

Defining and Redefining the Constitutional Peoplehood in the Post-Independence Vietnam

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Introduction

The post-independence constitution was formally adopted in Vietnam in 1946, when political and military vacuum occurred in Southeast Asia with the end of the Japanese presence. This was followed by the 1959, 1980, 1992 constitutions, the constitutional amendment in 2001, and most recently the 2013 Constitution. Each of these constitutions marks a particular stage of development in the political thought and changing realities in Vietnam's approach to socialism and beyond. Importantly, "we the people", the only legitimate constituency in modern constitutional law, has also changed conceptually in each of these stages.

In this paper, the 1946 Constitution, the 1959 Constitution of the North Vietnam and the post-unification 1980, 1992 and 2013 Constitutions will be examined to find out how "we the people" as a concept changed along with the spectrum of the 70 years political and constitutional development in Vietnam. It is however not enough for a comprehensive analysis, without also looking into the formation and collapse of the constitutional thoughts in the Republic of Vietnam, i.e., the Southern Vietnam, in the period of 1954-1975. Two constitutions were enacted in the South during this period. The first one was adopted in 1956 and the second in 1967. This North-South division and its subsequent termination played an important role in defining and redefining "peoplehood" in the post-1975 constitutional law making. But due to the limited scope of this research looking into the stream of continuity and discontinuity between the period of 1945 and current Vietnam, the constitutions of the South Vietnam will not be sufficiently

elaborated. To the extent necessary, the political contexts of South Vietnam in the 1950s and 1960s will be referred to, in explaining the political environment in which the North Vietnam had to design its constitutional life, particularly at the adoption of the 1959 Constitution. The purpose of this paper is to reveal the general trend of changes in the concept of peoplehood along these constitutional periods which presumably reflected the political and social backgrounds of different times and some importantly unique factors underlying Vietnamese efforts to move towards constitutionalism based on “we, the people” as the legitimate constitutional constituency.

The analyses will focus on three important periods in the forming of peoplehood in the Vietnamese constitutional law. The 1946 Constitution marks Vietnam’s first move towards modern constitutionalism away from colonialism and foreign dominance. It also proclaims the end of the monarchy and establishment of a republic. The process started from the Declaration of Independence read by Ho Chi Minh on September 2, 1945. The year 1954 was then the turning point that divided Vietnam into the Northern and the Southern parts. The 1956 Constitution of the South and the 1959 Constitution of the North reflected the divide not only in political ideology of the elites, but also in their ways of perceiving peoplehood as an historical continuity of a nation.¹⁾ This division was formally brought to an end in 1975. Forces from the North defeated the South Vietnamese administration and unified the country on April 30, 1975. But the division had yet to be mended in real and constitutional terms. Political

1) As will be further elaborated, particularly in section 2 below, the 1959 Constitution of North Vietnam introduced a deep ideological feature of the communist state defining peoplehood based on class rhetoric and the concept of the “good” Vietnamese versus the “bad” Vietnamese. On the other hand, the 1956 Constitution of South Vietnam defined peoplehood in a way where there is no explicit constitutional definition of “good” versus “bad” people but only denunciation of acts defined as unconstitutional by Article 7 which explicitly placed communist thought and tendency outside the constitutional protection. Article 7 stated that “All acts aimed at spreading or realizing directly or indirectly communism in any form are against the principles stipulated in the Constitution”. (Unless explicitly indicated otherwise, all English translation of the legal provisions or Vietnamese texts cited in this paper is done or modified by the author. The translation is meant only to serve the purpose of this article.)

and, soon afterwards, economic projects were implemented by the post-1975 Vietnamese government in an attempt to mend it. These projects included constitutional remaking and introduction of economic reforms, initially started as a controversial project in the South, during the early 1980s. It becomes therefore necessary to carve out a third period to be included in the main focus of this research by looking into the second half of the 70 years history as the beginning of another constitutional evolution towards redefining peoplehood in a new political and economic context. Comparing the pre-1980 Constitutions with the post-1980 ones, particularly the 1992 and the 2013 Constitutions is logically also a useful exercise to discover the successes, failures and the political efforts in defining and redefining the peoplehood in the history of Vietnamese constitutional making.

The next section will first look into the birth of an official constitutional definition of peoplehood in the Vietnamese quests for independence in the 1940s. The second section will then examine how this original concept of peoplehood took a new turn in the 1950s when a divided nation became a permanent phenomenon with the outburst of an ideological war. The third and the fourth sections will focus on changes which took place after the 1975 national unification, and sum up some new challenges which the country has yet to address in the early years of the 21st century. The final section then concludes.

1. The Beginning and the Fall of a Constitution for All

After the proclamation of the Independence Declaration on September 2, 1945, the provisional government organized by Vietminh²⁾ established a 7-member committee on September 20 of the same year to undertake the task of

2) Vietminh is short for the *Viet Nam Doc Lap Dong Minh Hoi* (League for the Independence of Viet Nam), an organization made up of the Indochinese Communist Party and several other elements as well as non-communist personalities. Douglas Pike, *History of Vietnamese Communism, 1925-1976*, Hoover Institution Press, 1978, pp.45-48; Ellen J. Hammer, *The Struggle for Indochina 1940-1955 – Viet Nam and the French Experience*, Stanford University Press, 1954, pp.94-99.

drafting the Constitution. The draft was said to have been disseminated for public comments. On March 2, 1946, the first legislature of the National Assembly set up a Constitutional drafting committee comprised of 11 members, led by Ho Chi Minh, to incorporate the comments into the original draft prepared by the provisional government. It was passed on November 9, 1946.³⁾

The Independence Declaration was made in a political vacuum created by the Japanese withdrawal from Vietnam at the end of the Second World War before the return of the French colonial administration.⁴⁾ About one week later, Chiang Kai Sek's army entered Hanoi on September 9, 1945. Then came the British forces and the return of the French colonial administration.⁵⁾ By the end of 1946, violent confrontations between the Vietminh and the French forces turned sour particularly in Hanoi and its vicinity.⁶⁾ As a result, the 1946 Constitution was not promulgated and most of its provisions were not implemented. However, it is important to remember that, unlike the subsequent constitutions, the 1946 Constitution was adopted also for the sake of unifying different fighting forces in pursuit of national independence. As a well-informed observer of the development of constitutional law in Vietnam recently wrote,

Vietnamese scholars and many informed citizens look back on the 1946 Constitution as an example of the inclusion of at least some democratic

3) More details of the drafting and adoption of this 1946 constitution are mentioned in the constitutional law textbook published by the Hanoi Law University, *Giao Trinh Luat Hien Phap Viet Nam (Vietnamese Constitutional Law Textbook)*, Cong An Nhan Dan Publishers, Hanoi, 2008, pp.74-75.

4) For more historical details involving the Japanese role before and during its withdrawal from Vietnam, see Ralph B. Smith, "The Japanese Period in Indochina and the Coup of 9 March 1945", in Walter L. Hixson (ed.), *The Roots of the Vietnam War*, Garland Publishing, 2000, pp.2-35.

5) For more details about what happened between August 1945 and the period of one or two years that followed, see Philippe Devillers, *Histoire du Viet-Nam de 1940 a 1952*, the first AMS edition published in New York 1975, reprint of the 1952 ed. published by Editions du Seuil, Paris, p.132 onwards; and in English, see Ellen J. Hammer, *The Struggle for Indochina 1940-1955 – Viet Nam and the French Experience*, Stanford University Press, 1954, pp.94-202.

6) Douglas Pike, *History of Vietnamese Communism, 1925-1976*, History of Ruling Communist Parties, Hoover Institution Publication 189, 1978, p.74.

principles, an ethos of participation, and accountability of government leaders and legislators, rather than a harsh political line. The contexts of the Vietnamese constitutions that were to follow, particularly those of a Vietnam at war and pursuing a hardened socialist line in 1959, and the constitution promulgated after the defeat of South Vietnam and during a period of strong socialist ideology again, in 1980, were very different from the attempt to build a broad national consensus by a new and fragile regime in 1946.⁷⁾

In fact, this Constitution was adopted by a National Assembly which consisted of 333 elected deputies. Among them, 43% were non-partisan candidates and 57% were members of various parties and factions. In addition, 70 non-elected members were admitted into the National Assembly, as proposed by Ho Chi Minh, to represent the Vietnamese National Party (*Viet Nam quoc dan dang*) and the Association of Vietnamese Revolutionary Comrades (*Viet Nam cach mang dong chi hoi*).⁸⁾ Even though the Indochinese Communist Party played an important role in these maneuvers, it knew very well that the situation of that time required a broad-based consensus to legitimize the independence movement. Studies about the development of Vietnamese communist movements particularly during the 1930s and the early 1940s pointed to its tendency of displaying soft ideological stance at that time in order to gain broader participation and supports by other non-communist nationalist movements.⁹⁾ A resolution by the Communist Party's 6th Central Committee meeting in 1939 stated that "the Anti-Imperialist Front is not calling for establishment of a sovietist government of workers, farmers and soldiers, as a form of government exclusively for proletariats".¹⁰⁾ But it suggested

7) Mark Sidel, *The Constitution of Vietnam – A Contextual Analysis*, Hart Publishing, 2009, p.27.

8) Hanoi Law University, *Giao Trinh Lich Su Nha Nuoc va Phap Luat Viet Nam*, (History of Vietnamese State and Law – Textbook), Cong An Nhan Dan Publishers, Hanoi, 2008, pp.444; Bernard Fall, *The two-Vietnam*" (Japanese translation by Takata Ichitaro), 1966., p.76.

9) Hoang Van Chi, *From Colonialism to Communism – A Case History of North Vietnam*, Frederick A. Praeger Publisher, NY, 1964, pp.41-63; William J. Duiker, *Vietnam – Revolution in Transition*, second edition, Westview Press, 1995, pp.36-46.

10) Hanoi Law University, *Giao Trinh Lich Su Nha Nuoc va Phap Luat Viet Nam*, pp.432-433.

the establishment of “a form of government inclusive of all classes of the public, domestically and in the struggle for peoples’ revolution. A part of the capitalist class may come with the public at a certain stage”.¹¹⁾ Later, at the 8th Central Committee meeting in May 10-19, 1941, formation of the post-independence government was discussed in more concrete terms. The Party resolution states:

After defeating the French and Japanese imperialism, we will establish a revolutionary government of the Democratic Republic of Vietnam …… The government of the Democratic Republic of Vietnam is elected by the National Congress…… a democratic republican regime in conformity with the spirit of democracy.¹²⁾

(1) A Confusing Start of the Peoplehood in Definition

As a result of this political orientation, the first post-independence constitution was drafted carefully enough not to make any reference to the socialist or communist ideology. Article 1 stated only that,

Vietnam is a Democratic Republic. All powers in the country belong to the whole Vietnamese people (*nhan dan*), with no discrimination as to race, gender, property, class or religion.¹³⁾

Chapter two of the Constitution provided for the obligations and rights of citizens (*cong dan*). In this Chapter, Article 8 referred to the special assistance for ethnic minorities (*quoc dan thieu so* = literally translated as minority nationals). Article 9 recognized that women had the same rights as man. The Constitution also guaranteed the right to direct, free and secret voting.¹⁴⁾ Then in Chapter 3, there were provisions on the election of the People’s Assembly every three years and local People’s Council, which were elected directly by local residents through universal suffrage.¹⁵⁾ Although the Constitution was not fully implemented due to

11) *Ibid.*, pp.432-433.

12) *Ibid.*, pp.433.

13) The Vietnamese term for people in this Article 1 is “*nhan dan*” as emphasized in the brackets.

14) Article 17 of the 1946 Constitution.

15) Chapters 3 and 5 of the 1946 Constitution.

the interrupting war, it was adopted as a modern constitution in terms of its democratic and de-feudalist nature. Beede considers this Constitution not communist but “bourgeois democratic”.¹⁶⁾ Aikyo suggests that it was the product of a compromise based on internal and external power politics of the time. He points out that this compromise was not only apparent in the constitutional provision on the protection of Vietnamese citizen’s private property, but also the attempt to gain more concessions from the French colonizers and to consolidate the relationship with the traditional feudalist trends, particularly the landlords, through the medium of a struggle for national independence.¹⁷⁾

The concept of “people” in this Constitution seemed broad and inclusive, and there was no definition on its limits and scope. But unlike most western constitutions, the preamble did not refer to a consistent concept of the Vietnamese subject. It did not only refer to the “*nhan dan*” (people) who were given liberty by the August Revolution,¹⁸⁾ but also referred to the “Vietnamese *dan toc* (people)¹⁹⁾ who escaped the oppressions of colonial policies, and at the same time denounced monarchy and mandarinship. The distinction between people as “*nhan dan*” and people as “*dan toc*” is not legally clear. In some contexts the term “*dan toc*” is more appropriately translated into “ethnic group”. But in other context, to translate *dan toc* as an equivalent of “ethnicity” as the word is understood in English may create more confusion than clarity in the constitutional text. This is particularly so when *dan toc* is used with the adjective Vietnamese. The relevant parts of the preamble were as follows:

The August Revolution has regained sovereignty for the nation, liberty for

16) Benjamin R. Beede, “Democratic Republic of Vietnam”, in Albert P. Blaustein & Gisbert H. Flanz (eds), *Constitutions of the Countries of the World*, New York, 1971, p.2.

17) Aikyo Masanori, *Betonamu Kenpo Shi* (Constitutional History of Vietnam), *Nihon Hyoronsha* Publisher, 1993, p.90. Regarding the protection of property right, Article 12 of the 1946 Constitution stated “Vietnamese citizens’ right to hold private property shall be guaranteed”.

18) The August Revolution refers to the coup staged by the Vietminh forces on August 19, 1945, against the Emperor Bao Dai and his pro-Japanese government. The Emperor was forced to abdicate in favor of a Provisional Government of the Democratic Republic led by Ho Chi Minh.

19) Note the different Vietnamese terms in brackets. More will be elaborated below.

the people (*nhan dan*) and established the foundation for a democratic republic.

After 80 years of struggle, the Vietnamese people (*dan toc Viet Nam*) have been freed from the oppressions of the colonial policies, and at the same time have discarded the monarchy and mandarin regime. The homeland has launched on a new journey.

The mandate of our people (*dan toc*) at this stage is to preserve the territory, struggle for complete independence and construct the State on the basis of democracy.

The word *nhan dan* was used widely in the provisions of the Constitution when referring to “people” of the country in general.²⁰⁾ Citizen “*cong dan*” was used instead when referring to rights-holders and bearers of constitutional obligations. In contrast, the phrase *dan toc Viet Nam* or *dan toc* in a related context only appeared in limited paragraphs of the Preamble. The other paragraphs normally mentioned *nhan dan* in referring to the people in general. The concept of a Vietnamese *dan toc* in the first post-independence constitution, and to some extent some subsequent ones, therefore caused technical confusions in defining peoplehood in the early years of Vietnamese modern nation-building. The following paragraphs in this and the next sections will try to review the cause of this confusion and try to make sense of it from the political history and reality of Vietnam before and after each of the major constitutional moments. This historical and political explanation of the cause of confusion may also help reduce the risk of unnecessary arbitrariness in translating or interpreting some contextually sensitive vocabularies connected to “people” in reading the Vietnamese Constitutions.

(2) *Putting the Confusions in Context*

From the historical perspective, the preamble of the 1946 Constitution emphasized the existence of a “*Vietnamese dan toc*” as an historical fact. The 1946 Constitution stressed on the 80-years struggle of this “*Vietnamese dan toc*” against

20) One of the examples is its appearance in provisions on “People’s Parliament” (*nghi vien nhan dan*). See Chapter III of the 1946 Constitution.

colonialism and feudalism (monarchy and mandarinship), and looked forward to a new period of nation-building based on democratic principles.

Revolution in this period was not an exclusively communist movement. Communist or socialist ideology was only one part of the independence movement. Revolution was therefore a mass movement to put the “oppressive” colonialism to an end. As a matter of fact, the Bao Dai court, the last feudal dynasty in Vietnam denounced the 1885 protectorate treaty with France in March 1945, after the Japanese forces successfully stage a *coup d’etat* against the French colonial administration in Vietnam.²¹⁾ A few months after that, with the defeat of the Japanese by the allied forces in Vietnam, the communist guerilla led by Ho Chi Minh entered Hanoi on August 19, 1945. They sent an envoy to Hue on August 25 to demand the dethroning of the Emperor Bao Dai, thereby ending the history of monarchy in Vietnam.²²⁾ What followed was the establishment of a Democratic Republic of Vietnam headed by Ho Chi Minh and the adoption of the 1946 Democratic Republican Constitution.

This signified a discontinuity in the development of Vietnamese political history. This political discontinuity was not difficult to realize because the historical feudalistic government had been de-legitimated as a result of over 80 years of *de facto* foreign control which includes 60 years of *de jure* colonial rules, and not less due to the subsequent chaos under the colonial and monarchical reigns. But the Democratic Republic’s concern then was to prevent national divisions and disintegration of the independence movement. Logically, some sort of historical continuity is necessary to keep the falling pieces together. The Preamble of the 1946 Constitution had to emphasize upon a certain continuity in the form of a unique and unified “Vietnamese *dan toc*”, something denoting a big family of Vietnamese People which may be made up of different peoples. “*Dan toc*” in this sense may mean more than just a political or ideological collective. It implied a

21) Bernard Fall, *The two-Vietnam* (Japanese translation by Takata Ichitaro), 1966, p.69.

22) Ellen J. Hammer, *The Struggle for Indochina 1940-1955 – Viet Nam and the French Experience*, Stanford University Press, 1954, pp.94-202

whole entity with some sort of natural and emotional identity, perhaps a bond that is stronger than the modern concept of “people” (*nhân dân*) understood mainly in terms of a community of co-inhabitants residing in a common national territory.

2. From the pursuit of independence to the quest for legitimacy

Although with slightly different nuances, the 1959 Constitution retained similar distinctions in making reference to the peoplehood in its Preamble. It referred to *dan toc Viet Nam* in one context and *nhân dân Viet Nam* in another. But unlike the 1946 Constitution, the 1959 Constitution also applied the word *dan toc* widely in its provisions referring to ethnic groups or ethnic minorities. This appeared in Article 3 which read:

The Democratic Republic of Vietnam is a unified country consisting of many ethnic groups (*dan toc*). All ethnic groups (*dan toc*) living in Vietnam are equal in rights and obligations.

The nation shall have the duty to retain and develop the unity among all ethnic groups (*dan toc*). All acts of contempt, suppression and segregation in ethnicity (*dan toc*) shall be prohibited.

All ethnic groups (*dan toc*) shall have the right to sustain or revise their custom and traditional practices, use their own spoken and written languages, and develop the culture of their own ethnic groups. (*dan toc*).²³⁾

Places where ethnic minority (*dan toc thieu so*) lives in collectivity shall be established into autonomous zones. Autonomous zones are inseparable parts of the Democratic Republic of Vietnam.

The nation makes efforts to assist ethnic minorities (*dan toc thieu so*) in catching up with the common economic and cultural levels.²⁴⁾

23) In the English translation of the 1959 Constitutions printed in Albert P. Blaustein & Gisbert H. Flanz (eds), *Constitutions of the Countries of the World*, “*dan toc*” in these three paragraphs is translated as “nationality” or “nationalities”. See Dana Blaustein, “Socialist Republic of Viet-Nam”, in Albert P. Blaustein & Gisbert H. Flanz (eds), *Constitutions of the Countries of the World*, Oceana Publications, Inc, 1971.

24) In Albert P. Blaustein & Gisbert H. Flanz (eds), *Constitutions of the Countries of the World*, “*dan toc*” in these two paragraphs is translated as “national minorities”.

The Preamble referred to Vietnamese “*dan toc*” (“*dan toc Viet Nam*”) as a “*dan toc*” that worked hard and always fought courageously to construct the nation and to protect the independence of the motherland. This was the only reference to “*dan toc Viet Nam*” in the long Preamble of the 1959 Constitution. Subsequent paragraphs only mentioned “*nhan dan*” (people). Therefore, to understand “*dan toc Viet Nam*” as the Vietnamese ethnic group in the Preamble of the 1959 Constitution may create confusions with regard to the interpretation of Article 3 of the same Constitution. How can the Vietnamese ethnic group be made up of many ethnic groups? In this context, it apparently makes better sense to interpret “*dan toc Viet Nam*” as the “Vietnamese people” or “Vietnamese nationals”. Therefore, whether “*dan toc*” in the 1959 Constitution should be translated into “people”, “ethnic group” or “national” needs to be again contextually based. The situation leading to confusions in defining Vietnamese peoplehood right after the 1945 Declaration of Independence has been elaborated in the previous section. The following paragraphs will focus on the new context which took place several years afterwards.

The need to define Vietnamese people along the historical continuity of a presumed nationhood changed significantly after the rival political regimes emerged by the end of the 1940s in the southern part of the country.²⁵⁾ The 1954 Geneva Agreement officially divided the country into the North and the South. The struggle for independence was then followed by the struggle for legitimacy. The North was particularly sensitive about this, since their earlier initiation of the Independence Declaration and drafting of the 1946 Constitution did not result in a sustainable coalition with other nationalist movements. But the South administration, particularly that of President Ngo Dinh Diem after the 1954

25) Some former non-communist nationalist movements left the movement led by Ho Chi Minh and started their own struggles in the South, in different forms, some showing strong religious affiliations. See D. R. SarDesai, *Vietnam – The Struggle for National Identity*, Westview Press, 1992, pp.56-61; J.A.C. Grant, “The Viet Nam Constitution of 1956”, *The American Political Science Review*, vol.52, no.2, June 1958, pp.437-440; and, for more historical details, see also Philippe Devillers, *Histoire du Viet-Nam de 1940 a 1952*, the first AMS edition published in New York 1975, reprint of the 1952 ed. published by Editions du Seuil, Paris, pp.394-440.

French military losses at the Dien Bien Phu battles, did not see its continuous cooperation with the Western powers such as France and the US as an extension of the colonial politics. Instead, its emphasis on being democratic and part of the “free world” as opposed to the Sovietist North was obviously a straightforward challenge to the legitimacy of the North Vietnamese administration.²⁶⁾ A Constitution was adopted in 1956 by the Constituent Assembly of the Republic of Vietnam under Diem, to introduce a political system that gave some superficial resemblances to the modern democratic systems of the West.²⁷⁾ The rhetoric of a “*dan toc Viet Nam*” in the North Vietnamese Constitution therefore had to shift its attention away from the issue of independence to the question of legitimacy.

In addition to the development in the South, the failures of land reform introduced by the Democratic Republic of Vietnam in the North, between 1953 and 1956 also created reasons for the government in the North to feel the need to reboot its legitimacy as a political existence that can claim to represent the people of Vietnam as a nation. The land reform campaign started with the agricultural and trade taxation enforcement to re-establish state revenue and to sustain the independence and unification struggles. The campaign was implemented quite arbitrarily by the local enforcement agents that several unrelated incidents of

26) Although the monarchy was officially dethroned by the Viet-Minh group in 1945, the former Emperor Bao Dai remained politically active. For a while after the Democratic Republic of Vietnam was established, Ho Chi Minh appointed the former Emperor as his senior advisor. However, the latter defected to Hong Kong a few years later and started working with other South Vietnamese nationalist movements until he came back in 1949 to lead the “State of Vietnam”. Diem was the Prime Minister under the Emperor Bao Dai’s administration in South Vietnam, until he deposed the monarchy by means of a popular referendum in 1955, which then made him the President of the new Republic of Vietnam. Although Diem did not prove himself as a genuine democrat in the way the word is generally understood, his strong anti-communist attitude and his reputation as a fervent nationalist earned him substantial support both internationally and domestically, at least in the mid-1950s. For some details of the political change in this period, see Bernard Fall, *The two-Vietnam* (Japanese translation by Takata Ichitaro), 1966, pp.197-276, and William J. Duiker, *Vietnam Revolution in Transition*, 2nd edition, Westview Press, 1995, pp.91-97.

27) For brief reviews of the 1956 Constitution of the South Vietnam, see Mark Sidel, *The Constitution of Vietnam – A Contextual Analysis*, Hart Publishing, 2009, pp.15-20; J.A.C. Grant; and Francis J. Corley, “Notes and Comment – The President in the Constitution of the Republic of Viet-Nam”, *Pacific Affairs*, May 1960, pp.165-174.

political suppression and economic and tax abuses were reported during this period. Even though consequently, the campaign led to expropriation of a significant amount of property from the “capitalists”, it was not officially admitted that way. Instead, the campaign was said to have been used to root out “traitors” and the “reactionaries”.²⁸⁾ Given the fact that the campaign took place under the 1946 Constitution and during the time of the North Vietnamese administration’s increasing quest for legitimacy, expropriation of the capitalists’ property would not be politically sound. As mentioned earlier, the 1946 Constitution makes neither reference to communism nor socialism as the dominant ideology and indeed provides for the “guarantee” of Vietnamese citizens’ ownership over private property.²⁹⁾ But the implementation of the campaign was so arbitrary and abusive that some prominent members of the government and academia at that time had to express their concerns publicly against it. Sidel cites the criticisms made by Professor Nguyen Manh Tuong in 1958 as follows:

Administrative measures, and particularly legal measures, when correctly used, can ensure the success of the revolution. What did we want then? We wanted to discover the enemies of the peasants, of the revolution, in order to suppress them. But if we were prudent, if we wanted to safeguard the prestige and the success of the revolution, we should not forget that revolutionary justice must not miss its target: the enemy. A slogan has been put out: Better kill ten innocent people than let one enemy escape. This slogan is not only leftist to a ridiculous degree but it is also harmful to the revolution...³⁰⁾

Tuong then suggested that basic criminal procedural reform be introduced and observed to guarantee the successful realization of the revolution. He referred to four principles in criminal procedure, which may be generally summed up here in the following terms: the respect for the principle of statutes of limitation, the

28) Hoang Van Chi presents several important episodes of the campaign during this time and attributes the root of the campaign to the Chinese experience a few years before that. See Hoang Van Chi, *From Colonialism to Communism: A Case History of North Vietnam*, Frederick A. Praeger, New York, 1964, pp.90-106 and 163-208.

29) Article 12 of the 1946 Constitution.

30) Mark Sidel, *The Constitution of Vietnam – A Contextual Analysis*, Hart Publishing, 2009, p.42.

individuality of criminal offenders, no condemnation without valid evidence, and the respect for a suspect's right to due process in investigation and accusation and the right to a counsel. He then argued:

How can these principles be applied to our Land Reform? The reform could certainly continue, but the punishment of reactionaries should not be settled by the Special People's Court[s], obviously so full of shortcomings... On the contrary, having mobilized the spirit of the people and listened to their denunciation, we should charge the ordinary People's Court to investigate, to examine, to interrogate, to judge, while the defendants should have the right to defend themselves and to be represented by counsel. We only hate the crime they might have committed; their human dignity we respect.....³¹⁾

However, not only were such views not accepted by the regime, Tuong and other individuals making such criticisms were also severely criticized and deprived of their professional lives.³²⁾ The Land Reform was later partly revised for political reasons and the administration admitted some errors in public,³³⁾ but instead of returning to the tract of the 1946 Constitution, the regime decided to push ahead with a more radical process of revolutionary struggle and seek for more legitimacy by incorporating a stronger ideological and strategic color into a new political order.³⁴⁾

This shift was evident in the statement of Vo Nguyen Giap, then the spokesman of the Vietnam Workers' Party (formerly the Indochinese Communist Party led by Ho Chi Minh), addressing the 10th Congress of the Party Central Committee, in recognition of the errors the government committed under the Land Reform

31) *Ibid.*, p.43.

32) *Ibid.*, p.42.

33) Some episodal descriptions of this period are available in Hoang Van Chi's *From Colonialism to Communism: A Case History of North Vietnam*. He calls this the 'rectification of errors'. See Chi, pp.209-220.

34) Bernard B. Fall, "North Viet-Nam's New Draft Constitution", *Pacific Affairs*, May 1959, pp.178-186; Bernard B. Fall, "Constitution-Writing in a Communist State - The New Constitution of North Viet-Nam", *Howard Law Journal*, vol.6, 1960, pp.157-168; Bernard B. Fall, "Notes and Comment - North Viet-Nam's Constitution and Government", *Pacific Affairs*, July 1960, pp.282-290.

campaign. A part of the statement as reported by the Nhan Dan newspaper (no.970) on October 31, 1956 was quoted (and perhaps translated) by Chi as follows:

We have failed to realise the necessity of uniting with the middle-level peasants, and we should have concluded some form of alliance with the rich peasants, whom we treated in the same way as the landlords.

We attacked the landowning families indiscriminately, according no consideration to those who had served the Revolution and to those families with sons in the army. We showed no indulgence towards landlords who participated in the Resistance, treating their children in the same way as we treated the children of other landlords.³⁵⁾

This indicates a political orientation in the Party to classify people into friends and foes of the revolution. The foes are no longer limited to foreign imperialists or colonialists. Although friends are not only peasants and workers, not all landowners are equally considered members of the group. The discrimination is now based on the contributions that landowners have been making to the army (of the Democratic Republic) or to the Resistance.

Unlike in the 1940s, the Vietnam Workers' Party in the mid and late 1950s was gradually dominating the political arena in the North Vietnam. It climbed up the political ladder and was officially recognized as the leading political party in the Vietnamese struggle for national unification. This was explicitly mentioned in the last paragraph of the Preamble of the 1959 Constitution:

Under the enlightened leaderships of the Vietnam Workers' Party, the Government of the Democratic Republic of Vietnam and President Ho Chi Minh, the whole population forms a wide solidarity front for national unification (*dan toc thong nhat*). It will surely achieve glorious victories in the building of socialism in the North and realization of unification of the homeland

The official position taken by the Party on political issues in the North by the

35) See Hoang Van Chi, *From Colonialism to Communism: A Case History of North Vietnam*, Frederick A. Praeger, New York, 1964, p.210.

late 1950s ought to be considered indicative of the trend to which the country (in this case the North Vietnam) would be led in the subsequent years. Looking back on the Land Reform and the following political developments in North Vietnam, one may be able to observe a consistent trend of approaching towards socialism and totalitarianism in the political life there. The fight for national unification demanded no longer plain rhetoric against imperialism but also an unambiguous attitude towards the question of how to move the struggle forward. It was not only a “Vietnamese vs foreign imperialists” formula that could be of sufficient help. The reality required a clearer definition of the good Vietnamese and the bad Vietnamese in claiming political legitimacy and gaining an upper hand in the struggle for popular supports in the domestic forum.

The 1959 Constitution may be seen as a political arrangement to take up this new challenge. As observed by some foreign researchers of this Constitution, the North Vietnam appeared less cordial to the “broad united front of political parties, intellectuals, business people and others that the new regime had tried to reach”,³⁶⁾ but more interested in standing on “its own record of attempting to solve Vietnam’s perennial economic and political problems by espousing a formula that is radically different from that of its southern competitor”.³⁷⁾ The Preamble of the 1946 Constitution was revised and additional paragraphs were added to form a long Preamble of 10 short and long paragraphs. The paragraphs where “*dan toc Viet Nam*” appeared in the 1946 Constitution was reworded as follows:

The Vietnamese people (“*dan toc Viet Nam*”), throughout their thousand of years of history, have been an industriously working people (“*dan toc*”) who have struggled unremittingly and heroically to build their country and to defend the independence of their Fatherland.³⁸⁾

Unlike the 1946 Constitution, this paragraph linked “*dan toc Viet Nam*” to a

36) Mark Sidel, *The Constitution of Vietnam – A Contextual Analysis*, Hart Publishing, 2009, pp.45-46.

37) Bernard B. Fall, “North Viet-Nam’s New Draft Constitution”, *Pacific Affairs*, vol.32, no.2, 1959, p.186.

38) Dana Blaustein, “Socialist Republic of Viet-Nam”, in Albert P. Blaustein & Gisbert H. Flanz (eds), *Constitutions of the Countries of the World*, Oceana Publications, Inc, 1971.

longer history than just the independence struggles of 80 years. The Preamble instead left the latest revolutionary history to the following paragraph which stated:

Throughout more than eighty years of French colonial rule and five years of occupation by the Japanese fascists, the Vietnamese people (“*nhan dan Viet Nam*”) consistently united and struggled against domination by the foreign aggressors in order to liberate their country.³⁹⁾

The English translation of the 1959 Constitution found in the *Constitutions of the Countries of the World* edited by Blaustein et. al. consistently uses the word “Vietnamese people” to stand for both “*dan toc Viet Nam*” and “*nhan dan Viet Nam*”. But it is interesting to note here that the terminologies used in the original Vietnamese version of the Constitution, pointed to some apparently well-deliberated choice of words which delivered a very clear political and constitutional message. This is so obvious when comparing the ways the same historical period of anti-colonial struggles were addressed in the Preambles of the two Constitutions. The 1946 Constitution and the 1959 Constitution used two different terminologies when referring to the same context of the struggling “Vietnamese people”.

The concept of a pre-modern Vietnamese people (*dan toc*) who shared with each other the natural and emotional identity of a community that came together to fight foreign colonizers was then replaced by a newer concept of ideologically and politically structured people expressed in the term of “*nhan dan*”. When comparing with the 1946 Constitution, this conceptual shift also amounts to discontinuity of an historical source of legitimacy which in fact seems essential in appealing to the struggles for national unification. It is obvious that the ideologically and politically structured people (*nhan dan*) could not have come from nowhere. They have to be presented as the people of the land in order to justify their claim for leading the war against foreign imperialists and the struggle for national unification.

39) *Ibid.*

Under the 1959 Constitution, this pre-modern Vietnamese-ness expressed in the term of “*dan toc*” was identified with a people who had existed over a period of many thousand years.⁴⁰⁾ The anti-colonial independence movement and the subsequent struggle against “foreign aggressors” only represented a different kind of Vietnamese-ness, i.e. that of a common political and ideological bond – that of “*nhan dan*” or people in a “modern” “socialist” community. These two different concepts of Vietnamese peoplehood were presented separately in the two paragraphs of the Preamble cited above.⁴¹⁾

It was on this basis that the 1959 Constitution classified Vietnamese people into the good Vietnamese and the bad Vietnamese in the subsequent paragraphs:

However, the French imperialists, assisted by the US imperialists, again provoked an aggressive war in an attempt to seize our country and enslave our people (“*nhan dan*”) once more. Under the leadership of the Vietnamese working class party and the government of the Democratic Republic of Viet-Nam, our entire people (“*nhan dan*”), united as one, rose up to fight the aggressors and save their country.....

The Vietnamese revolution has moved into a new position. Our people (“*nhan dan*”) must endeavour to consolidate the North, taking it towards socialism; and to carry on the struggle for peaceful reunification of the country and completion of the tasks of the national people’s democratic revolution throughout the country.

.....

Meanwhile in the South, the U.S. imperialists and their henchmen have been savagely repressing the patriotic movement of our people (“*nhan dan*”).

.....

40) Historians normally refer to Van Lang as the earliest name for Vietnam back in the Early Bronze Age at about the third millennium B.C. Van Lang is said to have founded by King Hung, who remains to date a legendary founder of the nation. For some brief details, see D. R. SarDesai, *Vietnam: The Struggle for National Identity*, Westview Press, USA, 1992, p.8.

41) Translation abstracted from Dana Blaustein, “Socialist Republic of Viet-Nam”, in Albert P. Blaustein & Gisbert H. Flanz (eds), *Constitutions of the Countries of the World*, Oceana Publications, Inc, 1971.

Our State is a people's (*nhan dan*) democratic State based on the alliance between the workers and peasants and led by the working class. The new Constitution defines the political, economic and social system of our country, the relations of equality and mutual assistance among the various nationalities ("*dan toc*" or ethnic groups) in our country, and provides for the taking of the North towards socialism, and the building of a stable and strong North Vietnam as a basis for the struggle for the peaceful reunification of the country.⁴²⁾

The rhetorical claims for legitimacy were found in all these paragraphs. The trend moved closer towards legitimizing a national movement to wage a war of ideology and patriotism, distinguishing "*nhan dan*" (people) of a "people's democratic State" from those henchmen of foreign aggressors. All these claims denoted a new kind of Vietnamese-ness defined differently from that derived from thousand of years of pre-modern nation-building.

3. Peoplehood Redefined in Combined Ideological and Economic Terms After Unification

However, with the end of the unification war, this ideologically oriented peoplehood led to a new form of conflicts in the post-unification southern territory. Resistance to the domination by the North in dictating the policy for the South⁴³⁾ and the boat people movements⁴⁴⁾ led to another legitimacy crisis for the government. The 1980 Constitution, which actually pushed the socialist rhetoric even further apparently did not help. This new socialist orientation started with another wave of land and agricultural reforms, by focusing strongly on the

42) In this paragraph, the word "*dan toc*" is translated as "nationalities". It may actually be "ethnic groups".

43) For some descriptions of the situation during this period, see Nguyen Van Canh, *Vietnam Under Communism 1975-1982*, Hoover Institution, Stanford University, 1983.

44) Nguyen Van Canh, *Vietnam Under Communism 1975-1982*, Hoover Institution, Stanford University, 1983, pp.128-136; William J. Duiker, *Vietnam Revolution in Transition*, Second Edition, Westview Press, 1995, pp.108-115.

establishment of collective production in agriculture and strengthening the roles of the State in leading and directing the economy.⁴⁵⁾ Then the introduction of the Doi Moi policy in late 1980s brought new challenges to this ideological appeal. Subsequent constitutional re-making and amendment gave birth to the 1992 Constitution and its 2001 amendments. This section will examine how the ideological and economic manouvers during this period involved the redefinition of peoplehood in the subsequent constitutional amendments.

The expression “*dan toc Viet Nam*” mostly disappeared from the Preamble of the 1980 and 1992 Constitutions. In its place was the expression “*nhan dan Viet Nam*”. Although in the 1980 Constitution Preamble, our (meaning “Vietnamese”) “*dan toc*” appeared in the first paragraph, its rhetorical value seemed relatively insignificant. It is translated as our “nation” in the *Constitutions of the countries of the world*, issued May 1981. The whole paragraph read:

Throughout their four-thousand year history, the Vietnamese people (“*nhan dan*”) have worked hard and fought heroically to build and defend their country. This long and persistent struggle for independence and freedom has fostered the staunch and indomitable tradition of our nation (“*dan toc*”).

The possessive adjective “our” was later removed from the same preambulatory paragraph of the 1992 Constitution. Instead, the expression “*dan toc*” seemed to retain its more cultural, ethnic and perhaps anthropological meaning of “ethnic groups” addressed in the substantive provisions of the two constitutions. More elaborations on this issue will be made in the following section.

Unlike the previous constitutions of 1946 and 1959, the 1980 Constitution is known as the Constitution of the Socialist Republic of Vietnam. One year after the North-South unification, the new Government, led by the former North Vietnamese administration, renamed the regime as the Socialist Republic of Vietnam to mark the beginning of a new political era moving the whole nation towards “greater successes” in the “construction of socialism” and “defence of a socialist fatherland”.⁴⁶⁾ *Dan toc* as a terminology appearing in the 1980

45) Chapter II of the 1980 Constitution of the Socialist Democratic Republic of Vietnam.

46) The last preambulatory paragraph of the 1980 Constitution.

Constitution was less personified and less rhetorical than it had been in the previous constitutions. It was used to refer to an abstract concept of a “nation”.⁴⁷⁾ Neither did the dichotomy of good Vietnamese and bad Vietnamese exist under this Constitution.

The dual concept of peoplehood (*dan toc Viet Nam* and *nhan dan Viet Nam*) found in the previous constitutions was therefore fading out in the 1980 Constitution, giving way to a simpler concept redefined into one single terminology, namely *nhan dan* or the Vietnamese people who “stand in solidarity under the all-victorious flag of the Vietnam Communist Party, make efforts to implement the Constitution, and seek to accomplish even greater successes in constructing the socialism and defending the socialist Fatherland”.⁴⁸⁾

In connection to the socialist ideology, the 1980 Constitution provided for a new type of economic system, based on centralized economic planning⁴⁹⁾ and national control of foreign trades.⁵⁰⁾ Collective use of materials for production and collective production, instead of individual production schemes, were encouraged.⁵¹⁾ But the collective agricultural production arrangements in the 1980s seemed to fail in different parts of Vietnam.⁵²⁾ To save the collapsing economy, the Government introduced the *Doi Moi* policy in the mid 1980s. This policy was officially pronounced at the 6th Congress of the Vietnam Communist Party in 1986. Some initial positive results turned up significantly soon after the

47) For example, the 8th paragraphs of the Preamble refers to “...encouraging the national (*dan toc*) liberation movement, the workers movement and democracy...”. Article 76 provides that “Citizens shall be loyal to the Fatherland. Betraying the Fatherland is the most serious crime against the nation (*dan toc*)”. However, the second provision of Article 76 was slight revised in the 1992 Constitution to read that “... Betraying the Fatherland is the most serious crime.”

48) The last paragraph of the Preamble of the 1980 Constitution.

49) Chapter II of the 1980 Constitution.

50) Article 22 of the 1980 Constitution.

51) Articles 17, 18, 23, and 24.

52) For analyses of these failing stories, see Benedict J. Tria Kerkvliet, *The Power of Everyday Politics – How Vietnamese Peasants Transformed National Policy*, Cornell University, 2005.

trial implementation of the policy.⁵³⁾ The government then decided to amend the 1980 Constitution in order to address the new changing reality. A new constitution was adopted on April 15, 1992.⁵⁴⁾

As a Charter for Renovation,⁵⁵⁾ the 1992 Constitution contained some explicit references to *Doi Moi* in the revised preamble:

In the light of Marxism-Leninism and Ho Chi Minh Thought, carrying into effect the programme of national construction in the period of transition to socialism, the Vietnamese people (*nhân dân*) vow to unite millions as one, uphold the spirit of self-reliance in building the country, carry out a foreign policy of independence, sovereignty, peace, friendship and cooperation with all nations, strictly abide by the Constitution, and win ever greater successes in their effort to renovate, build and defend their motherland”.⁵⁶⁾

Throughout the whole Preamble, as exemplified by the paragraph quoted above, the rhetorical reference to socialism was retained but confined to only limited historical and political contexts.

The bond between the constitutional “peoplehood” and the constitutional ideology was loosened further by the provisions of some articles on economic policy. In a scholarly analysis of the Article 15 of the 1992 Constitution comparing that to provisions of the 1980 Constitution, Mark Sidel writes:

The 1980 Constitution emphasized the building of socialism, socialist industrialization, the centrally run economy, the leading role of the state sector in the national economy, state monopoly in foreign trade and foreign economic

53) Melanie Beresford, “Economic Transition, Uneven Development, and the Impact of Reform on Regional Inequality”, in Hy V. Luong (ed.), *Postwar Vietnam – Dynamics of a Transforming Society*, Institute of Southeast Asian Studies, Singapore, and Rowman & Littlefield Publishers, 2003, pp.57-64.

54) See the fourth preambular paragraph of the 1992 Constitution. See also the Hanoi Law University textbook, *Giao Trinh Luat Hien Phap Viet Nam* (Vietnamese Constitutional Law Textbook), Cong An Nhan Dan Publishers, Hanoi, 2008, pp.99-100.

55) Mark Sidel, *The Constitution of Vietnam – A Contextual Analysis*, Hart Publishing, 2009, p.83.

56) Last preambular paragraph of the 1992 Constitution as translated by Mark Sidel *Ibid.*, p.86.

relations, the ‘socialist transformation of the private capitalist economy’ and a subservient role for private, cooperative and other forms of business. By 1992, six years after *doi moi* began, the situation was different. The 1992 Constitution emphasized the building of a ‘multi-component commodity economy functioning in accordance with the socialist orientation’ – a clause laden with political terminology that nonetheless clearly recognized the emerging role of market forces and mechanisms together with the socialist tradition of central planning and helped to lead to a new generation of laws governing foreign investment, domestic business and other economic legislation.⁵⁷⁾

Article 16 defined the new economic policy of the State to make “people wealthy and the nation strong”, responding better to the “material and spiritual needs of the people” based on “liberation of all production forces” and “mobilization of the hidden potential of every economic component” including the national economic sector, collective economic sector, individual economic sector, private capitalist economic sector, and the many forms of national capitalist economic sector…….”⁵⁸⁾

In light of the new *doi moi* policy, Article 16 and several other related articles substantially liberalized the constitutional concept of peoplehood from the strict socialist ideology in the context of a planned economy, and open up an autonomous sphere for the people (*nhan dan*) to be more self-reliant and allowed to exercise their inherent potentials to make the suitable choice, at least in living their economic lives.⁵⁹⁾ For the first time, the 1992 Constitution in its Article 15

57) *Ibid.*, p.90.

58) Article 16 of the 1992 Constitution.

59) All constitutions between 1946 and 1992 provided Vietnamese people (or, to be more accurate, some particular groups therein) with some political autonomy, albeit within a limited ideological and political framework, to choose their representatives or leaders in the National Assembly or local People’s Councils. People’s capacity to make their own choices in the economic field was restricted by the State’s regulation and State or collective management of agricultural and industrial production as well as the State’s monopolized control of foreign commercial activities under the constitutional provisions regarding the economic regimes of 1959 and 1980. See for example Chapter II (the

introduced the concept of a socialist market economy to be managed by the State. This Article was later amended to remove the phrase “to be managed by the State”. Article 25 of the 1980 Constitution providing for uncompensated nationalization of “the economic foundation of feudal land lords and comprador bourgeoisie in the Socialist Republic of Vietnam” did not reappear in the 1992 Constitution. Instead, Article 23 of the latter guaranteed the non-nationalization of lawful property of individuals or organizations, whereas Article 25 encouraged foreign organizations and individuals to invest capital and technology in Vietnam and guaranteed the legal ownership of these foreign organizations and individuals. Article 25 also stated that “enterprises with foreign invested capital shall not be nationalized”. The same Article also required the State to facilitate (and encourage, through the 2001 amendment) Vietnamese who resided permanently abroad to invest in Vietnam.⁶⁰⁾ As such, the space of freedom or autonomy for individuals and private bodies to engage in economic activities in Vietnam was formed by means of abandoning several ideologically based restrictions stipulated by the 1980 Constitution. This space was further expanded by the constitutional amendment in 2001 to emphasize on Vietnam’s establishment of an “independent and sovereign economy based on full exercise of internal potential”, “active integration into the international economy” and carrying out “national industrialization and modernization”.⁶¹⁾

4. Ethnic Minorities and Other Legal Issues Related to the Definition of Peoplehood

In the context of peoplehood in Vietnam, this section will examine two seemingly not much related issues, namely constitutional and legal status of ethnic minorities and Vietnamese diaspora outside of Vietnam. However, from a bigger picture, a review of these two issues may give us some clues on how peoplehood

economic and social regimes) of the 1959 Constitution and Chapters II (the economic regime) and III (culture, education, science and technology) of the 1980 Constitution.

60) More discussions about the issues of overseas Vietnamese will follow in the next section.

61) Article 15 of the 1992 Constitution as amended in 2001.

in general has been constitutionally redefined in recent years to develop beyond the issue of legitimacy.

Ethnic Groups in National Integration

Ethnic groups or ethnicity is generally translated as *dan toc* in Vietnamese. However, the 1946 Constitution referred to these groups as *quoc dan thieu so* (national minorities).⁶²⁾ This presented a clear distinction between the Vietnamese *dan toc* as an all-inclusive concept of Vietnamese “people”, past and present, on the one hand; and the minority groups constituting smaller parts of this greater Vietnamese peoplehood on the other. Scholarly research on the question of ethnic minorities in Vietnam has been conducted quite extensively elsewhere.⁶³⁾ In this section, these previous theories and observations about the construction of a constitutional mechanism in Vietnam to integrate the ethnic minorities issue will be examined and reconsidered in the Vietnamese context of defining and redefining the “people” analyzed above.

Although the existence of ethnic minorities was officially recognized in the Declaration of Independence pronounced in 1945, comprehensive constitutional provisions on the rights and legal issues related to them were not in place until the adoption of the 1959 Constitution. This Constitution provided for the principle of equality between all ethnic groups and the proper relationship between the national and the ethnic groups. It introduced the right of high-density ethnic communities to organize themselves into autonomous zones. The relevant provision of Article 3 states:

62) Article 8 of the 1946 Constitution.

63) Aikyo Masanori devotes one chapter of his book in Japanese on the history of the Vietnamese Constitutional Law to the question of “Vietnamese Constitutional Law and Ethnic Minorities”. See Aikyo, *Betonamu Kenpo Shi, Nihon Hyoronsha Publishers* 1993, pp.217-239. See also Kuruta Motou *betonamujin kyousanshugisha no minzokuseisaku shi – kakumei no naka no esunishiti* (The History of Ethnic Policy of the Vietnamese Communists – Ethnicity inside a Revolution), *Ootsuki Shoten Publishers*, 1991; and more recently from the socio-economy perspective, A. Terry Rambo & Neil Jamieson, “Upland Areas, Ethnic Minorities, and Development” in in Hy V. Luong (ed.), *Postwar Vietnam – Dynamics of a Transforming Society*, Institute of Southeast Asian Studies, Singapore, and Rowman & Littlefield Publishers, 2003, pp.139-170.

Local areas where ethnic minorities live in high density may establish autonomous zones. Autonomous zone is an inseparable part of the Democratic Republic of Vietnam.⁶⁴⁾

These autonomous zones were later abandoned in the Constitution of 1980 and all local administrative units were made uniform all over the Republic. Aikyo examines the drafting development of 1980 Constitutional provisions on ethnic minorities and argues that “the biggest concern” of the 1980 Constitution with regard to the issue of ethnic minorities is reflected in the “establishment of the Ethnicity Council elected by the National Assembly”.⁶⁵⁾ Article 91 of the Constitution conferred the Ethnicity Council the mandate “to conduct studies on ethnic (*dan toc*) issues, submit proposals to the National Assembly and the State Council, and assist the National Assembly and the State Council in supervising the implementation of ethnic policies”. The Constitution also provided for the right of Ethnicity Council “to submit draft legislation to the National Assembly”⁶⁶⁾ and “to request verbal reports or submission of materials by members of the Council of Ministers and other related members with regard to necessary questions”.⁶⁷⁾ Those to whom the request was addressed had the responsibility to respond.⁶⁸⁾ Vietnamese scholars considered this policy orientation as aiming at consolidating the oneness of Vietnamese nationals, based on the principle of equality among all ethnic groups. One scholar was quoted as stating that “Every ethnic group is a constituent of the unified nation. All participate in the mastery of the nation based on the principle of equality and hold the same rights and obligations in the political authority and socialism, defending the motherland and developing the economy and the culture”.⁶⁹⁾ Aikyo considers the 1980 Constitutional provisions on “*minzoku*”, or “*dan toc*” in Japanese, as featuring the development of a system of collective mastery with regard to the ethnicity

64) Article 3 of the 1959 Constitution.

65) Aikyo, *Betonamu Kenpo Shi, Nihon Hyoronsha* Publishers 1993, p.230.

66) Article 86 of the 1980 Constitution.

67) Article 93 of the 1980 Constitution.

68) *Ibid.*

69) Nguyen Viet Huong quoted in Aikyo, 1993, p.231. The quotation is translated from Japanese.

questions.⁷⁰⁾ Revoking the autonomous zones marks the Vietnamese approach to eliminating the distinctions between ethnic minorities and ethnic majorities in the formation of local administrative units.⁷¹⁾

The political agenda of a post-unification Vietnam was obviously to eliminate any differences that may suggest divisions in peoplehood or the nationhood. The “oneness” was emphasized in referring to the concept of a “Vietnamese people”. The 1980 Constitution gave ample recognition to the diverse composition of this “Vietnamese people”. But the long-term objective of gradually reducing gaps was clearly stated in the provisions of Article 5 which read:

The Socialist Republic of Vietnam is a unified nation of all ethnic groups (“*dan toc*”) living together on the territory of Vietnam, having equal rights and obligations.

The State shall protect, strengthen and consolidate the great national (“*dan toc*”) solidarity, prohibiting all acts of ethnic (“*dan toc*”) contempt or segregation.

All ethnic groups shall have the right to use ethnic dialects and scripts, preserve and display well their own fine custom, practices, traditions and cultures.

The State shall plan to gradually eliminate the differences between ethnic groups in their levels of economic and cultural development.

A verbatim comparison between Article 3 of the 1959 Constitution and Article 5 of the 1980 Constitution, defining the relationship between the nation and its people, showed that while the former recognized the diversity of Vietnamese nationhood, the latter suggested the desirability of the commonness. The former stated in the first paragraph that “the Democratic Republic of Vietnam is a unified nation consisting of many ethnic groups (“*dan toc*”)”. This provision then appeared in Article 5 of the 1980 Constitution with some changes in wording to emphasize on the territorial bond of all ethnic groups in constituting a unified nation. The “unified nation” was no longer defined as consisting of many ethnic groups, but actually belonging to a collective of all ethnic groups sharing a common territory

70) Aikyo, *Ibid.*, p.231.

71) *Ibid.*, p.233.

and having equal rights and obligations. Article 57 guaranteed non-discrimination of citizenship based on ethnic and other lines, and Article 53 stated “Citizens of the Socialist Republic of Vietnam are persons who hold the Vietnamese nationality as determined by law”,⁷²⁾ further ensuring an ethnicity-neutral concept of Vietnamese citizenship.

Legal Status of Vietnamese Diaspora

Until 2008, dual nationality was not allowed in Vietnam, making it impossible for a Vietnamese or Vietnamese descent residing as citizen of a foreign country to claim that he/she had a Vietnamese citizenship by birth. This restriction logically alienated Vietnamese who did not share territorial bond with the others living inside the country, treating most overseas Vietnamese at that time as foreigners lacking the share of peoplehood, particularly with regard to those who left the country as sympathizers of the former South Vietnamese regime or in search of refuge in a foreign country. To further examine this issue, the following paragraphs look into the developing constitutional provisions related to the legal status of Vietnamese diaspora residing outside of the country.

The territorial definition of peoplehood under the 1980 Constitution was later revised in the constitutional amendment of 1992. The market-based economy launched in the second half of the 1980s opened up the concept of peoplehood to partly include also overseas Vietnamese who came back and assisted the motherland in economic development. The difference between Vietnamese citizens residing in the country and overseas Vietnamese living abroad was then redefined in terms of *nhan dan* on the one hand and *viet kieu* or *nguoì Viet Nam ðinh cu o nuoc ngoai* (Vietnamese residing permanently abroad) on the other.⁷³⁾

72) Until 2008, dual nationality was not accepted in Vietnam, making it impossible for a Vietnamese residing as citizen of a foreign country to claim that he/she had a Vietnamese citizenship by birth.

73) Overseas Vietnamese was referred to as “*Viet Kieu*” by the 1980 Constitution (Art.75) but later as “*Nguoi Viet Nam Dinh Cu O Nuoc Ngoai*” (Vietnamese residing permanently abroad) by the 1992 (Art.75) and the 2013 constitutions (Art.17) respectively.

The latter group of Vietnamese have since been given - at least literally under the subsequent constitutions - some special treatment, less privileged in political decision-making process than the *cong dan* or *nhan dan* but better positioned in the Vietnamese economic platforms than non-*viet kieu* foreign investors inside Vietnam.⁷⁴⁾ The constitutions of 1980, 1992 and the 2001 amendment, and of 2013 all have separate provisions on Vietnamese diaspora.

The 1980 Constitution introduced for the first time a provision on *Viet Kieu* in Article 75. It simply stated that the State safeguards the legitimate rights and interests of *Viet Kieu*. Nothing was provided to specify what those legitimate rights and interests contain. Neither was the reality of that time showing clearly what categories of *Viet Kieu* would come back to Vietnam during this period and seek the protection of this constitutional provision.⁷⁵⁾ In the 1992 Constitution which was promulgated after Doi Moi had already officially started for six years, a second paragraph was added to the provision on Vietnamese residing permanently abroad to specify what roles and functions were expected of the returning Vietnamese diaspora. The second clause of Article 75 of the 1992 Constitution added that

The State creates conditions for Vietnamese residing permanently abroad to maintain close contact with their family and homeland, (and) to participate in the building of the homeland (and) the country.

74) In reality, this phenomenon has particularly been apparent in the laws on land and housing. Legal conditions for *Viet Kieu's* purchase and possessing of houses or right to possess, or for them to gain commercial access to land, have been more favorable than those regarding non-Vietnamese foreign investors. However, further liberalization of the commercial transactions in real estate in recent years and the permission for *Viet Kieu* to have dual nationality in Vietnam has reduced these legal differences and their significance. But some technical differences remain in the latest enactment of the 2014 Law on Housing. See for example Articles 9 and 121 of the 2003 Land Law; Articles 9, 125 and 126 of the 2005 Law on Housing; the two provisions of the 2009 Law on Revisions and Additions to Article 126 of the Housing Law and Article 121 of the Land Law; and Articles 7, 8, 10, and 161 of the 2014 Law on Housing.

75) One thing which seemed quite relevant in this context was the exodus of ethnic Vietnamese leaving the persecution and chaos created by the Khmer Rouge between 1975 and 1978 in Cambodia.

The same article, inclusive of the first and the second clauses, was further amended in 2001 as follows:

Vietnamese residing permanently abroad are a part of the Vietnamese national (*dan toc*) community. The State safeguards the legitimate rights and interests of Vietnamese residing permanently abroad.

The State encourages and creates conditions for Vietnamese residing permanently abroad to preserve the identity of Vietnamese national culture, to maintain close contact with their family and homeland, (and) to participate in the building of the homeland (and) the country.

Peoplehood under this new constitutional amendment was allowed to possess a broader view of Vietnamese-ness to be defined in terms of ethnical, cultural and historical identity. The *viet kieu* is in fact recognized as part of the Vietnamese *dan toc*. As a result of this redefinition under the 1992 Constitution and the subsequent constitutional amendment of 2001, the Vietnamese peoplehood now incorporates a two-layered legal categorization, namely Vietnamese people (*nhan dan*) and Vietnamese nationals (*dan toc*). The former refers to a narrower concept of citizenship whereas the latter recognizes a wider spectrum of Vietnamese nation in its historical, cultural and other less legalistic nature. The expectation for overseas Vietnamese to contribute to promoting the cause of Doi Moi in Vietnam became apparent at the adoption of the 1992 Constitution.

At the latest constitutional revision in 2013, the duty of the State to protect the rights or interests of Vietnamese residing permanently abroad is redefined by Article 17 as the duty of the State to do so only for Vietnamese citizens residing abroad. In the spirit of this revision, one may understand that Vietnamese nationals not holding the Vietnamese citizenship will enjoy the same constitutional protection as any foreigners living in Vietnam. There is no special duty for the State to protect the rights and interests of this group of diaspora other than that to be given to foreigners in diplomatic and other legal sense. But the cultural, national and historical bonds between this group of diaspora and the homeland

(Vietnam) remain well recognized, if not further emphasized, by the Constitution. Article 75 mentioned above, combined with Article 49, is now rewritten as articles 17 and 18 in the 2013 Constitution as follows:

Article 17:

1. Citizens of the Socialist Republic of Vietnam are persons who hold Vietnamese nationality.
2. Vietnamese citizens shall not be expelled or surrendered to a different country.
3. Vietnamese citizens abroad shall be protected by the Socialist Republic of Vietnam.

Article 18:

1. Vietnamese residing permanently abroad are an inseparable part of the Vietnamese national (*dan toc*) community.
2. The State encourages and creates conditions for Vietnamese residing permanently abroad to preserve and develop the identity of Vietnamese national culture, to maintain close contact with their family and homeland, (and) to participate in the building of the homeland (and) the country.⁷⁶⁾

Underlying the change in the State's duty to protect overseas Vietnamese was the latest amendment of the nationality law to allow for Vietnamese residing permanently abroad to keep or reclaim their Vietnamese nationality together with the foreign nationality they hold as citizens of a foreign country.⁷⁷⁾ In other words, dual nationality is permitted for these overseas Vietnamese. Instead of requiring the Vietnamese government to grant particular legal protection of the rights and interests to Vietnamese residing permanently abroad, the new dual nationality scheme will encourage these Vietnamese to retain or reclaim their nationality and, as one of the logical consequences, to let them enjoy the protection given by

76) Underlined and emphasized by author

77) Article 7 paragraph 2 on Policies Regarding Persons of Vietnamese Origin Residing Permanently Abroad of the 2008 Nationality Law states "The State adopts policies to create favorable conditions for persons who lost Vietnamese nationality to have access again to the Vietnamese nationality".

Article 17 of the new Constitution.⁷⁸⁾ However, this new institutional recognition of dual nationality in Vietnam is a highly contextual move. It is mainly aimed at facilitating Vietnamese residing abroad to retain their Vietnamese peoplehood and therefore their convenient return to the motherland and contribute to the reconstruction of the Vietnamese country. It is argued that Vietnamese citizens inside Vietnam are Vietnamese nationality holders and not entitled to dual nationality. This has drawn particularly great attention in the recent case of Nguyen Thi Nguyet Huong, who had been a member of the National Assembly since 1999 and was voted overwhelmingly again into the 14th legislature in July 2016. But she had to resign from her membership in the National Assembly and her position as a member of the Hanoi Municipal People's Council, due to her alleged violation of the Nationality Law and thus being disqualified as a member

78) Article 2 paragraph 1 of the 2008 Nationality Law states "In the Socialist Republic of Vietnam, every individual has the right to have nationality. Vietnamese citizens cannot be deprived of their nationality except for cases provided for by Article 31 of this Law", whereas Article 31 on Grounds for Depriving Vietnamese Nationality states in the first paragraph "Vietnamese citizens residing abroad may be deprived of Vietnamese nationality if their conduct causes serious harm to the national independence, to the construction and defence of Vietnam, or to the credibility of the Socialist Republic of Vietnam". Articles 2(1), 7(2) and 31(1) first appeared as Articles 1(1), 6(2) and 25(1) of the 1998 Nationality Law. Article 4 of the 2008 Law reintroduces the principle of single nationality from Article 3 of the 1998 Law by stating in exactly the same terms that "The State of the Socialist Republic of Vietnam recognizes that Vietnamese citizens have one nationality that is the Vietnamese nationality" (a modification of the phrase "only one nationality" prescribed by the 1988 Nationality Law), but adds to the end of this sentence a conditional phrase "except for cases provided otherwise by this Law". The statement of exceptional cases emphasizes the clear position of the 2008 Law to allow for deviation from this single nationality principle if necessary. This is further clarified by Article 13(2) of the same Law in defining persons who have Vietnamese nationality, which states "Vietnamese residing permanently abroad, who has not lost Vietnamese nationality as prescribed by Vietnamese laws before this Law comes into effect, shall remain to have Vietnamese nationality; and, within a period of 5 years after the effective date of this Law, shall make registration with overseas Vietnamese representative missions in order to maintain the Vietnamese nationality". This opens up an unambiguous permission for overseas Vietnamese permanent residents or foreigners of Vietnamese origin living abroad to register for retaining of their original Vietnamese nationality, hence a condition for dual nationality to be granted to Vietnamese residing permanently abroad. In an amendment in 2015, the administrative requirement to make registration within 5 years after the effective date of the 2008 Law under Article 13(2) was abolished, making it an automatic recognition of dual nationality for Vietnamese residing permanently abroad, unless the nationality has been deprived according to the Law. See Article 1 of the Law Revising and Complementing A Few Provisions of the Vietnamese Nationality Law, no.56/2014/QH12, adopted and promulgated on June 24, 2014.

of the National Assembly after she was found to have recently acquired the second nationality of Malta.⁷⁹⁾

Conclusions

It is pretty easy perhaps to call people living in Vietnam or people speaking Vietnamese as their first native language “the Vietnamese”. But when one tries to look into the constitutional definition of the “Vietnamese peoplehood”, particularly as it may be understood in Vietnamese language in the different constitutions of Vietnam, one finds it extremely complicated to identify who actually are and are not included in this definition. This paper seeks to understand this “Vietnamese peoplehood” as a changing concept continuously evolving in the process of modernizing the Vietnamese nation state. Defining the Vietnamese peoplehood since the country’s independence from colonization in the second half of the 20th century has been a complicated task. Being a nation which has had its own claimed history of several thousand years, contemporary Vietnam has been trying to define and redefine the Vietnamese peoplehood according to the special political and economic needs of the different times. However, more often than not, these political and economic needs were not able to ignore the importance of retaining some sort of historical linkages to a broader national legitimacy, which relies quite heavily on some particularly cultural, historical and collective identity of people who have been choosing to call themselves “Vietnamese”. The economic landscape after Doi Moi in Vietnam has for one more time testified to this

79) This case has been widely published by Vietnamese online newspapers. See for example the *Tuoi Tre* newspaper (online version) “*DBQH Nguyen Huong co quoc tich Malta: Do co quan chuc nang phat hien*” (National Assembly Deputy Nguyen Huong has the nationality of Malta: Discovered by the Competent Authority”, dated July 18, 2016, available at <http://tuoitre.vn/tin/chinh-tri-xa-hoi/20160718/dbqh-nguyet-huong-co-quoc-tich-malta/1138858.html> (access date: September 2016); and *VnExpress* “*Vi sao ba Nguyen Huong khong duoc xat nhan tu cach dai bieu Quoc hoi*” (Why was Ms. Nguyen Huong’s qualification as a deputy of the National Assembly not approved), dated Sunday, July 17, 2016 available at http://vnexpress.net/tin-tuc/thoi-su/vi-sao-ba-nguyet-huong-khong-duoc-xac-nhan-tu-cach-dai-bieu-quoc-hoi-3437809.html?utm_source=detail&utm_medium=box_relatedtop&utm_campaign=boxtracking (access date: September 2016).

importance. Recent reforms in the nationality law and other regulations related to the treatment of overseas Vietnamese (including the many *Viet Kieu* who fled the country after the unification) shows the latest attempt to redefine peoplehood in the 21st century Vietnam. However, political considerations, instead of constitutional consideration alone, still remain dominant in many aspects to strike a workable balance between the ideological background of the current political regime and the quest for a sustainable legitimate constituency for the Vietnamese constitutional life.