

INFORMATION MEMORANDUM FOR THE ADMINISTRATOR

THRU: EXSEC

FROM: AA/VN, James P. Grant

SUBJECT: Legal Administration Project for Vietnam

I think you will be interested in this particular project, due to its ground-breaking character as a technical assistance program.

Introduction

When the Government of Vietnam promulgated its new Constitution on April 1, 1967, it created an independent Judiciary co-equal with the National Assembly and the Executive Branch of government. Previously, the entire judicial system had been under the jurisdiction of the Minister of Justice, and in large degree was dominated by the Executive Branch. Furthermore, the court system had settled into a static role. Sitting only in Saigon and Hue, and acting in mandarin fashion, the higher courts offered the average citizen little relief. Even access to courts of first instance was unavailable, except in a few provincial capitals.

Vietnam inherited most aspects of the typical French colonial legal system, compounded and complicated by regional variations due to the fact that the French had different relationships with Cochin China, Annam and Tonkin. In addition, there is the "customary" law of the Montagnards and other tribes who have administered their own ancient tribal laws. The GVN is not only faced with creating an appropriate Judicial system, but also has a three-fold task of developing a body of law which will: (1) eliminate regional variations; (2) govern those functions of an independent developing nation which were non-existent for a colony; and (3) conform to the requirements of the new Constitution for social, political and economic development.

From an administrative point of view, two important steps are now required to implement the separation of powers provided by the new Constitution: (1) a major reorganization of the judiciary, from the Supreme Court (Articles 80-84) to adequately subordinate courts which will assure the rule of law being available to all citizens; and (2) reorganization of the Ministry of Justice in its new role. We have been asked to provide assistance in both these areas. There is also the possibility that we will be asked to participate, in an advisory role, in the organization of the tripartite Inspectorate (Articles 88-91) one-third of whose members will be drawn from the Supreme Court and which, therefore, cannot be fully operative pending establishment of that court.

Action to Date

Several important accomplishments have been achieved. The GVN established a Legal Research Commission (LRC) in the summer of 1967, composed of distinguished judges, lawyers and professors of law. The LRC has prepared an inventory of existing laws under the following codes: (1) Civil Law; (2) Criminal Law; (3) Commercial Law; (4) Criminal Procedure; and (5) Civil and Commercial Procedure. These have been translated into English for better analysis by American advisors. A seminar for judges was held during the late fall of 1967, under the aegis of the Ministry of Justice as a briefing session on the expanded legal horizon created by the new Constitution. For the first time, in the fall of 1967, circuit judges began regular hearings in the provincial capitals working out of Saigon and Hue to bring the rule of law to the countryside. Consultants provided by AID provided memoranda of recommendations on (1) the organization of the Supreme Court; (2) a detailed budget outline for the judiciary; (3) maintenance of physical facilities for the courts; and (4) reorganization of the Ministry of Justice and its role under the Constitution. A consultant was provided in August and September 1967 to make a comprehensive survey of legal library and reference facilities and law repositories; these were found to be quite limited, scattered in several places and, in general, outdated. Another consultant was provided by AID in September 1967 to assist the LRC by reviewing work already done in the field of Commercial Law and making recommendations regarding further development.

In addition to the consultants provided by AID, full time direct-hire advisory services have been provided to the Minister of Justice by a Public Administration Advisor (Frank O'Neill) experienced in the field of comparative law both as a prosecuting attorney during the war crime trials in Japan and as a teacher of law in Korea. This work with the Ministry of Justice and LRC has resulted in the identification of over 120 legal areas which will require new statutes or public laws to bring them into conformity with the Constitution, or to otherwise modernize outmoded provisions of existing law. The GVN is in process of issuing and disseminating 20 pamphlets informing the public of their legal rights and responsibilities.

AID has also arranged (by an FY-67 grant of \$25,000) for The Asia Foundation to supply assistance in related problems, such as further training seminars for judges and other legal personnel, improving legal services, aiding the LRC, assisting in customary law, improving standards for admission to the bar, and other fields.

Work to be Done

Plans call for continuance of a direct-hire advisor. In addition to providing day-to-day advice, he will monitor two contracts. One is to provide advice on the reorganization of the Ministry of Justice, revision and modernization of obsolete legal codes and procedures, development of essential public laws, and organization of the new judicial system. The Institute of Judicial Administration and the International Legal Center are under consideration for this contract. The other contract, with The Asia

Foundation, is planned to continue assistance to the LRC, to assist the university system on legal education and curricula reforms necessary to reorient to the new Constitution, to promote legal research including work in tribal law, to stimulate development of a legal aid program, especially in provincial areas, the development of a professional bar association, and similar services to enhance the legal profession.

This is a unique program designed to transform an obsolete legal system oriented to colonialism to a modern legal system necessary to provide GVN with a modern legal framework essential to achieving social, political and economic development and designed to bring the rule of law to all the people of the Nation.

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Clearance:

VN/ND:JArthur

Date: _____