

ASSESSMENT ON REAL SITUATION OF LAWS GUARANTEEING THE RIGHT TO ACCESS INFORMATION OF CITIZENS

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BACKGROUND

The review aims at making a comprehensive assessment on situation of current laws as regards recognition and assurance of the right to information access of citizens, with 3 criteria:

- Compliance with Constitution 2013's provisions on the right to access information and principles to ensure human rights, citizen rights;
- Sufficiency, consistency, suitability, feasibility of current provisions on the right to access information;
- Resolution to shortcomings, obstacles, gaps of laws governing Government's responsibility in recognition, respect, protection and assurance of implementation of the right to access information of citizen.

Propose some solutions to formulate and complete the laws to ensure the right to access information.

BACKGROUND

- Review 14 legal fields with almost 120 legal normative documents;
- Review legal normative documents by 8 identified dimensions, including: (i) type of information; (ii) information provider; (iii) information receiver; (iv) information access methods; (v) forms to provide or publish information; (vi) procedures for access to information; (vii) conditions for guaranteeing access to information; (viii) fee for access to information.
- Legal information in the review has been processed in accordance with matrix method then transferring to the report.
- The report has been analysed in 6 key matters.

BACKGROUND

Six (06) key matters

- ① Information and connotation of the right to access information;
- ② Information receiver, information provider;
- ③ Information to be accessed;
- ④ Forms of information provision (public disclosure, disclosure upon request);
- ⑤ Procedures for information access; and
- ⑥ Conditions to guarantee information access.

1. INFORMATION AND CONNOTATION OF THE RIGHT TO ACCESS INFORMATION

Definition of information:

- At present, *there has not been any definition on “information” in any legal normative documents.* Some legal normative documents only define information in specific area, such as information for foreign affairs, environmental information, digital information, electronic information;
- *There is no definition on state secret information.* The Ordinance on State Secrets Protection only provides the definition of “state secret”.

1. INFORMATION AND CONNOTATION OF THE RIGHT TO ACCESS INFORMATION

Concept and connotation of the right to receive information, the right to access information

- Constitution 1992 recognizes “*the right to receive information*” of citizens and Constitution 2013 recognizes “*the right to access information*” of citizens, however, *there has been no legal normative document explaining officially definition and connotation of such rights.*
- Article 19 ICCPR provides *the right to freedom of expression; include at least 3 elements: freedom to seek, receive and impart information of all kinds.*

1. INFORMATION AND CONNOTATION OF THE RIGHT TO ACCESS INFORMATION

Vietnamese laws have recognized to some extent the right in specific areas:

- *Freedom to seek, exchange information* (Law on Information Technology)
- *Freedom to receive information publicly disclosed by state bodies who hold relevant information* (Law on Promulgation of Legal Normative Documents, Law on Accounting, Law on State Audit)
- *Freedom to receive information by requesting information provision* (Law on Anti-corruption, Law on Press)
- *Freedom to disseminate information* (Law on Publication, Law on Press)

1. INFORMATION AND CONNOTATION OF THE RIGHT TO ACCESS INFORMATION

Comments

- Although there has been no official definition or explanation about connotation of the right to receive information, the right to access information, to certain extent, current Vietnamese laws have recognized and made certain compatibility of the right to access information to the conception and regulation on freedom to expression of international treaties.
- In a specific area, normally connotation of the right to access information has not included fully 3 elements as specified in ICCPR.

2. SUBJECTS

Information receiver:

Information receivers are provided differently across various fields, depending on which group of subject in the society will be affected and see the necessity of such information, for instance:

- *Receivers may be limitless, infinite*
- *Receivers may be all individuals*
- *Receivers may be citizens*
- *Receivers may be individuals, organizations, agencies*
- *Receivers may be individuals, organizations directly related to information in specific field*

2. SUBJECTS

Information receivers are provided differently in different areas and mostly wider than provisions of Constitution 1992 and Constitution 2013.

Constitution 1992 and 2013 only stipulate that information receivers are *citizens*, meanwhile, majority of current legislations specify information receivers are organizations, individuals. *Foreigners, stateless persons residing within Vietnamese territory and foreign organizations* operating legally in Vietnam are entitled to access information that State bodies actively disclose widely.

2. SUBJECTS

Information provider

- Information providers, who are *responsible for disclosing information publicly*, are regulated widely, including all state agencies, socio-political organisations, businesses and organisations, individuals in some areas.
- In terms of assurance responsibility of the State to the right to access information of organisations and individuals, information providers that are *bodies exercising state power (public power)* responsible for providing information as provided in current legislations include the *National Assembly, People's Court, People's Procuracy, Government and system of state administrative bodies from central to local levels (highest number)*.

3. INFORMATION ACCESSIBLE AND LIMITED ACCESS

Information accessible

- Information accessible in specific areas is regulated by various legal normative documents.
- Access extent is often in the form of a list:
 - ✓ Some legal normative documents list accessible information in various areas;
 - ✓ Specialized legal normative documents only list accessible information within such specialized area;
 - ✓ Some legal normative documents provide exclusion principle in access of information of state secrets, private secrets, business secrets, or list specifically information excluded from access (Law on Promulgation of Legal Normative Documents, Law on Anti-corruption)

3. INFORMATION ACCESSIBLE AND LIMITED ACCESS

- *Major form for accessible information provision* is that state bodies disclose publicly. Few documents regulate the form of providing information upon request of individuals, organisations.
- *Origin and status of accessible information*: current Vietnamese laws have not got clear and consistent regulations on existing origin and status (“availability”) of information, resulting in doubt on feasibility of information provision.
- Information can be legally accessed in a specific field but may be *restrictively accessed in reality* due to contradiction and insufficiency of legal provisions in relevant fields.

3. INFORMATION ACCESSIBLE AND LIMITED ACCESS

Information with limited access

- *State secrets:*
 - ✓ Scope of information under state secrets is regulated quite largely and generally;
 - ✓ Scope of state secrets and other secrets have not been clearly determined, as a result, there have been overlaps;
 - ✓ Lack of specific guiding provisions on competence and procedure to declassify for each state secret level.

3. INFORMATION ACCESSIBLE AND LIMITED ACCESS

- *Information on private secrets:*
 - ✓ Although stipulated in various legal normative documents (Constitution 2013, Civil Code 2005, Criminal Procedure Code, Law on Press, Law on Medical Examination and Treatment), at present *there is no unified understanding on definition and connotation of personal secrets, private secrets and there has not been any guidance, definition on family secrets as mentioned in Constitution 2013.*
 - ✓ Lack of regulations on providing information on private secrets, personal secrets *in case of necessity for reason of community benefits.*

3. INFORMATION ACCESSIBLE AND LIMITED ACCESS

- *Business secrets:* laws protect business secrets absolutely, but do not stipulate cases where provision or disclosure of business secrets can be done for reason of community benefits (Civil Code, IP Law, Competition Law).
- *Information during investigation, inspection process:* also protected by the laws absolutely.
- *Information on audit:* audit results, audit records are confidential but may be provided to some authorised subjects in some certain cases.
- *Work secrets, public duty secrets:* there is no legal document which explains, clarifies concept, connotation of work secrets, public duty secrets

3. INFORMATION ACCESSIBLE AND LIMITED ACCESS

- Still exist some provision on secrets restraining the right to access information which is not in conformity with the spirit and regulations in Clause 2 Article 14 Constitution 2013:
 - ✓ *Still exist regulations on secret information in by-laws, for example, Decree No. 17/2012/ND-CP guiding Independent Audit Law, Decree No. 86/2011/ND-CP detailing and guiding the implementation of some articles of Inspection Law.*
 - ✓ *Some criteria to identify Checklist of documents for limited use in historical archives do not fall into the cases stipulated in Clause 2 Article 14 of Constitution 2013.*

4. FORMS OF INFORMATION PROVISION

- **Forms to disclose information publicly**

- ✓ Forms of disclosure can be various depending on the content and nature of the matter. Basically, majority of current legislations specify the forms of widely dissemination, especially, posting on e-portal and mass media.
- ✓ In some areas, forms of public disclosure may be public posting, disclosure at a meeting, by written notices.
- ✓ Legislations specify many forms of information disclosure but they are still general, there is no principle on forms of disclosure to be applied for each type of information.

4. FORMS OF INFORMATION PROVISION

- **Forms of information provision upon request:**

Fundamentally, there are still few legal regulations on this matter. For instance:

- ✓ The Law on Environment Protection provides the information provision upon request through conversation/in writing (Article 128);
- ✓ Article 43 of the Law on Construction provides the information provision in writing;
- ✓ Article 39 of the Law on Inspection and Article 46 Decree No. 86/2011/ND-CP provide information provision upon request by relevant agencies, organizations, individuals.

5. PROCEDURES, TIME, AND FEE FOR INFORMATION PROVISION

- **As regards the procedures and time for public disclosure**

Several legal normative documents do not provide state agencies' responsibility to announce and publicize information widely in a certain period of time after creating such information. Some legal normative documents specify the time for performing the announcement and publicisation of information.

5. PROCEDURES, TIME, AND FEE FOR INFORMATION PROVISION

- **As regards the procedures, time and fee for public disclosure upon request:**

Fundamentally, there is no comprehensive regulation for ensuring citizens' right to access:

- ✓ There is no regulation on principles to be complied upon making request and providing information upon request;
- ✓ Regulations on procedures for making request and providing information; on the time, fees for information provision; procedures of making and settling complaints in relation to information provision are scattered in various legal documents with different levels of detail.

5. PROCEDURES, TIME, AND FEE FOR INFORMATION PROVISION

- **As regards the procedures, time and fee for public disclosure upon request (continued):**
 - ✓ There have been only some regulations on the time to provide information upon request; few regulations on reasons for refusing to provide information; people being responsible to provide information;
 - ✓ There are *very few* regulations on the fee for providing information upon request (Decree No. 91/2006/ND-CP, Article 37 of the Law on Lawyers, point c clause 2 Article 29 of the Law on Archives, clause 3 Article 8 of the Law on Water Resources, clause 3 Article 166 of the Law on Housing, etc.).
 - ✓ Will the right to access to information of the poor, the disadvantaged people be restricted if charging fees for information access?

6. CONDITIONS TO ENSURE THE IMPLEMENTATION OF THE RIGHT TO ACCESS INFORMATION

There are still not many regulations on conditions to ensure public disclosure (*including regulations on information archives, technical means ensuring public disclosure, human resources for information provision and forms of handling violations against the responsibility to ensure the right to information/access to information of organizations and individuals*); the regulations are still neither concrete nor corresponding to the requirements for ensuring efficiency.

GENERAL ASSESSMENT

1. Achievements

- Regulations on state agencies' responsibilities of being open and transparent and providing information in legal documents promulgated recently have been clearer and more specified compared to previous ones, especially in laws and ordinances issued in five recent years.
- The state has expanded the information scope, better ensured the right to information and the right to access to information of citizens and enhanced state agencies' responsibility in ensuring citizens' right to information.

GENERAL ASSESSMENT

2. Limitations and entanglements:

- *Firstly*, there is no general, official, or consistent regulation on information and the right to access to information;
- *Secondly*, the applicable legal system is still neither consistent nor comprehensive in concretizing regulations of the Constitution 1992 on citizens' right to information and regulations of the Constitution 2013 on the right to access to information;
- *Thirdly*, applicable laws do not stipulate the principles to identify the scope of information to be accessed or not to be accessed, information limited to be accessed;

GENERAL ASSESSMENT

Limitations and entanglements (continued):

- *Fourthly*, most of the applicable documents have not paid attention to citizens' right to positively request for information provision;
- *Fifthly*, in most areas, there is still no regulation on procedures and time for information provision;
- *Sixthly*, applicable laws have not established any sufficient, comprehensive, or consolidated legal mechanism to ensure effective performance of the right to access to information.

RECOMMENDATIONS

The Law on Access to Information is proposed to comprise the main contents as follows:

- Clearly identify information concept and connotation of the right to access to information; principles for access to information and forbidden acts in implementing rights and ensuring citizens' right to access to information;
- Relationship between the Law on Access to Information and other laws containing regulations on access to information in particular areas;
- Stipulating principles to determine the subjects for access to information;
- Clearly distinguishing the scope of information to be accessed and information limited to be accessed;
- Stipulating conditions to ensure citizens' right to access to information.

THANKS FOR YOUR ATTENTION!
