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POLICY RECOMMENDATIONS TO THE DRAFT LAW ON REFERENDUM

(scheduled to be approved at the 10th session, XIII National Assembly)

The development of a Law on Referendum is a significant step toward building the rule-of-law state and the promotion of direct democracy in line with the provisions of the 2013 Constitution of Vietnam (hereafter, “the Constitution”). The analysis and recommendations in this Policy Brief and Recommendations have been made in reference to the Draft Law on Referendum (hereafter, “the Draft law”), which has been submitted to the XIII National Assembly of Vietnam, at its 10th Session in October 2015.¹

INTRODUCTION

In Vietnam’s legislative history, the right to referendum has been acknowledged since the 1946 Constitution (Article 21 and Article 70)², and further affirmed by the 2013 Constitution (Article 6 and Article 29)³. The adoption of a Law on Referendum is vital to creating a solid legal foundation for the exercise of the people’s right to referendum as well as to stipulating clear responsibility of state agencies in ensuring needed conditions for meaningful participation of the people in this form of direct democracy.

Ensuring the right to referendum, in line with principles of international human rights law, is also a mechanism to guarantee the right to citizen participation as mentioned in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which Vietnam accepted in 1982. Pursuant to the ICCPR, every citizen shall have the right and the opportunity “to take part in the conduct of public affairs, directly or through freely chosen representatives”.

When organized properly, referendums are useful for strengthening democratic systems, and enhance institutional discipline on the behavior of elected bodies and representatives. They also facilitate elected bodies and representatives to fully take into account voters’ opinions when making decisions on their behalf⁴. This experience is important in Vietnam as it continues to build a rule-of-law state, develop a market economy, and deepen international integration in the post-2015 period. Therefore, the Law on Referendum should promote the renovative spirit of the Constitution, and ensure the legal consistency and realisation of substantive rights of citizens. It is important to note that fulfilling the aspirations of the Constitutional right to citizen participation includes not only the right to referendum, but also the right to access to information (Constitution, Article 25), the right to participate in state and social management (Constitution, Article 28) and the right to complaints and denunciation (Constitution, Article 30).

RECOMMENDATIONS TO THE DRAFT LAW ON REFERENDUM

Based on the Draft law which has been submitted to the 10th Session of the National Assembly, UNDP respectfully suggests that the issues below be further discussed before the National Assembly approves this law.

- 1 The draft law is accessible at <http://duthaonline.quochoi.vn> from 24 October, 2015
- 2 Article 21, 1946 Constitution stated: “The people shall have right to vote on the Constitution and important issues of the country, as per Article 32 and 70”. Article 70, (c), states that the draft revised Constitution, after being approved by the National Assembly, must be “provided to the public for voting”.
- 3 Article 6, 2013 Constitution states: “The People shall exercise the state power in the form of direct democracy and of representative democracy through the National Assembly, People’s Councils and other state agencies”; and Article 29 stipulates: “Citizens who reach the age of eighteen have the right to vote in referenda organized by the State.”
- 4 Study results and best practices, “Direct Democracy – An Overview of the International IDEA Handbook”, International IDEA, 2008.

1. Right to call a referendum – consideration of how citizens can also propose to call a referendum

According to the 2013 Constitution, the people have the right to vote in referendums organized by the State (Article 29.) In many countries⁵, citizens are also enabled to propose a referendum provided that enough people are gathered to jointly participate and present a proposal, normally in the form of a duly signed petition or a duly signed proposal, to an authorized agency (in Viet Nam, the National Assembly Standing Committee as currently prescribed in the Draft law). While safeguards are needed to ensure that citizen-proposed referendums do not violate Constitutional principles, the right to propose a referendum should not be limited to the National Assembly, the President, or the Government (as in Chapter II of the Draft law). For certain issues, Viet Nam would benefit if matters of national importance can be placed on a referendum through an orderly and constitutional process by the people themselves.

2. Subjects of referendum – ensure the people’s participation in decision-making of important national issues

Referendums are often applied to cases of important political subjects, such as adopting a revision to the Constitution, enlarging the class of persons entitled to citizenry, or creating a special-purpose tax to fund a national priority. In practice, organizing a referendum is costly in terms of finance, time and political attention. Therefore, the mobilization of resources must be considered thoroughly when designing the referendum process, from its inception phase through its implementation, to safeguard efficiency and to ensure that there are substantial benefits to using a referendum rather than other democratic mechanisms. Issues for decision by referendums are often stated clearly in the Constitution or in legislation to avoid placing ill-considered or inappropriate issues on referendums that do may not have a legal foundation or would violate core constitutional principles if the referendum is passed.

The draft law assigns full authority to the National Assembly to “consider and decide” on matters “extremely important” to the country that need to use the referendum process (Draft law, Article 17). Through representative democracy, the National Assembly is the people’s representative body in Vietnam; however, to ensure direct democracy through referendum, it is necessary to have clearly defined provisions on specific procedures that allow citizens to send proposals and to suggest referendum options to the National Assembly in accordance with grassroots democracy principles. These provisions are a necessary component for accomplishing the the foundational principle of the “right to call a referendum.” Referendums promote transparency and people’s participation in deciding matters of the State and management of society (Constitution, Article 28), but to ensure these goals are realized properly, the content of questions put to referendum, and how they are promoted, need to be carefully detailed in the Law on Referendum.

3. Guarantee the right to information specifically on the substance of the referendum and available options

A key principle to make a referendum meaningful is the guarantee that the public has access to impartial, comprehensive, and relevant information. This will facilitate fully informed debates and discussions on solutions provided for in the referendum.

In this process, the mass media plays a critical role. Beside provisions on principles of information provision and propaganda (Draft law, Article 31), the Draft law should also have provisions on respecting the diversity of information sources and proactively allow objective media coverage on debates related to different options and solutions for referendum.

The Draft law assigns the Ethnic Council and the concerned policy Committee of the National Assembly to review referendum proposals (Chapter II), yet the current draft law has no regulation on the responsibility of state agencies for providing the public the details of the proposal, or the options available in both stages; that is, before the proposal is submitted to the National Assembly Standing Committee for review, and after the National Assembly makes decisions about adopting a resolution on the referendum.

To ensure free and open publicity, transparency, participation, and political commitments of all the people during the referendum process, making information available to the public and creating a consultation process

⁵ According to IDEA’s direct democracy database, 40 countries – out of 265 countries whose data are available to IDEA -- have regulated that people have the right to propose referendum, including the Russia Federation, Taiwan, and the Phillipinnes

Summary of key recommendations to ensure the right to referendum when developing the Law on Referendum:

- *The right to propose a referendum should not be limited to state institutions – citizens should also be able to propose matters for referendum directly.*
- *Legal regulations on process and procedures of referendum should ensure meaningful participation of citizens in the decision-making of national important issues.*
- *When deciding to organise a referendum, sources of information to the people that are impartial and unbiased, and made available in a suitable timeframe is for dissemination, communication and debates on referendum question and options, is imperative.*
- *The content and language of the ballot text must be as clear and accurate as possible, and should only have clear goal that is not open to different interpretations of its consequences.*
- *Communication and dissemination of information to the public about the content of referendum questions is one of the crucial factors to ensure the legitimacy of the referendum results.*
- *Provisions on the organization of a referendum should ensure the openness, transparency, efficiency, full participation by voters, and accountability for respecting the outcomes of the referendum. Common principles should be applied to both elections and referendum, and should be clarified in advance of the voting.*
- *The legal consequence and time for announcement of referendum result, and the people's engagement in oversight and the role of the court in settling conflicts and violations during a referendum, should be stipulated in the Law on Referendum.*

prior to the submission of a proposal to the National Assembly Standing Committee is crucial. To avoid unclear and confusing questions and answers, it is necessary to have requirements that the content of referendums and related documents be made available to the public via mass media and National Assembly's portal at least 30 days or more in advance of the referendum (equivalent to the amount of time for gathering opinions to law and ordinance proposals as per the Law on Promulgation of Legal Normative Documents in 2015 (Article 36).

The content of the referendum ballots and provided options for selection must be considered carefully. This will be simple and efficient if citizens are asked to select between two options of "yes" or "no" for a question. Therefore, the content and language of the given questions in the ballot text may influence the decisions and legitimacy of the ballot. In general, the wording must be as accurate and clear as possible, and consistent in terms of the objective and explanation. This should be considered and integrated in the provision of criteria for "reviewing a referendum proposal" (in article 15(2)) of the Draft law. More specifically, on the ballot text, at Article 18(4), it is recommended to allow the National Assembly Standing Committee to have assistance from a panel of senior experts or technical advisors to help frame the question in a neutral and simplified manner. This panel would be responsible for providing comments publicly on the presentation of questions and options used in the referendum.⁶

It is also important to ensure that information is available to the public once the National Assembly decides to organise a referendum. The Draft law should add more responsibility to the National Assembly Standing Committee and the Government for providing adequate information on the pros and cons of each option of the referendum and the discussion processes leading to each given option. This will ensure that the people have the opportunity to approach diverse analysis and assessments before making decisions.

4. Organisation of referendum – open, transparent, efficient and accountable

The draft law has detailed provisions on the method of holding a referendum to ensure that the casting of votes proceeds in accordance to legal regulations, and states that the Government and People's Committees at all levels are assigned to conduct the referendum (Draft law, Article 19 and Article 20). To avoid intentional and inappropriate influence at the local level, the same principles should be applied to national elections and nationwide referendums.

From the beginning of the referendum process to the announcement of results, the total timeframe of a referendum should not be so short that the public is unable to receive enough information and the experts or

⁶ In the UK, the Election Council holds responsibility of providing comments on the accuracy, coherence and clarity of referendum questions. This council has circulated a Guide on referendum questions. In some states in the US, a referendum proposal must undergo a technical review by the State Prosecutors Office (or an equivalent agency) to ensure it complies with the constitution and effective commitments on human rights to avoid using resources for a referendum that the results can be claimed invalid by the court. Often, opposing sides to a referendum are allowed to submit a short statement through mass media in support or in opposition to the question put forth.

the press is unable to provide a comprehensive analysis on different aspects of the referendum issue and present diverse points of view to the public. The draft law currently prescribes that the announcement of a referendum will be made at least 60 days prior to the referendum (Article 8); in order to ensure that adequate information is provided to the public, it is recommended to extend this period of time to three months or longer.

5. Result of referendum – legal consequence and time for result announcement

The general provisions on the number of voters and the minimum number of voters who must accept the referendum must be defined prior to the vote. The legitimacy, transparency, fairness, and acceptance of the public to the referendum result will be enhanced if these figures are clearly stated in the Draft law, and must not be changed before or during the conduct of the referendum. Rules on how to resolve disputes or legal challenges to a referendum process or its outcome are equally important.

Whether a referendum is mandatory or advisory should also be carefully considered and stipulated in the law on referendum. A government that calls for a referendum but fails to implement it if accepted by the people will undermine its own legitimacy.

The Draft law gives the authority of announcing referendum results to the National Assembly Standing Committee. This may not comply with the constitutional principle of assignment and coordination among state agencies in exercising state powers and the legislative-making process, since the result of a referendum is also as valid as a law by the National Assembly. Therefore, the announcement of referendum result should be given to the State President – similar to provisions on the announcement of a law, (Article 80, 2015 Law on Promulgation of Legal Normative Documents.)

6. Oversight of the referendum

The people should be given an opportunity to exercise their rights to oversee and participate in referendums. In addition to supervisory responsibilities agencies of the state as regulated in the draft law, more guidance in the Draft law is needed to supplement the oversight role of social organisations, professional organisations, and other mass organisations (including members and non-members of the Vietnam Fatherland Front) to ensure a fair, democratic, objective, and transparent referendum process.

7. Handling of violations

The Draft law merely touches upon administrative mechanisms to handle violations during a referendum. The people should be given an opportunity to use all legal mechanism in place to handle violations or disputes about the process or outcome, including judicial procedures. On the basis of ensuring the constitutional principle of assignment and coordination among agencies in the exercise of state power, the Draft law should complement the role of the Supreme People's Court in implementing the judicial power in cases of disputes and disagreements over the results of the referendum. This is an important principle of the rule of law.

REFERENCE

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