



# Legitimation in Vietnam from 1968-1989

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## LEGITIMATION IN VIETNAM FROM 1968-1989

For the period before the unification of the country in 1975, separate legal regimes governed the issue of legitimacy in North Vietnam and South Vietnam.

### South Vietnam from 1964 to 1977

#### *Applicable Laws*

In the former Republic of Vietnam legitimation was governed successively by Decree-Law No. 15/64 Regulating Marriage, Filiation, and Community Property, promulgated on July 13, 1964 (SL 15/64),<sup>1</sup> and the first unified Civil Code of 1972 (Bộ Dân Luật 1972 - BDL 72), promulgated on December 20, 1972.<sup>2</sup> Although the former Republic of Vietnam (RVN) ceased to exist at the end of April 1975, the law governing family relations in this region did not change until 1977 when the country was officially unified under the name Socialist Republic of Vietnam. Thus, during the period from April 1975 to March 1977,<sup>3</sup> the law that applied on adoption was apparently still the BDL 72 that was promulgated under the RVN.

Under the laws of 1964 and 1972, children born out of legal wedlock were considered illegitimate children. The legitimation of illegitimate children under these laws required two separate steps:

- 1) the official acknowledgment by either parent, and
- 2) the legitimation of the child by the marriage of the natural parents to each other.

#### *Acknowledgment of an illegitimate child*

Both laws provided that an illegitimate child could be acknowledged by means of a notation to that effect made on the birth certificate, if the acknowledgment had been made at the declaration and registration of the child's birth. If the acknowledgment was not made at the time of the birth registration, it could be made at a later date before a public notary<sup>4</sup> as an official act or be established by a court judgment. Such acknowledgment had to be recorded in the current birth register and birth certificate at the place where the acknowledgment occurred. Depending upon the circumstances, a public notary as well as the clerk of the court had to forward the information regarding acknowledgment to the status officer of the child's birthplace to be recorded in the margin of the original birth register.<sup>5</sup>

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<sup>1</sup> Sac Luật số 15/64 Qui định giá thú, tu hôn và tài sản công đồng [Law No. SL 15/64 Regulating Marriage, Filiation, and Community Property], 2724-2736 CBVNCH (Jan. 1, 1964).

<sup>2</sup> Sac Luật số 028-TT/SLU ban hành bộ Dân Luật [Law No. 028-TT/SLU promulgating the CIVIL CODE OF 1972] 760/1-760/103 CBVNCH (Feb. 28, 1973).

<sup>3</sup> The application of North Vietnamese laws nationwide was officially announced by Resolution No. 67/CP of Mar. 25, 1977.

<sup>4</sup> In the former Republic of Vietnam in the South, a public notary was an official with extensive legal training.

<sup>5</sup> Arts. 96 and 98 of LGD 1/59, 115 of SL 15/64, and 221 of the BDL 72.

The laws further stated that the acknowledgment of a child by the father or the mother affected only the person making the recognition. However, if the father at the time of recognition had declared the name of the mother, and if the latter implicitly or explicitly had subsequently acknowledged the child, such action had a legal effect upon her as well. Inversely, in a case in which the mother was the parent who declared the birth, had acknowledged the child, and had stated the name of the father, and if the father had tacitly or publicly recognized the child, such an acknowledgment had a binding legal effect upon him.<sup>6</sup> These laws prohibited polygamy, and therefore they also prohibited the acknowledgment and legitimation of a child born of an adulterous relationship between a married man and a married woman.<sup>7</sup> Accordingly, if one of the parents was single, only that single parent could have acknowledged the child.

*Legitimation of an acknowledged child*

In regard to whether or not this form of acknowledgment would have constituted legitimation of an illegitimate child, both of the above-mentioned laws stipulated that a natural child could be legitimized only by the marriage of his/her natural parents. Thus, a natural child who had been acknowledged by his/her mother and father was automatically legitimized at the time of the parents' marriage to each other. If the acknowledgment was made at the time of the parents' marriage, the acknowledgment had to be effected by means of a separate certificate, drawn up by the Registrar celebrating the marriage, confirming both the recognition and legitimation, in accordance with article 131 of SL 15/64 and article 243 of BDL 72.

Articles 131 of SL 15/64 and 244 of BDL 72 further stated that an illegitimate child could be acknowledged after the marriage of the parents. In the latter case, the legitimation had to be effected by a judgment of the court rendered in a public session, confirming that the two parties were the parents of the child, thereby pronouncing the legitimation of the child.

All actions of acknowledgment and legitimation, however, had to be noted in the margin of the child's birth certificate and recorded in the current register and original birth register of the place where the child was born.

The laws entitled an acknowledged child to the care and support of the parent who acknowledged him/her unless the child's status was legitimized by the marriage of the parents to each other.

**Legitimation Law in North Vietnam and Throughout the Nation After 1977**

The law that came to apply nationwide to family matters after March 1977, including legitimation, was the Marriage and Family Law of 1960.<sup>8</sup> This Law and other related legislation went into effect throughout the

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<sup>6</sup> Arts. 97 of LGD 1/59, 119 of SL 15/64, and 225 of BDL 72.

<sup>7</sup> Arts. 99 of LGD 1/59, 116 of SL 15/64, and 222 of the BDL 72.

<sup>8</sup> HUONG DÂN THI HÀNH LUẬT HÔN NHÂN VÀ GIA ĐÌNH [Guide to the Application of the Marriage and Family Law] 10-16 (Hanoi, Pháp Ly, 1982).

whole country as of March 1977, in accordance with Resolution No. 67/CP of March 25, 1977.<sup>9</sup> The 1960 Family Law was promulgated on January 13, 1960, and was applied only in the former Democratic Republic of Vietnam (North Vietnam) until it became effective nationwide in 1977. This Law was later superseded by the new Marriage and Family Law of January 1987.<sup>10</sup>

Under these two laws, children born out of wedlock are also considered illegitimate children. However, the father or the mother can acknowledge his/her illegitimate child at the People's Committee of his/her place of residence. If a conflict arises, the case will be decided by the People's Court of the place where the child was born.

In accordance with article 31, the 1987 law not only allows the acknowledgment of a natural child by either parent, but also allows the determination of filiation by the court based on the request of the child or upon the request of the child's guardian or another authorized organization, e.g. the People's Control Organ, the Vietnam Women's Union, the Ho Chi Minh Communist Youth Union, or the Vietnam Trade Union if the child is a minor. The determination of parenthood is allowed even if the mother or father has already died.

The same two laws further stipulate that an illegitimate child who is acknowledged by the father or the mother or by a court decision (e.g., based on a paternity or maternity suit) will have the same duties and rights as a legitimate child. Although these laws also forbid polygamy, the acknowledgment of a child of an adulterous relationship is not prevented.

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<sup>9</sup> Nghị Quyết số 76/CP, ngày 25 tháng 3, năm 1977 [Resolution No. 76/CP of Mar. 25, 1977] 2 LUẬT HỌC [Review of Juridical Science] 3 (1977).

<sup>10</sup> LUẬT HÔN NHÂN VÀ GIA ĐÌNH [Law on Marriage and the Family] 8-20 (Hanoi, Pháp Ly, 1991).