

Key Features of Vietnam's Legal System

Briefing Paper of the
Overcoming the Legal Barriers to REDD+ Implementation Project**
July 2013

Elizabeth Dooley

Cambridge Centre for Climate Change Mitigation Research

Gretchen Engbring

Cambridge Centre for Climate Change Mitigation Research

Dr Sophie Chapman

Department of Land Economy, University of Cambridge

ABOUT THIS BRIEFING PAPER

A country's legal system is not just about formal rules. It is made up of policies, laws, institutions, conventions and historical memory. Together, these elements create a unique context in which to consider any given law or regulatory issue. It is important to understand the mechanics of a legal system, particularly how the Government is structured (ie. institutions of public administration) and the hierarchy of laws. The hierarchy of laws indicates the power of any given legal instrument, and which public body is responsible for it.

A snapshot of the structure of Vietnam's government and hierarchy laws is set out below. This will support the analysis of any regulatory issue in Vietnam (including climate change and forest policy, for which this information was initially collected).

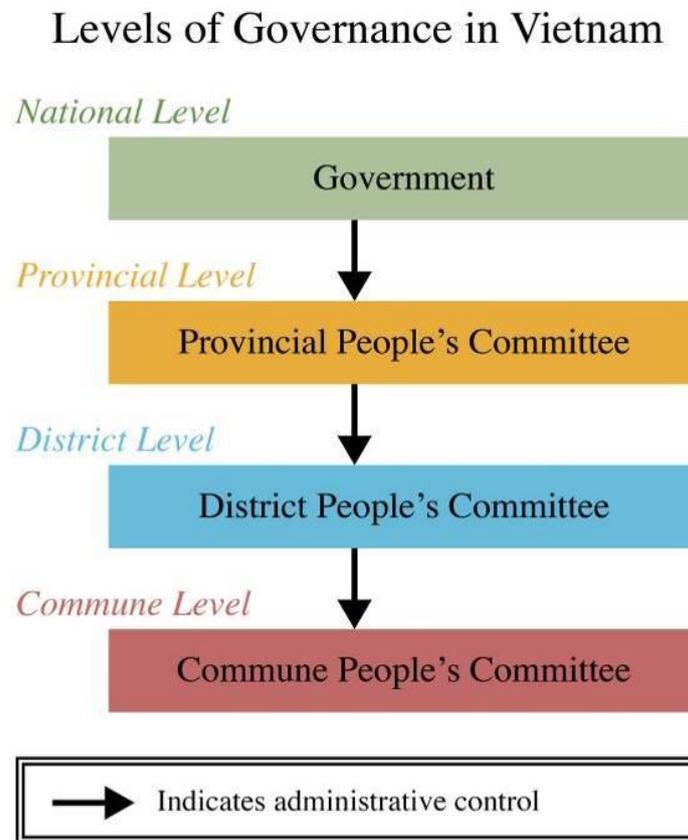


** The **Overcoming the Legal Barriers to REDD+ Implementation Project** was a research project that ran from July 2012 - June 2013. It was funded by the Cambridge Conservation Initiative. Although it had different funding and a separate agenda to the REDD+ Law Project, some of the work provided background context for the issues considered by the REDD+ Law Project.

VIETNAM'S LEVELS OF PUBLIC ADMINISTRATION

Vietnam's official country name is the Socialist Republic of Vietnam,¹ led by the Vietnamese Communist Party as the sole political party.²

The following diagram shows the tiers different tiers of public administration in Vietnam, with the 'national level' at the top of this decision-making hierarchy:



Graphic adapted from Nguyen Quang Tan, Nguyen Van Chinh and Vu Thu Hanh, 'Statutory and Customary Forest Rights and their Governance: The Case of Viet Nam' (IUCN 2008) 17 Fig. 2.

¹ 1992 Constitution, Preamble.

² Nga Pham, *Vietnam's Communist Party congress faces economic test*, BBC NEWS (12 Jan. 2011), <http://www.bbc.co.uk/news/world-asia-pacific-12151218>.

VIETNAM'S CONSTITUTIONAL STRUCTURES AND HIERARCHY OF LAWS

Vietnam's governmental structure is derived from the **1992 Constitution**:

- The **National Assembly** is “the highest State authority in the Socialist Republic of Vietnam.”³ Article 84 lays out its extensive duties and powers, but subsection (7) gives it the power “[t]o elect, suspend and revoke the President, the Vice-President, the Chairman and Vice-Chairmen and the members of the Standing Committee of the National Assembly, the Prime Minister of the Government; the Chief Justice of the Supreme People's Court, the Chief Prosecutor of the People's Inspectorate General”⁴
- The **Standing Committee** “is the permanent body of the National Assembly” elected by it⁵ to issue decrees on certain assigned topics, provide oversight of the People's Councils and other committees within the National Assembly, and basically to serve as the Constitutional/legal monitor of the Government, Supreme People's Court and Inspectorate General—a steering committee for the larger body somewhat.⁶ Specific to local indigenous forest communities, a **Council of Ethnic Nationalities** is elected by the National Assembly and “shall be consulted before any Government decision concerning policies of ethnic nationalities is made public”.⁷ It supervises policy formation and implementation by the National Assembly, Standing Committee, and the Government.⁸
- The **President** is the “Head of State” responsible for foreign relations and national defense purposes, and is accountable to the National Assembly, from which he or she is elected.⁹ The President recommends the election of the Vice President, Prime Minister, Chief Justice, and Chief Prosecutor to the National Assembly, but has the power to appoint Deputy Prime Ministers, Ministers and other Government members—so somewhat limited control over the executive branch.¹⁰

³ 1992 Constitution, Article 83: “The National Assembly is the highest representative body of the people, the highest State authority in the Socialist Republic of Vietnam. . . . The National Assembly exercises the right of supreme supervision of all State activities.”

⁴ 1992 Constitution, Article 84(7).

⁵ 1992 Constitution, Article 90.

⁶ 1992 Constitution, Article 91.

⁷ 1992 Constitution, Article 94.

⁸ *Id.*

⁹ 1992 Constitution, Article 101 (“The President is the Head of State, acting on behalf of the Socialist Republic of Vietnam in domestic and foreign affairs.”), AND Article 102 (“The President is elected from among National Assembly representatives. The President is responsible and accountable to the National Assembly.”) AND Article 103 (“The President has the following duties and powers: (2) To assume command of the People's armed forces and the position of Chairman of the Council for National Defence and Security. . . . (5) To proclaim decisions on declaration of the state of war, to sign decrees granting general amnesties on the basis of resolution of the National Assembly or of the Standing Committee of the National Assembly.”).

¹⁰ 1992 Constitution, Article 103.

- The **Government** is the “executive body of the National Assembly and the highest administrative State body” made up of the Prime Minister (the only one required to be a representative of the National Assembly), Deputy Prime Ministers, other Ministers and members of the Ministries.¹¹ It is responsible to the three levels above it—the National Assembly, Standing Committee and the President.¹²
- The **Prime Minister** directs the work of the executive branch and monitors lower-level government actions, such as implementation of People’s Council resolutions and People’s Committee decisions and actions to make sure they are compliant with the Constitution, laws, and texts from higher agencies.¹³
- The **People’s Councils** are elected bodies that pass resolutions to implement higher-level measures and direct local affairs.¹⁴
- The **People’s Committees** are then “the local administrative State bodies, which have the responsibility to implement the Constitution, laws and texts adopted by the higher State authorities and resolutions of the People’s Councils.”¹⁵

The diagram overleaf displays the various documents generated by the different bodies within this system (noting that the left-hand side column indicates the administrative body responsible for generating the document), ie. the **hierarchy of laws**.

¹¹ 1992 Constitution, Article 109-10.

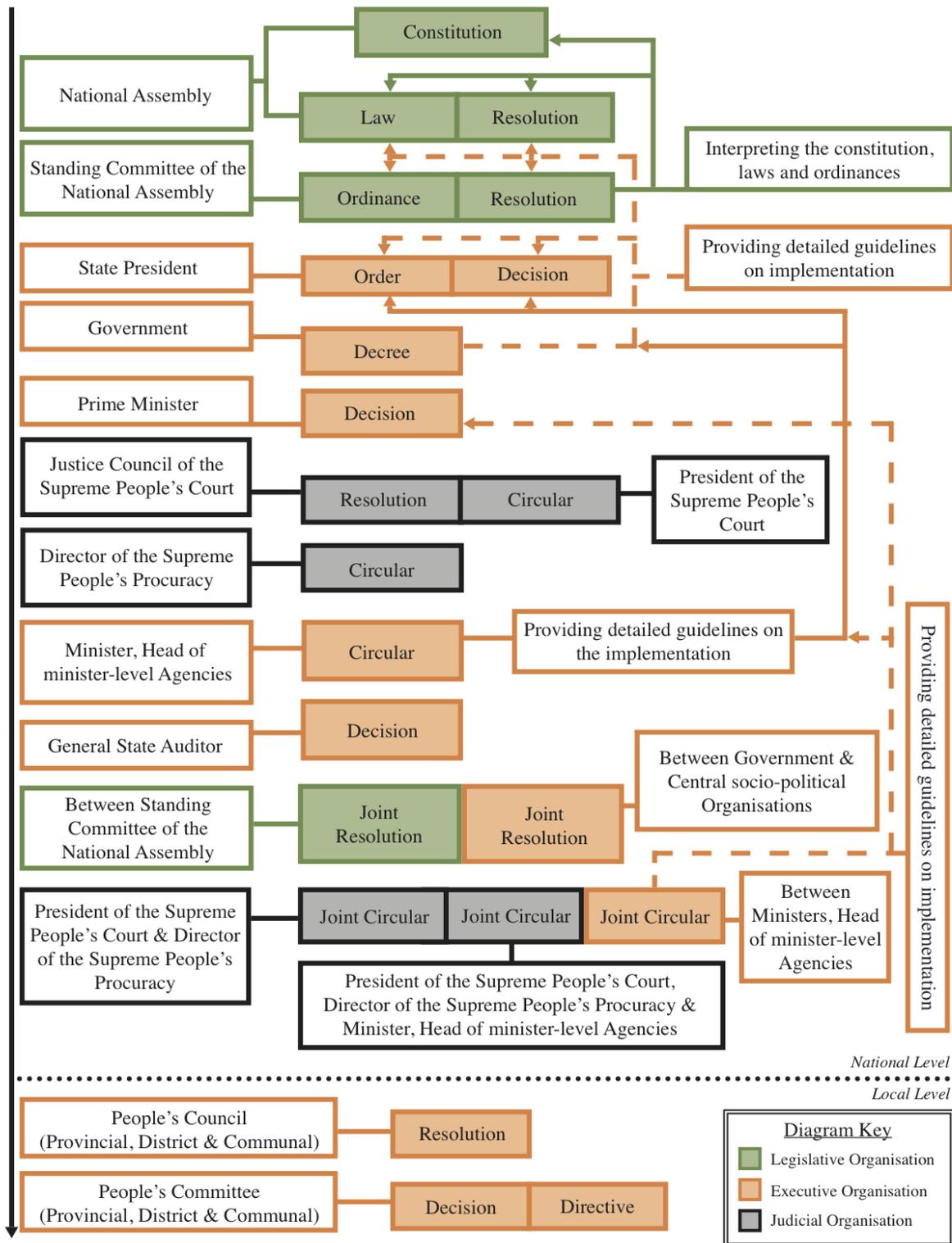
¹² 1992 Constitution, Article 109 (“The Government is responsible and accountable to the National Assembly, the Standing Committee of the National Assembly and the President of State.”).

¹³ 1992 Constitution Article 114 (“The Prime Minister of the Government has the following duties and powers: (1) To direct the work of the Government, members of the Government, People's committees at all levels, and to preside over all meetings of the Government. ... (4) To suspend the implementation of or to abrogate decisions, instructions, circulars of Ministers and other members of the Government; decisions, instructions of people's committees and chairmen of people's committee of provinces and cities directly under central authority that contravene the Constitution, laws and texts of the State agencies at higher levels. (5) To suspend the implementation of resolutions of people's councils of provinces and cities directly under the central authority that contravene the Constitution, laws and texts of the State agencies at higher levels and make recommendations for abrogation of the former by the Standing Committee of the National Assembly”).

¹⁴ 1992 Constitution, Article 120.

¹⁵ 1992 Constitution, Article 123.

Hierarchy of Legal Documents of Vietnam



Graphic adapted from Nguyen Thi Phuong Loan, 'Legal Framework of the Water Sector in Vietnam' (ZEF Working Paper Series, Department of Political and Cultural Change 2010).