

CHAPTER 3

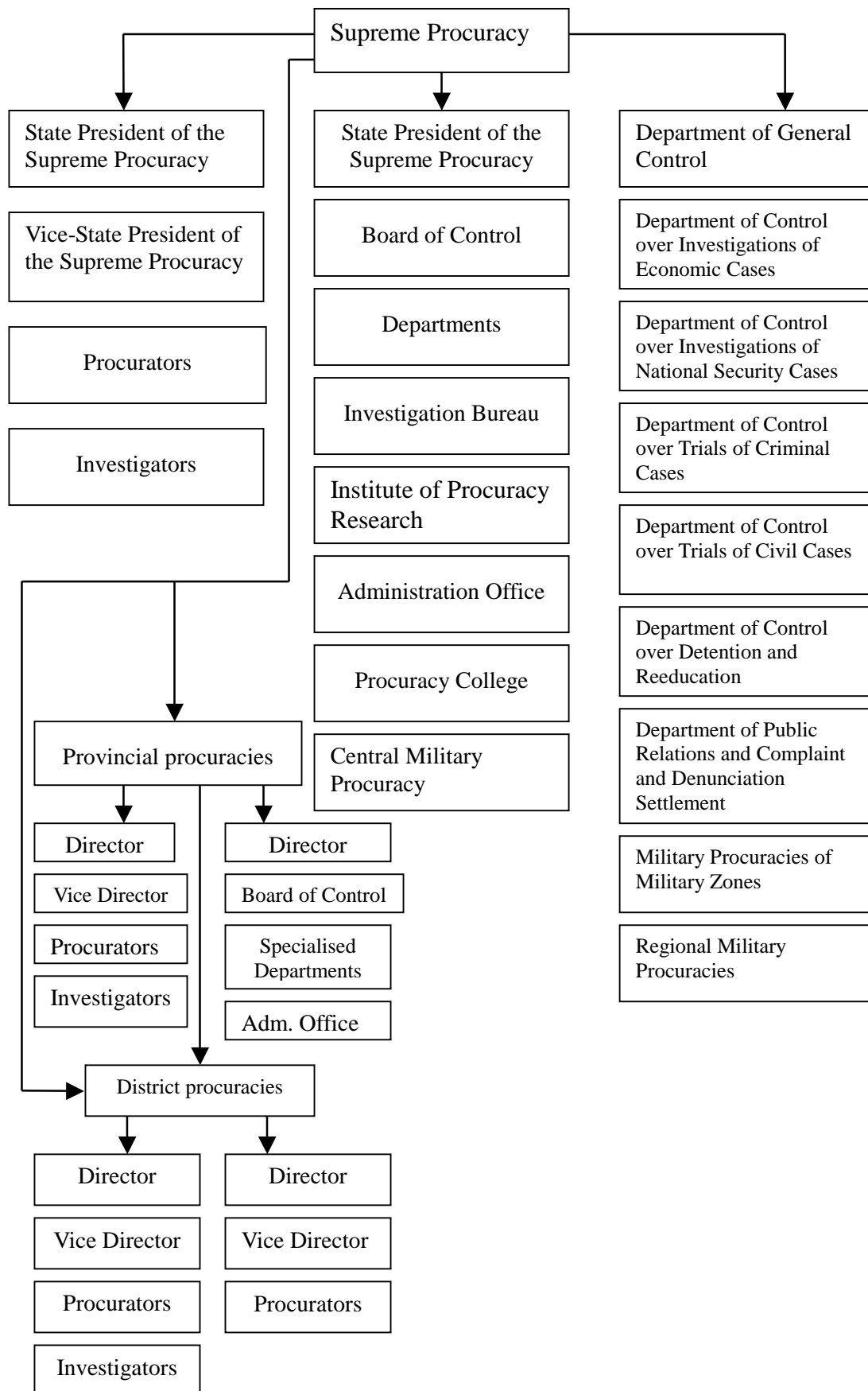
VIETNAM'S PROCURACY

I. STATUS AND FUNCTIONS OF THE PROCURACIES IN THE STATE APPARATUS

Procuracy was officially created for the first time under the 1959 Constitution (Articles 105-108) and the Law on the Organisation of the Procuracies dated 15 July 1960. By that time, the only function to be performed by the procuracies was *to control and ensuring law obedience* while the public prosecution was then still under the jurisdiction of the Public Prosecution Institute.

The 1980 Constitution has introduced new developments to the functions and tasks of this institution. Pursuant to Article 138 of the 1980 Constitution, the Procuracies are responsible for controlling the law obedience by ministries and other bodies under the Council of Ministers, local authorities, social organisations, armed forces, State employees and citizens and ensuring a strict and uniform implementation of the law. The procuracies also exercise the right to public prosecution. Thus since the 1980 Constitution, the procuracies have started to concurrently perform both functions of *controlling law obedience and exercising the right to public prosecution*. These fundamental functions of the procuracies have been preserved and reaffirmed in the 1992 Constitution as well as in the on-going process of judiciary reform and are considered as a special feature of the ways in which the State apparatus of the Socialist Republic of Vietnam is organised.

System and organisational structure of Procuracies



Organisational structure of procuracies

The procuracy system in Vietnam is organised at three levels including:

- The Supreme Procuracy;
- Provincial procuracies;
- District procuracies; and
- Military procuracies.

1. Controlling the law obedience by ministries and other bodies under the Council of Ministers, local authorities, social organisations, armed forces and citizens.

This type of activities covers two areas, namely:

- *Examining and controlling the legitimacy and legality of legal documents issued by ministries, ministerial bodies and subordinate bodies* such as resolutions, circulars, directives of ministers, chairmen of State committees; resolutions of the people's councils at all levels; decisions and directives of the people's committees at all levels. These activities are carried out with a view to (i) discovering those legal documents which are contrary to or inconsistent with legal documents enacted by the National Assembly, Standing Committee of the National Assembly, State President and the Government, and (ii) ensuring a strict and uniform implementation of the law by bodies, organisations, units and citizens.
- *Controlling law obedience in the behaviours of various State bodies ranging from ministries to lower agencies, social organisations and citizens.*

During the process of examining legal documents, the procuracies may, if uncovering violations of law, lodge protests requesting the issuing bodies to suspend, amend or abolish these documents. The procuracies are also entitled to request for an elimination of causes of such violations of law, imposition of disciplinary sanctions or administrative penalties against the violators, or initiate criminal prosecution. Under certain circumstances as prescribed by the law, the procuracies may take civil actions or necessary measures to recover the lost assets or ensure payments of damages for losses caused by the violations of law.

2. Controlling law obedience during the conduct of investigations by investigation bureaus.

Any investigations must be conducted in such a manner that impartiality, comprehensiveness, adequacy, accuracy and strict compliance with the law are secured. The criminal prosecution against the accused must be well-reasoned and initiated in conformity with the law.

If violations of law are discovered during the investigation, the procuracies may request the investigation bureaus and investigators to take actions to remedy the violations or change the investigation bureaus or investigators. Any investigators who commit criminal acts may be prosecuted by the procuracies.

The procuracies also have the rights to put an accused under criminal prosecution or suspend or temporarily suspend investigations.

3. Controlling law obedience during the court hearings.

The procuracies maintain their control over law obedience during the court hearings in ascertaining that all trials are held in a serious, prompt and law-abiding manner. During their control of court hearings of criminal cases, the procuracies also concurrently exercise the right to public prosecution before the courts of the same level.

Any violations of law found during the court hearings may be protested by the procuracies under appellate, reviewing and rehearing procedures as prescribed by the criminal procedural or civil procedural laws.

4. Controlling law obedience during the execution of court judgements.

]To this end, the procuracies examine and control law obedience by the courts, judgement execution bodies, judgement execution officers, organisations, bodies and individuals during the execution and enforcement of judgments or decisions which have taken effect to ensure their prompt and proper executions.

The procuracies are empowered to lodge protests with the courts, judgement execution bodies of the same level or of lower levels, judgement execution officers, and relevant organisations, bodies and individuals to request for (i) the execution, revision or abolition of the judgements, (ii) imposition of disciplinary sanctions or administrative penalties against the violators. Any signs of crimes may be subject to a criminal prosecution initiated by the procuracies.

5. Controlling law obedience during detention and re-education process.

This function is performed by the procuracies to ensure that detention and reeducation are carried out in compliance with the law and with due respect to the legitimate interests of the detainees. Procuracies are entitled to (i) examine files and assets of agencies and units of the same level or of lower levels which are assigned to carry out the detention or re-education; (ii) interview the detainees about the detention and re-education; (iii) receive and deal with complaints on detention and re-education; (iv) decide to release individuals who are illegally detained or re-educated; and (v) request relevant bodies and agencies of the same level or of lower levels to suspend the execution of judgements, revise or repeal illegal documents or deal with violators of the law.

The head of the Supreme Procuracy is elected by the National Assembly among its deputies subject to the nomination of the State President. The tenure of the head of the Supreme Procuracy is the same as that of the National Assembly or 5 years.

The head of the Supreme Procuracy will be responsible and report to the National Assembly, the Standing Committee of the National Assembly and the State President.

The directors of local or military procuracies at all levels will be appointed, dismissed and removed by the President of the Supreme Procuracy.

Procurators are to be appointed by the State President on the proposal of the head of the Supreme Procuracy to control law obedience and exercise rights to public prosecution.

II. OVERVIEW OF THE PRACTICAL PERFORMANCE OF THE PROCURACIES

As regard the general control or control of various areas of activities

After the enactment of the 1992 Constitution, Vietnam's legal system has taken a step forward particularly in respect of the economic laws. The people's procuracies have based on these pieces of legislation to undertake their control following uniform and centralised plans with special focus on key industries. From this practice, recommendations on measures to remedy violations of law during the State management have been made.

- In 1990, control of export and import activities
- In 1991, control of foreign exchange
- In 1992, control of trade on cigarettes, alcohol, communication, and posts
- In 1993, control of capital construction
- In 1994 and 1995, control of use and management of land
- In 1996 and 1997, control of compliance with tax laws, budget law, management of budgetary collections and payments in relation to education and training programs and hunger eradication and poverty reduction.
- In 1998 and 1999, control of management and use of investment capital in industries, transportation and communication, agriculture and rural development and the implementation of the Law on Companies.
- In 2000, control of State management of import and export activities.

Through their control of different areas of activities as mentioned above, the procuracies at all levels have lodged protests requiring branches or bodies where violations have been discovered to take remedial measures, strengthen State management in these areas and impose administrative sanctions or initiate criminal prosecution against violators of law and criminals. In 1998-1999 alone, procuracies at all levels uncovered errors and mistakes in over 4,000 legal documents and requested for appropriate repeals, revisions, or corrections. The procuracies at all levels also conducted examination and inspections of 6,000 units, lodged over 5,000 protests, recovered nearly VND 200 billions, requested for criminal prosecution of over 200 cases and requested for imposition of administrative sanctions against nearly 5,000 individuals.

Thanks to control of law obedience in handling criminal cases and exercising public prosecutions, the procuracies, together with other law enforcement bodies help to discover and strictly deal with crimes. Annually, procuracies initiate criminal prosecutions of over 60,000 criminal cases, most of which are related to threats of national security, corruption, smugglings or drug traffickings, including exceptionally serious cases.

Procuracies at all levels have paid a strong attention to control of law obedience by both the conductors and participants of proceedings with a view to ascertaining that statutory procedures are pursued and democratic rights of citizens are

respected.

Furthermore, *arrests, detentions and seizures have been subject to a close and prudent control of procuracies* which may decline to approve unjustified warrants of arrests, writs of extension of detention period, or warrants for attachment. In recent years, the number of arrests for temporary detention tends to decrease. In Hanoi alone, the number of arrests made in the first quarter of 2000 reduced by over 35% given the same period in 1999. Among the detainees, up to 90% have been brought to criminal trials.

During their control of detentions and re-education, procuracies of all levels have paid more attention on periodic and extraordinary examinations at the detention and re-education camps, decided to free many individuals who were illegally detained without well-established grounds.

Apart from that, control of the execution of judgements is also attached with a greater importance by closely monitoring effective judgements and decisions given by the courts, especially imprisonment sentences which have not yet been served. To this end, the procuracies contribute to improving the slow execution and delayed implementation of judgements as reported in previous years,.

In controlling civil, administrative, economic and labour cases, the procuracies dealt mainly with disputes over real properties, assets, marriage and family relations. Although, the control of settlements of economic, labour and administrative cases, and business bankruptcies is their new activities, the procuracies have made tremendous efforts in controlling the preparation of documents and participating in the hearings to ensure that these cases are handled in a proper manner, and the interests or relevant State bodies, economic organisations and citizens are safeguarded.

However, frankly speaking, some procuracies have not fulfilled their assigned tasks and duties in controlling arrests and detentions. Control of investigations has been ineffective resulting to overdue investigations, illegal conduct of investigations and prosecution, omission of crimes, or even unjustifiable prosecutions and trials.

The control of hearing activities are still limited since the number of protests lodged by procuracies is small and only a low percentage of these protests were admissible by the courts.

Additionally, it is worrying to find out that many convicts who were sentenced to imprisonment are still at large.

Finally, during their combat and prevention of crime, procuracies at all levels

paid inadequate attention on the causes and conditions of crimes with a view to improving preventive measures.