



OFFICE OF CIVIL OPERATIONS

UNITED STATES MISSION TO VIETNAM

OCO NOTICE

SUBJECT: A Summary of Vietnam's New
Constitution.

NUMBER: 67-92

DATE: May 2, 1967

It has been requested that the attached memorandum from the Director, USAID and the paper, "A Summary of Vietnam's New Constitution" be distributed to all OCO personnel.

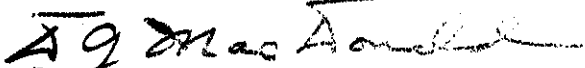
Attachment: a/s

Distribution C

Approved: OCO/ExSEC-MSD

TO: All USAID Officers

A 112 11, 1967

FROM: 
D. G. MacDonald, Director, USAID/Vietnam

SUBJECT: Attached Paper, "A Summary of Vietnam's New Constitution".

One of the exciting and important recent developments in Vietnam has been the drafting and promulgation of a new Constitution. This Constitution not only will set the pace and the tenor of political developments in this country, but also will shape the institutions that the Vietnamese people are building to govern themselves.

The Program Office and the Office of the Assistant Director for Public Administration have collaborated in the writing of the attached summary of the constitutional document. I commend it to the reading of every USAID adviser. As Americans working closely with Vietnamese officials, it behooves us to be familiar with the new Constitution, so that we can be guided by its provisions and aspirations as we assist and advise our Vietnamese counterparts in their important nation-building efforts.

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USAID / Vietnam

Program Office

Evaluation Branch

A SUMMARY OF VIETNAM'S NEW CONSTITUTION

Background Paper No. 2-67

April 7, 1967

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This summary of the Constitution of Vietnam is based on Constitution of the Republic of Vietnam: Unofficial American Embassy Translation.

Additional copies of this Background Paper are available, and should be requested in writing from Evaluation Branch, Program Office, USAID/Saigon. It is requested that individual requests coming from divisional technicians be consolidated by Division or other offices into bulk orders.

This summary is published for the information of USAID/Vietnam personnel. It is not intended to be a statement of United States Government views.

Introduction

The new Constitution of Vietnam, drafted and approved by the Constituent Assembly, was promulgated by executive action on April 1, 1967. It contains a number of provisions which are of particular interest to USAID advisers because of their relationship to USAID's program of assistance to the Government of Vietnam. The following is a summary of these provisions.

In general, the Constitution establishes a republican form of government, with a presidential system, a rather powerful legislature, an independent judiciary, and a number of other agencies with operational and advisory functions. The Constitution provides for an intricate system of checks and balances. The Constitution creates institutional channels through which non-governmental bodies, such as commercial and industrial organizations, labor unions, or educational organizations, can make their views known to government. Created while the country still is the victim of internal insurgency and external aggression, the Constitution places emergency powers at the disposal of the President, subject to approval by the legislature.

A separate section of the Constitution provides for a transitional period during which the Government of Vietnam gradually will be recast into the mold the Constitution provides.

Explicit and implicit in the Constitution is the need to enact various laws to provide the details for what the Constitution roughly sketches out. Indirectly, USAID advisers may find themselves involved in some of the processes of legislative drafting required for these laws.

* * *

Education and Culture

The Constitution considers culture and education as matters of national policy. Freedom of education is recognized, and basic education is compulsory and free; talented persons of few means will be given aid and support to continue their studies. Research and creative work in the fields of science, the letters, and the arts are to be encouraged and supported by the State. An appropriate budget is to be reserved for the development of culture and education.

Universities are to be autonomous. The rectors of the universities are to be appointed by the President with the approval of the Upper House of the bicameral National Assembly.

The Constitution establishes a Culture and Education Council, which has the responsibility to advise the Government in the drafting and execution of cultural and educational policy. With the approval of the National Assembly, the Culture and Education Council may select representatives to brief the National Assembly on subjects within its purview, and may contribute ideas at the time the National Assembly debates laws relating to culture and education.

A National Academy is to be established.

The term of the Culture and Education Council runs for four years. One-third of its membership is designated by the President (whose term of office also is four years), and two-thirds of its membership will be elected by public and private cultural and educational organizations and by parent-teacher associations. The details of the organization and regulations of the Culture and Education Council will be prescribed by law.

Economic and Social Life

Every citizen has the right and the duty to work and to receive fair remuneration, enabling him and his family to live in dignity. The State recognizes and guarantees the right of private property. Freedom of trade and competition is recognized, but it cannot be exercised to secure monopoly or control of the market. The State encourages and assists economic cooperation which has the character of mutual economic assistance. It gives special support to those elements of society who have a low standard of living; and advocates raising the standard of living of rural citizens, and especially helping farmers to have farmland. The State advocates a policy of making the people property-owners. Expropriation or requisition by the State for the common good must be accompanied by speedy and just compensation at price levels existing at time of expropriation or requisition.

The State will endeavor to create employment for all citizens.

Freedom to join labor unions and to strike is respected within the framework and regulations prescribed by law. On the basis of equality between duties and rights, workers have the right to choose representatives to participate in the management of business enterprises, especially in matters concerning wages and conditions of work, in accordance with criteria and procedures to be prescribed by law.

The State endeavors to establish a system of social security. It is the duty of the State to establish a system of social welfare and of public health, and to support the nation's warriors both spiritually and materially, and to support and raise the nation's orphans.

Every citizen has the duty to pay taxes in accordance with the provisions of the law.

The Constitution establishes an Economic and Social Council, to advise the government on economic and social matters. One-third of the membership of the Economic and Social Council is appointed by the President; two-thirds are nominated by industrial and commercial organizations, and by labor unions and associations having an economic and social character. The term of office of the Council is four years; its detailed organization and procedures will be determined by law. With the approval of the National Assembly, the Economic and Social Council may select representatives to brief the National Assembly on matters within its purview, and may contribute ideas at the time the National Assembly debates draft laws and economic and social programs.

The family is recognized as the foundation of society. The State will encourage and facilitate the formation of families, and assist expectant mothers and infants. Marriage is to be based on mutual consent, equality, and cooperation; family cohesion is to be encouraged.

Minorities

Freedom of religious belief, and the freedom to preach and practice a religion, is respected and guaranteed as long as it does not violate the national interest, and is not harmful to public safety and order, or contrary to good morals. The State is impartial in the development of various religions, and no religion is recognized as the State religion.

The presence of minorities in the Vietnamese community is recognized. The State is to respect the habits and customs of minority compatriots. Customary courts will be established to pronounce judgments on some disputes involving habits and customs of minority compatriots. A law will prescribe special rights in order to assist minority compatriots.

The Constitution establishes an Ethnic Council, representing the ethnic minorities living within the territory of Vietnam. The Council has the responsibility to advise the government in matters affecting ethnic minorities. With the approval of the National Assembly, the Ethnic Council may select representatives to brief the National Assembly on related matters. The Council may contribute ideas before draft laws, programs and plans affecting ethnic minorities are debated. One-third of the Council's membership will be designated by the President, and two-thirds will be elected by ethnic minorities. The term of office of the Council is four years; its detailed organization and regulation will be prescribed by law.

Local Government

The Constitution proclaims the principle of local self-government for villages, provinces, autonomous cities, and the national capital. In each of these units, there is to be an elected council and an elected head of the unit's executive agency. Election is by direct and secret ballot, except that at the village level, a village chief may be elected by the village council from among its own regularly elected members. The deliberative bodies and the executive chiefs are:

Villages: Village Council and Village Chief

Provinces: Province Council and Province Chief

Cities and the Capital: Municipal Council and Mayor

The government will appoint two civil servants who will have the responsibility to assist mayors, province chiefs and village chiefs in administrative and security matters, as well as other administrative personnel.

Members of the various councils and the executive heads of local administrative units may be dismissed from office by the President if they violate the Constitution, the laws of the nation, or national policy.

Legislation is to spell out the organization and regulation of local administration.

Public Morality

Members of the National Assembly or their spouses may under no circumstance participate in a bid or sign a contract with the government. The President, the Vice-President, the Prime Minister, and members of the Cabinet may not hold any position in the private sector, whether it is remunerated or not. Their spouses may not participate in government bids or contracts.

The Constitution establishes an Inspectorate, with an autonomous budget and the right to establish regulations governing its internal

organization; the overall organization and regulation of the Inspectorate will be prescribed by law.

The Inspectorate is empowered to inspect, control, and investigate personnel of all public and private agencies directly or indirectly engaged in corruption, speculation, influence-peddling, or acts harmful to the national interest. It will inspect accounts of public agencies and of commercial enterprises. The Inspectorate will audit the property of personnel of public agencies, including that of the President, the Vice-President, the Prime Minister, the Chairman of the Supreme Court, and members of the National Assembly. In turn, the Supreme Court will conduct audits of the personal property of the Chairman and members of the Inspectorate.

The Inspectorate is empowered to propose disciplinary measures against guilty persons or to request prosecution by competent courts; and it has the right to announce publicly the results of its investigations. Inspectors will enjoy those guarantees that are necessary for them to carry out their duties.

The Inspectorate will consist of from nine to eighteen Inspectors; one-third of their number will be designated by the National Assembly, one-third by the President, and one-third by the Supreme Court.

Budget Legislation

The Government must submit the draft budget to the office of the Lower House prior to September 30. Representatives and Senators have the right to propose additional expenditures, but they must at the same time propose equivalent new revenue.

The Lower House must vote on the budget prior to November 30 and transmit the approved version to the Upper House by December 1 at the latest.

The Upper House must vote on the draft budget before December 31. If the Upper House disagrees with the Lower House about one or more provisions of the draft budget, it must return the bill to the Lower House within three consecutive days along with an explanation of its action. The Lower House has the right to vote final approval of the bill with a two-thirds majority of its total membership; if the Lower House is unable to reach a two-thirds majority, the viewpoint of the Upper House will be considered as approved. In the event that the draft budget has not been finally voted by December 31, the President has the right to sign a decree authorizing expenditure of one-twelfth of the previous budget until the Lower House has voted final approval of the draft budget.

General Provisions of the Constitution

The Constitution establishes a bicameral legislature--the

National Assembly--with an Upper House consisting of from 30 to 60 members, and a Lower House consisting of from 100 to 200 members. The term of the Lower House is four years; its members are elected from constituencies not larger than a province. The members of the Upper House serve for a six-year period; half of the membership of the Upper House is elected every three years on a nation-wide basis. All bills must be submitted initially to the office of the Lower House; however, they may be submitted by members of the Upper House and by the President as well as by members of the Lower House. The Lower House can override contrary decisions of the Upper House by a two-thirds vote majority of its total membership. The National Assembly can override legislative objections by the President by an absolute majority of the total number of Representatives and Senators.

The President and Vice-President run together on one ticket, and are elected for a four-year term; they may be re-elected once.

The President promulgates laws, and has a right of veto which can be overridden by the National Assembly (see above). The President appoints the Prime Minister, and appoints other members of the Cabinet upon the proposal of the Prime Minister. The President has the right to reorganize all or part of the Cabinet on his own initiative, or when the National Assembly recommends that he does so by a two-thirds majority vote of the total number of Representatives and Senators (the President has the right to reject such a recommendation, but he must accede to it if it is passed again by a three-quarters majority of the combined membership of the National Assembly). The President presides over meetings of the Council of Ministers, i.e., Cabinet.

In most circumstances, the Vice-President succeeds to the Presidency upon the death or disability of the President. The Vice-President is Chairman of the Culture and Education Council, of the Economic and Social Council, and of the Ethnic Council.

The Constitution establishes a National Security Council to examine matters relating to national defense, national security, and make recommendations on major issues of internal security or foreign affairs. The President is the Chairman of the National Security Council.

The Supreme Court has appellate jurisdiction from lower courts as well as the right to decide on the constitutionality of all laws and decree-laws, and to review decrees and administrative decisions. It also has the power to decide on the dissolution of a political party whose policy and activities oppose the republican form of government. The Court consists of from nine to fifteen judges chosen by the National Assembly and appointed by the President from a list elected by the Association of Judges, Association of Prosecutors and Association of Lawyers. The term of office of Supreme Court judges is six years. The

Supreme Court has a separate budget, and is empowered to establish regulations governing the Judiciary. A Judiciary Council, composed of judges elected by the Association of Judges, advises on matters relating to the Judiciary, including the appointment, promotion, transfer, and disciplining of judges.

The Special Court, presided over by the Chairman of the Supreme Court and consisting of five members from each House of the National Assembly, is empowered to remove from office the President, the Vice-President, the Prime Minister or other Ministers, Secretaries of State (junior ministers), Supreme Court judges, and members of the Inspectorate, in case of treason or other high crimes. Motions to bring charges emanate from the National Assembly, where such a motion must be approved by two-thirds of the total number of Representatives and Senators--three-fourths of the total membership in case the President or Vice-President is involved. The Special Court decides removal from office by a three-fourths vote of its members--four-fifths in cases involving the President or Vice-President.

The Armed Forces Council advises the President in matters relating to the Armed Forces, especially promotion, transfer, and discipline.

The Constitution recognizes that political parties have an essential role in a democratic system, and encourages progress toward a two-party system. It recognizes the formalization of political opposition.

The Constitution may be amended through a process that begins with a proposed amendment submitted by the President or by an absolute majority of the membership of either House of the National Assembly, and culminates in the approval of the amendment by two-thirds of the total number of Representatives and Senators, and promulgation by the President.

The President may by decree declare states of emergency, curfew or alert over part or all of the national territory, but the National Assembly must within twelve days of such a decree ratify, amend, or reject such an act. In a state of war or when elections cannot be held, the President may, with the approval of two-thirds of the members of the National Assembly, prolong the terms of office of some of the elected bodies of the country and appoint some province chiefs.

The election of the President and Vice-President must be organized no later than six months from the date of the promulgation of the Constitution (i.e., from April 1, 1967). The election of the National Assembly and the organization of the Supreme Court and of the Inspectorate must be carried out no later than twelve months from the date the first President assumes office. The other bodies provided for in the Constitution must be established no later than two years from the date the first National Assembly is established.

The Assembly elected on September 11, 1966, will enact laws for the election of the President and Vice-President, Upper House and Lower House, and for the organization of the Supreme Court and the Inspectorate; it also will legislate regulations for political parties and for the press, and has the power to ratify treaties. The Assembly will assume full legislative powers from the time the first President takes office, until the first National Assembly is convened. The Assembly elected on September 11, 1966, also will control the procedures for the election of the first President and Vice-President.

During the first Presidential term, the President may appoint province chiefs.

Rights and Guarantees

In addition to the rights and duties of citizens already mentioned in this summary, the Constitution also provides for legal protection of the freedom, lives, property and honor of every citizen; various legal guarantees; privacy of the home and the correspondence of citizens; freedom of thought, speech, press and publishing, and of association; abolition of censorship, except for motion pictures and plays; and the right to participate in the political and public life of the country, including the right to petition and to engage in overt, non-violent, and legal opposition.

Specific legal guarantees stipulated in the Constitution state that an accused will be considered innocent until a sentence declaring his guilt is handed down, and that in the event of doubt, the court will rule in favor of the accused. No one can be detained for indebtedness. A person who was unjustly detained may demand compensation for damages from the State after he has been pronounced innocent. No one can be arrested or detained without a legal order issued by an agency with judicial powers conferred upon it by law, except in case of flagrant violation of the law. The accused and his next-of-kin must be informed of the accusation against him within a time limit prescribed by law; detentions must be controlled by an agency of the Judiciary. No citizen may be tortured, threatened, or forced to confess; confessions obtained by such means will not be considered as valid evidence. A defendant is entitled to a speedy and public trial, and has a right to have the counsel of a defense lawyer during every phase of the interrogation, including the preliminary investigation. When accused of a minor offense, persons who are employed and have a fixed residence, and who do not have a record of more than three months imprisonment for an intentional crime, may be released pending trial; the same is true for women pregnant more than three months who have a fixed residence and are employed, and who are accused of minor offenses.

No one has the right to enter, search or confiscate the property of a person unless in possession of orders from a court, or when necessary for the defense of security and public order according to the spirit of the law.