

The vested authority and responsibilities of the Village Council are derived from two sources -- administrative legislation and tradition. Delegated administrative functions depend on the place of the village in the larger polity -- the state or nation -- and owing to historical events these functions have undergone a series of changes. Traditional council functions, however, are rooted in the role of the councillors as leaders in village society and consequently are more conservative.

The old proverb "Phep vua thua le lang" (The laws of the Emperor yield to the customs of the village) is known by all Vietnamese, and in many respects it characterizes the village in Vietnam as a self-contained homogeneous community, jealously guarding its way of life -- a little world that is autonomous and disregards (if not disdains) the outside world. In southern Vietnam, historical events since the end of the nineteenth century have rendered the image implicit in the proverb less and less applicable to the village. The isolation of the village has steadily grown less, and the ways of the village have been more and more encroached upon by the ways of the world. Despite this fact, however, village methods for the administration of justice have changed very little in the last thousand years.

One of the most important functions of the Village Council is to maintain order in the village, and while this has been expanded to include matters of political security, traditionally it simply meant punishing the guilty and arbitrating disputes. Crimes are rare in the average village. Most disorders are torts, and there are numerous conflicts between individuals and families. In the traditional Village Council, justice was a matter for the Huong Chanh, the arbitrator of minor conflicts among villagers. The usual procedure was for the accused and accuser to swear to the truth of their statements before the altar of the Guardian Spirit of the Village. Each would have a live chicken, and as they made their oaths, they would cut or tear off the chickens' heads, begging the Guardian Spirit to strike them dead if they lied.

In the lowlands the district chiefs have limited judicial powers. When using their authority to gather evidence and to bring offenders to court, they function as assistants to the prosecuting attorney. They are not authorized to hold trials of any kind, but they may arrest anyone caught in a criminal act, interrogate witnesses and prepare an official statement for the prosecuting attorney. When a serious crime has been committed, the district chief makes a personal investigation on the scene and informs the prosecuting attorney of the facts. Where public safety or morale is involved, the province chief must also be informed. Village chiefs are authorized to mediate disputes between villagers, but criminal offenders are customarily turned over to the police for investigation to determine what further action is to be taken.

Most disputes in lowland villages are settled informally by hamlet chiefs or Village Councils. Many others remain unresolved because the

contending parties cannot afford to go to court. Differences between members of the same family are probably most often settled within the family to avoid the disgrace attached to airing family troubles in public. Angry villagers seeking a settlement of their differences commonly take their cases first to the head of their five-family group or to their hamlet chief. They then may go to the Village Council which serves as an informal court for petty offenses or minor litigations. Rarely is a case appealed beyond this level. Villagers fear having their problems presented to harsh or cold strangers at the district tribunal. The council also prefers to keep village problems from district authorities whose legal decisions are too rigid, and having disputes recorded there would cause the village to lose face.

The limited information available indicates that most complaints or infractions arise from quarrels within or between families, disputes over property ownership or damage, defaults in debts or services, altercations over the use of land or irrigation water, jealousy and marital infidelity.

The informal judicial role of the Village Council is an important means of preserving tranquility. Moreover, hearing cases enables the council to keep closely in touch with village attitudes and activities. Procedures are extremely informal, with no ritual and seemingly with no particular person in charge. The contending parties on entering the village hall may begin telling their stories to the first councilman they meet. The disputing parties usually stand on opposite sides of the room, and each presents his version of the case. Witnesses for either or both then are heard. Onlookers may interject statements and the councilman may make suggestions for settlement or refer the disputants to the police chief, who, though without specific legal authority, also acts as adjudicator in village quarrels.

In serious disputes, the entire council may meet and listen to the complaints of the parties. After questioning them, the council may ask their hamlet chief to investigate further, delegate the case to him for settlement or itself try to effect a reconciliation. It may also require indemnity for loss or damage, or levy fines or impose other sanctions such as contributions of labor to village projects. Unresolved cases are forwarded to the district chief for further consideration.

A threat to refer a case to the district chief, who may place it before a court, often brings a settlement. Village justice, which costs nothing, generally seems to be administered effectively and villagers prefer its relatively mild operation to the expense and possible severity of the regular courts.

Tradition called for ordinary villagers guilty of a legal violation to be beaten with a rattan cane; notables were fined. When the colony of Cochinchina was established, the French administration forbade these

punishments as too harsh. Vietnamese officials, however, registered formal complaints, contending that this repression of power greatly diminished the prestige of the village leaders. As a compromise, in 1904, legislation granted the Village Councils the right to demand additional days of guard duty as punishment for males and the right to impose certain penalties for damage to public property or fraud relative to alcohol and opium regulations.

In Khanh Hau, a village of 3,241 inhabitants, located about 55 kilometers from Saigon, between August 1956 and May 1958, an estimated 60 to 90 cases -- three or four each month -- were brought to the Village Council for arbitration. For the most part they concerned marital relationships, family lands, irrigation problems, physical assaults, rent issues, and land use. Other complaints arise from disputes over property ownership or damage and defaults in debts or services.

Mountain Tribespeople. The Indochina peninsula contains about one million mountain tribespeople who are aborigines of great dissimilarity with a low level of civilization. An accurate census has yet to be taken, but as many as 700,000 of these people have been estimated to occupy the highland regions of South Vietnam.

One of the most extraordinary things about these tribesmen is their remarkable memory which has enabled them to pass down through the centuries oral epics and legal codes in poetic form. The Rhades, for example, have in their sagas a name for and description of the mammoth and the megatherium which have been extinct since prehistoric times. This unique memory has helped compensate for the fact that these people had no written language of their own until French and American missionaries began devising it, mostly during the last century.

There is not now and never has been a Montagnard nation. The social and administrative unit is the village, each one independent and governed by its own chief and council of elders. The village chief is selected by the villagers but is generally the wealthiest and most intelligent man in the village. He must be approved by the council of elders, a group of old, respected men selected by the villagers. The chief is responsible for all village affairs and must organize all village rituals. For purposes of illustration the legal concepts of one of the tribes, the Rhades, will be explored in greater detail.

A Rhade Village Trial. The village system for dealing with a thief is as follows. The person who has had property stolen comes to the Village Council house and asks one of the elders to question the suspected thief. If an accusation is then made against the suspect, the chief of the village is informed so that he may summon the suspect and set a day and place for trial. The trial is usually held in the house of the suspect, and the owner of the stolen property along with the village chief

and counsel for the accused, are present. The speaker for the accused is his counsel and speaker for the owner is the elder he has selected. The elder protests the action allegedly committed by the suspect with parables. If a judgment is made against the suspect, he must return to the owner three of whatever he has stolen, unless he is pardoned by that owner, in which case he might only return double or exactly what he has stolen.

In the past, local custom included trials by ordeal. First, a sacrifice was made and the spirits called. Then various methods of determining guilt were utilized. One method was for the accused and a champion selected by the villagers both to plunge their heads under water. If the accused was the last to withdraw his head, he was deemed innocent. Another method was to pour hot lead or pitch on the hands of the accused. It was believed that the spirits would protect him if he were innocent. Another alternative, which for obvious reasons was usually selected, was the wine-drinking test. Old belief provided that the innocent would be protected from becoming drunk or sick upon drinking the required three liters of wine.

Spirit World Concepts of Justice. Despite many differences, some basic characteristics are shared by almost all of the tribespeople. First of all, superstition and fear play a heavy role in their lives. Although Christian missionary efforts have made some changes, the great majority of tribespeople are animists or spirit believers. Followers of this ancient Southeast Asian religion believe that practically everything has its own spirit -- for example, a rock, a tree, thunder and flowing water. Most of the spirits are unfriendly, and tribespeople take elaborate precautions to avoid antagonizing them. In one case, a Vietnamese soldier washed his truck in a mountain stream and the spirit of the stream was much offended until appeased by a sacrifice.

The Montagnard's conception of right and wrong is actually a matter of what is expedient and inexpedient. He is concerned with policy rather than justice. Piety and fervor have no place in his ritual observations. He conceives his relationship to the spirit world as a contractual arrangement in which the spirits are strict and exacting creditors but who can be paid off by means of a ceremony. Broadly speaking, there is nothing either particularly benevolent or hostile in the attitude of these ghostly autocrats towards their human feudatories. Drought, deluge, epidemics -- in fact, disasters of all kinds -- are merely indications that the rites have been violated, and the only remedy lies in finding the offender and compelling him to put the matter right by providing the prescribed reparation.

All of the rituals require alcoholic consumption and as a result respectability and drunkenness are allied. The upright man gives evidence of his ritual adequacy by being drunk as often as possible; he is respected by all for his piety, a pattern held up to youth. The words "nam lu,"

uttered in grave welcome to the stranger in a Montagnard village and meaning "let us **drink much together**" have all the exhortatory value of an invitation to common prayer. Passers-by are begged to join in the tribesmen's orgies of eating and drinking and it is bad taste -- offensive to the spirits -- to eat or drink less than is provided by the fearsome liberality of the hosts. To prevent any possibility of the visitor's unwillingly committing this kind of discourtesy, or remaining in a state of disreputable sobriety, an attendant squats at his side keeping a careful check on his consumption and ensuring that he drinks at least the minimum measure.

The system works out in practice much better than one might expect. Crimes against an individual, such as theft or violence, are viewed in terms of interference with one man's debts to the gods by another. The aggressor, however, is seen as no more than the instrument of one of the spirits who has chosen this way to punish the victim for some ritual inadequacy. The judge, therefore, reciting in verse the appropriate passage of customary law, abstains from stern moralization. Both sides are in the wrong, and rather illogically, it seems, the aggressor is sentenced to make material reparation and also -- what is regarded as far more important -- to provide the animals and liquor necessary for the ritual reparation to be paid to the offended spirits. The ritual reparation, of course, takes priority, and in cases of hardships may be paid for in installments. The offender is compelled by law to take part in this feast which provides as a secondary function the means of reconciliation of the two parties.

There is no distinction among the Montagnards between civil and criminal law and no difference is made between intentional and unintentional injury. If a man strikes another in a fit of temper or shoots him accidentally while out hunting, it is all the work of the spirits. No eyebrows are lifted. It is just another human misfortune to be settled by a drinking bout at which the whole village gets tipsy. The mountain tribesmen do not apply the death penalty, since otherwise the community would expose itself to the vengeance of the ghost of the executed man. Two of the greatest crimes are the theft of water and of rice, which are under the protection of powerful spirits. Owing to the sacrilegious nature of such an offense, which exposes the community to the resentment of the spirits involved, the offender in this case is banished for life.

Many tribes have witch doctors or shamans who advise them how to appease an angry spirit. In the process, the shaman interprets various omens and carries out cruel sacrifices on animals, particularly those of the bovine family. The shaman enjoys high esteem in Montagnard society and he interferes constantly in all activities, social, political and judicial. Each family pays him a tax in kind against future famine and towards the expense of community festivals. The shaman is popularly credited with the possession of uncanny powers and the destructive capacity of the most eminent members of this fraternity, the Sadet of War and the Sadet of Fire, who belong to the Jarai tribe, were formerly regarded with apprehension even by the chieftains.

The Rhade Legal Code. One of the most advanced groups of tribes-people is the Rhade, who live in the provinces of Darlac, Quang Duc, Phuoc Long, Phu Yen and Khanh Hoa. Like other tribes that speak languages of the Malayo-Polynesian linguistic family, the Rhade have a matriarchic society. The woman proposes marriage to the man, and the eldest daughter inherits her parents' property.

The Rhade have a carefully thought out oral code of laws which is especially well suited to their way of life and passed down from generation in poetic form. Eventually, Sabatier, the French resident who came in the 1920s to administer Darlac Province, gave them a written language, a quoc ngu transcription of their dialect and prepared a written collection of their customs.2:6-9/

Rhade Customs Relating to Marriage. The Rhade have a matrilineal kinship system, that is, the females own the houses and family goods. Males are, however, permitted to own weapons, elephants and bicycles. A girl is allowed to take a husband as soon as she is physically mature. The reasoning behind this custom is to prevent a young girl from having affairs and bringing shame on herself. Various family groups are prevented from marriage because of legend about kinship and pseudokinship. If two members of the same clan marry, this angers the spirits and a wild buffalo must be sacrificed.

When a girl comes of age, the parents hold an assembly and discuss the possibilities of a husband for the girl. Once a boy is selected, they call his uncles and his brothers into the assembly to see if his family agrees. If the brothers and uncles of the boy agree, they then meet with the boy and his parents. Provided the boy and his parents agree, a day is then set when everyone from the two families will meet at the boy's home.

On the day both families meet at the boy's home, the wedding ceremony takes place. The boy sits on one side of a mat and the girl on the opposite side. Each of them places a bracelet on the mat. If the girl likes the boy, she takes his bracelet from the mat, and if the boy likes the girl, he takes her bracelet from the mat. The families are witnesses, and wedlock is completed.

At the end of the bracelet ceremony the boy's parents ask for a dowry from the girl. She is expected to give in accordance with the position or wealth of the boy. If the boy is a state official, she might give one large flat gong which costs about 20,000 piasters; a lesser gift for a boy of good standing might be a buffalo worth 5,000 piasters. Dowry is usually given to fit the needs of the boy's family. If the girl has no family or cannot pay the dowry, the parents of the boy ask the girl to live in their house. If, at the end of 2 or 3 years the girl can pay the dowry, both families gather together again and an elder speaks for the marriage. A buffalo or pig is then sacrificed, according to the wealth of the young girl. Provided the girl has a family, the couple then moves to the home

of her parents, this being the rightful place of her husband, once the dowry is paid.

Should the marriage be broken at any time by the husband, he must pay his wife double the dowry she paid for him, plus a fine for each of the children he leaves her with. If the wife breaks the marriage, she must pay her husband the same dowry she gave his family for him. Divorce is rare among the Rhade, and it is even less seldom that both parties agree to divorce, since in such a case neither would pay the other.

When the wife dies, the husband returns to his family unless there is another free woman in the family for him to marry. In case he returns to his family, any children he has stay with another female member of his former wife's family. His former wife's brothers are responsible for their care. In the event the husband dies, the wife raises the children whether or not she marries again. The maternal uncle is responsible for his sister's children, should her husband die. Even if the father is not dead, the maternal uncle must pay any fines, should his nephew get into trouble.

Rules for adultery are included as a part of the marriage system. If the wife should catch her husband with another woman, she levies a fine against him according to the wealth of his family. The husband must then obtain this money from his family and give it to his wife. The wife is likewise fined for committing adultery, unless the man is unmarried, in which case he pays a fine to the husband. In any case of adultery, where both parties are married, a fine is levied against each. The man must pay his wife and the woman, her husband. In the case of the woman, the money must be given to the parents of her husband. Neither she nor her husband can use that money.

A man may take more than one wife if he is rich and if the brothers of his first wife agree. The wife's brothers also have the power of correction in all family matters. Women cannot marry more than one husband.

In the case where a boy and a girl have a private affair, a bracelet may be exchanged in secret. This provision ensures that a girl rarely becomes pregnant without having a husband she can lay claim to. It would be a rare case where the boy tried to deny the secret marriage, because he would be forced to pay a heavy fine.

Rhade Land Tenure. Land in the Rhade area is owned by the clans. This includes all of the land on which Rhade live and a clan may have one or more large tracts which it claims as ancestral land. For each tract there is a representative of the clan called the po lan who is considered the hereditary or appointed guardian of this land. The po lan is usually the eldest female of the eldest line in the subclan of each territory. Her duties and responsibilities are clearly prescribed by Rhade traditions.

The limits of the clan are well-marked by natural boundaries, such as rivers, hills, rocks or trees. A record of this boundary is passed by word of mouth from generation to generation. Under the po lan system, the po lan must visit the limits of the clan land to honor the souls of their ancestors who lie in the soil within each subclan area. The po lan must sacrifice a buffalo for the soul of each of the ancestors so they will bring rain. Sacrifice must also be made to approve the affronted ancestors if two members of the same clan marry, or marriage occurs between two clans not permitted to marry.

If anyone should violate the territory by practicing shifting agriculture or cutting the forest without the permission of the po lan, she can levy a fine against the offender. Parts of the forest are considered sacred and it is forbidden to cut trees there. If this is done, great misfortune will occur to the subclan that owns the territory and sorcerers must contact the spirits. The po lan receives 2 or 3 baskets of rice, pigs, chickens, cotton every seven years as a fee for her services. In addition to this, she receives free wine and food in places she visits.

As keeper and protector of the clan land, the po lan has no right to alienate it. Due to the marriage pattern of the Rhade, clan members are scattered throughout the area. It is likely therefore, that nonclan people will be cultivating clan land. This is done with the permission of the po lan.

In many instances the po lan does not live on the clan land. For example, the H'mok clan owns most of the land around the town of Ban Me Thuot but the po lan lives some five kilometers away. The clan elders and the po lan know the limits of their land. A few of the po lan have papers attesting their ownership, some of which are sets of undated, rather crudely drawn titles and maps issued by M. Sabatier.

In order to purchase land from the Rhade it is necessary to negotiate with the po lan, with those cultivating portions of the land and the notables of villages in whose territory the land in question is located. More than likely the individuals cultivating land are from the village concerned so the two latter parties can be dealt with together. In this case, it is a question of compensating them for the loss of cultivated land. Discussion with the po lan would have to be held separately. The major difficulty in such negotiation lies in the fact that the concept of transferring title of land does not exist among the Rhade. They are unfamiliar with money and it is very difficult to discuss cash compensation.

Formal Customary Courts. With the arrival of the French, an administrative organization was established for the entire High Plateau. Three provinces, Darlac, Pleiku and Kontum, were formed, each with a French resident. The provinces were divided into districts and the districts into

cantons. French policy was to utilize local leaders as much as possible and to train and use secretaries and assistants from the local population. Consequently, the clerical echelon in the provincial headquarters, the district chiefs and canton chiefs were practically all Mountaineers. There was no attempt to bring about any sweeping changes in the existing system of justice which was based on what could be called tribal law. Instead the French formed a tribunal coutumier at each province headquarters. This is a formal court intended to settle Mountaineer difficulties and generally mete out justice according to tribal customs. The tribunal is only intended to settle those cases which cannot be resolved by the village chief and Village Council.

The tribunal in Ban Me Thuot typifies the situation. The tribunal convenes for the first seven days of every month. The Mountaineers who have grievances gather and wait their turn to be heard. The chief of the tribunal is an elderly man from Ban Don, of Lao Mhong, origin. His uncle had been appointed the first tribunal chief by the French when the tribunal was founded. He inherited this role and it will be passed on either to his son or his sister's son. In judging the cases brought before the tribunal, the chief judge relies on the written collection of Rhade customs compiled by Sabatier.^{2/}

The tribunal has some cases concerning property disagreements. However, the most frequent difficulties concern adultery. The tribunal deals only with cases in which both parties are Mountaineers. Cases involving both Vietnamese and Mountaineers are the responsibility of the province chief. The chief judge is assisted by some Rhade leaders and there is a court clerk to record the testimony and judgments.

Other Matters Covered by the Rhade Code. Some of the concepts included in the law of the Rhade are quite sophisticated, even by present-day standards. For example, it states that madmen who commit crimes cannot be held responsible in the same way sane men can. It establishes procedures for selecting a new chief and for isolating lepers so they will not spread contagion. It prescribes penalties for hiding serious matters from the village chief and for starting fires in the village.

Some Current Problems on the High Plateau. Many have quite correctly described the present situation in the High Plateau of SVN as resembling that of the American West during the 19th century, when the westward movement of settlers gave birth to years of struggle with the Indians who sought to protect their ancestral lands. The Diem government encouraged large numbers of settlers to move into the High Plateau, resulting in many new villages and a substantial increase in population. The Mountaineers, just like the American Indians, regarded this invasion with fear and bitterness. The new settlers have often taken the Mountaineers' land and the merchants, plantation owners and military have exploited them. The Michigan State University Vietnam Advisory Group has collected numerous revealing incidents and statements by the Mountaineers such as:

"One man said he was very upset about his land. He had just cleared a rice field and a Vietnamese moved in and settled on it. He went to the authorities and received no help. When he went directly to the squatter and asked why he was there, the man retorted by threatening to burn his house.

"Several agreed that it was a common occurrence in the Pleiku market that if the Mountaineer would not accept the offered price for sale of his vegetables, the Vietnamese merchant would crush the vegetables, making them unsalable.

"Several noted that in the Pleiku market, the merchants often try to badger them into buying things. If the police are there, they try to help the Mountaineers, but when the police leave the merchants resume their pressure.

"The Vietnamese promise to pay them for working on the roads, but either they never receive the money or it takes a long time. They must work on the roads three times a year for a period of ten days each time. They must obey when they are called, for they are afraid of what will happen if they don't agree.

"The Vietnamese talk equality,' a group of Mountaineers agreed, 'but they don't mean what they say ... in their hearts, they want to dominate us. They are colonialists. The French were bad at the mouth, but in their hearts they were good. Things were better.' 3:34/

The reaction of these mountain people to such discrimination by the Vietnamese is one of deep frustration. Many have fled into the mountains but others have stayed to fight.

Today, as the modern world grows closer to the Highlands and other rural areas of SVN, the conflict becomes more and more crucial. The contrast of this 16th century civilization of the interior meeting the 20th century jet planes, helicopters and transistor radios of the outside world is fantastic and ominous. For years the mountain tribesmen were relatively isolated and thus could easily preserve their society in its fixed state. But with the coming of modern warfare the exposure to more dynamic external forces has increased at a dizzy pace. Today the mountain people are constantly faced with the outside world. Vietnamese and American soldiers live in their midst. Helicopters and the other machines of modern warfare mingle among the tribesmen with their elephants and medieval crossbows in the jungle and on the roads. The transistor radio,

and perhaps soon television, will leap the barriers of distance and illiteracy. Men who serve in the Army return home with new standards and new expectations. The Montagnards are experiencing a rapid cultural change of enormous significance.

The Potential Role of Law in the Highlands. Like the US experiences with ethnic minorities, the problems of the Montagnard's position in SVN are largely social or cultural matters. If, during the 19th century, the US had adopted a more enlightened approach to the problems of the American Indians and Negroes, much subsequent difficulty could have been averted. It would behoove the Vietnamese to learn from these experiences and undertake now to study and better understand the mountain tribesmen, their customs and their problems

Many of the difficulties of the mountain people in their encounters with the outside world result from what we would call in the United States denials of basic civil rights. These people are taken advantage of in land and commercial dealings -- their property is seized and taken from them; their labor has been extorted without just return. These discriminations and violations of basic rights are, however, curable through legal channels if the proper courts and laws are available.

The GVN must seek to meet this problem by enacting and enforcing effective legislation and constitutional guarantees which define and protect the rights of all individuals. Such action would respond to the real needs of vast numbers of mountain and rural people. If these laws were properly promulgated and enforced, they would be a major factor in winning the support of these people, not just for the legal system, but for the government as well.

Military Justice

General. Although the last direct participation by France in the SVN judiciary system ended on 16 September 1954, the legal procedures and, with relatively few exceptions, the legal concepts presently in force in SVN remain essentially French. This is also true of the SVN Code of Military Justice which bears a close resemblance to the French Codes de Justice Militaire.

On 14 May 1951, His Majesty Bao Dai promulgated the SVN Code of Military Justice. Despite the many violent changes which have taken place in SVN since that time, this code is still in effect and its amendments have been remarkably few. There are, however, very significant amendments in the making. Proposed decree law 11086 QP-HC-1-2 provides for some sub-

stantial reorganization of the military justice system including: (1) the replacement of the Military Tribunals and Military Field Tribunals with Corps Military Tribunals; (2) the establishment of a military appellate body to perform the functions presently assigned to the Civilian Court of Appeals; and, (3) the appointment of military defense counsel to represent all accused before the Corps Military Tribunals as well as on appeal. However, this proposal has not yet been implemented and the GVN is still studying methods of placing it into operation. Hopefully, these reforms, when and if put into operation, will help to bridge some of the gap that often exists between the military justice system on paper and its actual operation.

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The Code of Military Justice is divided into two parts: Title I, entitled "The Judgment of Offenses Committed by Military Personnel or Assimiles," and Title II, "Military Offenses Committed by Military Personnel and Assimiles and the Penalties Applicable to Them".

Title I has thirteen chapters, the first two of which cover the organization and jurisdiction of military courts. Other chapters describe in some detail the various procedures for the preliminary investigation, the investigation by the examining magistrate, referral for trial and the procedures followed during the trial itself. Provisions are also included for appeals, requests for rehearings and execution of judgments.

The various military offenses are defined in the second chapter of Title II. Most of these offenses have a familiar ring to anyone who has ever been associated with the military. Heading the list, in Section I, are "failure to report for duty" and "desertion". Section II deals with such offenses as military revolt, rebellion, insubordination, and acts of violence, assaults and insulting behavior toward superiors. Other offenses covered in this section include abuse of authority, robbing military wounded and dead, the selling, buying, misappropriation, waste, loss, pawning, receiving and concealing of government property, pillage, voluntary self-mutilation and infractions of military orders. In SVN, as in France, offenses are ranked roughly in three classes:

(1) Less serious criminal offenses (contraventions de simple police), punishable by a fine and a maximum of ten days in jail.

(2) Offenses of moderate gravity (delits), punished by a fine and a sentence of imprisonment, as a rule not exceeding five years.

(3) The most serious offenses (crimes), which are punishable by death or imprisonment at hard labor for more than five years.

Only the last two classes are mentioned in the Code of Military Justice.

The first chapter of Title II deals exclusively with punishments. Article 104 of this chapter provides that the punishments for ordinary crimes are those set forth in the applicable civilian penal laws. Punishments for military offenses are found in the specific article dealing with each particular offense.

Military courts may, in addition to the punishments specified by the civilian penal law for crimes not of a purely military nature and by the Code of Military Justice for military offenses, impose accessory punishment known in French as degradation militaire. This punishment includes:

(1) Deprivation of grade and the right to wear the uniform and insignia.

(2) Expulsion from the Armed Forces and loss of civic, civil and family rights. (This exclusion extends as well to the enjoyment of pension rights and other benefits authorized by the legislation on pensions; the loss of family rights involves deprivation of the right to be legal head of the extended family, to serve on the family council and to share in the disposition of family property.)

(3) Deprivation of the right to wear any decorations.

All sentences involving degradation militaire are published in the orders of the day.

In the case of delits, military courts may impose the following punishments:

(1) La destitution. (This involves deprivation of grade and rank and the right to wear the uniform and insignia and, under certain circumstances, the right to receive a pension.)

(2) Loss of grade. (This punishment has the same effect as destitution except it does not effect the right to a pension and to recompense for past services.)

(3) Imprisonment.

Until fairly recently, the administration of military justice in SVN has been highly centralized. Article 20 of the code charges the Minister of Defense with the responsibility for investigation of all offenses falling under military jurisdiction and delivering the offenders to competent

Military Tribunals for trial. Although Article 20 has always provided for the delegation of this function to regional commanders, it was not until 1964 that any action was taken to implement this provision of the code. On July 27th of that year, the Minister of Defense authorized commanders of Corps Tactical Zones "to order the prosecution of civilians and enlisted personnel of the regular and regional forces before military courts for offenses committed in their respective Corps Tactical Zone." Further delegation was made in the decree law of 13 August 1965, which gave prosecutors the power to institute prosecutions for ordinary desertion. Approximately six months later, by Decree Law No. 001-QT/SL of 17 January 1965, the Chief of Staff of the RVNAF was also delegated authority to order prosecutions. However, the Minister of Defense retained the power to order the prosecution of commissioned officers before military courts.

The chief military figure in the administration of military justice is the Director of Military Justice, who reports directly to the Minister of Defense rather than to the Chief of Staff of the RVNAF. The director's mission, as set forth in Presidential Decree No. 332/QL, 11 November 1964, is to advise the Minister of Defense on all legal matters, to study and implement the organization, operation and administrative, of Military Tribunals, to recommend necessary amendments to the Code of Military Justice, to study all problems of national or international law concerning the RVNAF and to provide legal assistance. It is not yet entirely clear as to what the exact division of responsibility will be between the Director of Military Justice and the Judge Advocate, High Command, a position established by Ministry of Armed Forces Directive No. 1752, 11 November 1954. According to this directive, the Judge Advocate advises the Chief of Staff on all legal affairs, provides technical assistance in the preparation of documents, plans and programs, recommends amendments to the Code of Military Justice, controls judicial matters, conducts judicial investigations and prepares documents recommending prosecution.

Most of the business of administering the code is done by an autonomous corps of military justice officers, bailiffs and clerks. The Military Justice Corps is roughly the equivalent of the US Army Judge Advocate General's Corps but performs its functions on a defense-wide basis for all the armed forces. It has approximately 50 officers ranging in rank from first lieutenant to colonel (the rank held by the Director). These men are generally law school graduates, although some have not passed the probationary period required for admission to the bar as fully qualified lawyers.

Among the key jobs held by Military Justice Corps officers are those of commissaire du Gouvernement and juge d'instruction militaire. The commissaire du Gouvernement may be considered as the counterpart of our trial counsel or public prosecutor. The US Article 32 investigating officer is somewhat analogous to a juge d'instruction militaire. However, the juge

d'Instruction is not a layman but rather a professional jurist with more extensive powers than our pretrial investigating officer. Perhaps the most aptly descriptive English title for this officer is "examining magistrate." His precise status will become more readily apparent after a detailed description of his duties during the pretrial procedures.

At each Military Tribunal are a government prosecutor who may have one or more assistants, an examining magistrate, and a chief clerk aided by one or more assistant clerks and process servers or bailiffs. The process server, in addition to serving various papers for the court, also assists the court president in maintaining order when the court is in session.

No military defense counsel is provided for under the code. However, an accused has the right to hire civilian counsel of his own choosing. If an accused does not have the means to pay for counsel, a civilian lawyer is designated by the head of the local bar association to defend him.

The Vietnamese place great stress on pretrial investigation and procedures. Only "judicial police" may conduct investigation of offenses preliminary to trial. This is true under the procedures followed by civilian as well as military courts. Within the Department of Defense authority to act as judicial police has been given to officers, noncommissioned officers and squad leaders of the Military Police Criminal Investigation Service. Until 1 January 1965, this had been a function of the GVN National Gendarmerie which was abolished on that date. The Gendarmerie personnel, cases and equipment were then divided between the National Police and the Military Police. About 300 gendarmes went to the Military Police, where for the most part, they now constitute the Criminal Investigation Service. The net result of this change is to give the Military Police fairly broad authority to make investigations, particularly in cases involving offenses against the security of the state.

SVN law now provides for only two types of military courts:

- (1) Regular Military Courts.
- (2) Field Courts.

Both of these courts are more or less comparable to the US general court-martial, particularly insofar as the punishment they may adjudge. The Vietnamese have no counterparts to the American summary and special court-martial.

SVN is divided into four Corps Tactical Zones and the Capital Military District at Saigon. Military courts usually sit in Hue for cases arising in I Corps, in Nha Trang for II Corps cases and in Saigon for cases from the remaining areas, except for those cases referred to the IV Corps Field

Court which sits at Can Tho. (If proposed Decree Law 11-86 QP-HC-1-2 is enacted these two courts will be replaced by a Corps Military Tribunal.)

Contrary to the practice in SVN civil courts of trying criminal and civil actions simultaneously, civil actions cannot be brought before military courts in SVN. However, after the military court has rendered its decision, a suit for damages may be adjudicated in the appropriate civilian court.

Regular Military Courts. A regular Military Tribunal is composed of a civilian president and four military members. The president is a civilian judge from the local Court of Appeals who has been assigned to duty with the military court, usually for a period of six months. However, on 30 March 1964, Decree Law 5/64 amended Article 9 of the Code of Military Justice to provide for two alternate presiding judges for each Military Tribunal, who may be selected from the field grade officers of the Military Justice Corps. The military members are selected from a roster of officers and noncommissioned officers from various units stationed in the area of operations where the court is sitting and are placed on call for such duty for six months. These personnel, who may be from any of the armed services (Army, Air Force, Navy or Marines), are recommended for this assignment by the military commander of the area. Generally, as in the case of US courts-martial, the grade of the military members selected to hear a particular case will exceed that of the accused. Furthermore, if the accused is an enlisted man or civilian, one of the four military members must be a noncommissioned officer. As has been previously pointed out, each military court has a chief prosecutor and an examining magistrate, both of whom have one or more assistants, plus a number of clerical personnel to carry on the day-to-day administration.

Military Field Courts. The essential and most characteristic feature of the Field Courts is that they may try only flagrante delicto cases arising during a period of emergency which involve: (a) personnel of the RVNAF or the Regional Force charged with committing offenses denounced by the Code of Military Justice, the Penal Code or any other current law; or, (b) civilians charged with committing offenses against the national security as stipulated in the Penal Code, Ordinance No. 47, 21 August 1956, and Law 10/59, 6 May 1959, and certain other offenses set forth in the Code of Military Justice where it is explicitly prescribed that civilian perpetrators are subject to military jurisdiction.

During the state of emergency the Field Courts have been empowered, by the decree law of 27 July 1965, to try both military and civilian defendants on numerous charges such as black marketing and dishonesty in office.

With the exception of the president, who is a military officer instead of a civilian judge, the composition of a Field Court is the same as that of a regular military court. As will be seen later, the procedure in a case going before a Field Court, particularly prior to trial, is considerably simplified and abbreviated. A sentence pronounced by a Field Court is final. No appeals are executed without the approval of the President of the Republic.

Handling of an offense by a military court usually goes through three stages:

(1) Opening of the case by the filing of a complaint or accusation.

(2) Preliminary investigation.

(3) Trial and possibly a fourth stage, that of appeal. However, in those cases where a Field Court is utilized, stage two, the preliminary investigation, is considerably abbreviated and since there is however, no death sentence, the fourth stage is eliminated.

When, through various public officials, witnesses, victims, or others, it is learned that an alleged offense has been committed, the nearest Criminal Investigation Service office or judicial police official is notified and an investigation begins immediately. If the investigation produces evidence leading to the conclusion that a particular individual has committed the offense, a report is made to the nearest military justice officer who may be located at Saigon, Nha Trang, Can Tho or Hue, as the case may be. There the report is examined to determine if there is proper legal basis for a trial, and if so, whether the accused should be confined or released to an administration company pending trial. Both are important decisions because in some cases a very lengthy period may elapse prior to trial. In any event, an offender destined for trial usually is transferred from his unit and will await trial either in prison or in an administration company located near the military court which will eventually hear his case.

When the appropriate military justice personnel have examined the file and determined that the evidence contained therein is sufficient to warrant trial, the case is forwarded to the Minister of Defense, if the accused is an officer. If an enlisted man or a civilian is involved, the case goes to the commander of the Corps Tactical Zone where the accused is located. Depending upon the particular circumstances, the Minister or the corps commander will either order the case placed on the docket for direct trial or sign an "Order for Investigation" granting the accused a hearing before an examining magistrate. In time of war, provided an investigation has been made by an official having judicial police powers, any offender can be ordered directly before a court,

without a preliminary investigation by an examining magistrate. In time of peace, this abbreviated procedure is permissible only in those cases involving offenses in which the maximum punishment is a fine or imprisonment not exceeding five years. The case is sent first to the prosecutor who is a Military Justice Corps officer, usually holding the grade of major. If an "Order for Direct Trial" is involved, he arranges for the case to be placed on the docket for trial. When he receives an "Order for Investigation" he forwards the case directly to the examining magistrate. As a matter of practice, however, even in time of war, most cases involving serious offenses, other than those classified as en flagrant delit are referred to an examining magistrate for a preliminary hearing.

The Examining Magistrate. One of the characteristic features of SVN criminal procedure, civilian as well as military, is the investigation by an examining magistrate. In marked contrast to Anglo-American practice, the SVN system of proof in criminal affairs allows the parties little or no control over the presentation of evidence. Thus, in SVN, the evidence is led not by advocates representing the prosecution and defense, but by the president of the court, in the interest of abstract justice alone. This makes it essential that the president be well informed, not only of the charges against the accused, but also of the evidence which points to his culpability. If the president's interrogation of witnesses is to be at all fruitful, he must be thoroughly familiar with every aspect of the case. It is virtually indispensable, therefore, that the facts be fully investigated before the trial and the results of the investigation presented to the president in a manner which, as far as possible, ensures their accuracy. This is the job of the examining magistrate. It is up to him to conduct a very patient preliminary examination of all the evidence, sifting and studying, hearing and rehearing it, until as many as possible of the inconsistencies have been eliminated and those remaining, thrown into sharp relief. He has wide powers to call as a witness any person whose testimony might throw light on the case. If portions of the testimony should prove to be contradictory, the witnesses are reheard and asked to explain the contradictions. All of this time they are under oath; but, if inconsistencies still remain, the examining magistrate is likely to resort to a "confrontation." In other words, he arranges for persons giving contradictory testimony to confront each other as he questions them in the hope that one or the other will give way. He may also proceed to a "reconstitution of the crime." This often demonstrates to the accused or a witness the futility of maintaining a false version of the facts and leads to admissions of the truth. Each bit of testimony heard is reduced to writing and placed in a file where all papers relating to the case are assembled. By the time the examining magistrate has completed his investigation, the file will contain a complete record of the events leading up to and constituting the crime, as well as all subsequent steps taken by the authorities in bringing the offender to justice. Thus, by studying the file prior to trial, the president is in a position to question the witnesses effectively and, when they depart

from their previous testimony, to challenge any apparent contradictions.

Rights of the Accused. The examining magistrate, at the initial hearing, informs the accused of the charges against him, of his right to remain silent and that he may, at his own expense, retain counsel of his own choosing. If the accused is unable to afford counsel, the examining magistrate will ask the head of the civilian bar association to designate a lawyer to defend the case. Unfortunately, in actual practice, these lawyers, who are not paid for their service, often fail to appear at the hearing. While these absences are tolerated at the proceeding before the examining magistrate, the appointed counsel is required to appear and represent his client at the actual trial.

An accused in custody may request a provisional release. It is then up to the examining magistrate, after consulting with the prosecutor, to approve or disapprove this request. Even though the accused makes no such request, the examining magistrate may, early in the proceedings, decide whether the accused is to be kept in confinement or released pending completion of the investigation and trial. The Vietnamese Code of Military Justice also permits the examining magistrate to require bail. However, inasmuch as bail is not commonly used, provisional liberty is generally based on the mere word of the accused that he will subsequently appear. In any event, an appeal from the examining magistrate's decision may be made by either the accused or the prosecutor to the indictment chamber of the local civilian Court of Appeals.

The accused generally is not entitled to be present during the interrogation of witnesses by the examining magistrate. However, the latter must make available to the accused for his information, all evidence which might serve to convict him. In fact, Article 45 of the code requires that upon completion of an investigation during which an accused was not represented by counsel, the examining magistrate read to the accused the entire report of investigation. The accused is permitted, at all times, to communicate freely with his counsel and may not be interrogated or confronted with witnesses against him, except in the presence of his counsel, unless he expressly renounces this right. The day prior to the interrogation of the accused, his counsel is given access to the dossier and is brought up to date by the clerk on all orders or instructions issued thus far by the examining magistrate. When an interrogation is ended, the accused is entitled to review any statement made by him to ensure its accuracy and truth. The transcripts of such statements must be signed by the accused, the examining magistrate and his clerk. If the accused refuses, or is unable, to sign, this fact must be reflected in the record. The code also provides that an accused may, during the investigation, produce all evidence which he believes material to his defense.

(Again, proposed Decree Law 11086 QD-HC-1-2, if put into effect, would enlarge the rights of the accused by granting him military defense counsel before the corps tribunal and also on appeal.)

The Examining Magistrate's Decision. When his investigation is completed, the examining magistrate transmits the dossier to the prosecutor, who has three days to return his recommendations in the matter to the examining magistrate. The latter, who is not bound by the prosecutor's recommendations, has several possible sources of action open to him. If he determines that the offender is not subject to military jurisdiction, he will return the dossier to the authority who issued the "Order of Investigation" for transfer of the case to a civilian court competent to hear it. The examining magistrate may, in another instance, find that the facts do not constitute a punishable offense or that the evidence is insufficient to justify prosecution of the alleged offender; whereupon he will order the case dismissed. On the other hand, if he concludes that an offense subject to military jurisdiction has been committed and that there is sufficient evidence to warrant prosecution, he refers the case to a military court for trial.

Either the accused or the prosecutor may appeal from a decision of the examining magistrate to the indictment chamber of the local civilian Court of Appeals. Such appeals are quite common, particularly in cases involving suspected VC and other persons accused of offenses against the security of the state.

Once a case finally has been referred to a military court for trial, it is up to the government prosecutor to take all the administrative steps necessary to get the proceedings under way. He prepares the charges, arranges for the time and place of trial, summons the witnesses and notifies the members of the court. At least three days before the trial, he must furnish the accused a copy of the charges against him, the text of the applicable law and a list of prosecution witnesses. He also must inform the accused that if he does not select his own counsel, the president of the court will designate one for him. The counsel may read the entire dossier in the clerk's office or, if he so desires, make copies of it at his own expense. The accused may have any witnesses he chooses called simply by giving their names to the clerk of court. All sessions of military courts ordinarily are open to the public. However, if an open session might endanger public order or morality, the court may sit in closed session. In any event, the verdict of the court must be publicly announced.

From the beginning to end, the president is in complete charge of the proceedings. An invaluable aid to him in this task is the dossier prepared by the examining magistrate, which he has given careful previous study. His first official act after opening the court is to swear in those members who have not already been sworn. He then calls the accused before the bar and asks his name, age, profession, residence and place of birth. Standing beside the accused is his defense counsel, wearing a long black robe with a white ermine tassel hanging over one shoulder. Not infrequently, rather attractive women lawyers appear before military courts as defense counsel.

Next, the president directs the clerk to read the orders convening the court and referring the case for trial, the charges drawn by the prosecutor and such other information in the case that he thinks necessary to be brought to the attention of the court. When the clerk has finished reading, the president reminds the accused of the offense for which he is being tried, pointing out that the law gives him the right to say everything that is useful in his defense. The president also advises the defense counsel that he cannot say anything contrary "to his conscience or against a due respect for laws and that he must express himself with decency and moderation."

At this time, the accused is afforded an opportunity to make a statement in his own behalf, after which the president questions him. If the other members of the court or the defense counsel have any questions, they cannot ask them directly but must have them relayed through the president. This is true in the case of other witnesses as well as the accused.

When the accused leaves the stand, the clerk shouts out the names of all the witnesses, prosecution and defense alike, who then come to the front of the courtroom and await further instructions. When the roll call of witnesses has been completed, the president directs them to go to the witness room and remain there until they are called upon to testify. Each witness, before testifying, is sworn by the president to "speak without hatred and, to tell the truth and nothing but the truth." One after another, the president questions the prosecution witnesses -- a white-uniformed policeman, a company commander, a barefoot peasant in his black pajama-like costume -- until all such witnesses have been called. In formulating his questions, the president relies heavily on the dossier prepared by the examining magistrate, going through a similar process of shifting and winnowing to arrive at the facts of the case. On occasion, a witness may deviate from the testimony he gave before the examining magistrate. Whenever this happens, the president is quick to point out the discrepancy and demand an explanation. In the event of conflicting testimony by several witnesses on a particular point, the president may order a "confrontation," which can be a very effective means in arriving at the truth.

In the statement he makes at the conclusion of the government's case, the prosecutor does not take the aggressive, adversary approach familiarly associated with US criminal proceedings. He simply summarizes the facts and the law on which the prosecution is based and, more often than not, asks for a fair and equitable sentence giving the accused the benefit of any mitigating circumstances which are present in his case.

Now reached is the stage of the trial where the defense presents its side of the story. The accused may call such witnesses or present such evidence as he deems useful in his defense. This includes matters

in mitigation or extenuation of the offense as well as evidence on the merits. At the conclusion of the defense's case, the prosecutor may make a reply, but in the event he does so, the accused and his counsel are always given an opportunity to have the last word.

The honor guard then presents arms and everyone stands as the court leaves the room to go into closed session to deliberate on the findings and sentence. Voting is by secret written ballot and a majority vote is required for a conviction as well as in arriving at a particular sentence. If convicted, the accused is ordered by the court to pay the costs of the trial. The court also, in certain cases provided for by law, orders the confiscation or return to the government or other owner, of all items seized or produced as evidence in the case. The judgment, which is quite lengthy compared to the findings and sentence of a US court-martial, is prepared by the court clerk and signed by him as well as the president and the other court members.

An indication that the court has arrived at its findings comes when the honor guard again snaps to "present arms," shortly after which the court re-enters the courtroom. If the accused has been found not guilty, the court will announce his acquittal and the president will order his release, if he is not detained for some other cause. When the accused has been found guilty, his sentence is announced by the court clerk and the prosecutor advises him that he has three days in which to appeal to the Cour de Cassation, the highest civilian court of appeals in SVN. The prosecutor may also submit an appeal within the same three-day period. As has been previously pointed out, there is no appeal from a decision of a Military Field Court. However, in a case involving a death sentence, the accused always has a right to petition for amnesty, even when he has no right of appeal or even after his appeal has been rejected. (Proposed Decree Law 11086-QD-HC-1-2 would merge the field courts and military courts in the Corps Tribunal and establish a military appellate body to perform the function now assigned to the civilian Court of Appeals.)

The record of trial, being a summarized rather than verbatim record of the proceedings, is quickly and easily prepared. When the time limit for an appeal has passed or appellate procedures have been completed, the record is transmitted to the Director of Military Justice. Provision in appropriate cases is also made for suspension of a sentence or remission of the unexecuted portion.

Nonjudicial Punishment. The SVN Code of Military Justice makes no mention of nonjudicial punishment. Nevertheless, this form of disciplinary action has long been authorized by various directives and orders of the Ministry of Defense. Provision is made for a variety of punishments, the permissible type and amount depending generally upon the grade of the offender and the grade of the person imposing the punishment. Types of

punishment which may be imposed, include admonition, reprimand, restriction to certain specified limits and confinement. The place of confinement is specified, i.e., the unit guardhouse, post stockade or, in the most severe cases, solitary confinement in a detention cell in a disciplinary barracks.

In contrast to the provisions of Article 15 of the United States Uniform Code of Military Justice, the GVN regulations do not provide for a forfeiture of pay. A further difference in the two systems lies in who may impose nonjudicial punishment. Under the Uniform Code of Military Justice, only a "commanding officer" has this authority. This term includes a warrant officer but not a noncommissioned officer or civilian. On the other hand, the lowest grade SVN punishing authority is a corporal who may impose a maximum of two days restriction on enlisted men under his command. The amount and variety of punishment which may be awarded a member of the RVNAF increases with the grade of the punishing authority, finally reaching a peak with the Minister of Defense who may impose penalties ranging from an admonition to 60 days solitary confinement. The SVN accused has no right to elect trial by court-martial in lieu of nonjudicial punishment but is permitted to represent to the punishing authority matters in mitigation, extenuation or defense.

Conclusion. SVN jurists have adopted the French concept that the essential purpose of criminal justice is to arrive at the truth. Great stress is placed on the pretrial phase of the procedure. There is also a tendency to place greater faith in the integrity of the men who administer the procedure than in the procedure itself. And these men are sometimes inclined to feel that justice is served when the truth is uncovered no matter what means are used to uncover it. Protection of society is the paramount concern. In contrast, US criminal justice, military as well as civilian, is designed to protect the accused at every state of the proceedings against the enormous police power of the state. This design injects into the proceedings an element of fairness which is deemed indispensable. It is said to matter little that this will occasionally permit a criminal to escape the law, for the system is itself more precious than the result in a particular case. However, there is little or no dispute as to what the machinery of justice in both systems is trying to accomplish. US and SVN alike believe that criminals should be punished and that the burden of proving the guilt of an accused is on the state. It is only in the manner of going about this proof that the two systems differ.

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from Appendix I, Vietnamese Legal History:

Legal Systems Under the French. One of the most significant French influences fell upon Vietnamese jurisprudence. An independent court structure was established for the use of French and other nonindigenous persons. These courts eventually became the official system and the traditional or customary courts continued to exist, as they do today, only in the rural areas where the formal courts failed to reach.

.....

Actually, the real friction between the legal concepts of Vietnam and France are usually overlooked. The major difference lies in the attitude each country takes toward the tension between rights and duties, a problem of balance which all legal systems face. The French are primarily concerned with protecting the rights of the individual, while traditional Vietnam stressed the Confucian concept of duties that each person must fulfill. However, the existence of the French legal system in Vietnam has not completely overwhelmed the Confucian tradition and it appears that the legal structure does not necessarily dictate the point of view that must prevail. Certainly in the United States legal system each of these concepts has prevailed from time to time.

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(from "The Vietnamese Legal System," prepared
in early 1966, by the International Affairs
Division, Office of the Judge Advocate General,
Department of the Army, Washington, D.C.)

CENTRAL GOVERNMENT: The Commission for Education and French Schools:

In a communique dated Oct. 18, 1966, the Commission for Education has made known that it has proposed to the government to entirely review the problem related to the French schools in Vietnam so as to put an end to a "nonsensical situation that has extended too much but without upsetting nor causing any detriments to the Vietnamese students who have followed the French education."

Following is the tenor of the above communique:

The agreement signed on the 1st of Nov. 1960 between the representatives of the Vietnamese and French governments, governing the establishment of French cultural institutions, will expire on the 1st of Nov. 1967. At this juncture, many delegations representing prefectural as well as provincial teaching bodies and students have come to the Education Ministry to ascertain its position vis-a-vis existing French schools in Vietnam.

In order to end rumors and prevent from possible misunderstandings, the Commission for Education makes known its policy in this matter:

1. The basic characteristics of the Vietnamese education, as referred to during the course of educational conferences held in 1958 and 1964, are humanism, nationalism, and emancipation. In the 20th century, as world relations become closer and closer, Vietnamese education must preserve and develop traditional values and at the same time assimilate the essentials of great world civilizations so as to be able to follow the course of other peoples. Consequently, the Commission for Education will never support a "cultural blockade" behind which there would exist only Vietnamese schools to produce chauvinistic narrow-minded students. This has been proved by Vietnamese educational programs.
2. However, to welcome foreign cultures is one thing while the recognition of several education systems quite different from each another in the national territory is another. French schools in Vietnam are not private schools like those of the English or Germans, to teach modern languages, but, on the contrary, are institutions which teach the French education program under the direction of French authorities, and outside the control of the Commission for Education.

No country in the world over can entrust the education of some ten thousands of its youths to foreign educational institutions under the direction of foreign authorities according to a program fixed by foreigners themselves. Besides damaging the national prestige, the coexistence of two kinds of education systems creates two kinds of youths quite different from one another, causing detriment to national unity in this period when the nation needs unity badly.

3. For all the above reasons, the Commission for Education has proposed to the government to review the whole problem of French schools established in Vietnam, and to take appropriate measures to put an end to an irrational situation that has gone on too long. The Commission will do this without upsetting the present situation of Vietnamese who are already following the French education.

The point of view of the Commission for Education is based on strictly educational reasons. It is not affected by the present political and diplomatic relations between France and Vietnam.

OPEN ARMS: defects of the program and what to do about them:

Republic of Vietnam

Ministry of Information
and Open Arms

No. 640-TBTTCH/BCH/VP

Saigon, Sept. 7, 1966

UNDER SECRETARY OF OPEN ARMS

TO:

- the Directors
- the Chiefs of Services
- the Heads of Sections & Offices of the Central Open Arms Agency
- the Chief Inspectors
- Inspectors in Charge of Open Arms at the 4CTZs
- the National Open Arms Center Manager
- All Open Arms Provincial/District Service Chiefs.

SUMMARY: Deficiencies in the Open Arms Program.

- I. Since the reorganization, the Central organization has identified deficiencies in the Open Arms Program which require improvement for a more effective program. The following defects are listed, with appropriate measures for correction:

Defects	Corrective Measures
L. Overcrowded Centers	: Service Chiefs must review plans for expanding : centers and report to the Central for the financial : year 1967. Poor management by the Services has : caused this condition.
2. The Centers have no cultivated land available.	: The Services must survey land surrounding the : Center and help returnees produce more food. : Request the Province Chief to provide assistance : from the Agricultural Service, and assistance for : seed, night-soil, etc.
3. Sick returnees do not receive adequate medical care.	: The Chief of Medical Service should request USAID : to have medical teams (MILPHAP, FILIPINOS, ROK) : give physical examinations to returnees and their : families <u>at least once a week</u> . (The Service Chief : in Long Khanh, through USAID, arranged for the : Filipino medical team to visit the center three : times a week). Also, the Service can train permanent : public health assistants from the Chieu Hoi Cadre. : Request the Province Medical Service to give a : training class for cadre who will perform medical : aid in the centers.
4. The training program for returnees is too long, and has monotonous lectures; and instructors are often late.	: Service Chiefs must consider the importance : of returnee training. The training program and the : instruction must be lively, with more group : discussion actively monitored by the instructor. : The instructor must retain the respect of trainees : by always being on time.
5. Returnees do not always receive prescribed benefit: rewards for arms, operating fees and allowances.	: Returnees must receive their allowances and rewards : from the Center. Service Chiefs are responsible to : see that payments are made on time, and will answer : complaints in this area.

6. Returnees do not get I.D. cards for two or three months after they leave a Center : The I.D. card can help returnees to get a job when they leave a Center. The Service Chief must request the Province to have I.D. cards ready on the date of release. As a minimum, temporary cards should be issued.
-
7. Most Centers are not equipped with radios for news and musical programs. : The Service Chief should request the JUSPAO Provincial Representative to assist in obtaining radios to inform and entertain returnees. They can also be used as loudspeakers during meetings, classes, and local musical programs. The Service can request funds from the administrative department to purchase radio batteries.

This letter will be given serious and immediate attention. Inspectors are requested to review each of the defects listed above and report to the Central the results of corrective measures taken,

s/Pham Anh

OPEN ARMS: a change of terms, from "one who gave up" to "one who returned to his family:"

Republic of Viet Nam

Open Arms and Information Central

Executive Committee

#20, Le thanh Ton, Saigon

POSTAL MESSAGE

FROM: Under Secretary for Open Arms

TO: - Heads of different Directorates and Services pertaining to the Open Arms Central Agency
- Inspectors on Open Arms activities in Tactical Areas 1, 2, 3 and 4
- Manager of the National Open Arms Center
- Chiefs of Chieu Hoi Sections throughout the country

Text No. 588/TB/TCH/BCH/VP/BD

In its contacts with people who had rallied to the just cause, the Open Arms Central Agency became aware of the fact that some of them unveiled their complex due to their being obsessed by the appellation of "Quy Chanh Vien". An analysis of this appellation shows us that the term "Quy" does not sound well because it causes the returnees to have the complex of a defeated combatant who surrenders to his enemy. Moreover, the term "Vien" makes the appellation of "Quy Chanh" displeasing and discourteous. This use of terms without due consideration has been unintentionally in contradiction with the noble meaning of our **Open Arms** Policy. As correction, the Central Committee has decided that from now on the appellation of "Quy Chanh Vien" must be cancelled once and for all and be replaced by the appellation of "Hoi Chanh" which will be used as follows:

1. For a group of persons, use this phrase "Anh Chi Em Hoi Chanh" (Our brothers and sisters who rally to the just cause).
2. For an individual, use this phrase "Anh Hoi Chanh Nguyen van X"

(Male Hoi Chanh Nguyen van X), "Chi Hoi Chanh Nguyen thi Y"
(Female Hoi Chanh Nguyen thi Y) or "Anh Nguyen van X Hoi
Chanh (Brother Nguyen van X, Hoi Chanh), "Chi Nguyen thi Y
Hoi Chanh" (Sister Nguyen thi Y, Hoi Chanh).

The Chiefs of Open Arms Section are requested to hold meetings
for the explanation of this message to cadres under their authority,
so that there will be uniformity in the execution.

Saigon, August 20, 1966

Under Secretary for Open Arms

s/Pham Anh

RURAL DEVELOPMENT: how much will be spent on each kind of rural development during 1967:

The following are estimates, by the Commission-General for Revolutionary Development, and requested in the 1967 budget:

P R O G R A M S	F U N D S	R E M A R K S
a) R.D. Cadre	21,000,000\$VN	
b) Hamlet Self-Help	470,000,000\$VN	
c) Transportation & Warehouses	657,000,000\$VN	
d) Training for village and hamlet Adm. Personnel	16,000,000\$VN	
e) Support to Popular Regimentation	22,000,000\$VN	
f) Rural Education	799,000,000\$VN	
g) Public Works	456,000,000\$VN	
h) Rural Electrification	100,000,000\$VN	
i) Agriculture Affairs	194,000,000\$VN	
j) Animal Husbandry	182,000,000\$VN	
k) Fisheries	75,000,000\$VN	
l) Farmer's Association	12,000,000\$VN	
m) Irrigation	120,000,000\$VN	
n) Rural Health	218,000,000\$VN	
o) Handicraft	120,000,000\$VN	
p) Unforeseen Expenses	138,000,000\$VN	
TOTAL	3,600,000,000\$VN	
q) Agrarian reforms	30,000,000\$VN	To be computed later
r) NACO	811,000,000\$VN	
s) Reorganization of Village & Hamlet Administrative system	1,638,000,000\$VN	Not including VN\$64,300,000.00 sponsored by the budget of 100 vil- lages.

PERSONNEL: the staff of the Constituent Assembly:

The Constituent Assembly has chosen the following persons as its official staff:

President	Mr. Phan khac Suu
1st Vice President	Mr. Le quang Liem
2nd Vice President	Mr. Nguyen van Dinh
Secretary General	Mr. Truong tien Dat
1st Deputy Secretary	Mr. Nguyen huu Luong
2nd Deputy Secretary	Mr. Nguyen huu Chung
3rd Deputy Secretary	Mr. Thach Sung
General Treasurers:	Mr. Mai Duc Thiep
	Mr. Tran van Phien

PERSONNEL: recent changes among key officials in Provinces and Districts, as of November 1, 1966

<u>PROVINCES AND DISTRICTS</u>	<u>NAME</u>	<u>TITLE</u>
BIEN HOA Di An	Maj. Nguyen ba Tri	District Chief
GIA DINH	Maj. Pham hi Mai	Deputy Province Chief for Security
HAU NGHIA Duc Hue	Capt. Tran tan Phat	District Chief
KIEN GIANG	Nguyen van Manh	Deputy Province Chief for Administration
LAM DONG	Maj. Tran van Thanh	Province Chief
PHU BON Phu Thien	Lt. Nguyen An	District Chief
PHUOC LONG	Maj. Lam sin Thenh	Deputy Province Chief for Security
PHUOC TUY Long Le	Capt. Vo sanh Kim	District Chief
QUANG TRI	Nguyen van Diep	Deputy Province Chief for Administration
SADEC	Maj. Le Trung Tho	Province Chief
THUA THIEN	Maj. Nguyen khoa Bao	Deputy Province Chief for Security
TUYEN DUC Lac Duong	Capt. Doan van Bai	District Chief
VINH BINH Cang Long Cau Ngang	Capt. Nguyen van Ba Capt. Nguyen van Tan	District Chief District Chief

PERSONNEL: recent changes in representatives of the Special Commission for Refugees, in provinces and cities, as of Oct. 1, 1966:

<u>Province or City</u>	<u>Representative</u>	<u>Staff</u>
Binh Duong	Pham xuan Thiet	8
Gia Dinh	Capt. Le nghiem Dung	7
Phuoc Long	Tran Phu	4
Chuong Thien	Luu van Huan	0
Kien Tuong	Nguyen van Dien	7
Vinh Long	Le dinh Thi	10

THE NEW PROVINCE OF SADEC:

Republic of Viet Nam

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Office

Chairman/Central Executive Committee

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Decree No. 162-SL/DUNC

The Chairman/Central Executive Committee

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DECREES:

Art. 1 - This hereby re-established the province of SADEC, the capital of which is seated at SADEC.

Art. 2 - The area of this province includes the following:

1. District of Sadeo with 3 cantons, 13 villages:

Canton An Trung:

from Vinh Long Province

Village Tan Vinh Hoa

-

Village Tan Xuan

-

Village An Tich

-

Village Tan Hiep

-

Canton An Thanh:

-

Village Tan Dong

-

Village Tan Khanh

-

Village Tan My

-

Village Tan Khanh Tay

-

Village Tan An Trung

-

Canton An Thoi:

-

Village Binh Tien

-

Village Tan Phu Trung

-

Village Hoa Thanh

-

Village Tan Duong

-

2. District of Lap Vo with 2 cantons, 8 villages:

Canton Phu Thuong:

from Vinh Long Province

Village Binh Thanh Dong
Village Binh Thanh Tay
Village Binh Thanh Trung
Village Dinh Yen
Village Hoi An Dong
Village My An Hung

-
-
-
-
-
-

Canton Phong Thoi:

Village Vinh Thanh
Village Long Hung

-
-
-

3. District of Duc Ton with 2 cantons, 7 villages:

Canton An My Dong:

Village Phu Huu
Village An Nhon
Village An Khanh
Village An Phu Thuan

-
-
-
-

Canton An My Tay:

Village Tan Nhuan Dong
Village Hoa Tan
Village Phu Long

-
-
-

4. District of Duc Thanh with 3 cantons, 8 villages:

Canton Tien Nghia:

Village Hoa Long
Village Long Thang

-
-
-

Canton Ti Thien

Village Tan Thanh
Village Tan Phuoc
Village Long Hau

-
-
-

Canton An Khuong:

From Vinh Long Province

Village Phong Hoa
Village Tan Hoa Binh
Village Vinh Thoi

-
-
-

The boundaries of the Province of SADEC are fixed in accordance with the map attached to this decree.

Art. 3 - The province of SADEC has its private budget; this budget will be established, ratified and brought into execution according to procedures governing the implementation of provincial budgets.

Art. 4 - All expenses incurred in the establishment of the administrative structure of this province will be provided by the National Budget.

Art. 5 - The Deputy Chairman of the Central Executive Committee, all Commissioners General, Commissioners, Special Commissioners, Deputy Commissioners, Province Chiefs of Vinh Long, Sadec, are charged, each as to that which concerns him, with the execution of this decree.

Saigon, 24 Sept. 1966

s/Nguyen cao Ky

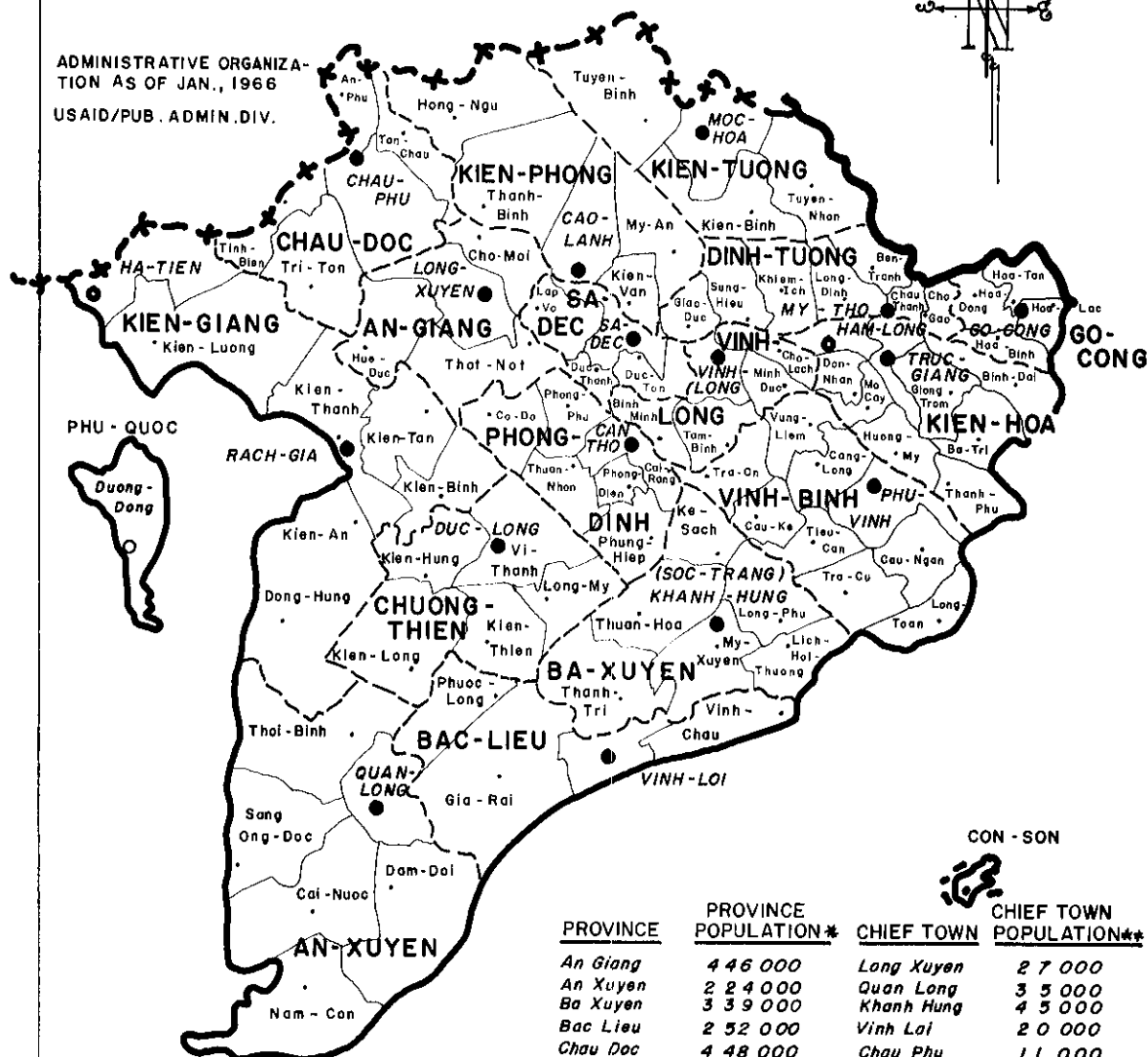
The Province of Sadec is shown on the map of the 4th region immediately following this page.

--editor

THE GOVERNMENT OF THE REPUBLIC OF VIETNAM

FOURTH MILITARY ZONE

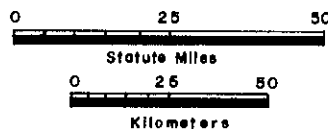
ADMINISTRATIVE ORGANIZATION AS OF JAN., 1966
USAID/PUB. ADMIN. DIV.



LEGEND

- + — NATIONAL BOUNDARY
- PROVINCE BOUNDARIES
- DISTRICT BOUNDARIES
- PROVINCIAL CAPITAL OR CHIEF TOWN
- OTHER IMPORTANT COMMUNITIES
- DISTRICT HEADQUARTERS

SCALE 1:1,000,000



PROVINCE	PROVINCE POPULATION*	CHIEF TOWN	CHIEF TOWN POPULATION**
An Giang	4 46 000	Long Xuyen	27 000
An Xuyen	2 24 000	Quan Long	3 500
Ba Xuyen	3 39 000	Khanh Hung	4 500
Bac Lieu	2 52 000	Vinh Lai	20 000
Chau Doc	4 48 000	Chau Phu	11 000
Chuang Thien	2 17 000	Vi Thanh	3 000
Can Son	3 000	Can Son	3 000
Dinh Tuong	519 000	My Tho	67 000
Go Cong	175 000	Go Cong	18 000
Kien Giang	369 000	Rach Gia	48 000
Kien Hoa	570 000	Truc Giang	18 000
Kien Phong	307 000	Cao Lanh	5 000
Kien Tuong	48 000	Moc Hoa	7 000
Phong Dinh	402 000	Can Tho	77 000
Sa Dec	249 000	Sa Dec	96 000
Vinh Binh	518 000	Phu Vinh	20 000
Vinh Long	324 000	Vinh Long	96 000

* ESTIMATED AS OF OCTOBER, 1966

** PROJECTED TO NOVEMBER, 1966

*** ADMINISTRATIVE DELEGATION AS OF APRIL 21, 1965. AND INCLUDED IN SPECIAL CAPITAL ZONE

NOTES ON ADMINISTRATION IN VIETNAM: Checklist for Estimating Revolutionary Development Cadre Performance:

J33 of MACV (J33, Headquarters, United States Military Assistance Command, Vietnam, APO San Francisco 96243) has produced a "Checklist for Visiting RD (59-man) Cadre Groups" for use by MACV subsector advisors. It is enclosure 2 of a memorandum dated October 3, 1966, titled "Operational Guidelines for Advisory Support of Revolutionary Development Cadre." It is also available as an attachment to Operational Memorandum No. 169-66, dated October 17, 1966, Office of Field Operations (AD/FO) of USAID, Saigon.

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NOTES ON ADMINISTRATION IN VIETNAM: Checklist to Evaluate Open Arms Programs:

The Open Arms (Chieu Hoi) Office of the Office of Field Operations of USAID, Saigon, has produced a checklist for use in evaluating open arms programs in provinces. Operational Memorandum 168-66, dated October 17, 1966, Office of Field Operations (AD/FO), USAID, Saigon.

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NOTES ON ADMINISTRATION IN VIETNAM: Viet Cong Cadre:

. . . Extensive interviews with several hundred Viet Cong cadre and soldiers who defected or were captured between June 1965 and June 1966 form the basis of this . . .

. . . Among the cadres . . . are veterans with up to 20 years service and many long time Communist party members. There appear to be increasing signs of war weariness among the older cadre . . . the age level of the recruits has been going down. The VC is having recruiting troubles. The recruiting . . . during the past 18 months in fact has changed from "drafting" to outright impressment . . .

. . . an increasing number of VC cadre and soldiers of all ranks have become tired of fighting and are deeply depressed by the prospect of a protracted war as it is being proclaimed by their leaders . . . This defeatist tendency became pronounced following the U.S. military buildup . . .

. . . food rations are being reduced in VC ranks. Complaints about inadequate daily rations are very common . . .

There is friction between Northerners, Southern regroupees, and Southern VC cadre. Many bitter comments were made concerning this. Said a typical Southern cadre: "The returnees consider the South Vietnamese cadre their lackeys. They are very arrogant, and I have been ordered by them to do this or that . . ." Or: . . . "We southern cadre endured hardships for years while they were enjoying themselves in the North, and now they come to

command, show themselves to be overbearing and bring division into the Front's ranks . . . "

(from "Exploitation of VC Vulnerabilities,"
JUSPAO, No. 23, October 14, 1966)

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NOTES ON ADMINISTRATION IN VIETNAM: Terminology: A Commission Has a Mission; A Ministry Ministers:

It may (or may not) help our readers to note that recently the Government of Vietnam changed all Ministries to Commissions, and all Ministers to Commissioners.

The idea, our Vietnamese friends, colleagues, and counterparts tell us, was to embed in the titles of the major units of national government the idea of action, of programs. A Commission has a mission. A Ministry helps, serves, or goes on doing what it has been doing, but a Commission has a set of tasks to do.

The idea of action is further stressed in the change of the preposition. Thus, what was formerly the Ministry of Youth is now the Commission for Youth. The former Ministry of Labor is now the Commission for Labor.

The word "Department" is also used from time to time, in official and unofficial documents, to describe former Ministries, now Commissions.

—the editor

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NOTES ON ADMINISTRATION IN VIETNAM: How to Help Refugees:

The Special Commission for Refugees has produced a Refugee Relief Operational Handbook. It is available in English from the Office of Refugee Coordination of USAID, Saigon.