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Report on the survey of

THE REALITY OF LOCAL COURT GOVERNANCE IN VIETNAM

2014

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PREFACE

The Research on “Survey on local court governance in Vietnam” was conducted by NHQuang & Associates within the framework of Project 00058492 “*Strengthening Access to Justice and Protection of Rights in Vietnam*”.

The Research Team, led by Mr. Nguyen Hung Quang and its members, would like to express its sincere thanks to the People’s Committees, People’s Councils, provincial Party Committees, provincial and district procuracies and courts in Vinh Long Province, Ho Chi Minh City, Da Nang City, Ninh Thuan Province, Hai Phong City, and Lao Cai Province for their enthusiastic support in conducting the research and their valuable comments on this Report.

The Research Team also wants to extend our grateful acknowledgement to both Professor Pierre Landry, and Ms. Le Nam Huong – Program Officer of UNDP Vietnam - for their great support in the design of questionnaires, analysis of data as well as worthy comments and contributions to the Research Team to complete this Report. Our sincere thank also goes to Professor Pip Nicholson and Mr. Cait Storr – Law School – Melbourne University, Australia for their comments and revision to the English version of the Report.

The Research Team is especially thankful to the Management Unit of Project 00058492 and the Office of the Central Steering Committee for Judicial Reform (formerly the Secretariat) for their ideas and assistance with the success of this Research.

INTRODUCTION

Vietnam is experiencing strong institutional and legal reform processes. Amendments are now being debated for the current Constitution with a focus that includes political aspects. The drafting of amendments to the Constitution have drawn the attention and contributions of a vast population of all classes.¹ At present, the Judicial Reform Strategy to 2020 (“the Strategy” or “the Judicial Reform”) is also being implemented and exerting great influence on the course of law making and institutional reform. The Strategy has determined that “the tribunal sector is placed at the centre and adjudication plays the key role.”² The Judicial Reform activities focus on the central importance of the organization and operation of the court system. The activities for the innovation and completion of the interactions between the procuracy, investigation body and judicial support organs are all based on court organization and operating practices and reforms.

The Central Steering Committee for Judicial Reform (the “CSCJR”) has assigned the Supreme People’s Court and the central judicial agencies the task of studying different judicial reform projects, but to date there has been no project undertaking comprehensive and intensive research on court governance issues. Meanwhile, court governance is a crucial issue for the re-organisation of the State apparatus, including the operational mechanisms of the court system. This issue has created some theoretical and practical questions regarding the present court management model, such as whether the management of local court organisation by the Supreme People’s Court creates a “closed” system within the tribunal sector or whether it enhances court independence. The other issues raised is how to give effect to the principle of people’s representation in adjudication activities.

To give more information and to clarify some issues arising from reality, the Project 00058492 “Strengthening Access to Justice and Protecting Rights in Vietnam” between the Vietnamese Government and the United Nations Development Program (UNDP) provide support to implement Research on judges’ views of court governance and court independence. This Research was conducted by quantitative and qualitative survey methods. Questionnaires were sent to individual judges at 63 provincial courts and 697 district courts producing a high level of participation and some excellent information.

¹ Resolution No. 38/2012/QH13 of the National Assembly dated 23/11/2012 organizing to collect opinions of people for draft amendment to the 1992 Constitution.

² Resolution No. 49-NQ/TW of the Politburo dated 02 June 2005 on Judicial Reform Strategy to 2020.

ABBREVIATIONS

In this Report, there are some abbreviations as follows:

- Criminal Code	CC
- Criminal Procedure Code	CPC
- Ministry of Justice	MOJ
- United Nation Development Program	UNDP
- International Covenant on Civil and Political Rights	ICCPR
- Investigation Body	IB
- Bar Association	BA
- Certificate of Defence	COD
- United Nations	UN
- Fatherland Front	FF
- Criminal procedure	CP
- People's Court	PC
- Supreme People's Court	SPC
- Legal aid	LA
- Adjudication panel	AP
- Judicial Reform	JR
- National Assembly	NA
- Central Steering Committee for Judicial Reform	CSCJR
- People's Procuracy	PP
- Supreme People's Procuracy	SPP
- Judge working at a provincial people's court	Provincial judge
- Judge working at a district court	District judge
- People's Court at province level	Provincial Court
- People's Court at district level	District Court
- Judicial Development and Grassroots Engagement sponsored by Canadian International Development Agency	JUDGE Project

LOCAL COURT GOVERNANCE IN VIETNAM

Part I: INTRODUCTION

1. Background

The current Constitution stipulates that: “(t)he State powers are unified and decentralised to State bodies, which shall coordinate with one another in the exercise of the legislative, executive and judicial powers”.³ This regulation is further confirmed by Party documents⁴ and the policy to build a “rule of law state” with Vietnamese characteristics : “State power is unified with delegation of power to and co-ordination among State bodies in the exercise of the legislative, executive and judicial powers. The National Assembly is the highest representative body of the people, the highest State authority and the only body vested with constitutional and legislative powers in the Socialist Republic of Vietnam; other state bodies established by the National Assembly are subject to the supreme control of the National Assembly, and responsible for reporting their work to it. The Vietnamese State does not have a separation among legislative, executive, and judicial power”⁵.

The 1992 Constitution stipulating the organisation of the state apparatus requires that legislative power “supervise the activities” of the executive and judicial powers,⁶ while the apparatus of judicial agencies are “responsible to make working reports” to legislative agencies.⁷ This principle creates the present mechanism of state power as between legislative and judicial power.

The Constitution of each nation should guarantee the “the independence of the court” and the scope of judicial power in the state’s power system in compliance with its own state model. Vietnam’s state does not operate according to the “separation of powers” model, and the court organisational model in Vietnam is different to those in other nations. Therefore, the court must be recognised in terms of its own legal

³ Constitution 1992 (amended under Resolution No. 51/NQ-QH10), Article 2.

⁴ Resolution No. 49/NQ-TW of the Politburo dated 02 June 2005 on Judicial Reform Strategy to 2020; Political report of the 9th Central Committee of Vietnamese Communist Party at the 10th National Congress of the Communist Party of Vietnam on 10 April 2006; vide the Speech of General Secretary Nguyen Phu Trong at the opening of the 5th Plenum of the Central Committee of Vietnamese Communist Party, the 11th tenure, *ibid*; Tran Ngoc Lieu, *ibid*; Nguyen Van Manh (2012), *ibid*.

⁵ The Speech of General Secretary Nguyen Phu Trong at the opening of the 5th Plenum of the Central Committee of Vietnamese Communist Party, <http://www.daibieunhandan.vn/default.aspx?tabid=73&NewsId=245664>;

⁶ Constitution 1992, Article 91, 122.

⁷ Constitution 1992, Article 135, Article 139.

position and judicial power in order to guarantee its efficient operation.⁸ Simultaneously, the court governance model must be organised to guarantee the efficiency of adjudication activities, including the efficiency of the court's operation, and to uphold the principle of fair trial. The court is putting effort into building its image as an institution trusted by the people to carry out dispute settlement. Therefore, the reality of court governance also has to be studied to protect judicial power in its relationships of “delegation, supervision and co-ordination” with legislative and executive power.

At the present time, the court governance model is keenly discussed among legal science researchers. There is a view the vertical system that assigns management of local court organisation and administration to the Supreme People's Court is not consistent with the general direction of judicial reform. This vertical assignment creates a “closed” environment within the tribunal sector, and does not distinguish between jurisdiction under judicial proceedings and administrative processes. As a result, compliance with the principle of independence and with the law of judges and People's jurors in adjudication is affected. From another perspective, the vertical assignment of management of local court organisation and administration to the Supreme People's Court has enhanced the independence of the court system from the system of executive agencies, has strengthened judicial power and made clear the “assignment, control and coordination” of judicial power with the remaining power branches.

One of the tasks of judicial reform in Vietnam is “*to clearly identify the functions, duties, competencies and to improve the organisation and apparatus of judicial agencies. The focus is to build and improve the organisation and operation of the people's courts*”⁹. The Judicial Reform Strategy to 2020 set out several goals for the court's operation to implement the tasks of judicial reform such as:

- “*...re-organising the court system in such a way that the courts will be jurisdiction-based ...*”;
- “*...ensuring the Supreme People's Court is responsible for summarising adjudication experience, issuing guidelines on uniform and consistent law*

⁸ See further the speech of the Chief Justice of the SPC to the Central Steering Committee for Judicial Reform and speech of the Chief Justice of the SPC to the Drafting Committee for Amendment of Constitution 1992, http://toaan.gov.vn/portal/page/portal/tandtc/chanhan/323586?p_page_id=1752962&p_cateid=1751910&item_id=16393818&article_details=1; http://toaan.gov.vn/portal/page/portal/tandtc/chanhan/323586?p_page_id=1752962&p_cateid=1751910&article_details=1&item_id=16393870; 2013.

⁹ Resolution No. 49/NQ-TW of the Politburo dated 02 June 2005 on Judicial Reform Strategy to 2020.

application, developing judicial precedent, and reviewing or retrying cases.... ”;

- *“...reforming the method for conducting trials in the courtroom by defining more clearly the status, powers, and responsibilities of litigators and other parties involved in litigation so as to guarantee transparency, democracy, and discipline; improving the quality of adversarial litigation in all trials and hearings, which might be seen as a breakthrough in judicial activity. ... ”;*
- *“...reforming and improving the mechanism for allocating annually increased amounts of the budget to judicial organs and activities, in the expectation that the National Assembly will allocate the budget to the judiciary and hand it over to local judicial organs which will be responsible for financial management and utilisation under the oversight and examination of the central judicial authorities. Allowing local authorities to provide additional financial support for local judicial activities from their excess revenues. ... ”;*
- *“...making a clear distinction between administrative management and judicial authority and jurisdiction in the process of litigation by increasing the authority and responsibility of investigators, prosecutors, and judges to enable them to proactively perform their tasks; and enhancing their independence and accountability in making appropriate judicial decisions... ”¹⁰..*

The Judicial Reform Strategy also requires:

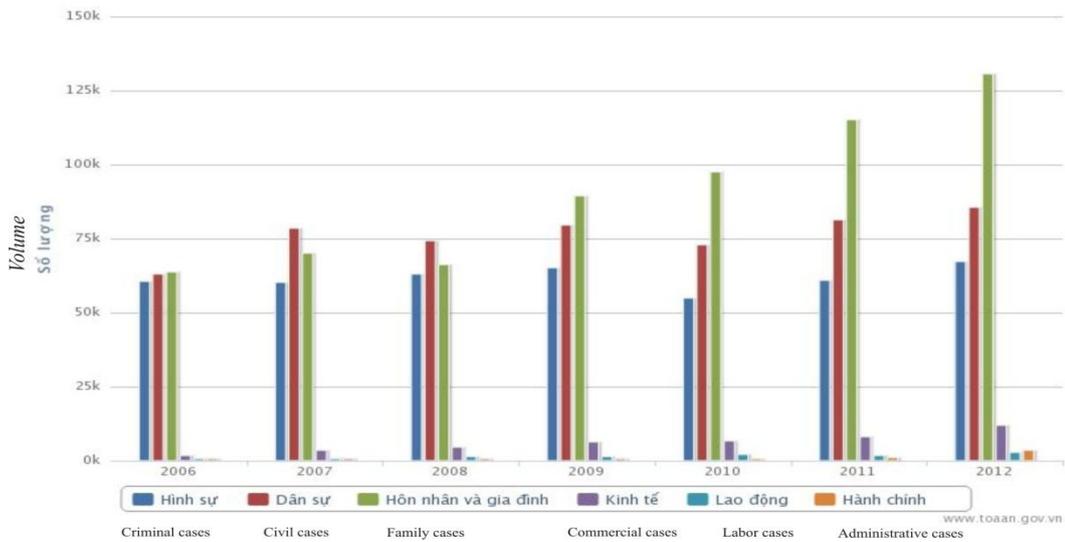
- *“...reforming administrative procedures within judicial bodies to provide favourable conditions for the people to access justice ... ”;*
- *“...recognition that the task of the developing and defending of the Fatherland and the demands of building a Rule of Law State in Vietnam require the promulgation and implementation of a Strategy for Judicial Reform to 2020 which should accord with the reform of legislative duties and public administration.... ”.*
- *“...recognition that judicial reform must start with the requirements of socio-economic development and of building an equitable, democratic, and civilised society; actively serve and promote socio-economic development;*

¹⁰ Resolution No. 49/NQ-TW of the Politburo dated 02 June 2005 on Judicial Reform Strategy to 2020.

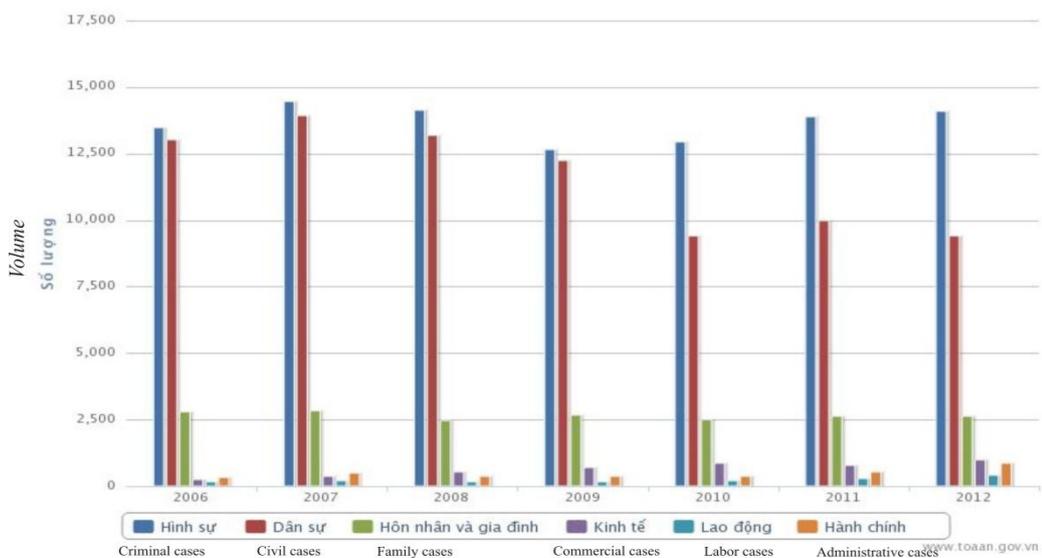
steadfastly defend the nation; and guarantee the linkage between socialist democratic development and the renovation of legislative work and public administration reform... ”¹¹.

Judicial reform, including measures to enhance the quality of the court’s performance, is urgently needed. According to the SPC’s reports, both the crime situation and other case types are increasingly complicated. The overall quantity of cases is increasing and the rate of non-criminal cases is increasing even higher than the rate of criminal cases (See Figures 1 and 2).

“Figure 1: Data of first instant cases in the Court system”



“Figure 2: Data of appeal cases in the Court system”



¹¹ Resolution No. 49/NQ-TW of the Politburo dated 02 June 2005 on Judicial Reform Strategy to 2020.

This reality requires a comprehensive re-thinking of the court's entire structure and administration, from the stage of receiving petitions to adjudication and judgment enforcement specified by the Judicial Reform Strategy.

2. Objective

The objective of this Research is to consider the relationships required to perform court functions and duties within the tribunal sector and in each court according to the purposes of judicial reform summarized above.¹² In order to achieve this objective, this Research has studied, surveyed and analyzed some major issues as follows:

- judicial administrative management at courts;
- court governance;
- interaction between court judicial administration and court governance; and
- some issues on judicial reform related to local court governance.

This Research was conducted using sociological surveys of judges' opinions in order to '*...identify the functions, duties, competence and perfecting the organisation and apparatus of judicial bodies. The focal point is building, perfecting organisation and operation of people's courts ...*'¹³. The Research does not go deeply in surveying judges' opinions about the governance relationship between the National Assembly and the Supreme People's Court, nor between the Chief Justice of the SPC and those of local courts (see further Appendix 1 on survey methodology). Rather, the Research addressed the relationship between local People's Councils and local courts, local People's Committees and local courts, the management relationship between the Chief Judge of local people's courts and his/her staff and local government, and the power to organise adjudication and other works of such local courts. Judges and court officials have to comply with the directives of the Chief Judge and perform work in accordance with regulations, provisions, processes, and procedures for handling work in accordance with the laws or guidelines, and provisions set out by the Chief Judge.

The survey results from this Research can be analyzed in multiple ways to provide various information and data. More particularly, this survey collected opinions (approximately 47% of total judges in the country – see Annex 1) of judges from 63 provinces/centrally-run cities. Such information can be used to assess the existing managerial situation within the tribunal sector, identify the model and organization of the court apparatus as well as the state agencies supporting the Courts' operation. This can be used to build policies on human resources and other resources for the operation

¹² Terms of Reference (TOR) on 06/01/2011 (enclosed with Request for Proposal).

¹³ Resolution No. 49/NQ-TW of the Politburo dated 02/06/2005 on Judicial Reform Strategy to 2020.

of the entire tribunal sector or of each region, emulation cluster¹⁴ or of each province of the tribunal system. The survey data also may assist to identify training demands, enhancing the capacity of judges and court officials.

Part II: JUDICIAL ADMINISTRATIVE MANAGEMENT AT COURTS

Judicial administrative roles in the operation of tribunals have not been specified in any legal document. Some resolutions dealing with the administration of tribunals stipulate the goals of “*creating favourable conditions for the people to access justice ...*” and “*making a clear distinction between administrative management and judicial authority and jurisdiction in the process of litigation by increasing the authority and responsibility of investigators, prosecutors, and judges to enable them to proactively perform their tasks, and by enhancing their independence and accountability in making appropriate judicial decisions...*”¹⁵.

From 2005, the tribunal sector has determined to “*reform judicial administrative procedures within courts with a focus on transparency, simplicity, and convenience for the people to easily perform their right to take legal actions via the courts - accordingly, when the people institute lawsuits at a court, that court must be responsible for identifying which agency has the relevant settlement jurisdiction, to send relevant documentation to that agency, and to inform the petitioner thereof; and to publish the procedures of supplying material and, information, and of accessing documents, and copies of court’s judgments and decisions in accordance with legal regulations*”¹⁶.

According to Mr. Truong Hoa Binh, the Chief Justice of SPC, “*judicial administrative procedures within the court means the processes and procedures of an administrative nature that support the adjudicative activities of the court; handling the people’s requirements before and after trials and other management; and the supervision by court leaders at all levels. Such activities include reception of the people; receipt and settlement of petitions, appellate and protest dossiers, dossiers from the People’s procuracies, receipt of complaints; receipts of official documents; assignment of case settlement; supply of copies of court judgments and decisions;*

¹⁴ The court is divided into 7 emulation clusters, including : a) Cluster I includes 14 People’s courts of provinces and cities in northern plain area; b) Cluster II consists of 14 People’s courts of provinces in northern mountainous area; c) Cluster III includes 13 People’s courts of provinces and cities in central coastal and Highland area; d) Cluster IV consists of 9 People’s courts of provinces and cities in the Eastern South; dd) Cluster V consists of 13 People’s courts of provinces in the Western South; e) Cluster of units subject to the SPC; f) Cluster of military court sector.

¹⁵ Resolution No. 49/NQ-TW of the Politburo dated 02/06/2005 on Judicial Reform Strategy to 2020, Preamble.

¹⁶ Plan No. 122/BCS of the Party’s staff Committee of the SPC dated 26/12/2005.

management of input, output and outstanding cases; arrangement of the trial hall; and procedures for managing and exchanging information in order to support the supervision and management by at court leaders at all levels”¹⁷.

On the basis of the aforementioned views, Part II will discuss the following issues:

- judicial administrative work in the courts’ activities include receiving petitions, complaints, supporting the people to perform judicial administrative procedures; and
- the works supporting the adjudication activities include assigning cases, keeping track of and guaranteeing the time limit of proceedings and trial organization.

CHAPTER I: Judicial administrative work in court operation

Some issues of judicial administration roles and processes at court were stipulated in the CPC 2003 and Civil Procedure Code 2004 and some Resolutions of the Judge Council of the SPC¹⁸ such as the receipt process for petitions in civil cases, criminal cases and forms and templates of papers, records, etc. However such documents have not consistently specified the processes for receiving citizens, or the receipt and settlement of complaints, appeals, protests, or case assignment. Through our research of the receipt process for civil and administrative cases at courts, the Research Team finds that administrative roles and processes vary from court to court. The procedures to receive petitions, complaints, and how to regulate official documents and papers of the courts also differ from those of state administrative bodies.

1. The receipt of petitions

Under the provisions of the CPC and Resolution No. 02/2006/NQ-HDTP of the Judge Council, the procedures for receiving petitions for the first instance trial are formulated according to whether jurisdiction is first instance or appeal rather than

¹⁷ Mr. Truong Hoa Binh, Chief Justice of the SPC, *Some contents on the reform of judicial administrative procedure in the people’s court activities*, http://toaan.gov.vn/portal/page/portal/tandtc/299083?item_id=23071379&p_details=1, 2013.

¹⁸ Resolution No. 03/2004/NQ-HDTP of the Judge Council – SPC dated 2/10/2004 guiding the implementation of provisions in the first part “General Provisions” of the Civil Procedure Code 2004; Resolution No. 04/2004/NQ-HDTP of the judge Council – SPC dated 5/11/2004 guiding the implementation of provisions in the third part “First instance trial” of the Criminal Procedure Code 2003; Resolution No. 01/2005/NQ-HDTP of the Judge Council – SPC dated 31/03/2005 guiding the implementation of provisions in the first part “General Provisions” of the Civil Procedure Code 2004; Resolution No. 02/2006/NQ-HDTP of the Judge Council – SPC dated 12/05/2006 guiding the implementation of provisions in the second part “First instance procedures” of the Civil Procedure Code 2004.

whether the court receiving the case is a provincial or district People's Court.¹⁹ Key tasks and practical skills in receiving petitions are summarised below:

- The court only accepts petitions which are made in writing and include the contents described in Article 164 of the CPC (Civil Procedure Code). The receipt of petitions must be compliant with the provisions of Article 167 of the CPC and guidelines in Section 6 of Part I - Resolution No. 02/2006/NQ-HDTP. The court must have a receipt book to record the date of receiving the application which will form the basis for determining the date of initiating the lawsuit and the time limit for initiating the lawsuit.
- After receiving the petition, the court has to grant a written receipt to the petitioner. If receiving a petition sent by post, the court has to send the notice of petition receipt to the petitioner. If the petition does not meet all the provisions of Clause 2, Article 164 of the CPC, the court shall notify the petitioner to amend and supplement the petition in accordance with the provisions of Article 169 of the CPC, Section 8 Part I of Resolution No. 02/2006/NQ-HDTP.
- Within five business days from the date of receiving the petition, judges who are assigned to consider the petition must make one of the following decisions:
 - carry out the procedure for case acceptance, if the case is under its jurisdiction in accordance with Article 171 of the CPC, guided in Part I Resolution No. 01/2005/NQ-HDTP and Section 9 of Part I of Resolution No. 02/2006/NQ-HDTP; the announcement on case acceptance must comply with the provisions of Article 174 of the CPC;
 - transfer the petition to the competent court and notify the petitioner of that in writing. The procedure for transferring the petition shall comply with the provisions of Article 37 of the CPC and Section 6 Part I Resolution No. 02/2005/NQ-HDTP; or
 - return the petition under circumstances provided in Article 168 of the CPC and with further guidance set out in sub-section 7.1 of Section 7 of Part I Resolution No. 02/2006/NQ-HDTP.

The above procedure is not clear who does what and which is method for implementation. For example, the role of the judges is only referred to in the procedure after the courts have received petitions. The regulations mention “the courts” they do

¹⁹ Civil Procedure Code, Articles 25, 27, 29, 31, 33, 34, 35, 36, 37, 159, 161, 162, 163, 164, 167, 168, 169, 171 and 174; Resolution No. 02/2006/NQ-HDTP of the judge Council – SPC dated 12/05/2006 guiding the implementation of provisions in the second part “First instance procedures” of the Civil Procedure Code.

not clearly identify who in the court will be responsible to perform each task i.e. whether it is the Chief Judge, judges, or court clerks. Through a fieldwork in 6 provincial courts and 12 district courts, the Research Team found that there are three models for receiving the petitions, as follows:

1. *The first model:* judges are directly assigned to receive petitions and face to face meet with the applicants on a weekly schedule. For provincial courts, the presiding judge of a specialised court can assign a judge of that court by roster to receive the petitions, decide on the acceptance of the case files and report about the case settlement to the Chief Judge or the Deputy Chief Judge in charge. In some provincial courts, petition receipt and case acceptance are the responsibility of the Chief Judge. If the case is accepted, the presiding judge of the specialised court will report about the case settlement to the Chief Judge or Deputy Chief Judge in charge. The receipt of the citizens' petitions is conducted by the judge right from the beginning. The judge considers the petition, the initiation file and, if they are eligible, the judge receives petitions and appoints the date to notify the citizen whether the petition is capable of acceptance or not. After receiving the petition, the judge considers the case and decides on the acceptance of the case. In some courts, the judge reports the case acceptance to the court leader (Chief Judge or Deputy Chief Judge in charge). However, in some places, judges decide the acceptance themselves and court leaders only know about the case after it is accepted.
2. *The second model:* A court clerk or a group of court clerks is assigned to receive the petitions and face to face meet with the applicants. The court clerk considers the petition first and the case file, and, if they are eligible, s/he receives the petition and nominates the date to notify the citizen whether the petition is capable of acceptance or not. After the petition is received, the court clerk transfers the petition to the court leader or the judge who is assigned by the court leader to receive the case. Similar to the first model, in some provincial courts the court clerk(s) in charge of receiving petitions are also personnel of the specialised courts. The assigned judge or court leaders will make a decision on the case acceptance and inform the court clerk to notify the litigants.
3. *The third model:* The Court has a unit specialising in receiving petitions, similarly to the "one-stop-shop" divisions at administrative bodies that receive people, such as the people's committee at communal level, ward, or district

leve²⁰. This division receives petitions and guides citizens on the case files, the content of the petitions, litigation procedures and so on. The division provides a written receipt and appoints a date for decision on whether the petition is eligible to be accepted or not. The written receipt only records documents submitted on time. The division has a judge in charge of petition receipt and consideration of case acceptance. In the review process, if the case file is found to be incomplete, the Judicial Administrative Division notifies the applicant in writing to supplement the file. If the petition and the case are eligible for initiating the lawsuit, the “one-stop-shop” division will report this to the Chief Judge in writing and recommend acceptance.

According to the view of

Box 1: Under Decision No. 181/2003/QD-TTg dated 04/09/2003 of the Prime Minister, from Article 11 to Article 16, the operation of the “one-stop-shop” mechanism is stipulated as follows:

- (1) Citizens and organisations requesting settlement will directly contact the Receiving Requests and Delivering Results Unit.
- (2) Officers and public servants working at the Receiving Requests and Delivering Results Unit shall be responsible for considering the requests and case files of citizens and organisations and as follows:
 - a. Receiving and issuing a written receipt for cases filed, and appointing the date to return the result in accordance with regulations. If the case file is incomplete, the Receiving Requests and Delivering Results Unit should offer the citizen or organisation specific instructions to supplement and complete the case file.
 - b. In cases where the request of the citizen or organisation is not under the jurisdiction of the court, they should instruct the citizen or organisation to go to the relevant state agency for settlement.
- (3) The Receiving Requests and Delivering Results Unit shall be responsible for transferring case files of citizens and organisations to relevant functional units for settlement.
- (4) Relevant units shall be responsible for dealing with the case files of citizens and organisations transferred by the Receiving Requests and Delivering Results Unit, submitting to the relevant organisational leaders to sign and transfer back to the Receiving Requests and Delivering Results Unit within the time-limit.
- (5) The Receiving Requests and Delivering Results Unit re-receives the results of the settlement and returns them to the citizen or organisation within the time appointed, collects fees and charges for tasks allowed to collect fees and charges in accordance with the law.
- (6) In cases where the composition of the case file is not completed within the appointed time-limit, the Receiving Requests and Delivering Results Unit shall be responsible for notifying citizens and organisations of the reasons why the case files are incomplete and make other appointments to receive the results.

²⁰ “One-stop-shop” mechanism is currently a focus of the administrative reform model under Decision No. 181/2003/QD-TTg dated 04/09/2003 of the Prime Minister. The implementation of “one-stop-shop” mechanism aims to “create a substantial change in the relationships and problem-settling procedures between State administrative agencies and organisations as well as citizens, reduce troubles for organisations and citizens, combat red-tape, corruption and authoritarianism among State officials and employees, and raise the effectiveness and efficiency of the State management”, Article 1 – Decision 181/2003/QD-TTg.

judges and the lawyers directly interviewed, the first and the second model are the more popular models for receipt of petitions in Vietnam. In these two models, judges do not provide any *appointment slip*, or even *case file receipt* to citizens. In some courts, the receipt of petitions is recorded in a Receipt Book. The entire internal procedure of reporting the receipt of petitions and case files do not record in writing. The interviewed court leaders believe that once receiving a case, a judge will be responsible for the case. Some Chief Judges asked judges to report to the assigned leader of the court on the initiation of files and their views on the file acceptance. However, the fact that the operative models of petition receipt and internal reporting are not formal written procedures has created a gap in administering the receipt of cases. It leads to a situation where some judges select certain case types to accept. If the case is easy to settle, the judge will receive it, otherwise the judge will make an appointment so that the applicant will have to come back and the case may be received by another judge. Also, some judges do not want the pressure of studying the case file and reporting to the Chief Judge, so they receive the case but do not record it into the Receipt Book. It is said that the first model of petition receipt creates the opportunity for judges to receive cases for direct settlement on the basis of their relationship with the petitioner (see further Figure 6 and 7 on the situation of self proposal by judges to settle cases).

Using the second model, the People's Court of Ho Chi Minh City documents the entire process of receipt and acceptance of petitions. The receipt and handling of citizens' petitions are publicised via the system of Receipt Books of specialised courts and the general computer system of the Court. Petition handling results are displayed to citizens on the screen outside. The delivery of case files to relevant judges for consideration within the court internally is also recognised by receipts and recorded on the computer system. In addition, the Research Team has been informed that the People's Court of Binh Duong Province applies ISO 9001:2000 quality management for the administrative activities of the Court based on the provisions of procedural law. All procedures for receiving petitions and assigning cases in Binh Duong are also documented²¹.

The third model is presently only applied in the People's Court of Vinh Long Province (directly surveyed in this Research) and the People's Court of Thua Thien Hue Province. These two courts were chosen as the pilot courts for developing judicial

²¹The Research Team recorded information on the reforms in the People's Court of Ho Chi Minh City through other studies conducted in Ho Chi Minh City from the years of 2006, 2008 and 2011. The Research Team had information about the application of ISO in the management of the People's Court in Binh Duong province through a seminar on "Judicial Administrative Reform in Vinh Long" on 13/08/2012.

administrative reform within the framework of the CIDA-funded Judicial Development and Grassroots Engagement Project (JUDGE Project). This pilot applies a “one-stop-shop” model, centralising all tasks of receiving petitions, letters, documents, and papers sent to the court for receipt and handling within one Reception Unit. The table of court fees is publicly posted at the reception area. Court clerks or judges in the Reception Unit also provide consultation on the format of petitions, court procedures, etc.

The third model is also the model that the SPC has just approved as a pilot in three provincial people’s courts: the People’s Court of Vinh Long Province; the People’s Court of Thua Thien Hue; and the People’s Court of Hung Yen Province. It should be noted that in this pilot organisational structure of assisting the apparatus of the people’s courts at all levels prescribed by the Chief Justice of the SPC, there is no provision for a judicial administrative unit or “one-stop-shop” unit, nor statement of the conditions required for the establishment of a judicial administrative unit to specialise in receiving documents and papers from involved persons and parties having contacts with the court.²²

2. The receipt of complaints and denunciation letters

Each surveyed court applies different procedures for receipt of complaints and denunciation letters. Some courts make notice of schedule for court leaders to receive and settle citizens’ complaints and denunciation letters. Complainants or denunciators can meet and exchange information directly with the scheduled court leader. In case of necessity, the court leader will ask the complainant or denunciator to make a petition describing all details of the case. Other courts require citizens wishing to complain to make petitions in the first instance. The court office receives the complaints and then submits them to the court leader for settlement. In Vinh Long, the receipt of complaints and denunciation letters is also performed by the Judicial Administrative Division (according to the “one-stop-shop” model).

Both the People’s Court of Ho Chi Minh City and Vinh Long Province provide appointment slips for settlement of complaints and denunciation letters, and a fixed reception schedule of court leaders to settle complaints and denunciation letters. The

²² *Law on Organisation of People’s Courts No 22/2002/QH10, Article 25, paragraph 11. Pursuant to Decision No. 17/2003/TCCB dated 17 February 2003 of the Chief Justice of the Supreme People’s Court providing for the assisting apparatus of the local People’s Courts, which was passed by the National Assembly’s Standing Committee in Resolution No. 354/2003/NQ-UBTVQH11 dated 25 February 2003, the assisting apparatus of the People’s Courts of provinces shall be composed of: Office; Investigation Director Room; Personnel Organisation District-level people’s court only assisted by the Office of the apparatus.*

reception schedules of these two courts are publicised on the bulletin board of the courts.

3. Case file receipts, appointment slips

Under the provisions of the CPC, the courts have to receive the petitions filed directly by plaintiffs or sent by post and must enter them into the Receipt Book.²³ However, the CPC does not specify that courts must issue receipts, appointment slips or any other documents to confirm the submission of the plaintiffs. If the petition is under the jurisdiction of the court, the court will make assumption of the court fee for the case in advance.²⁴ The SPC's Judge Council provides guidance to the courts on how to provide notices of receipt to the petitioner.²⁵

In the survey, some court leaders and judges said that their courts provided appointment slips or receipts for submitted files. However, only the People's Court of Vinh Long Province and the People's Court of Ho Chi Minh City certified the provision of appointment slips or case file receipts to the people. In some other courts, judges and court clerks reported a belief that "legal regulations do not require supplying receipts of appointment slips" or that the courts "only have to make a record in the Receipt Book".

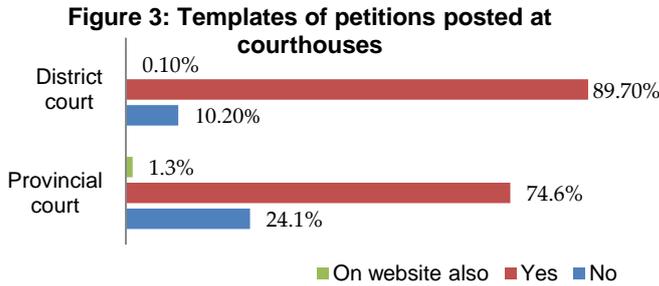
The Research Team also received the opinions of lawyers regarding the reasons why the courts do not supply appointment slips or case file receipts, namely that judges do not want to accept the pressure of answering petitions within five days as required under the legal regulations. In some lawyers' views, the lack of requirement for appointment slips or case file receipts creates a "gap" that allows authorized officials to harass the people for accepting the case.

Due to not being provided with appointment slips and case file receipts, the people need to return to the courts many times to know whether their petitions are to be accepted or not. Also, if the court officials lose their petitions, evidence or case files in the course of considering petitions, the people do not have any evidence to complain against them.

²³ Civil Procedure Code, Article 167.

²⁴ Civil Procedure Code, Article 171.

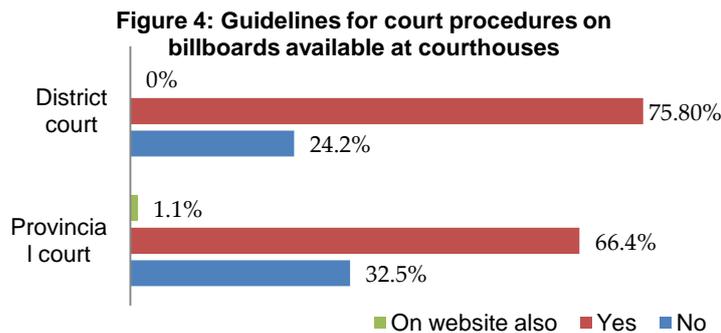
²⁵ Resolution No. 02/2006/NQ-HDTP of the judge Council – SPC dated 12/05/2006 guiding the implementation of provisions in Part Two "Procedure for resolution of case at the first instance court" of the Civil procedure Code point 6 guiding Article 167 - CPC.



That the courts neither give appointment slips or receipts nor record petitions in the Receipt Book is a problem that has also been recognized in previous surveys on the operation of the courts.²⁶

4. Supporting citizens' access to the courts and judicial services

All courthouses that the Research Team surveyed (see Appendix 1) have posted template forms for use in civil lawsuits and marriage and family lawsuits. For example, the People's Court of Ho Chi Minh City posts forms on the court's website (<http://www.tand.hochiminhcity.gov.vn>). During the September 2011 survey period in Vinh Long, the People's Court of Vinh Long Province did not have an operative website, but by June 2012, the Court's website was operative with links to template forms. Surprisingly, the posting of template forms by all local courthouses for access by citizens is an obligatory requirement mandated by the SPC but quite a high rate of judges surveyed responded that their courts do not post template forms (see Figure 3).



The practical use and application of forms is diverse. In some courts, posted forms are updated regularly and kept tidy but in other courts, the forms posted on the billboard seem to be old and the citizens do not know whether they are still valid for use. Some courts only accept citizens petitions

²⁶Report on a Survey of the Needs for District Courts Nationwide, Project VIE/02/015 Assistance for the Implementation of Vietnam's Legal System Development Strategy to 2010, Judicial Publishing House, 2007; The Report of Judicial Administrative Reform - experience from three pilot courts of Judicial Development and Grassroots Engagement Project (JUDGE Project), 2012.

made via the forms of the court while others accept handwritten petitions. It should be noted that the CPC specifies the form and essential contents of petitions²⁷ but there is no provision requiring citizens to type or write on the forms provided by the courts.

Providing court procedure guidelines for the citizens is also a requirement of the SPC, but some courts do not strictly implement this. Through the field survey in 12 local courts, only provincial courts post information about court procedures, while district courts (even in big cities such as in Ho Chi Minh City and Da Nang) do not post such guidelines. The people's need for information about court procedure is great.²⁸ Lawyers and prosecutors surveyed considered the posting of application forms or information on legal proceedings on the courts' websites as providing convenience to citizens.²⁹

Only the following provincial courts posted forms and information on their websites regarding court procedures for different types of cases, such as criminal, civil, marriage-family, and business-commerce affairs: Ho Chi Minh City (at the time of the survey); Vinh Long; Thua Thien Hue; Hung Yen; Bac Ninh; and Ha Tinh (at the time of writing this report).

CHAPTER II: Supporting adjudication activities

1. Case assignment

Assignment of adjudication (or "case assignment") is an important activity in the court's operation. This work relates to judicial independence, equality, flexibility and efficiency of the court apparatus. Unreasonable practices of case assignment can reduce the public confidence in the courts, delay adjudication and impact on adjudication quality.

The volume of cases annually received and settled by courts nationwide is continually increasing (see Figure 1 and Figure 2). The number of judges available depends on the staffing policy of the court sector as approved by the National Assembly in each period. In 2011, on average, each judge handled at least 47 cases. In

²⁷ CPC, Article 164.

²⁸ According to Survey report on Gender equality in the court system of Vietnam and in adjudicating activities of the Commission on the Advancement of Women of the SPC (in 2008), 76% of interviewed people said that they expected to receive the sympathy and the instruction on court procedures by court staff and judge when working with the court. In case of no instructor, the people believed in the guiding documents of the court procedures rather than those of other bodies.

²⁹ These are lawyers, prosecutors' opinions recorded in the survey, at that time, only the PC of Ho Chi Minh City posted templates, judicial administrative procedures on its website.

a survey question on the number of cases newly assigned in the previous month, 13 judges (or 0.6% of judges surveyed) said that they are assigned to handle 13 marriage and family cases via the previous month's first instance procedure. Each judge surveyed was handling at least 13 cases. One judge had had to solve 15 marriage and family cases in the month previous to the survey, including newly assigned cases and outstanding cases.

The procedural provisions and guidance on case assignment from the Judges' Council of the SPC only identify the jurisdiction to assign cases and the responsibilities of judges when being assigned cases,³⁰ but do not stipulate the procedure of assigning cases. Therefore, case assignment and settlement depends on the regulations and practices of each court, as decided its Chief Judge. In some courts, the Chief Judge directly assigns a judge to accept and handle each case and to chair the trial. In other courts, the Chief Judge and Deputy Chief Judge work together to manage the court and the Deputy Chief Judge performs the case assignment task³¹.

The model in which the Chief Judge assigns cases to judges is considered to reduce factors which may compromise the independence of judges. According to the Beijing Statement of Principles of the Independence of the Judiciary, "*the assignment of cases to judges is a matter of judicial administration in which the responsibility of ultimate control must belong to the chief judicial official of such court.*"³²

Through fieldwork, the Research Team found that cases are assigned 3 different ways: (i) assignment of cases under a clear procedure: cases assigned in turn, not on the basis of types of action and expertise of judges; (ii) assignment of cases to certain judges based on the discretion of the court leaders; (iii) assignment of cases according to judges' suggestions themselves.

The assignment of cases under the initiative of court leaders takes 2 forms: (i) assignment based on the criteria established by each court; or (ii) assignment based completely on the private decisions of court leaders.

³⁰Criminal Procedure Code, Article 38, 39; Civil Procedure Code, Article 40, 172, 257.

³¹ Law on Organisation of People's Courts in 1981, Article 37; Criminal Procedure Code, 2003, Article 38; Civil Procedure Code, 2004, Article 40; Resolution No. 03/2004/NQ-HDTP of Judge Council of the Supreme People's Court dated 02/10/2004 guiding the implementation of some provisions in Part one of "General Provisions" of the Criminal Procedure Code, 2003, Point a, Article 1, Section 1; Resolution No. 02/2006/NQ-HDTP of Judge Council of the Supreme People's Court on 12/05/2006 on the implementation of the provisions of Part Two "Procedure for resolution of case at the first instance court" of CPC, Article 6.3.

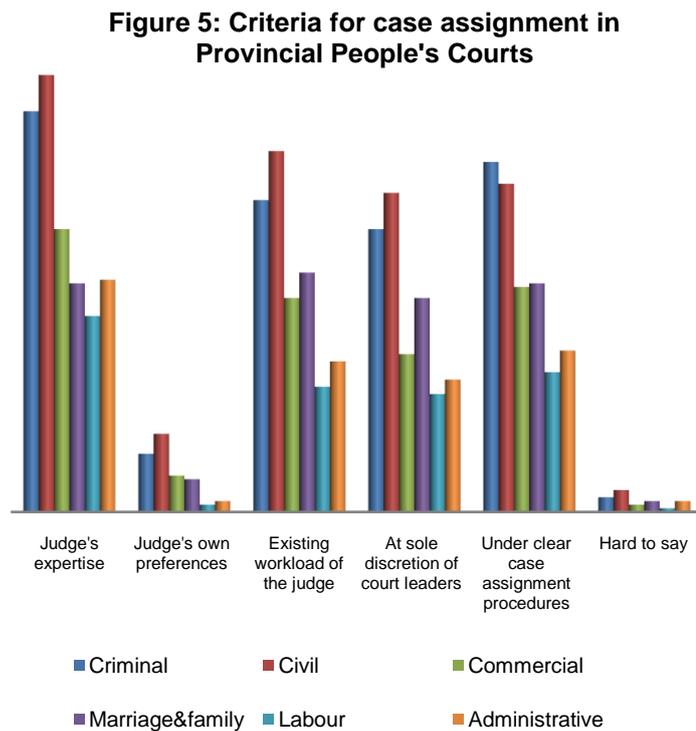
³²Beijing Statement of Principles of the Independence of the Judiciary, the People's Court Journal, No. 8, 2006, pages 46 - 48.

The current criteria of case assignment, as identified in this survey, are similar to those revealed in the previous survey on the needs of district courts³³. Court leaders assign cases to judges based on two main criteria: (i) “the workload” that a judge is handling at that time, including adjudicating work and other professional works of the court; and (ii) the “expertise or experience” of judges in handling cases. The chief judge may make decisions on assignment based on one or both criteria.

In addition to the above two criteria, a number of other factors are also considered by court leaders when assigning cases, for example:

- Judges’ experience:

- assigning cases appropriately to the position and seniority of judges;
- assigning cases on the basis of the geographical convenience in settling cases;
- assigning based on the nature of each case to decide the judge in charge; for complex and “key” cases, the court leaders will directly settle;
- assigning cases based on the judges’ adjudication experience;
- assigning cases equally to judges regardless of their expertise; or
- assigning cases based on ethnicity. Judges of ethnic minorities will handle cases of relevant ethnic minority i.e. judges of the Kinh ethnic group will handle cases for Kinh people.



- Judges’ work pressure:

- assigning alternately between a complex and a non-complex case.³⁴

³³Report on Survey of the Needs for District People Courts Nationwide, Project VIE/02/015 supporting for the Implementation of Vietnam's Legal System Development Strategy to 2010, Judicial Publishing House, 2007.

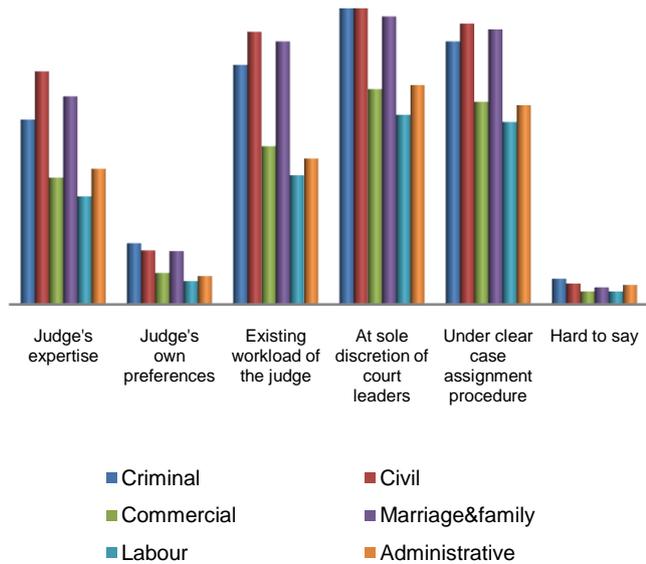
³⁴ According to a chief justice, who raised this opinion, the criterion of complex or non-complex case is just relative, not statutory. The objective of chief justice is to ensure the fairness among judges.

It should be noted that at provincial courts, case assignment does not follow the personnel structure of specialised courts, so judges are assigned to all types of cases.³⁵

- Judges’ proposal

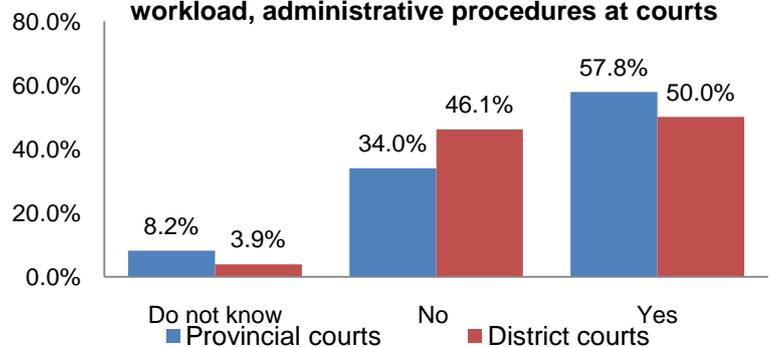
Many judges select the factor ‘Judges’ proposal’ because in some courts, the procedures for receiving, accepting and handling cases are all assigned to judges. After judges initially receive cases and make recommendations to the court leaders about acceptance, they are assigned to adjudicate the cases they have received. Lawyers consider that this factor may create favourable conditions for corruption in adjudication. The existence of such practices was confirmed by some of the judges surveyed via questionnaire (see Figure 5 and Figure 6) and they even reported a wish to have this issue recognized publicly (see Figure 8 and Figure 9). However, few judges admitted the existence of this issue in direct interviews, although none condoned the practice.

Figure 6: Criteria for case assignment in District People’s Courts



In the 5 years between the 2006 District Court Survey and the result of this study, the SPC still has not regulated a nationwide consistent model of case

Figure 7: Software for case management workload, administrative procedures at courts



³⁵The Chief Justice who said this explained that no judge wanted to hear administrative cases because these cases were often difficult and sensitive. Therefore, judges do not want to be appointed to administrative courts or be assigned to solve administrative cases. In order to ensure fairness, the Chief Justice requires judges to hear all types of cases without distinguishing case types. At the same time, such assignment can reduce the pressure on the administrative judges of the Provincial People’s Court.

assignment. The courts still use varying models, methods, criteria, and factors in managing case assignment.

Based on the field study, there are differences between HCMC and Vinh Long Province People’s Courts, and other surveyed Courts. The leaders of these two Courts use a computerised case statistics management system to enable prompt calculation of the numbers and progress of case settlement. With access to this information on the progress of solving cases, leaders of these Courts assign cases based on the criterion of “workload”.

Furthermore, this software system also helps leaders of these Courts assign judges to cases, set the adjudication schedules and mobilize judges among specialized Courts in the right way, without concomitance. Notably, the case management system of the HCMC People’s Court also helps the chief judge assign judges to study case files in order to accept cases quickly.

Presently, SPC is applying the case management software. 50% of all district judges and 57.8% of provincial judges said that they used this software in their Courts (see Figure 7 above). The reality is that it is advantageous to apply information technology in Court’s administration activities. In interviews of 18 District and Provincial Courts, 17 Courts said that they used the case statistics software provided by the Supreme People’s Court to assign staff to update and report by

Figure 8: Criteria for case assignment upon provincial judges' expectation

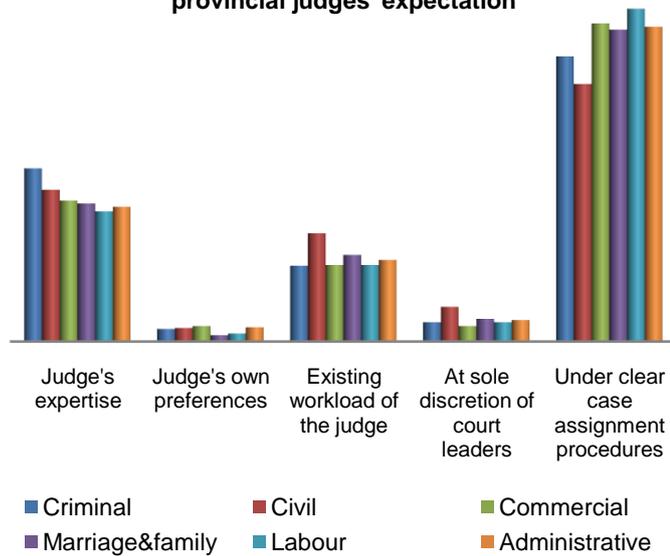
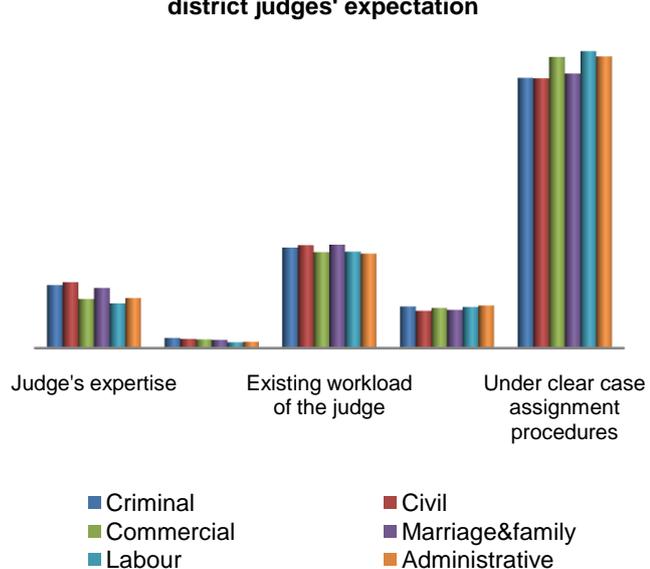


Figure 9: Criteria for case assignment upon district judges' expectation



software, but that they did not use this software in case assignment. The only Court that does not use this software is a Court in the mountainous area.

Most judges suggest that the option of assigning cases should follow a clear process inside the Court (see Figure 8 and Figure 9). In fact, many Courts already have internal regulations on case assignment (see Figure 28). Leaders of Courts who were interviewed in person said that assigning cases based on regulations reduces negative aspects of their work and improves their management capacity.

Case assignment based on regulations also improves the independence of Judges because the judge who accepts and solves each case must have no personal relations to or derive a financial benefits from that case³⁶.

2. Monitoring and ensuring procedural time-limits

A compulsory requirement of procedural laws is to ensure that procedural activities occur strictly within stipulated time-limits³⁷. Any violation against procedural time-limits will be considered a violation of proceedings and will be a factor leading to the revision of a judgment. Supervision of the junior adjudication level's compliance with procedural time-limits is done by the senior adjudication level. Thus, during adjudication, judges must always take this time-limit factor into consideration to avoid having their own judgments cancelled. In addition, other persons participating in proceedings (such as the procuracy, lawyers, involved persons, and defendants) all have the right to complain, appeal, or protest if adjudication procedures violate the relevant procedural time-limits.

The number of cases settled beyond mandated procedural time-limits is a problem that the tribunal sector usually requires to be reduced every year. On average each year, there are from 800 to 1,000 cases which exceed the relevant time-limits in the entire tribunal sector (occupying about 2.5% to 3% of the annual total number of cases).³⁸

In court governance, the Chief Judge is the person responsible for the operations of his/her court, including the task of ensuring cases are adjudicated legally in terms of procedural laws, and that the minimum of cases settle beyond procedural

³⁶ Nguyen Dang Dzung, *Judicial rights in state power organisation*, id., 2007

³⁷ Criminal Procedure Code, Article 96 and 97; Civil Procedure Code, Article 157 and 158.

³⁸ Report of the SPC summarising works done in 2012 and the key missions in 2013 of the tribunal sector, page 6; Report of the SPC summarising activities in 2009 and task orientation in 2010 of the tribunal sector, page 15; Report of SPC summarising activities in 2008 and task orientation in 2009 of the tribunal sector, page 15.

time-limits. The final award for emulation among courts also considers this criterion³⁹. According to leaders of surveyed courts, leaders usually pressure their judges to comply with procedural time-limits. Besides stipulating requirements for accelerating the case settlement process, court leaders can also adjust the progress of case settlement through the mechanism of case assignment based on work volume (See further Figure 5 and Figure 6).

3. Establishing and ensuring operations of Adjudication Panels

Practising the “*principle of collective decision*” through an Adjudication Panel will help judges to exchange opinions on all matters and details of a case to guarantee that the trial results are thorough, objective, and fair. The 1992 Constitution stipulates “*the People’s Courts shall debate collectively and pass the judgment by majority decision*”⁴⁰. Adjudication Panels are established after the judge assigned to act as presiding judge has implemented adjudication preparation work (in criminal procedure, this means after the judge has considered whether the case file meets adjudication conditions; and in civil, economic, administrative, and labour cases, this means after the judge has taken testimonies, collected evidence, and held mediation).⁴¹ Members of the Adjudication Panel will be decided by the Chief Judge of the Court.⁴²

The time from issuance of the decision establishing an Adjudication Panel to the hearing date (the trial) is subject to the period of adjudication preparation as prescribed by procedural laws.⁴³ As the Adjudication Panel is set up at the end of the adjudication preparation period, the time for other members of the Adjudication Panel (other than the judge initially assigned to handle the case or the presiding judge) to study the case file prior to the hearing is usually not long⁴⁴ (See Table 1

³⁹ Emulation is applied among the courts over the nation. See footnote 14.

⁴⁰ Constitution 1992, Article 131.

⁴¹ Criminal Procedure Code, Article 178, Civil Procedure Code, Article 195, the Law on Administrative Procedure, Article 123.

⁴² Criminal Procedure Code, Article 38, Civil Procedure Code, Article 40, the Law on Administrative Procedure, Article 35.

⁴³ Criminal Procedure Code, Article 176, Civil Procedure Code, Article 179, the Law on Administrative Procedure, Article 117.

⁴⁴ All procedural laws do not stipulate the accurate moment for setting up the adjudication panel of criminal, civil, and administrative cases. The Adjudication panel is set up and determined in the decision on bringing the case to trial (see Footnote 41). This decision is issued in the time of preparation for adjudication (see Footnote 43) and this act is only done once the judge in charge of the case settlement has studied the case file and found that the case files satisfy all conditions for adjudication. Then, as regards criminal cases, pursuant to Article 39, 176 and 178 of the CPC and guidelines in section 3 Part I Resolution No. 04/2004/NQ-HDTP, the judge shall issue the decision to bring the case to trial; as regards civil cases, the decision will be issued pursuant to Article 195 of the Civil Procedure Code and guidelines in section 12 Part II Resolution No. 02/2006/NQ-HDTP; and Article 123 of the Law on Administrative Procedures will be the basis for issuance of the decision in relation to

herein):

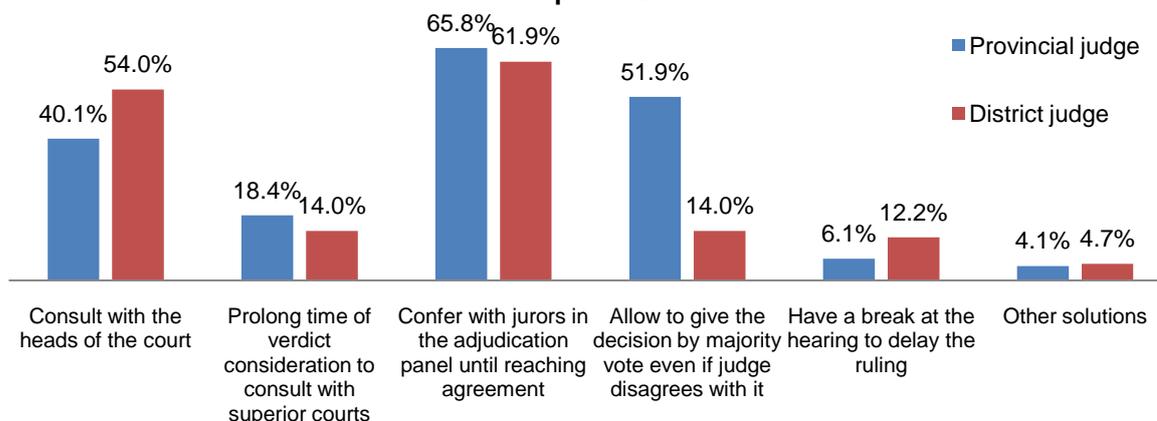
Table 1: Time for case file study before hearings of other members in the Adjudication Board (%)

	judge of provincial court						judge of district court					
	Criminal	Civil	Commerce	Marriage & Family	Labour	Administrative	Criminal	Civil	Commerce	Marriage & Family	Labour	Administrative
About less than 1 hour on the date of hearing	15.1%	21.0%	15.1%	23.5%	20.3%	14.4%	12.1%	14.6%	15.5%	18.0%	14.7%	13.1%
Several hours on the date of hearing	10.5%	18.5%	14.3%	19.6%	13.0%	14.4%	17.3%	19.3%	17.0%	18.0%	16.4%	16.5%
More than one day	44.3%	35.0%	42.1%	35.9%	33.3%	37.1%	56.0%	51.4%	51.6%	50.6%	52.7%	52.9%
More than one week	30.1%	25.5%	28.6%	20.9%	33.3%	34.0%	14.5%	14.8%	15.9%	13.4%	16.2%	17.5%

In interviews, judges and People’s jurors all desired to see the issuance of clear provisions stipulating that the main judges have to support other members of the Adjudication Panel in the task of studying case files carefully before trial. According to the survey as shown in Table 1, the percentage of judges who said that the time available to Adjudication Panel members for studying files before trial is only “*about an hour on the day of the trial*” or “*a few hours*” was existing remarkably in all types of cases. According to interviewed judges, the above amount of time available still ensured adjudication quality; however the opinion of People’s jurors was the opposite. They claimed that the time for case study was often short. Even some People’s jurors informed that in some cases, they are assigned to participate in the Adjudication Panel only just before the trial. Therefore, they could only grasp the information about the case through the main judge in charge of the case. The short time for study of the case makes the practical role of the juror in the Adjudication Panel becoming a formal one. The opinions of jurors are not appreciated as jurors cannot grasp all case information as well as the relevant legal provisions.

administrative cases. All procedural laws provide the time limit that the judge in charge is supposed to adjudicate the cases from the time of the decision on bringing the case to trial, which falls within the time of adjudication preparation and is shorter than this time (see Footnote 43).

Figure 10: Solutions in case members of Adjudication Panel have different opinions



In principle the Adjudication Panel works according to majority rule, in which each member has an equal right in deciding the case and each case is decided based on the Panel’s majority vote. However, the survey found that once members of the Adjudication Panel show different opinions in deliberation, presiding judges have different ways of reaching a decision (see Figure 10).

“Exchange of information about options for case settlement”, “exchange of professional knowledge” or “consultation” between judges of junior courts and judges of senior ones (See Figure 11 and Figure 12) have existed for a long time in the Court sector. This exchange is positive in helping Judges with further knowledge and experience of adjudication. On the other hand, it is proved negative in creating the mechanism of “instruction to the case” or “report about the case”. The SPC has an instruction to prohibit this mechanism but it still happens and need a measure for settlement⁴⁵. Even, the survey found that a judge was even disciplined for not “reporting during adjudication” before the trial (see Box 4).

⁴⁵ Nguyen Hong Ha, *On the adjudication desk from “instruction of case” and “case approval” (Trên bàn xử án từ “thỉnh thị án” và “duyet án”)*, The Informant Newspaper, 27/12/2012. The author alleged two evidences: (i) at the summary conference of the Tribunal sector in 1988, the Chief Justice of the SPC requested that the SPC must not set imposition in guidelines to local courts, not causing loss to the positiveness and independence of the adjudication panel; (ii) at the summary conference of the Tribunal sector in 1991, the Chief Justice of the SPC concluded that: “From now on, it is requested that you no longer use the expression of “instruction to the case” but it should be the consultation with the senior court with regard to some particular entanglements. The SPC shall not give any guideline for particular judgment but the consideration and decision of judgment for particular cases shall be entirely subject to the jurisdiction of the adjudication panel. Also, the situation of adjudication panel declaring “trial adjournment for consulting senior courts” at the middle of the trial must be stopped.

Figure 11: Provincial judges' consultation for settlement by case type

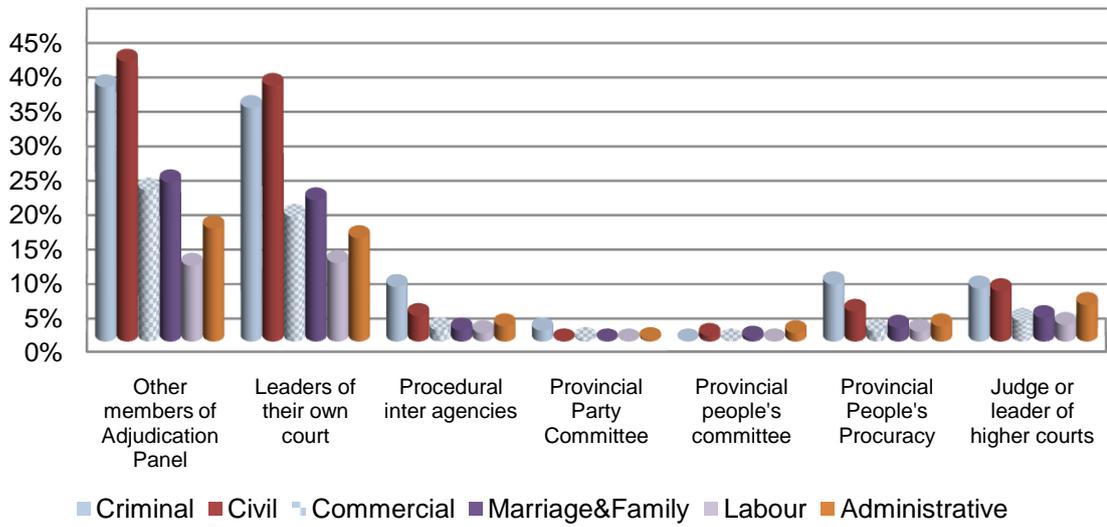


Figure 12: District judges' consultation for settlement by case type

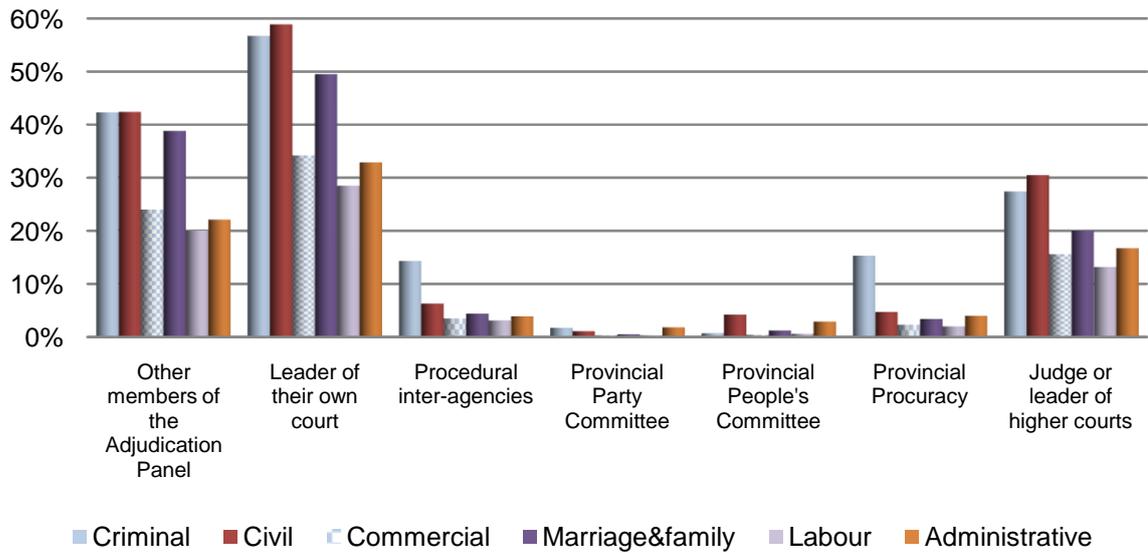
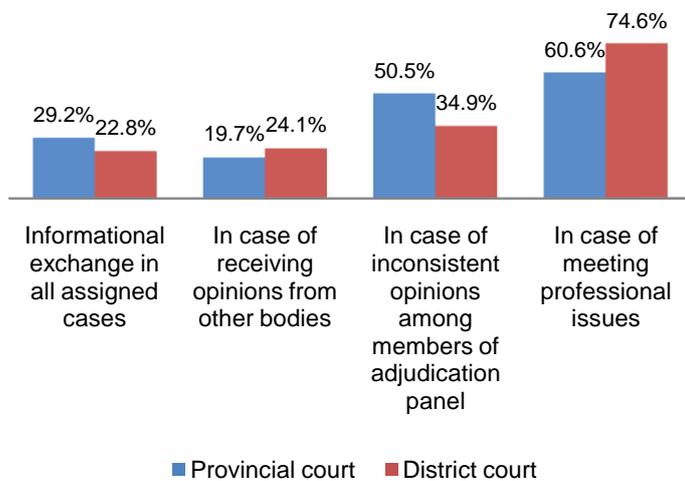


Figure 13: Reasons for judges' exchange on case settlement with court leaders

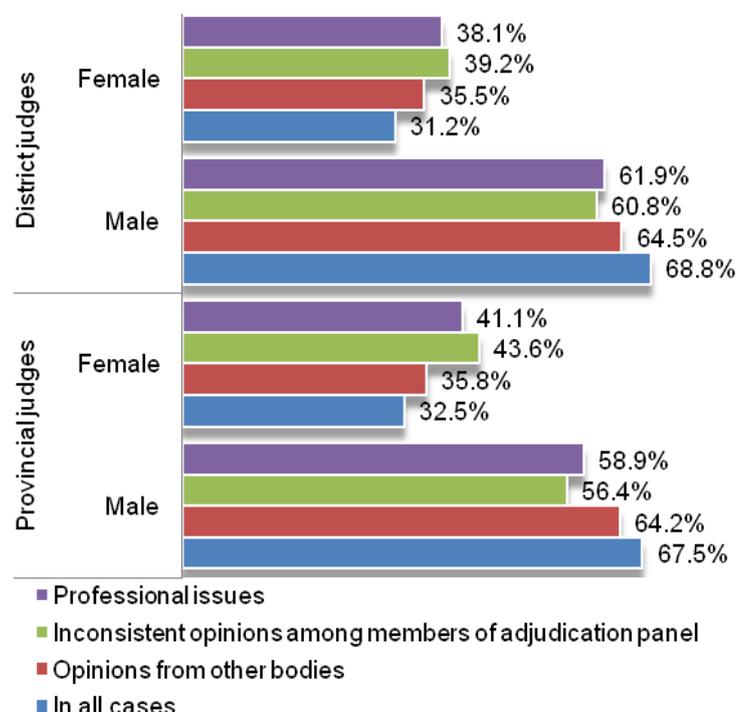


In the survey of judges in 2006, 68.05% of district judges reported seeking the opinions of the court leaders or superior courts when adjudicating. In 2011 the rate of district judges who seek court leaders' opinions (see Figure 12) is still high. This indicates that there has been almost no change in the working "routine" of judges

regarding case settlement. A significant percentage of judges, whether district or provincial, still consult the opinions of leaders on "guidelines for case settlement", (see Figure 11 and Figure 12). Notably, the percentage of male judges who alleged that they often consult on guidelines for case settlement is higher than that of female judges (see Figure 14) it laid down a discussion issue about gender and independence of the judges. In a research about gender equality of the SPC, the female judges are alleged to have several impacts to their independence in adjudication works due to the gender issue⁴⁶.

Court leaders who were interviewed in both provincial and district courts confirmed this "consultation" but to differing degrees. Some Chief Judges said that such "consultation" was only done when judges had

Figure 14: Exchange on solutions to case by gender of judges



⁴⁶ Survey on Gender Equality in Vietnamese Court System and adjudication activities in Vietnam, The Supreme People's Court, 2009, page 60, 61 and 62.

professional queries, relating to issues such as “vague legal regulations”, or “inability to contact litigants”, etc. In these instances, court leaders reported that the purpose of “consultation” is only to give judges more experience in handling problems with cases. Other Chief Judges expressed that the “consultation” was just about administration of adjudication including juror selection etc. In some cases, the objective of “consulting on guidelines for case settlement” was to help judges to get more opinions for settlement, restrict the potential for “intentionally handling for individual purposes” (i.e. corruption, as implied by this Chief Judge) and prevent wrongful convictions. There are opinions implied that the operation of “consulting guidelines on case settlement” within the court was not contrary to any regulations or principles of adjudication, as the principle of independence in adjudication under the Constitution is only applied during adjudicating, while “consulting on guidelines for case settlement” takes place before the trial. In addition, the “principle of collective decision” itself allows judges to discuss the cases with other judges.

The issue of “consulting on guidelines for case settlement” is not only carried out by judges with an “LLB” degree but also those with a “Master of Law” or “Doctor of Law” degree (see Table 2). It seems that this practice is common at all educational level, it is not confined to any certain educational group of judges.

Table 2: Judges’ exchange on case settlement with other agencies

	Qualification of judge	Provincial judges						District judges					
		Criminal	Civil	Commercial	Marriage & family	Labour	Administrative	Criminal	Civil	Commercial	Marriage & family	Labour	Administrative
Other members of AP	LLM	84.0%	88.3%	89.2%	88.0%	82.1%	80.7%	84.0%	88.3%	89.2%	88.0%	82.1%	80.7%
	Master of Law	16.0%	11.7%	10.8%	12.0%	17.9%	19.3%	16.0%	11.7%	10.8%	12.0%	17.9%	19.3%
	Doctor of Law												
	Have not got LLM												
Leader of such court	LLM	84.3%	86.7%	89.1%	83.7%	77.6%	81.6%	84.3%	86.7%	89.1%	83.7%	77.6%	81.6%
	Master of Law	15.7%	12.8%	9.8%	15.4%	20.7%	18.4%	15.7%	12.8%	9.8%	15.4%	20.7%	18.4%
	Doctor of Law												
	Have not got LLM		0.5%	1.1%	1.0%	1.7%			0.5%	1.1%	1.0%	1.7%	
Inter-judicial agencies	LLM	77.5%	78.9%	87.5%	75.0%	83.3%	81.8%	77.5%	78.9%	87.5%	75.0%	83.3%	81.8%
	Master of Law	22.5%	15.8%	12.5%	25.0%	16.7%	18.2%	22.5%	15.8%	12.5%	25.0%	16.7%	18.2%
	Doctor of Law		5.3%						5.3%				
	Have not got LLM												
Party Committee of the province/city	LLM	62.5%		100.0%			100.0%	62.5%		100.0%			100.0%
	Master of Law	37.5%						37.5%					
	Doctor of Law												
	Have not got LLM												
People’s Committee of the province or City	LLM	81.0%	86.4%	71.4%	90.0%	85.7%	63.6%		100.0%		100.0%		66.7%
	Master of Law	19.0%	9.1%	28.6%	10.0%	14.3%	36.4%						33.3%
	Doctor of Law		4.5%										
	Have not got LLM												
People’s Procuracy of the province or City	LLM	81.0%	86.4%	71.4%	90.0%	85.7%	63.6%	81.0%	86.4%	71.4%	90.0%	85.7%	63.6%
	Master of Law	19.0%	9.1%	28.6%	10.0%	14.3%	36.4%	19.0%	9.1%	28.6%	10.0%	14.3%	36.4%
	Doctor of Law		4.5%						4.5%				
	Have not got LLM												
Judges or leaders at Higher level	LLM	74.4%	83.8%	86.7%	88.2%	83.3%	81.5%	74.4%	83.8%	86.7%	88.2%	83.3%	81.5%
	Master of Law	25.6%	16.2%	13.3%	11.8%	16.7%	18.5%	25.6%	16.2%	13.3%	11.8%	16.7%	18.5%
	Doctor of Law												
	Have not got LLM												

4. Trial organisation

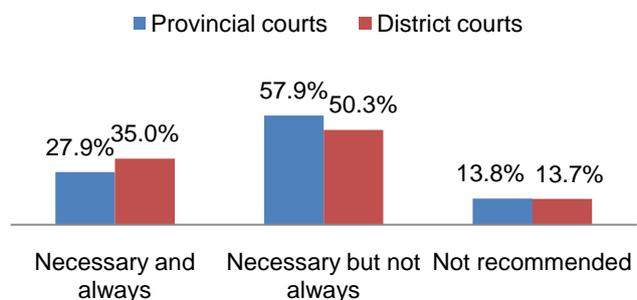
A hearing must be held at the time and place stated in the decision to bring the case to trial or in the notice for re-opening of the hearing. The hearing must be conducted continuously and publicly. In some cases, hearings can be conducted privately, but the judgment declaration must be publicised.

The above requirements mean the court organising the hearing must carefully prepare and maintain information about the availability of courtrooms, clerks, jurors, and alternate judges participating in the hearing. Within the court, the administrative office is responsible for arrangement of courtroom and equipment required for hearings. The chief judge will decide on the assignment of the People’s jurors and alternate judges participating in the Adjudication Panel. The selection of the Adjudication Panel members must conform to strict procedural requirements i.e. that potential members have never dealt with the case before, or have no relevant relation to the case etc. to avoid violation of procedural laws. Thus the courts must have good capacity for information management.

As discussed above, the survey found that the People’s Courts of Ho Chi Minh City and of Vinh Long are the two courts using case management software, and the most actively supporting judges, court clerks, and People’s jurors, in their work generally and greatly supporting the selection and assignment of members of the Adjudication Panel particularly.

In the surveyed localities, the adjudication of trials is held in public. Trials held in private must be requested by litigants and judges must decide whether a public hearing may affect the honour and dignity of the litigants and/or victims. However, judges surveyed reported that in some cases trials were still publicly held but the number of participants in the trials was limited to ensure their security, order and safety.

Figure 15: Judges' views on video and tape recording in trial



In order to enhance the transparency of adjudication and create a basis for further development of case law, the tribunal sector has a policy to develop the system of tape recording and video recording in provincial courts. Courthouses surveyed (see Appendix 1) had already installed tape recording and video recording systems. The percentage of judges in favour of recording in trials is quite high (see Figure 15). In in-person interviews, the Chief Judge of the Provincial People's Courts and many other judges advocated this policy. Supporters think that the recording of trials assists to guarantee the principle of public trial and to enhance the quality of trials. Among surveyed courts, the People's Courts of Vinh Long Province, Thua Thien Hue Province and Hung Yen had all installed modern recording systems as part of the Judicial Development and Grassroots Engagement Project (JUDGE Project). Some judges and court clerks of other courts said they recorded some trials using personal devices in order to assist in completing the minutes of trials. However, some judges do not support this policy for the reason that the recording may significantly impact on the attitude and decision-making processes of the adjudicating panel.

Sub-conclusion of Part II

- Judicial administrative work not only supports the administration and operation of the courts but also helps to facilitate convenient access to information and services of courts by the people.
- The “one stop shop” model of handling administrative work, as practised in various administrative bodies as well as in the people's courts of Ho Chi Minh City, Vinh Long Province, and Thua Thien Hue Province, promotes transparency and openness in the operation of courts. This model simplifies procedures for public access to the court and limits the potential for either public or judicial interference in the administration of cases.
- In formulating the aims of the “one-stop-shop” model, it is necessary separate and ensure independence between the judicial functions of administration (receiving petitions, assigning cases) and adjudication. The participation of the chief judge and court leaders in the case assignment process accords with the current management model of local courts as the chief judge is in charge of the general operation and administrative governance of the court. Judges are independently responsible for the legality of their adjudication. The application of the “one stop shop” model in the tribunal sector does not require the amendment of any provision in procedural laws, the Law on People's Court Organisation or the Ordinance on Judges and People's Jurors. The Chief Justice of the SPC simply

needs to issue a document providing for “supporting apparatus of the people’s courts at all levels” and submit this document to the Standing Committee of the National Assembly for approval.

- In order to promote the efficiency of the “one stop shop” model in handling administrative work and cutting down the compliance cost of performance of administrative procedures for both the courts and the people, local courts must publicise and update information in relation to court procedures, time and process of handling petitions, denunciation letters and templates of documents and papers required for use by citizens in court procedures. In addition, the local courts need to apply information technology (through case management software) to help make the work of case assignment clearer, more transparent and more likely to comply with procedural time-limits.

Part III: COURT GOVERNANCE

The Constitution of each country must ensure that judicial rights are respected within the system of state power provided for in the Constitution, and that the “independence of the court” conforms to the country’s chosen model.

The 1992 Constitution provides that “*the State power is consistent; there is the assignment and coordination among state bodies in exercising legislative, executive, and judicial power*”.⁴⁷ On the organization of state apparatus, the 1992 Constitution provides that the People’s representative body (the National Assembly and the People’s Council) is entitled to “*supervise the operations of*” courts,⁴⁸ and courts must “*be responsible for and report their tasks*” to the People’s representative bodies according to those bodies’ applicable functions.⁴⁹

Pursuant to the Law on Organization of the People’s Court, the Chief Judge is responsible for court management work, including his/her court and junior courts (if any)⁵⁰. The senior court body is also responsible for the adjudication function of the senior court itself and for revising judgments of junior courts.⁵¹ In short, the model of cooperation between the SPC and local courts includes two aspects, namely the management relationship between the senior and junior body, and the jurisdictional relationship based on review by the senior court of the junior court’s adjudication. Similarly, the relation between the two levels of local courts (provincial court and district court) includes two relations, the management relation between the senior and junior body, and the relation based on adjudication jurisdiction.

The term “court governance” is rarely referred in official reports in Vietnam, especially in courts’ reports. In practice, such terms as “court management”, “administrative court governance”, “administrative judicial management” and “management of local courts in terms of organization” are used inconsistently and they often cause confusion since each expression has different implication depending on their context of use. Which expression to be used will rely on the nature of the relationship involving the court⁵². Therefore, to strictly follow the research requirement and to clearly distinguish the terms relating to the court management, this

⁴⁷ Constitution 1992 (amended under Resolution No. 51/NQ-QH10), Article 2.

⁴⁸ Constitution 1992, Article 91, 122.

⁴⁹ Constitution 1992, Article 135, Article 139.

⁵⁰ Law on Organisation of the People’s Court dated 02/04/2002, Article 25 and Article 31.

⁵¹ Law on Organisation of the People’s Court dated 02/04/2002, Articles 19, 20, 21, 22, 23, 24 (for the SPC) and Articles 28, 29 and 30 (for provincial courts).

⁵² Opinion raised by Mr. Le Van Minh, a judge of the SPC, Head of the Department of Statistics – Generalisation of the SPC, Member of the Secretariat of the Central Judicial Reform Steering Committee at the seminar commenting the Outline of this report held in Do Son on 29/07/2011.

report uses the term “court governance” which focuses on analysis of the management relationship between the superior and junior courts. The management relationship between the SPC and local courts is stipulated in the Law on People’s Court Organization to include the following functions:

- *“to appoint, remove, dismiss judges of local people’s courts, the regional military courts and zonal military courts pursuant to a request of the Judge Selection Committee;*
- *to appoint, remove and dismiss Chief Judges and Deputy Chief Judges of local people’s courts after reaching consensus with the Standing committee of the local people’s council; to appoint, remove and dismiss Chief Judges and Deputy Chief Judges of regional military courts and zonal military courts after reaching consensus with the Minister of Defense;*
- *to organize professional training for judges, People’s jurors and officials of courts; and*
- *to regulate the assistant apparatus of the SPC, local people’s courts and submit to the Standing Committee of the National Assembly for approval... ”⁵³*

The management relationship between the Chief Judge of provincial courts and district courts within the province includes:

- *“(to) appoint, remove, dismiss the presiding judge and deputy presiding judge of specialized courts and other positions in the provincial court but not including the Deputy Chief Judge and judges; and*
- *to organize professional training for judges, People’s jurors and officials of the provincial court and district courts ”.⁵⁴*

Part III presents the research results on the selection and appointment of judges; the working regime of judges (including matters of rotation, promotion, reward and handling violations of judges, and the principle of independence of the judge in adjudication); the working conditions of judges (internal management regulations; training and fostering of judges; and means of working) and other relevant matters.

⁵³Law on Organisation of the People’s Court dated 02/04/2002, Article 25.

⁵⁴Law on Organisation of the People’s Court dated 02/04/2002, Article 31.

CHAPTER I: Appointment of Judges

1. Conditions for becoming a judge

The criteria for being appointed as a judge are provided in the Ordinance on Judges and People's Jurors dated 11/10/2002 (Article 5), and specified in Joint Circular No. 01/2011/TTLT/TANDTC-BQP-BNV dated 20/10/2011 which guides the implementation of a number of regulations of the Ordinance on Judges and People's Jurors; see also the Ordinance amending and supplementing a number of articles of the Ordinance on Judges and People's Jurors (Article 1 – see Box 2 below).

Box 2: General qualifications of Judges as provided in Clause 1 Article 5 of the Ordinance on Judges and People's Jurors

1. "Vietnamese citizens, who are loyal to the Fatherland and the Constitution of the Socialist Republic of Vietnam, have good moral qualities, are incorrupt and honest, have the spirit to resolutely protect the socialist legal system". This means that judges must:
 - a) strictly abide by the Constitution, the policies of the Party and State laws, not behave in any way that is detrimental to the independence, sovereignty and territorial integrity of the country, the socialist regime and the state of Socialist Republic of Vietnam.
 - b) be eager to learn, practise, improve the level of knowledge, the professional capacity, political quality and evolutionary moral; complete assigned tasks; absolutely obey the assignment and the mobilization of agency, organization.
 - c) Respect people, serve people, keep contact with people closely, listen to their opinions and be subject to their supervision; resolutely fight against corruption, wastefulness and all manifestations of bureaucracy, imperiousness and authoritarian.
 - d) Absolutely fight against persons, behaviours that are detrimental to the Party, country and people, protect justice; have spirit of self-criticism and criticism.
 - e) are not subject to the provisions of Article 2, Chapter I of the Regulation No. 57-QD/TW dated 03 May, 2007 of Politburo on "Some issues about protection of internal party politics."
 - f) do not do the acts provided in Article 15 of this Ordinance
 - g) have never been convicted, including cases that have remission of criminal records
2. "have a bachelor degree in law" means that the judge must have university degree on law granted by national universities having functions on training legal profession in accordance with the law; if the law bachelor degree is granted by foreign educational establishments, this degree must be accepted by competent agencies of Vietnam.
3. "Have been trained in adjudicating skills" means that the judge must have a certificate in adjudication profession training issued by establishments having functions on adjudication profession training in accordance with the law; if the certificate is issued by foreign educational establishments, this certificate must be accepted by competent agencies of Vietnam.
4. "Have been engaged in legal work for a given period of time" means a continuous time since being staffed as a civil servant in accordance with the law, including: court clerk, verifier of tribunal sector; examiner, investigator, procurator of procuracy sector; intermediate or higher level scout, intermediate or higher level policeman of people's police force, intermediate or higher level scout of people's security force and investigator in people's public security force; investigator, security guard in military; staff, executor, public notary, inspector, staff in charge of legal aspect, lecturer of law; the time being elected or assigned to be juror, the time being lawyer are also considered as "having been engaged in legal work for a given period of time".

5. "Have the capability to undertake adjudicating work" means that the judge must grasp and apply provisions of law in adjudication as well as other matters under the jurisdiction of the Court; complete assigned work efficiently, duly and with qualifiedly as evaluated by competent agencies on civil servants management or have good articles, paper researches on law which have been published or applied in practice.
6. "Be healthy enough to ensure the fulfillment of their assigned tasks" means that the judge must have full capacity to perform civil acts. In addition to physical requirement, he must not have any malformations or deformities that directly affect the posture, behavior or performance of Judges.
7. A person being prosecuted for criminal liability or considered for disciplinary sanction, where the final decision of the competent person or organizations/agencies has not been made, is not eligible to be proposed as a candidate for judge selection and appointment.

The fieldwork revealed the case of a provincial court that had to recruit some persons without a bachelor degree in law (LLB) to be officials at court in order to be able to make a judicial appointment at some district courts in mountainous areas. Officials recruited for this purpose were sent to obtain an in-service LLB to meet the qualification for judicial appointment. In a survey conducted with judges in 2006, only 80% of district judges had a university law degree - the remaining had a legal college diploma or an in-service law university degree⁵⁵.

Table 3: Judges' views on sources for judge's appointment

Sources for judge appointment	Provincial judges				District judges			
	Support very much	Support somewhat	Somewhat Oppose	Oppose very much	Support very much	Support somewhat	Somewhat Oppose	Oppose very much
a. Lawyers	20.10%	51.30%	21.10%	7.50%	12.10%	44.00%	31.30%	12.60%
b. Law professors, jurists	40.50%	47.00%	10.30%	2.20%	38.80%	42.70%	13.40%	5.00%
c. Prosecutors	31.70%	60.00%	5.70%	2.50%	29.10%	49.30%	16.90%	4.70%
d. Investigators	21.70%	53.40%	19.20%	5.70%	16.20%	48.10%	27.90%	7.80%
e. Other state officials	4.10%	13.80%	42.90%	39.30%	3.70%	13.80%	48.70%	33.80%
f. Court clerks and other court officials	76.10%	21.20%	0.90%	1.90%	78.60%	15.80%	2.00%	3.70%

⁵⁵ Project VIE/02/015, Support for Implementation of Vietnam's Legal System Development Strategy to 2010, *Report on survey of Needs of Districts Courts nationwide*, Judicial Publishing House, 2007, page 49. See further Le Van Minh, the SPC, *The status quo and demand to increase capacity of local court's judges*, presentation in biannual conference and legal partnership forum "Legal and judicial reform: Real situation and orientation".

The fieldwork also tells us that judges are rarely selected from officials working outside the court sector. Generally, legal officials working in state bodies are rotated to assume management duties in the tribunal sector. Judges interviewed in person “very much” supported the appointment of court clerks or court officials as judges compared to appointments from other sources. The opinions given by judges via questionnaires also supported diversity in the sources of candidates for judicial appointment (See Table 3).

In 6 provinces surveyed, representatives of provincial People’s Councils and People’s Committees reported being ready to support selecting judges from lawyers and other judicial officials if the laws permit. At present, the law provides that the Judicial Selection Committee must implement the selection process based on the proposal of the Chief Judge of the provincial People’s Court. The candidates are examined by the provincial People’s Court, the provincial Fatherland Front and the Provincial Committee about the criteria for becoming a judge.

2. The procedures for judge selection and appointment

Before 04 December 2011⁵⁶ the procedures for judge selection were carried out strictly under the requirements of the “Inter-Circular of the Supreme People’s Court - Ministry of Defence - Ministry of Internal Affairs and the Central Committee of the Vietnam Fatherland Front No. 01/2003/TTLT-TANDTC-BQP-BNV-UBMTTQVN dated 01/04/2003 guiding the implementation of some provisions of the Ordinance on judges and People’s jurors” (then this was re-formulated in the “Joint Circular No. 01/2011/TTLT-TANDTC-BQP-BNV of the Supreme People’s Court, the Ministry of Defence, Ministry of Internal Affairs dated 20/11/2011 guiding the implementation of some provisions of the Ordinance on judges and People’s jurors; Ordinance amending and supplementing some articles of the Ordinance on judges and People’s jurors”).

According to interviewed chief judges and court leaders, both former and current procedures for judge selection and appointment (including new appointment and re-appointment) are objective and strict. After being selected by the local judge selection board, candidate profiles must also be reviewed under the judge appointment procedure of the Chief Justice of the SPC. However, this procedures seems to be the

⁵⁶ The effective date of Inter-Circular No. 01/2011/TTLT-TANDTC-BQP-BNV of the SPC, Ministry of Public Security, Ministry of Home Affairs promulgated on 20/11/2011 guiding the implementation of some provision of the Ordinance on Judges and People’s Jurors; the Ordinance amending and supplementing a number of articles of the Ordinance on Judges and People’s Jurors.

reconsideration of the judge selection procedure at the locality. There is no specific regulation on the time for completing this procedure and it is often prolonged (from 3 months to one year); as a consequence sometimes the local courts do not have enough judges for adjudication⁵⁷. The interviewed chief judges suggested study and renovation to shorten the time for reviewing the candidate profiles by the local judge selection board and the time for judge appointment of the SPC Chief Justice.

Several judges interviewed in person also considered that the role of the local judge selection board is overly formal, and negatively affects the mental state of judges who may later be “afraid” to adjudicate administrative cases touching local authorities because these agencies have key members on the local judge selection board (see Table 4). The Judges also confirmed that it usually takes counselling divisions of the SPC much time for considering and reviewing the candidate files, which is the reason for prolonging the procedure of judge appointment by the Chief Justice of the SPC. Some Judges even submit application dossiers for appointment 6 or 7 months before expiry of their term but they are still not appointed in time. During the time awaiting for reappointment, they often support other Judges. Interviewed Judges also reveal that they usually had to prepare dossiers for reappointment as soon as the beginning of the 5th year in their term so as to obtain soon reappointment.

Representatives of the People’s Councils and People’s Committees of provinces and provincial-level Party Committee of 6 field surveyed provinces said that they create favourable conditions for judicial appointment and re-appointment of the tribunal sector. The Board of judicial selection usually bases its decision on the tribunal sector’s assessment of the quality of work of the official to be appointed or re-appointed. Such information is supplied by court personnel. Therefore, procedures for appointment and re-appointment of judges are mainly carried out actively by the tribunal sector. The role of the Board of the judge selection is only for monitoring and evaluation to ensure the proper running of local official organization affairs.

3. Tenure and working time of judges

Under the current provisions, the tenure of Judges is 5 years. This tenure is assessed by judges and court leaders as too short. Judges in 18 surveyed courts

⁵⁷ Pursuant to the Ordinance on Judges and Jurors of the People’s court (2003) and Inter-Circular No. 01/2003/TTLT-TANDTC-BQP-BNV-UBTWMTTQVN providing guidelines for implementation of some regulations of the Ordinance on Judges and Jurors of the People’s court, the procedure of judge selection is clearly provided in terms of formality and manner of implementation at local court level; nevertheless, there is no such regulation on consideration and counselling the Chief Justice of the SPC on judge appointment.

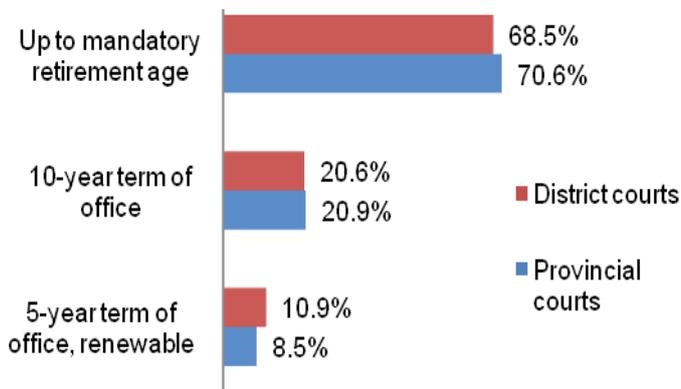
suggested extending judicial tenure. Some judges suggested extending tenure under the relevant legal provision to 7 years, 10 years or until retirement age. A majority of judges in both field surveys and questionnaires proposed that judges' tenure should be prolonged until retirement.

Table 4: Judges' viewpoints on procedures for being re-appointed

	Provincial court				District court			
	Completel y agree	Agree	Not agree	Completel y disagree	Completel y agree	Agree	Not agree	Completel y disagree
Judge Selection Council works effeciently as the Council actually removes unqualified judges	34.0%	46.7%	16.3%	3.0%	41.3%	42.1%	13.1%	3.5%
Judge Selection Council is subject to the unofficial impact of judge candidates	7.2%	13.2%	57.4%	22.3%	4.4%	18.2%	59.8%	17.5%
Judge Selection Council needs to strengthen the people's oversight mechanism to judicial branch	19.3%	60.0%	17.9%	2.9%	21.1%	53.6%	15.6%	9.7%
Judge Selection Council does not bring into play as only reappoints all candidates	5.9%	15.9%	60.4%	17.8%	6.2%	15.5%	57.5%	20.9%
Judge Selection Council prevents efficiently immoral behaviours in judicial branch	20.7%	55.2%	20.0%	4.1%	20.8%	49.8%	21.7%	7.7%
Judge Selection Council never promotes unqualified judges	23.3%	43.0%	28.7%	5.0%	22.2%	44.5%	25.4%	7.9%
Judge Selection Council reduces the judicial independence as local authorities have much influence	25.7%	29.1%	38.0%	7.2%	24.4%	31.7%	32.5%	11.4%
Judge reappointment procedures still exist shortcomings, take time and cause work stagnance	53.4%	36.1%	6.3%	4.2%	49.7%	36.6%	6.6%	7.1%
Under the new judge selection procedures, officers with high seniority but modest capacity will be more favoured than qualified person but with less seniority	18.4%	30.3%	39.7%	11.6%	16.0%	29.5%	41.6%	12.9%

Elements that judges cited as causing them do not dare to take initiative and exercise independence in adjudication included short tenure, and the percentage of cases requiring amendment or overturning attributable to judicial reappointment. Some opinions mentioned that in the first year and last year of the first tenure, judges tend to consider cases that will be less likely to lead to an appeal or protest. Therefore, the suggestion for prolonging the tenure is a practical need.

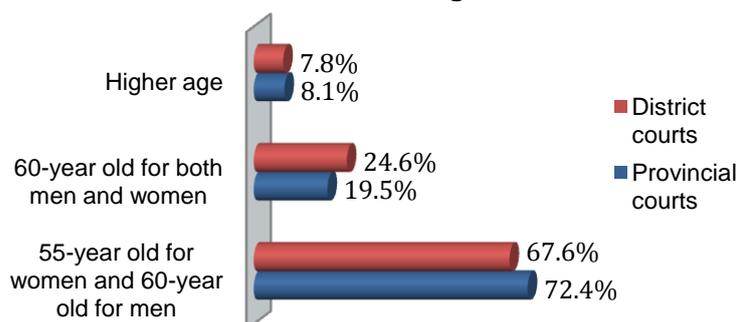
Figure 16: Judges' views on judge's term of office



Similar to the findings of the 2006 judge survey, the majority of judges who answered the questionnaires suggested extending the judge's tenure to retirement age (see Figure 17)⁵⁸.

In the field-surveyed provinces, the responses of representatives of the provincial People's Councils, People's Committees and provincial party committees were diverse on measures for improving supervision role over the court operation and adjudicate quality. Some representatives also suggested that to enhance the quality of adjudication work, supervision measures should be laid down rather than maintaining the existing judicial reappointment mechanism. Others advocated a change to "tenure up to mandatory retirement age" or "10-year tenure". Some protested against the proposal to extend judges' tenure, claiming that the current mechanism for managing adjudication quality of courts has not met the practical demand and corruption still exists. The current reappointment mechanism is a mechanism of supervising and assessing judges after 5 years

Figure 17: Judges' views on judge's retirement age



⁵⁸According to Report on Survey of Needs for District Courts Nationwide, the rate of district judges expecting their tenure lasting up to mandatory retirement age is the highest, accounting for 53.71%, 9.36% of judges expects their tenure twice as long as the current one (10 years). Just 14% of judges request to maintain the judge tenure as currently (5 years).

of work. While participation of other bodies in supervising courts' operations is limited because of the guarantee of the independence of the court system.

4. Rotation, promotion, reward of judges and settlement of judicial violations

a. Rotation mechanism

The rotation of management officials is meant to implement the Resolution of Congress IX and Central Resolution No. 3 (Tenure VIII) on personnel affairs aiming at objectives such as *“to create conditions for training, fostering and challenging staff, especially young staff... to adjust the arrangement of personnel more appropriately, and increase staff for places with urgent demand ... to dispel backward views and practices in personnel affairs, such as the tendency toward local and closed practices in each unit”*⁵⁹.

In 2012, implementation of the staff rotation policy continued, including the Conclusion of the Politburo set forth in the guideline to *“rotate and arrange that a number of key leadership titles (secretary, chairman of people’s committees, head of public security sector, tribunal sector, procuracy) are not local persons, and strive that more than 25% of provinces and cities and more than 50% of districts satisfy this policy by 2015; combine appropriately the location and arrangement of leadership at all levels and sectors, overcome the situation of insufficient staffing in some places and redundancy in other places, and the situation of locally confined, stagnant, bureaucratic, and corrupt practices, in order to contribute to the consolidation of the people’s trust in the Party and the State”*.⁶⁰

Field surveys showed that in 2 provincial People’s Courts the Chief Judges are rotated from other sectors to the tribunal sector. These two Chief Judges apply many new management methods which other provincial courts are cautiously studying, such as: judicial administrative reform on the receipt of petitions; periodic reception of citizens; case assignment; and changes of attitude and behaviour of judges and court officials toward citizens. These leaders bring their own experience from other agencies into the court operation. These Chief Judges received good comments for what they have

⁵⁹ Resolution No. 11/NQ-TW dated 25 January 2002 of the Politburo on the rotation of leading and managerial officials, Section II, para. 1, Thư viện pháp luật, <http://thuvienphapluat.vn/archive/Nghi-quyet/Nghi-quyet-11-NQ-TW-luan-chuyen-can-bo-lanh-dao-va-quan-ly-vb128753t13.aspx>.

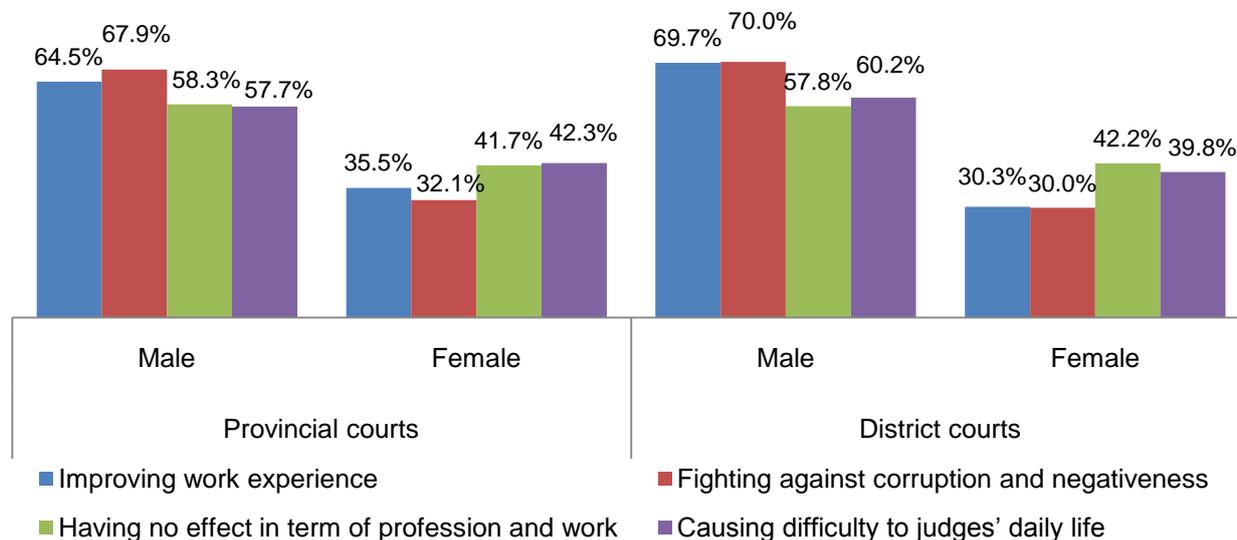
⁶⁰ Conclusion No. 24/KL-TW dated 05/06/2012 of the Politburo on strengthening the planning and rotation of leading and managerial officials up to 2020 and the subsequent years, Section II, para 1.2, The Communist Party Development (Tap chi Xay dung Dang), <http://xaydungdang.org.vn/Home/vankientulieu/2012/5163/Ket-luan-cua-Bo-Chinh-tri-ve-day-manh-cong-tac-quy.aspx>

done for the tribunal sector in the direct interviews conducted with provincial party committees/city party committees, provincial people’s councils, and the provincial/city people’s procuracy.

Opinions raised in the field survey suggested that because these rotated judges were formerly outside the tribunal sector they were enterprising in changing the working practices within the tribunal sector, and that they are rotated to help in developing the tribunal sector of the province. Rotated staff often hold the position of members of the provincial party committee or city party committee so they practise strong political advocacy for the provincial party committee or city party committee. However, there are some concerns about staff rotated to the tribunal sector from other sectors would not have adjudication experience and thus would not be able to properly manage court operation, or perform adjudication work of an adequate quality, affecting the independence of courts.

Staff rotation within the Court system is applied not only to leading staff of Courts, but also to judges. Judges may be appointed or seconded from an area to another area in a certain time for such purposes as “improving work experience”, “contributing to fight

Figure 18: Judges' views on rotation mechanism



against corruption and negative issues”, accelerating the progress of settling and recovering the situation of overdue cases, or supplementing staff from delta area to mountainous, far and remote areas⁶¹.

⁶¹ Summary Report of work in 2006 and orientation for work tasks in 2007 of the People’s court, January 2007; Summary Report of work in 2008 and orientation for work tasks in 2009 of the People’s court, December 2008; Notice No. 210/TB-TKTH on Conclusion of the Chief Justice of the Supreme People’s Court at the conference on

In the survey questionnaire, the majority of judges advocated the mechanism of judicial rotation among courts to “fight against corruption and negativity” and “improve work experience” (see Figure 18).

An equal number of male and female judges are also concerned that the rotation of judges may “cause difficulties” to the daily life of judges. Thus, there is no difficulty or difference in relation to gender characteristics in allocation, seconding, or rotating judges.

Box 3: Story of a Judge in a mountainous district in the central area

A Deputy Chief Judge in an urban district has been appointed as the Chief Judge of a mountainous district for seven years under rotation mechanism. The leader of the provincial court asked him to overtake this position in one term (5 years) and return to his home district with his wife and children after that. The Judge can only visit home once a month due to far distance and uncomfortable commutation. But now he stepped into the second term, the leaders of the Provincial People’s Court have not found a placement. Some other Judges and clerks in his court share the same situation. Their families stay in the urban area but they work in the mountainous area. All of them have to stay in official residences and can only visit home once or twice a month, longing for others rotated to replace them. However, no one accept to work there. The number of cases of the district is also few, thus their court has a limited budget. Meanwhile, trials with minor ethnic should be careful with the local custom. They even invite the litigants to have meals, stay overnight, and take them home on their own pocket money if the litigants live far away. The judges, clerks and other staff in this court hardly have opportunities to attend training, exchange experience and social activities with officials from other courts due to far distance and uncomfortable commutation.

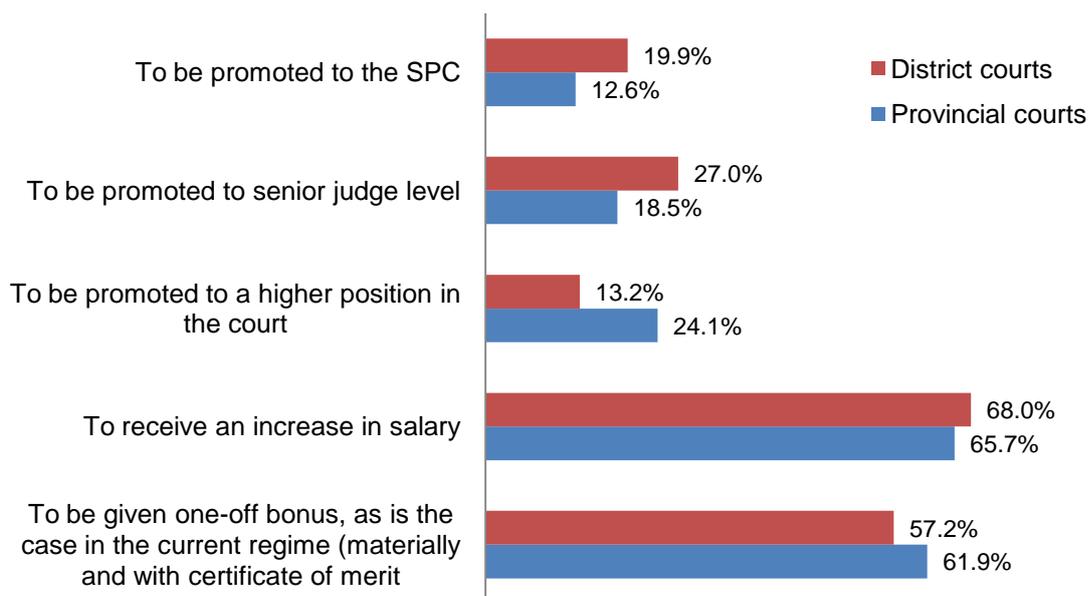
b. Mechanism for salary increases, promotion and reward in court management

According to the Ordinance which amends and supplements a number of articles of the Ordinance of the People’s Court’s judges and jurors, judges of the People’s Court are divided into 3 levels at present: a) judges of the Supreme People’s Court; b) the intermediate judges working at the Provincial People’s Courts; and c) the primary judges working at the District People’s Court. This classification was evaluated as not operating well by those Chief Judges and other senior judges of the district People’s Courts

interviewed in person. The classification of judge levels strongly relates to the salary level. Those Chief Judges and other senior judges said that the district judges work hard and devote several years to adjudication work of the district courts as a result of the work assignment requirements of the Party and demands of the people. Classifying them as primary judges with a low salary means denying their contribution to local adjudication. Comments showing the strongest reaction to this effect came from the courts in rural and mountainous areas.

In practice, the salary of judges depends on (i) the level of the judge and (ii) their working time in the tribunal sector (i.e. seniority), but it does not depend on the capacity of judges and the quality of their adjudication work. These factors are only considered upon reward at the end of the year. The reward is usually for encouragement purposes only, such as presenting titles and a small sum of money to certain judges. The majority of judges through both types of survey desired increasing salary as an incentive.

Figure 19: Judges' views on preferred forms of incentive



c. Mechanism for handling violations by judges

Judicial independence and judicial responsibilities are two indispensable aspects of ensuring the implementation of the law; however, they may sometimes conflict with each other.⁶² Judicial independence is not meant to protect judges from discipline,

⁶² J.Clifford Wallace, Remedy judicial corruption while guaranteeing judicial independence, People's Court Journal, Vol 8, 2006, pages 40-46.

investigation or criticism by executive bodies. Therefore, it is necessary to have a mechanism to handle violations by judges in a fair and objective manner.

As mentioned above, survey results indicate that some judges believe that the current mechanism of reappointment interferes with judicial independence. On the opposite side, others support the continued application of the reappointment institution to help control the adjudication quality and preserve judges' code of conduct.

Similar to the opinions of judges in the previous surveys, the majority of judges do not wish to base the reappointment of judges on the rate of “overturned” or “amended” cases (see Figure 20). “Reappointment”

is made regularly in the 5-year tenure. As stated above, to minimise the possibility of being disciplined, judges have found ways to minimise the possibility of “overturned” or “amended” cases (such as to avoid receiving the petition of or accepting complex cases, or “reporting during adjudication” and “request instruction for case settlement”). According to the opinions recorded in the field survey, the practice of “case report” or “case instruction” as discussed above has broken many management and judicial rules governing the courts' activities, such as “the principle of independence in adjudication” and “the principle of collective decision”. Such principles come to function for form's sake only and are not respected in practice any more. Some opinions said that judges

Figure 20: Judges' views on the rate of allowed overturned cases for reappointment

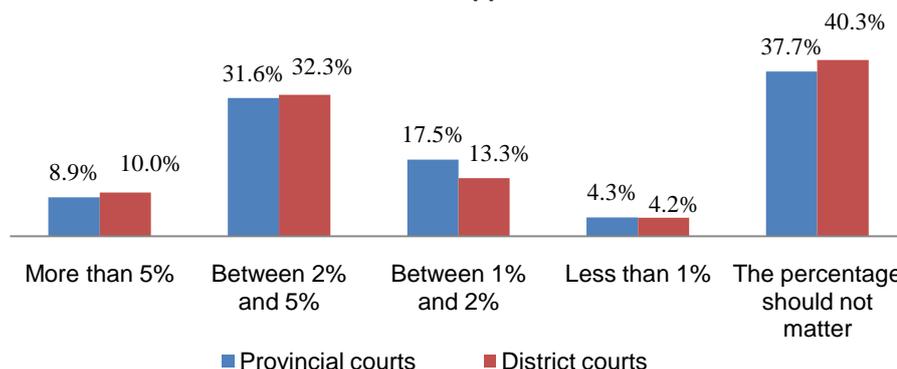
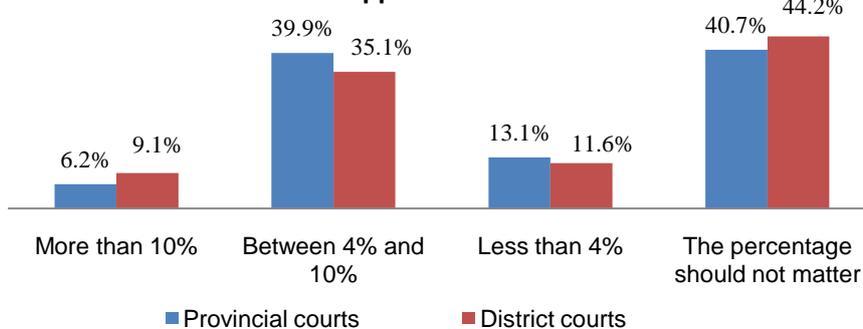


Figure 21: Judges' views on the rate of amended cases for appointment



have even “reported their case” or requested for “case instruction” in order to bind the court leaders or judges at higher level to their judgment.

The mechanism for settling complaints by judges who are disciplined or not reappointed is not really clear, whether the complaint is within the court, among local courts or to the SPC.

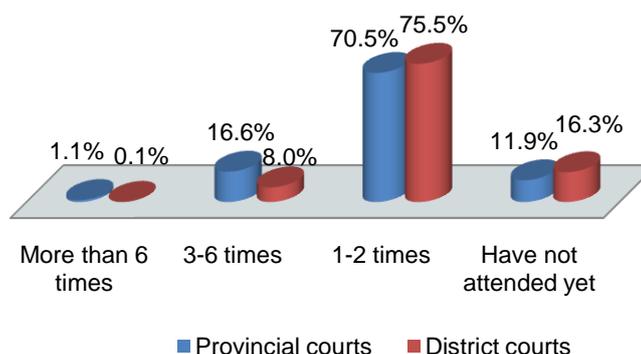
In some countries, the role of the chief judge is to directly supervise the activities of judges and deal with simple cases and small claims.⁶³ The model in Vietnam is similar - the Chief Judge is considered to be the head of a state body to settle complaints and denunciations about the behaviour of judges in accordance with the previous Law on Complaints and Denunciation and the current Law on Complaints and Law on Denunciation. Many Chief Judges also act as Secretaries of the Communist Party of the Court, and are thus responsible for monitoring the ethical rules and behaviour of judges who are also Party members.

In some countries, the Judges participate into some professional associations, such as judge associations. These associations have their own ethical code, code of conduct of judges, such as United States, Canada and EE.⁶⁴

In Vietnam, many judges are members of Vietnam Lawyers Association. Some courts have their own cells of Vietnam Lawyers Association. Many judges interviewed in person, and 60% of judges who answered the questionnaire, suggested that an association of judges should be established in order to facilitate judges’ work and be responsible for the implementation of monitoring adjudication from the people.

Some interviewed judges proposed that the Central Judicial Reform Steering Committee and the SPC should better perfect the role of managing adjudication and supervising activities of judges, and bear responsibility for adjudication quality.

Figure 22: Judges' attending seminars and training courses



⁶³ J.Clifford Wallace, Remedy judicial corruption while guaranteeing judicial independence, People’s Court Journal, Vol 8, 2006.

⁶⁴ See further on website of Federal Judges Association), <http://www.federaljudgesassoc.org>; National Judges Association, <http://nationaljudgesassociation.org>; Canadian Association of Provincial Court Judges, <http://www.judges-juges.ca>; Association of European Administrative Judges, <http://www.aeaj.org>.

There is an opinion that the performance of judges should be assessed by the persons jointly participating in proceedings and the people. This method has already been applied in some foreign court systems, such as New Zealand where the first evaluation of Judges' work was implemented in 2010⁶⁵). This method was also applied in Vietnam in assessment of quality and efficiency of public administrative services. Moreover, this method is also consistent with the spirit of 'people know, people check' (dan biet, dan kiem tra) or 'the people are the root' (lay dan lam goc).

5. Judicial training and development

For judges to be independent and improve their right of self-determination, they must be continuously taught and have professional development including fostering knowledge (including newly promulgated legal provisions) and adjudication skills and other knowledge about the expertise of judges, in order that they develop confidence in their decisions and are ready to be responsible for those decisions. Both questionnaire survey and in-depth interview indicate that many judges are not confident enough to make a judgment and consult the "case settlement direction" with the leaders of their Court out of fear that their judgment may be amended or cancelled by the senior court (see Figure 11, Figure 12 and Figure 13).

Appropriate training and fostering of knowledge for judges cannot only take place before judicial appointment (such as the judge training program at the Judicial Academy), but also includes ongoing annual fostering of knowledge/professional development.

In the surveyed provinces, the Chief Judges of the provincial People's Court reported that the work of knowledge training and fostering in provinces is mainly done through the shared adjudication experience of meetings between the Chief Judge of the provincial People's Court and those of district People's Courts, or the assigning of one person to attend relevant training. Then, the district Chief Judge imparts the knowledge gained by that person in training to the judges of his/her court. When the SPC offers specialised training in each cluster and area, judges have the opportunity to attend. However, the provincial People's Courts have limited budgets, thus training courses cannot be held regularly. The organisation of specialised training also requires support in terms of teachers who are senior judges in the SPC or senior reporters on politics and law.

⁶⁵ www.kiwisfirst.co.nz/files/Judge%20Surveyfinal.xls

In Vinh Long People’s Court in particular, the court held a number of training courses on office computing for judges in order to universalise the skills of using computers and searching documents for judges. To pay for the expense for organising these courses, a number of courses were funded by provincial People’s Committee while some others were sponsored by the JUDGE Project.

Similar to Judges’ responses to the questionnaire (Figure 24), all directly interviewed judges desired that appropriate training would be implemented as soon as new legislation is enacted. Some judges suggested that the SPC should maintain from 2 to 3 training locations and provide regular training for judges, with the training program and content widely publicised. Judges could then review the published program content and

select issues of interest and suggest the provincial people’s courts support them to participate in the relevant training.

The occupational practices of judges require judges to have life experience, social knowledge, and social relationships. Unlike other intellectual professions requiring personal responsibilities, such as doctors, lawyers, and teachers, the judges’ community in Vietnam has not formed a professional association to represent the professional activity of

Figure 23: Difficulties of judges for new regulations

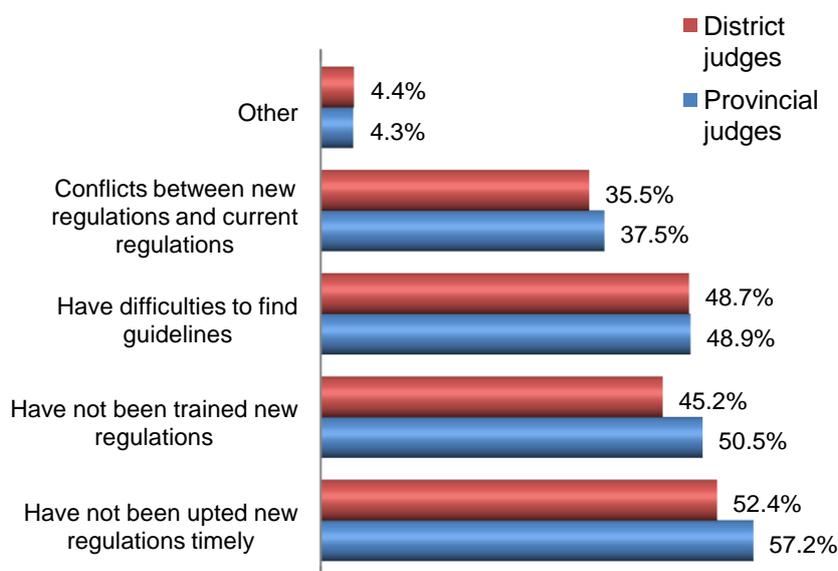
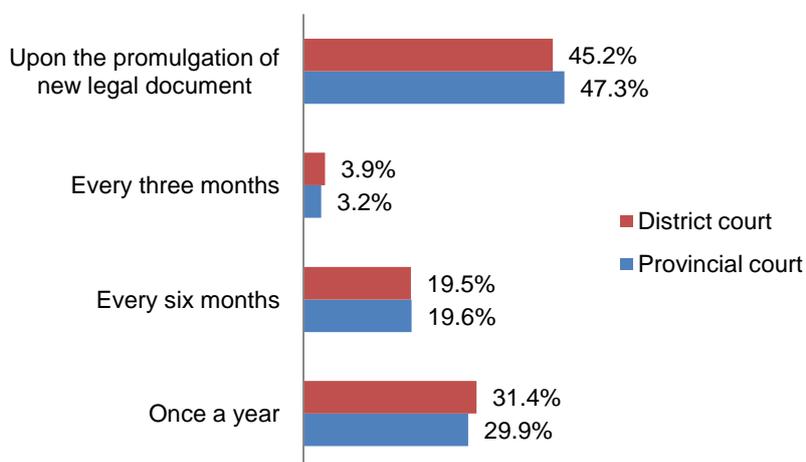
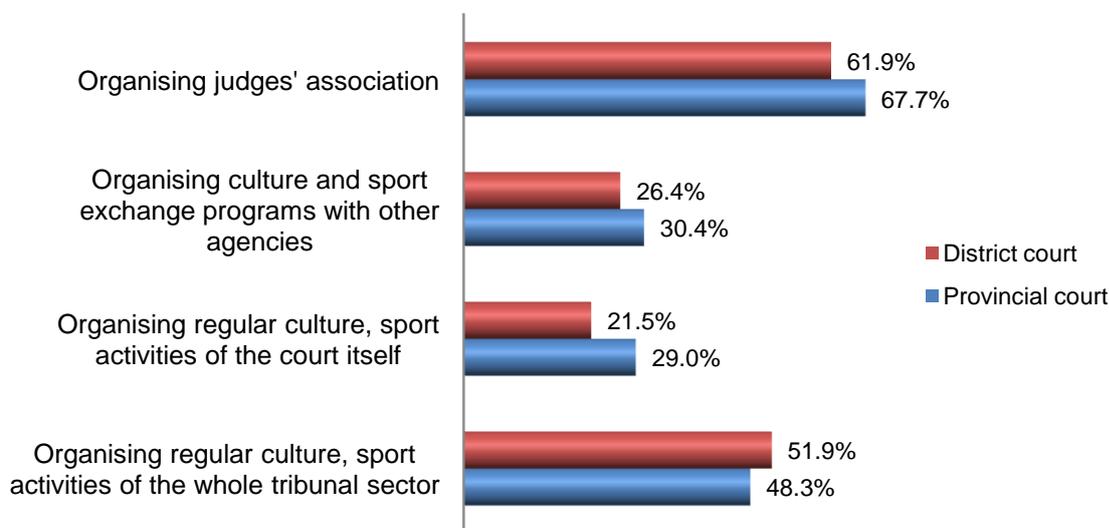


Figure 24: Judges' views on training courses



judges and to protect the reputation of the judicial profession. Most surveyed judges wanted a socio-professional organisation of their own (Figure 25). Beside the Communist Party, the Communist Youth Union, the trade union, and the Women’s Union, many courts have connections with branches of lawyers’ associations. But the activities of these lawyers’ associations are irregular and there is no specific action agenda relating to the development of professional knowledge or ethics of judges.

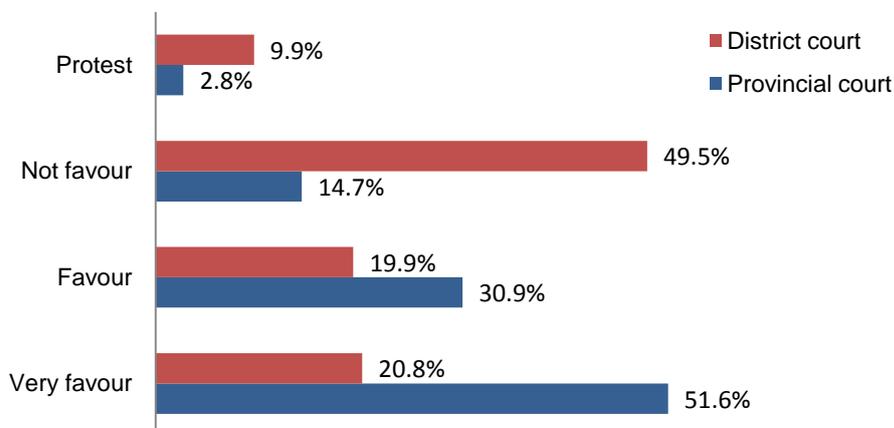
Figure 25: Judges' viewpoints about programs and activities relating to the development of the judicial profession



All provincial Courts have established trade unions and Women’s Associations. These associations occasionally organise a number of cultural activities and sports internally within the court system of the province and in coordination with the activities of the Provincial Women’s Union or the Officials’ Union of the Provincial Federation of Labour. Training activities are also sometimes held, such as training on gender equality or the rights of children.

According to survey results, more provincial judges desire specialisation in a particular area of law than district judges (see Figure 26). Some other provincial judges suggested that such specialisation should only apply in provinces with a large volume of cases in each sector and each region. In many places, the number of economic, labour, and administrative cases is small, and specialisation would mean that some judges would not have many cases for trial. Therefore, specialisation should be taken into account for the nature of the case rather than the type of the case.

Figure 26: Judges' viewpoints on specialising in specific field

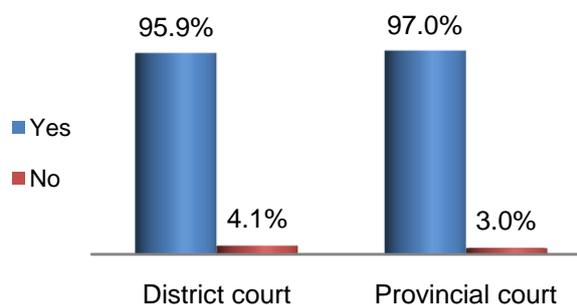


6. Internal management method by local courts

In this survey it is recognised that most local courts operate according to management methods based on regulations as opposed to the discretion of current leadership⁶⁶.

Management on the basis of relevant regulations is considered good practice. Regulations will encourage an organisation to operate in line with relevant objectives, functions, working principles and personal accountability. Regulations must therefore be formulated in conformity with the development objectives of the organisation, and publicised and promoted to every staff member working in the organisation. In the context of courts, regulations must encourage court independence and professionalism.

Figure 27: Internal regulations at Courts



In response to the survey questionnaire, 97% of provincial judges and 95.9% of district judges stated that their own courts had internal regulations (Figure 27). In in-person interviews, all Chief Judges, judges and court clerks affirmed that their courts had internal working regulations, together with legal provisions for staff in the tribunal

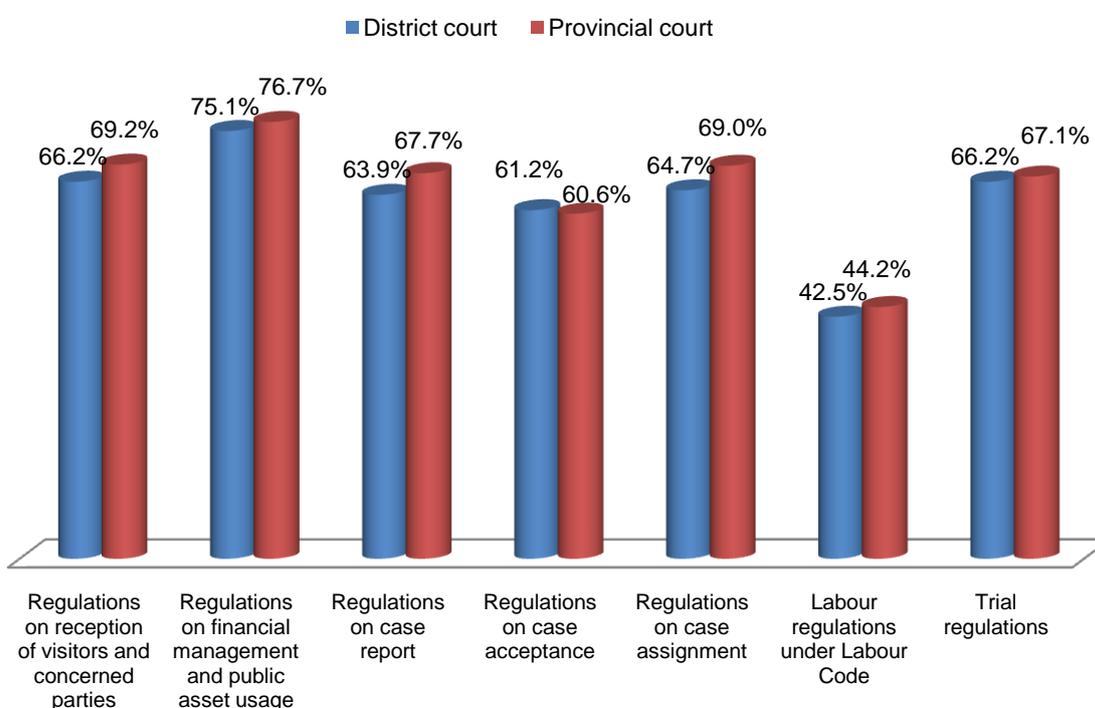
⁶⁶ Report on the Survey of the Needs of District Courts Nationwide, Project VIE/02/015 Support for the Implementation of Vietnam's Legal System Development Strategy to 2010, Judicial Publishing House, 2007, page 166.

sector, cadres and civil servants, and regulations for those who were members of the Communist Party.

Some typical internal regulations in tribunal sector agencies include: regulations on reception of guests and concerned parties; regulations on managing and using public assets; regulations on case reporting; regulations on case assignment; internal labour regulations; and trial regulations. Via field survey, the Research Team confirmed the existence of internal regulations in written form in one court, while in other courts, it was said that there existed regulations or that regulations had previously been read, but respondents hesitated when referring to written internal regulations. There are some regulations formed from conclusions of the internal meetings and directly distributed to all court staff.

Internal regulation in some courts needs to overcome matters which may affect the principle of independence in adjudication, such as regulation of case reporting by judges. One court applied sanctions to a judge who did the adjudication without reporting about his case (as mentioned above in Box 4), as it considered that the judge violated the relevant internal regulation.

Figure 28: Contents of internal regulations at Courts



In one southern province, the Chief Judge of the provincial court formulates various regulations to build a new working process together with the judges. Having been rotated from a body of the provincial government to the court, the Chief Judge realised that the working manner of the court was not efficient. Numerous judgments were being corrected and abrogated due to violation of procedure, particularly due to circumstances of judges prolonging case settlement by beyond the prescribed time-limit. The Chief Judge has set up a lot of new regulations, including regulations on receiving petitions and criminal case files, on reception of citizens and serving attitudes, on the working

Box 4: Reporting judgments in a provincial court in the middle region of Vietnam

A judge of a criminal court has been disciplined for adjudicating 4 appellate court hearings and 2 first instance court hearings, out of a load of 100 cases in 2010, without reporting to the Court leaders on the decisions. This judge based this conduct on the fact that these cases were adjudicated based entirely on evidence apparent in the case files and relevant legal provisions. For other cases, this judge reported duly to the Court's leaders. He said that reporting during adjudication is a good practice that can help the AP be properly aware of the cases enabling also receipt of comments from other judges in the judge Committee of the provincial court; but that reporting during adjudication should not be an administrative procedure that judges are forced to comply with. If so, the independence of the AP will be threatened.

The Court leaders said that reporting during adjudication is already a regulation. According to regulations, judges have to report before the trial to Court leaders then the Court leaders will convene the judge Committee to exchange professional matters with judges. These are regulations that judges must comply with. Reporting during adjudication is a professional exchange to help judges be better informed of the cases and criminal matters should not be omitted. The Court leaders and judge Committee help judges and the AP to increase their awareness of the cases, rather than imposing the sentence to be applied. Judges and the AP must be responsible for the judgment. When deciding the judgment, judges can have different views with those of the Court leaders and judge Committee and can record their opinions in the Minutes of Verdict Deliberation. The AP will decide based on majority decisions. That is the independence of judges. (Sai Gon Tiep Thi Media on 12/08/2011) <http://www.sgtt.com.vn/Thoi-su/151292/Chanh-an-tinh-Khanh-Hoa-tran-tinh-ve-“bao-an”.html>; <http://sgtt.vn/Thoi-su/151404/“An-vang-loi”-va-an-luong-tam.html>

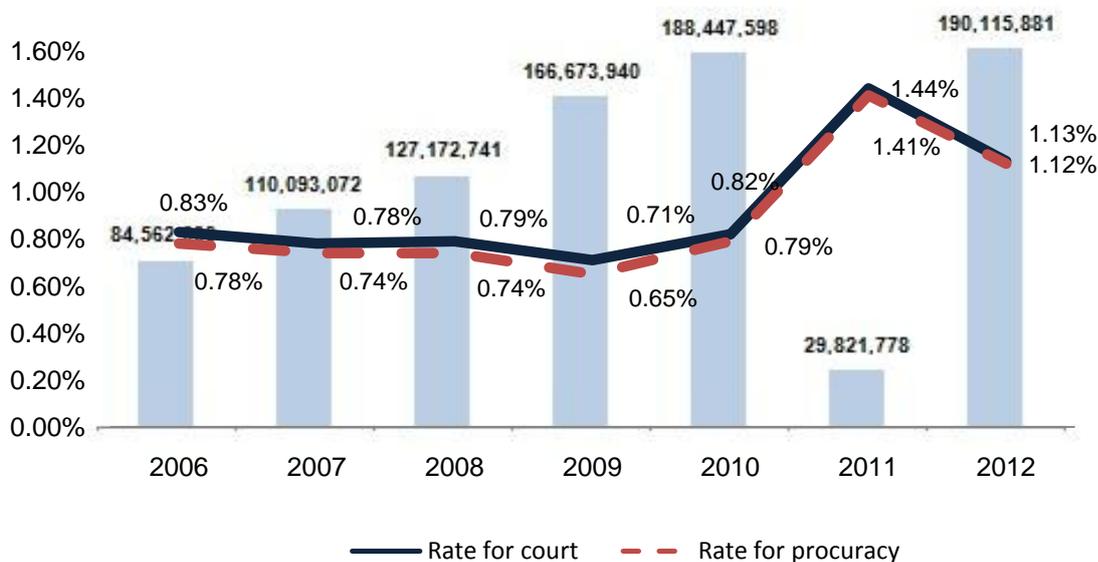
regulations of specialised courts and the court office, and so on. Through such regulations, the Chief Judge has changed the previous working practices of the court. According to this Chief Judge, if other state agencies can operate efficiently through the application of working regulations or ISO processes, agencies of the tribunal sector can also. All regulations have been formulated in written form, bound in volume and made public to all staff of this provincial court, and these regulations have been sent to the

Provincial Steering Committee for Judicial Reform to assist other agencies in cooperating or supervising the operation of the provincial court.

CHAPTER II: Guarantee of budget and working conditions for judges

1. Budget for the operation of the courts

Figure 29: Estimated budget granted for central agencies
(unit: million dong)



The estimated budget for the operation of the court system and procuracy system has increased in recent years (see Figure 29⁶⁷), which is consistent with the increased numbers of cases and judges over the period (see Figure 1 and Figure 2 in Part I).

Under the provisions of the Law on State Budget, the National Assembly approves the state budget estimates and the central budget allocation⁶⁸. The Government establishes and submits to the National Assembly the State budget estimate annual plan on allocation of the central budget, and the plan on State Budget readjustment in case of necessity.⁶⁹ The operating budget of the people's court system and people's procuracy

⁶⁷ Source: Website of the Ministry of Finance

(http://mof.gov.vn/portal/page/portal/mof_vn/1351583/2126549/2115685). In 2011 the estimated budget announced by the Ministry of Finance was not valuable for the budget for the Ministry of Public Security. This led to the total budget for the central government in 2011 be lower than the budget of other years and the rate for the Court and Procuracy to be higher.

⁶⁸ Law on State Budget, Article 45.

⁶⁹ Law on State Budget, Article 20.

system is subject to the central budget.⁷⁰ Therefore, the local budget does not include items for the operation of the local courts.

The current budget allocation method of the SPC is “based on the characteristics of each locality to grant a budget that meets work requirements i.e.

local financing is unequal (localities need to actively propose)”.⁷¹ The court’s budget is built on the basis of “self-control, self-responsibility for the staffing and administrative management budget”.⁷² This allocation method is also applied to state administrative bodies in general in accordance with a Decree of the Government⁷³. It is also known as the “fixed amount grant” (see Figure 30). Therefore, courts’ budget closely depends on the number of officials and employees within the tribunal sector.

Most Chief Judges said that the current budget allocation method in the local courts was the “fixed amount grant” method. Only 13.8% of Chief Judges of provincial people’s courts and 10.4% of the Chief Judges of district courts selected the questionnaire answer that read “granted based on actual demand”.

Figure 30: Mode of budget grant of the courts under Chief Judges' views

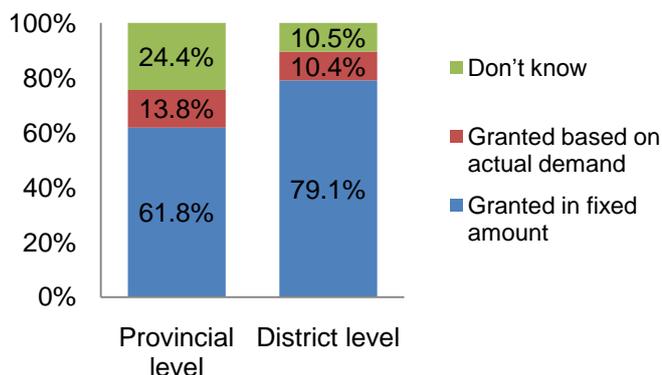
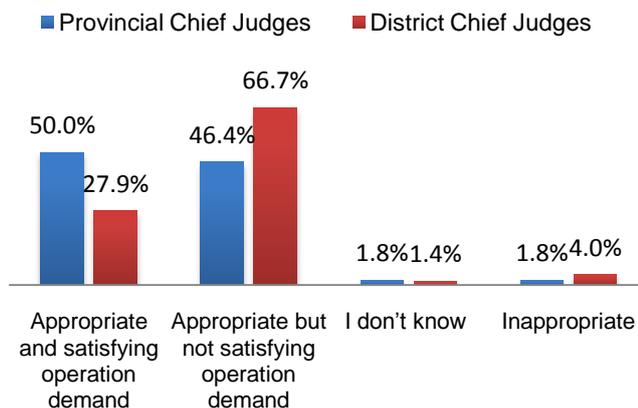


Figure 31: Judges' comments on current budget grants



⁷⁰ Decree No. 60/2003/ND-CP of the Government on 06/06/2003 detailing and guiding the implementation of the State Budget Law, Article 21.

⁷¹ Decree No. 130/2005/ND-CP of the Government dated 10/07/2005 on the autonomy and self-responsibility for the staffing and administration funding for state agencies.

⁷² Notice No. 17/TB-TKTH about the conclusions of the Chief /Justice of the SPC at the Review Conference in 2009 and implementation of tasks in 2010 on 03/02/2010.

⁷³ Decree No. 130/2005/ND-CP of the Government dated 10/07/2005 on the autonomy and self-responsibility for the staffing and administration funding for state agencies.

The “fixed amount grant” method aims to reduce the operating expenditures of state administrative agencies and promote the streamlining of the apparatus in order to improve the quality and efficiency of the work performed by the administrative agencies and divisions.

In in-person interviews, Chief Judges and Deputy Chief Judges all said that the current budget for courts was limited. The court had to try to operate within the allocated budget. In addition, some courts received support from the local People’s Councils and People’s Committees for some specific activities of the Courts, such as purchase of equipment, mobile hearing expenditures, organising tribunal sector events etc. Most of this support for the courts is irregular and not fixed because it is not permitted by legal regulations. Only 13 of the 18 surveyed courts receive support from local government. The remaining 5 courts do not obtain this support due to various reasons, such as a limited local budget, court leaders’ not wishing to be supported as it is contrary to legal provisions, or due to complicated grant procedures.

Box 5: Connecting to the internet thanks to the savings from office activities

A Chief Judge at a mountainous district court used funds allocated for other purposes to pay for the court’s monthly internet subscription. So, instead of reading 2-3 newspapers a day, now the court staff are able to read the newspapers available on the internet. Moreover, they can look up general documents, legal documents, etc. The Chief Judge and other officials have also agreed to reduce expenses to equip more air conditioners for offices, and procure computers for judges and Court clerks.

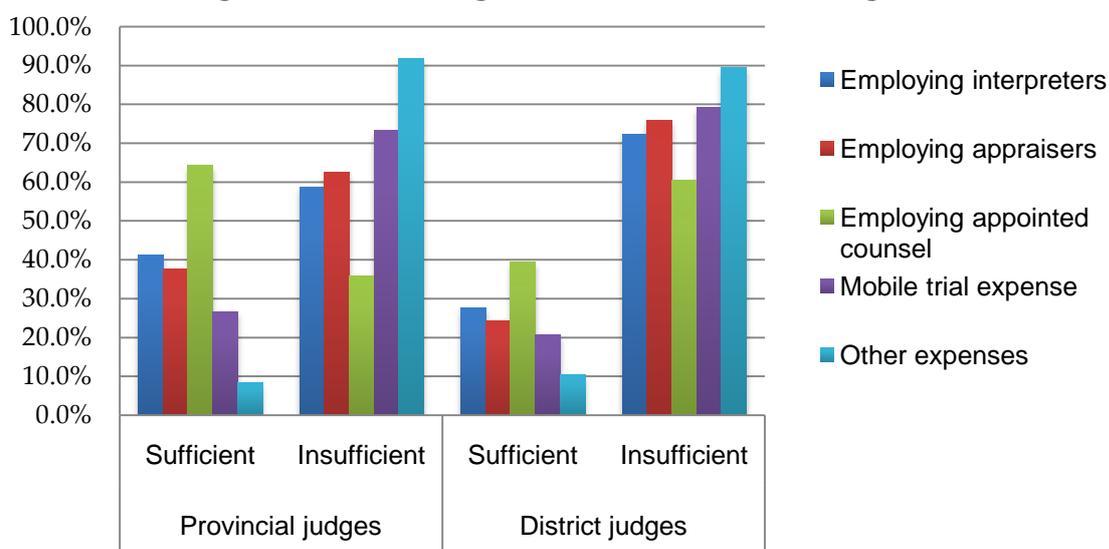
Direct surveys indicated that the courts receiving this support are mainly in the big cities like Hai Phong, Da Nang and Ho Chi Minh City. These cities have surplus revenues in the local budget. The People’s Committee of each city allows grants of “a small percentage” to support local courts. However this support is only based on the proposal of the courts, and is not a regular grant.

According to the representatives of the People’s Councils and People’s Committees of interviewed in person in the provinces, the local budget supported the activities of the local court before the promulgation of the Law on State Budget. However, currently the budget for the operation of local courts is not included in the list of expenditure estimates for local government budgets. In council meetings, the People’s Council will not approve any items for courts if the province does not have surplus revenues from the local budget. For some People’s Committees, financial support for operation of the courts is based on savings from a number of local activities. However, the support of the People’s Committee for the People’s Court must also comply with the provisions on the

use of the state budget. Every year, the state budget expenditures of the locality are audited. Any inappropriate expenditures will be recovered.

However, the budget allocation method of fixed amount grants to the courts has created favorable conditions for Chief Judges to take the initiative in the allocation and strict control of court expenditure and avoidance of waste. Thanks to this method, some courts have saved money to buy more equipment for work, such as computers, recorders,

Figure 32: Chief Judges' views on fixed amount grant



video recorders, motorcycles, and air conditioners (see more examples in Box 5).

Some local courts in localities with no surplus revenues from the local budget are still receiving financial support from local agencies, however these expenditures are insignificant, such as support for cultural festivals, sports, or buying one or two computers or printers. All Chief Judges in localities which do not have surplus revenues from the local budget expected the SPC or the Provincial People’s Courts to provide more funding for their activities.

Table 7: Provincial court judges' viewpoints on court budget allocation

	Provincial court				District court			
	Totally agree	Agree	Not agree	Totally not agree	Totally agree	Agree	Not agree	Totally not agree
The National Assembly directly allocates budget for courts at all levels	69.5%	17.2%	10.5%	2.9%	67.3%	17.5%	11.0%	4.3%
Both SPC and local authorities grant budget for provincial and district courts	60.0%	29.8%	6.1%	4.1%	59.6%	23.2%	9.4%	7.8%
Only SPC grants budget for provincial and district courts	65.8%	18.4%	14.5%	1.3%	2.3%	6.4%	21.7%	69.6%
Only local authorities grant budget for provincial and district courts	14.8%	5.6%	50.0%	29.6%	6.6%	6.1%	39.1%	48.2%
Other bodies	2.5%	2.5%	57.5%	37.5%	3.1%	6.6%	33.0%	57.2%

All Chief Judges interviewed in person reported that the budget for irregular expenses of judicial activities, such as “hiring an interpreter”, “hiring an assessor”, “hiring an appointed counsel” or “expenditures for mobile hearings” etc, were always sufficient to ensure the requirements of the proceedings. However, most of the Chief Judges who answered the survey questionnaires said that the budget for such activities was insufficient (Figure 32). This difference between opinions of Chief Justices and Judges has revealed the difference between the actual demand in adjudication activities (from Judges’ opinions) and the actual management of Court activities (from Chief Justices’ opinions). As mentioned above, “fixed amount grant” mechanism may help to manage the spending strictly, but at the same time limit the budget sources in case where the actual demand keeps increasing (see Figure 1 and Figure 2 on increasing number of cases through years).

Most Chief Judges and other judges, whether they were interviewed in person or interviewed by questionnaires (see Table 7), selected the answer “completely agree” or “agree” with the option that “the National Assembly directly allocates budget to the courts at all levels”. The second highest choice is “both the SPC and local government provide funding for provincial and district People’s Courts”. All Chief Judges interviewed in person said that they did “not want the court to heavily rely on the local budget”, and that “localities should provide budget as a support to the operation of the courts” because “the court serve the local citizens and the local authorities”.

2. Income of judges

Similar to the result from the survey of judges in 2006⁷⁴, judges' interviewed in this survey said that their current salary level was “not appropriate”, “still low” and that they “recommend the competent authorities to pay attention to the life and the income of judges”. According to the law, the salary and salary grade of judges is equivalent to that of other cadres and public servants. However, the salary grade of judges is approved by the National Assembly Standing Committee,⁷⁵ while the salary of cadres, public servants and officials is decided by the Government.⁷⁶ In addition, judges are entitled to the following allowances:

- Seniority allowance which depends on how long they have worked in such an occupation⁷⁷;
- Additional position allowance for the judge holding the position of Chief Judge, Deputy Chief Judge⁷⁸;
- Responsibility allowance which equals to 30% of the current salary plus leading-post allowance and extra seniority allowance (if any)⁷⁹; and
- Public affair allowance which equals to 25% of the current salary plus leader's allowance and extra seniority allowance (if any).⁸⁰

Each judge presiding over a trial is entitled to an allowance of 90,000 VND/day and each judge participating but not presiding over a trial is entitled to an allowance of 50,000 VND /day.⁸¹

For example, salary at the third scale⁸² of a judge will be calculated as follows:

⁷⁴ Report on the Survey of the Needs of District Courts nationwide, *ibid*, page 142.

⁷⁵ Resolution No. 730/2004/NQ-UBTVQH11 dated 30th December 2004 on the approval of payroll and allowance table for positions held by officials of the State; professional payroll, professional sector, procuracy sector; Article 5, allowance table for positions held by officials of the State and the National Assembly in charge, III.

⁷⁶ Decree No. 204/2002/ND-CP of December 14th 2004 of the Government on salary regime for cadres, public servants, officials, and armed force personnel.

⁷⁷ Inter-Circular of the Ministry of Home Affairs, the Ministry of Finance No. 04/2009/TTLT-BNV-BTC dated 24/12/2009 guiding the implementation of allowances for seniority for cadres, public servants with salary graded according to ranks or positions with professions in court, investigation, audit, inspection, enforcement of civil judgments and forest rangers.

⁷⁸ Resolution No. 730/2004/NQ-UBTVQH11 date September 30th 2004 on the approval of payroll and allowance table for positions held by officials of the State; professional payroll, professional sector, procuracy sector, Article 5 and allowance table for positions held by officials of the State and the National Assembly in charge, III.

⁷⁹ Decision No. 171/2005/QĐ-TTg dated 08 July 2005 of the Prime Minister stipulating on responsibility allowance regime for judge, court clerks and court verifiers, Article 1, Point 3.

⁸⁰ Decree No. 34/2012/ND-CP dated 15 April 2012 of the Prime Minister on public affair allowance, Article 3.

⁸¹ Decision No. 41/2012/QĐ-TTg of the Prime Minister on allowances for participants in court hearings, and meeting sessions to settle civil cases, Article 2.

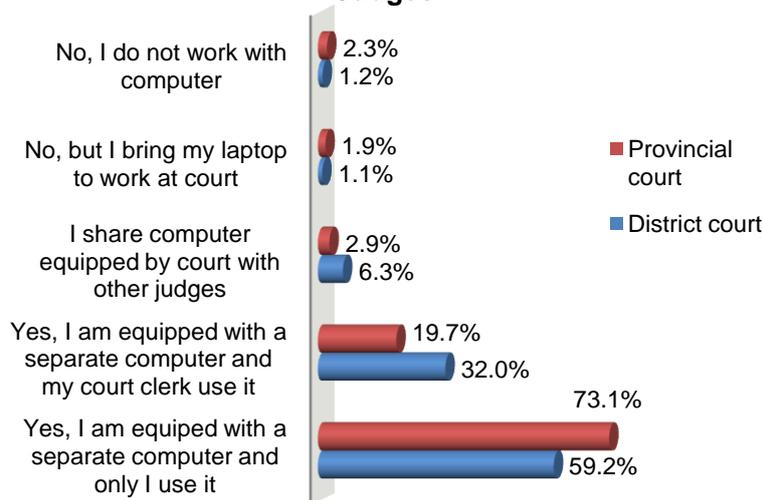
⁸² Grade 3 is calculated with 9 years of experience since that judge started working for the state sector and entitled to expert's salary.

Criterion	Amount (VND)
Salary grade: 3.00	3,150,000
Seniority allowance (9 years): 9%	283,500
Responsible allowance: 30%	945,000
Public affair allowance: 25%	787,500
Total income:	5,166,000

If a judge has to preside over a trial for 22 consecutive days in a month, he will receive 1,980,000 VND for daily trial allowance totally for 22 days. Therefore, the highest gross income of that judge in a month is 7,146,000 VND, higher than the salary level in 2006.⁸³ In reality, a judge would rarely preside over 22 consecutive days in a month. The income of judges is still higher than the average income nationwide (income per capita of Vietnam is about 2,253,000 VND/month).⁸⁴

Through the survey by questionnaire, 87.8% of provincial judges and 88% of the district judges said that a “satisfactory salary” would help them complete tasks and guarantee their independence in adjudication (see Figure 38). Judges preferred the form of commendation and reward of “getting a raise” far more than other forms, such as “being awarded certificates of merit,” “receiving judge level promotion” and so on.

Figure 33: Computer usage conditions of Judges



Low and unsatisfactory salary levels create income pressure on judges and promote corruption. In some countries, laws prohibit the reduction of a judge’s salary because this is considered a condition that can create corruption and impact on the independence of judges.⁸⁵

⁸³ Report on the survey of the Needs of District Courts nationwide, *ibid*, page 142.

⁸⁴ Ministry of Labors, Invalids and Social Affairs, to narrow the income gap among social strata, <http://www.molisa.gov.vn/news/detail/tabid/75/newsid/54777/seo/Thu-hep-khoang-cach-thu-nhap-giua-cac-tang-lop-dan-cu/language/vi-VN/Default.aspx>

⁸⁵ J.Clifford Wallace, Resolving judicial corruption while preserving judicial independence, *Journal of The People’s Court*, No.8, 2006, pages 40-46.

3. Working condition for judges

Making a comparison of working conditions with the 2006 survey on the tribunal sector⁸⁶, it is shown that judges are now equipped with better working equipment and devices. Through direct surveys in 18 courts, the Research Team confirmed that most judges are equipped with personal computers (including desk top computers and laptops). Few judges share computers with court clerks. Even in the People’s Court of Bac Ai District, a mountainous district of Ninh Thuan Province, judges are equipped with sufficient computers. The People’s Court of Bac Ai District also has internet connections. The number of judges with personal computers equipped by the courts nationwide is very high (Figure 33).

Through direct surveys, the Research Team found that judges in some big cities like Ho Chi Minh City, Da Nang and Hai Phong had better conditions in terms of computers, office equipment, air conditioners, internet, clean water, books and newspapers, compared to those in other localities. However, most courthouses in big cities are smaller than those in rural and mountainous areas. The reality that judges or court clerks have to share work rooms with 3-4 persons is common in cities. Meanwhile, in courts located in rural and mountainous areas, judges often have separate rooms or share rooms only with their own court clerks, but the physical facilities of courts in rural and mountainous areas are not as good as those in the cities.

All 18 courts surveyed directly have internet connection for at least one computer if not for all computers of the courts . Internet connection increases the convenience of common court activities, such as receiving and sending emails, and searching for

Figure 34: Computers connected to the internet

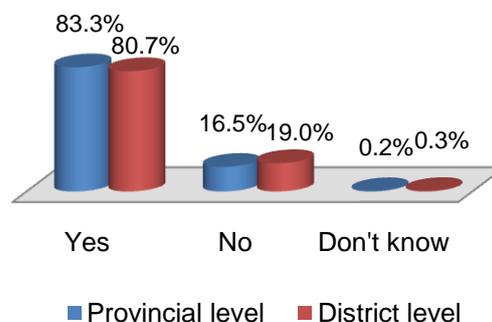
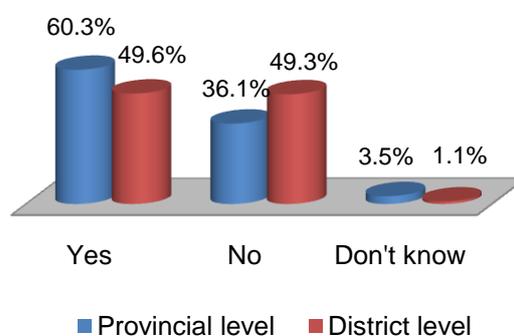


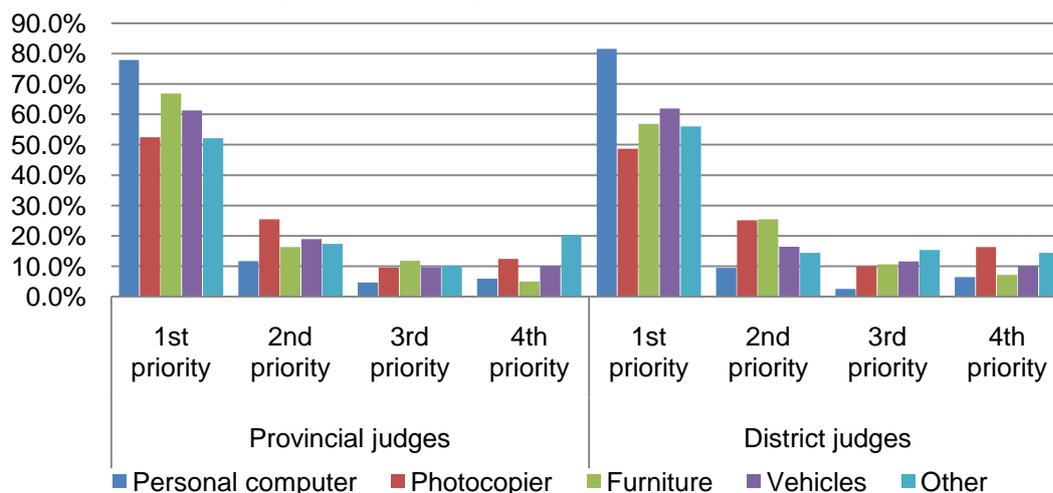
Figure 35: LAN connection at courts



⁸⁶ Report on Survey of Needs of district courts nationwide, idem, page 142.

information and legal documents online. In the survey by questionnaire, 134 district judges and 19 provincial judges directly answered questionnaires consisting of 49 questions online (see Appendix 3). The questionnaire requires the respondent to be online with a stable internet connection for an average of at least 15-20 minutes. According to the survey by questionnaire, more than 80% of judges have computers connected to the internet (see Figure 34).

Figure 36: Judges' equipment demands



The percentage of courts that have local area network (LAN) connection is lower than that of those with internet connection (see Figure 35). Of the directly surveyed courts, one of the six provincial courts and one mountainous district court had not yet had a LAN system. Some courts have connected to the electronic portal system of the SPC. The Research Team observed that some courts directly updated their judicial statistics on the website of the SPC. The direct survey results show that some courts have an operative LAN but mainly use it for sharing the internet connection only, while just a minority use their LAN for sharing data directly between connected computers' hard disk drives. Only the People's Court of Ho Chi Minh City has software for case management running on the LAN. The People's Court of Da Nang City is planning to develop software for case and adjudication management. The People's Court of Vinh Long Province is hiring a unit to write a software for case and adjudication management, with the funds taken from the savings of administrative expenditure. It is also sponsorship by the JUDGE Project to build software for judgment management (at the time of drafting, the People's Court of Vinh Long Province had completed and put these two software programs into use).

Connection to the internet and local area network helps judges, court clerks and other court officers update information more conveniently, and search legal documents and materials on the internet. All interviewed judges and court clerks said that they could

use the internet, which they used to search documents through the portal of the SPC. According to this survey, the proportion of judges who collected legal documents from the internet is quite high (see Figure 37).

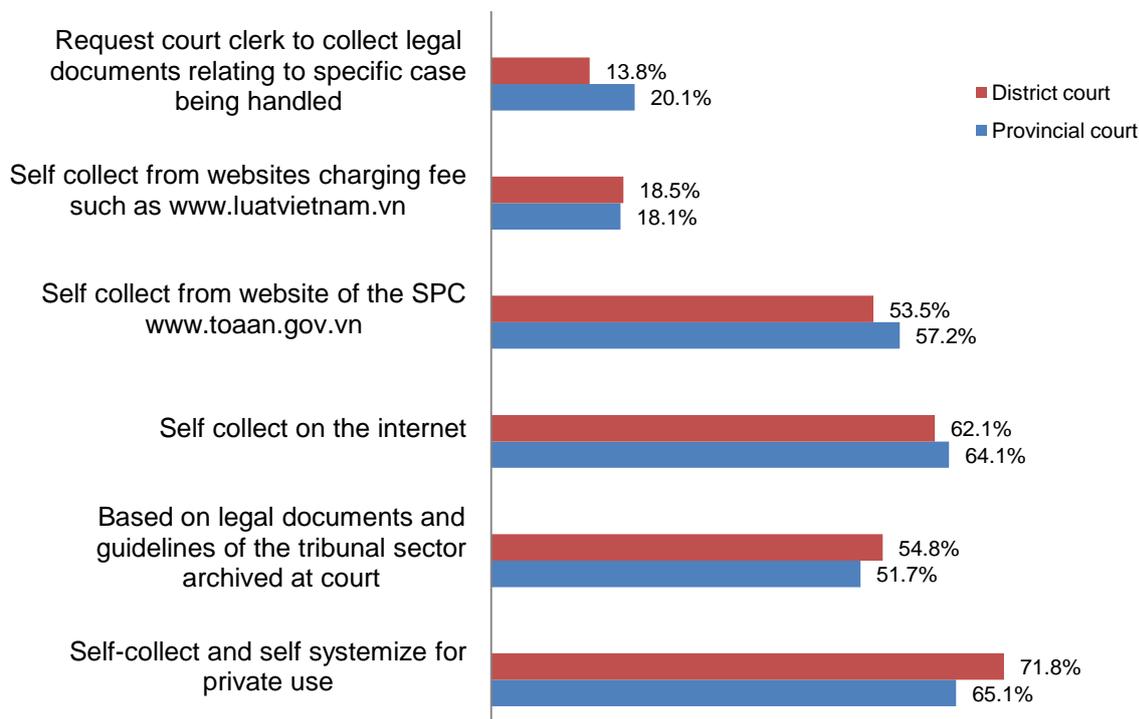
Thanks to the broad utility of computers, in terms of equipment demand, provincial judges or district judges rank computers first, followed by demand for vehicles from district judges and for office equipment from provincial judges (see Figure 36). Other equipment that judges want to be equipped with includes:

Tape recording	Cars	Printers
Video recording	Motorbikes	Projectors
Furniture	Phones	Library
Camera	Air conditioners	Internet connection equipment
Equipment for land measurement	Software for work	File cabinets
Maps for land measurement	Books on law analysis	Houses for public servants

Among the 18 courts surveyed directly, the majority of judges have their own personal court clerks to support them in working, apart from court clerks or court officers in other specialised units. In the remaining courts such as a court in a mountainous region, the number of court clerks is less than that of judges and clerks have to perform a lot of tasks at the same time, such as paperwork, typing, and servicing documents. This court fails to recruit court clerks and as a result, judges of this court have to do a variety of work by themselves, including work normally performed by court clerks such as servicing documents, receiving citizens and so on.

Thanks to the internet, at the present time the rate of judges who can search and collect legal documents on the internet is quite high (see Figure 37). This rate also reflects the current capacity of judges to use computers. Such figures are very important for the deployment of information technology in the operation of the tribunal sector.

Figure 37: Judges' sources for updated legal documents



Sub-conclusion for Part III

In order to develop a competent contingency of judges, the tribunal sector should expand the sources of judicial appointment as directed in Resolution No. 49/NQ-TW on Judicial Reform Strategy to 2020. Judges should be selected on the basis of having characteristic of full competence, virtue, and independence.⁸⁷ The appointment of judges from various industries and sectors will bring enable adjudication activities to be informed by other professional practices and make them more diversified.

Judge selection procedures should be reviewed and amended in order to minimise pressure on judges during selection. The institution of Judge Selection Council needs amending in order to meet the demands of selection, avoid formality in nature, avoid causing pressure on judges, and ensure the independence of judges selected.

The policy of circulation and re-assignment of managing officials has shown positive effects in several sectors in various localities.⁸⁸ This will break the closeness and localness, and limit the corruption within various agencies. In the tribunal sector, the survey has found positive results from the circulation of officials. However, in circulating officials in the tribunal sector, it is necessary to take into consideration

⁸⁷Beijing Statement on Principles of Judicial Independence, People’s Court Journal, Volume 8, p. 46 –48.

⁸⁸ Resolution No. 11/NQ-TW dated 25/01/2002 of the Politburo on rotation of leaders and managing officials.

factors that affect the independence and specialisation of courts, and the circulation of officials should not show itself as a reaction against decisions of judges.

Methods of promoting, rewarding, and disciplining judges should also be revised in order to encourage judges in their work. The current rewards mechanism is not enough to encourage judges' better performance, but it causes heavy pressure on judges. The mechanism of reappointment and the material sanctions for acts of judges (such as compensation for wrongful judgments under the Law on Compensation Responsibility of the State) also require a complete review to establish their effect on the quality of judges' operations, and to ensure that such measures do not appear as a measure of reaction by other state power bodies against judges' activities.

To ensure the independence of the courts, the courts must have the discretion to make socially meaningful decisions⁸⁹. Judges need regular education and training to improve their professional knowledge and adjudication skills, as well as knowledge of newly promulgated legal provisions and other knowledge about specialisation of judges, to increase their confidence in giving their own decisions and in their readiness to take responsibility for such decisions⁹⁰.

The tenure of judges needs to be longer than it is presently so that Judges could feel more secure in their work. This supports their independence in adjudication. It is suggested that to improve the quality of adjudication, the mechanism of reappointment to short tenures should not be maintained. The community of judges in Vietnam needs a professional code of conduct, similarly to other countries.

The practice of "case report" or "case instruction" breaches several governance and judicial principles in the activities of courts, such as the "principle of independent adjudication" and the "principle of collective adjudication", meaning that such principles are formally stated but unrespected in practice.

In order to guarantee their independence, the courts must be funded with sufficient finances through a budget grant mechanism which is transparent, clear and independent of budget approval agencies.⁹¹ The Judicial Reform Strategy to 2020 stated: "*The State shall ensure physical conditions for judicial work in line with the particular nature of each judicial organ and the capacity of the country.... (by) reforming and improving the mechanism for*

⁸⁹John Gillespie (2007), *ibid.* John Gillespie quoted Keith Hawkins, 'The Use of Discretion: Perspectives from Law and Social Science' in Keith Hawkins ed., *The Use of Discretion* (1992) page 11.

⁹⁰ See IBA Minimum standards of Judicial Independence, <http://www.ibanet.org/Document/Default.aspx?DocumentUid=BB019013-52B1-427C-AD25-A6409B49FE29>, accessed on 12/10/2012.

⁹¹Beijing Statement of Principles of the Independence of the Judiciary, the People's Court Journal, No.8, 2006, page 46– 48.

allocating budget to judicial organs and activities with a view that the National Assembly allocate the budget and hand it over to local judicial organs to be responsible for management and utilisation, under the oversight and examination of the central judicial agencies; (and) formulating a mechanism to allow local authorities to provide additional financial support for the activities of local judicial agencies from the surplus revenues of the local budget⁹². This method helps to limit influence from budget sources other than the court system, such as the local authorities.

The current method of allocating budget from the SPC to the local courts is supported by judges. When the tribunal sector can take more initiative regarding its budget for operation, it will have more independence. In other words, judicial power will be better protected. Also, in order to restrain poor practices budgetary self-management of courts, their financial management must be transparent and public.

In addition to guaranteeing financial sources for judicial activities, the salary regime of judges and other court staff also should be taken into consideration. Judges must be entitled to satisfactory preferences and proper working conditions. They also must be entitled to necessary rest breaks in order to perform their functions and duties well. Meeting the physical facilities requirements for judges is considered to be a key aspect of “satisfying the essential maintenance of the rule of law and the protection of human rights”⁹³. The Judicial Reform Strategy to 2020 suggests “developing an appropriate salary and award policy related to judicial staff’s work”⁹⁴. The income of judges must be improved to guarantee their daily life, to attract qualified persons to become judges, to restrain corruption and to guarantee judicial independence.

The “fixed amount grant” mechanism for allocating budgets for the administrative activities of the courts is a matter which should be reviewed thoroughly. In reality, this mechanism can only be suitable for administrative activities which can be anticipated by their simplicity and repetition. Judicial activities depend heavily on the level of complexity or the nature of the cases, so it is difficult to apply the “fixed amount grant” mechanism. Application of this mechanism may cause adverse consequences such as: (i) courts lacking sufficient budget to cover their operation; (ii) courts jeopardising the quality of judicial reform in order to reduce the expenditure, such as by not requiring judicial appraisal, or by cutting down the utilisation of counsel appointed by the courts⁹⁵.

⁹² Resolution No. 49-NQ/TW of the Politburo dated 02-6-2005 on Judicial Reform Strategy to 2020

⁹³ Beijing Statement of Principles of the Independence of the Judiciary, the People’s Court Journal, No.8, 2006, pages 46 – 48.

⁹⁴ Resolution No. 49-NQ/TW of the Politburo dated 02-6-2005 on the Judicial Reform Strategy to 2020.

⁹⁵ NHQuang&Associates, Report on the appointed counsel survey in criminal procedure law and practice in Vietnam, 2011, Vietnam Lawyers Association and the United Nations Development Program (UNDP), Page 30. <http://www.undp.org.vn/detail/publications/publication-details/?contentId=4399&languageId=4>.

Part IV: RECIPROCAL IMPACTS BETWEEN COURT ADMINISTRATION AND COURT GOVERNANCE

CHAPTER I: Impacts on adjudication principles

The management of the court is required to ensure judicial rights and the principles during court proceedings and adjudication as provided in the Constitution, in domestic law and also through international principles which Vietnam has ratified.

1. Managing to guarantee the “principle of independence in adjudication”

As discussed, the ‘principle of independence in adjudication’ is also a constitutional principle which asserts that “during adjudicating, judges and People’s jurors shall be independent and shall only act in accordance with law”. However, this principle is not defined clearly in practice, particularly regarding the scope of the phrase “during adjudication”. As a result, some issues arise here such as: whether “during adjudication” includes only the trial stage (thus implying that ‘independence in adjudication’ applies in a narrow sense) or, whether it includes all procedural activities carried out before and during the hearing. It is also unclear as to whether the ‘independence’ at issue is that of judges and People’s jurors or the independence of the entire court system. Some of the Chief Judges and other judges in the in-person interviews suggested clarifying this requirement.

There is an argument that “independence in adjudication” consists of three basic elements: (i) independence of the judicial power from other state powers (legislative and executive powers); (ii) independence of court bodies from other state agencies, and the independence of the lower courts from the superior courts; and (iii) the independence of judges and jurors⁹⁶ (which defines independence in adjudication in a broad sense).

As already noted, the 1992 Constitution provides that “state power is unity with delegation of power to, and co-ordination among, State bodies in exercising legislative, executive and judicial rights⁹⁷”. Thus, the Constitution recognizes the “relative” independence of the court apparatus. The Constitution also recognizes the “absolute” independence of judges and People’s jurors when hearing cases. Therefore, no activities should be allowed to impact on that absolute independence. Hence, practices in the court

⁹⁶ See further Luu Tien Dzung, *Adjudicating independence in the rule of law state in Vietnam*, Judicial Publishing House, 2012, page 16-page 17.

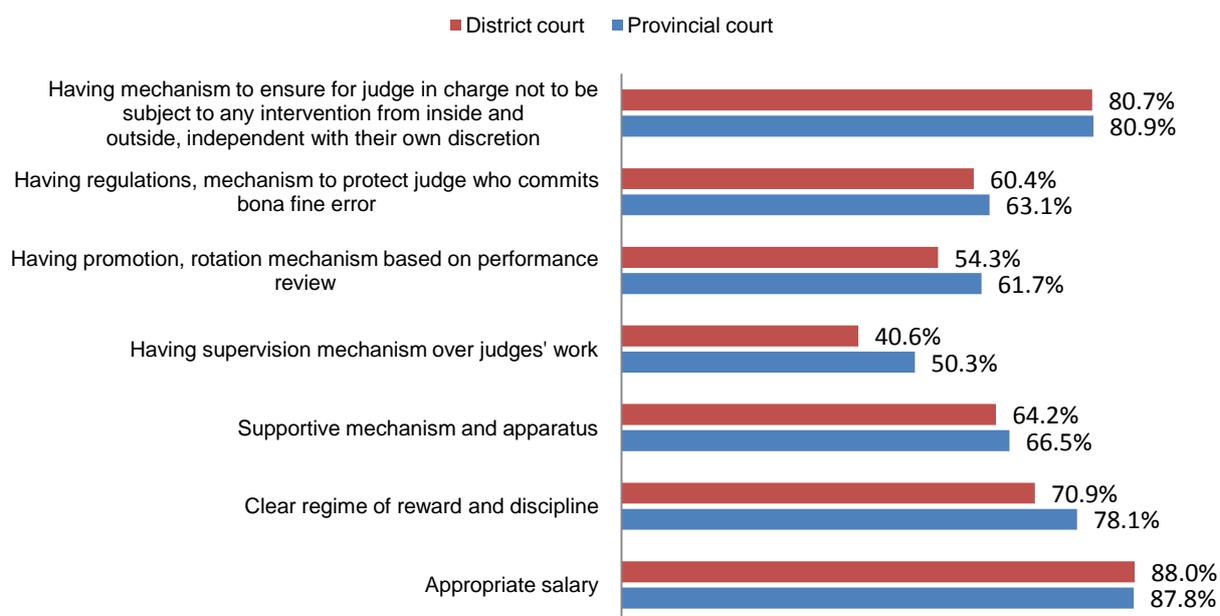
⁹⁷ Constitution 1992 (amended by Resolution No.51/NQ-QH10), Article 2.

system of “exchanging the case settlement with court leaders” and “consulting superior courts” (see Figure 11, 12, 13) need to be limited or eliminated.

Most of the Chief and other judges agreed that the court should be independent and take responsibility for the court’s activities. The SPC is responsible for supervising the activities of local courts. However one provincial Chief Judge, concerned about increased “independence of judges”, said that given the current qualification requirements of judges and the temptations of modern society, the quality of adjudication activities could not be guaranteed if judges were allowed more independence and oversight was loosened.

Others posed that the court should *not* be independent of local authorities. On this view, the objective of court activities is to serve local citizens, ensure security, and guarantee social order in each locality. Therefore, the court cannot separate itself from the political missions of the relevant locality. In addition, the court cannot be independent from the Party because of the principle of Party leadership; and subordinate courts cannot be independent from superior courts because the higher courts review the quality of the lower courts’ trials. The SPC also mentioned: “*the law neither provides the general adjudication principle; nor specifies the independence of a court of this level from that of other level ...*”.⁹⁸

Figure 38: Judges' viewpoints on independent adjudication



⁹⁸To Van Hoa, *The independence of the Court-Legal researchon theoretical and practical aspectsin Germany, USA, France, Vietnam and recommendations forVietnam*, Labor Publishing House, 2007, page 453.

In the opinions of some Chief and other judges, the independence of judges is aimed at ensuring only that judges obey the law during adjudication, and that they are impartial. This viewpoint is reflected in the provision in the International Convention on Civil and Political Rights that an adjudication panel “be capable, independent, and impartial” in maintaining the “right to a fair trial”⁹⁹. The Research Team gathered the opinions of judges on the factors affecting judges’ independence before conducting the questionnaire survey (see Figure 38). Most judges surveyed by questionnaire supported “a mechanism to ensure that judges shall be responsible for their decision independently, without any interference from inside and outside of the court” and “a satisfactory salary regime”.

In judicial administration, it will help to create independence among departments, and also contribute to creating transparency in the operation of the court, if adjudication support work is done by specialized departments of the court, rather than by judges who hear the trial directly. As stated above, for example, the receipt of applications by a judge who will not directly hear the relevant trial will limit ill practices and other opportunities to influence the independence of judges.

2. Managing to guarantee “the public trial principle”

“The public trial principle” is also a constitutional principle¹⁰⁰ and has been specified in procedural laws. This principle enhances the capacity of the people to supervise adjudication from outside the court to guarantee that adjudication activities are conducted properly and accurately. If all trial activities are put under the oversight of the people, arbitrary conduct will be minimised. The principle of public trial is also one among minimum principles in the right to a fair trial as stipulated in the International Convention on Civil and Political Rights.¹⁰¹

Pursuant to the Law on People’s Court Organisation, Chief Judges are responsible for “organising adjudication work”; therefore, each Chief Judge plays an important role in ensuring “the public trial principle”. In order to hold a public trial, a Chief Judge must ensure that the hearing schedule is sent to the accused, or to defendants or persons related to a civil dispute; or that the hearing schedule is posted at the head office of the court before the date of hearing. At the People’s Courts of Vinh Long Province and of Ho Chi Minh City, hearing schedules are publicised on the court’s website.

⁹⁹ International Covenant on Human’s Civil and Political Rights (ICCPR), Article 14. Vietnam has joined this Covenant.

¹⁰⁰ Constitution 1992, Article 131; Civil Procedure Code, Article 15; Law on Administrative Procedure, Article 17.

¹⁰¹ International Covenant on Human’s Civil and Political Rights (ICCPR), Article 14. Vietnam has joined this Covenant.

Confidential trials only take place upon the request of the parties concerned, and upon consideration by the judge of the content of the case, namely whether it influences the honour or dignity of the concerned parties. However, judges noted that in some cases, a trial is heard publicly, but the participants to the trial are limited (for example witnesses are limited) to ensure the security, order and safety for them.

The question of which stages of court procedure should be made public was also mentioned by some surveyed judges. Several judges reckoned that only the hearing itself should be made public, while other judges thought that transparency must be ensured throughout the whole trial procedure undertaken by the courts. Then, the adversarial approach can be enhanced. Among the courts visited in the project, the People's Courts of Vinh Long Province and Ho Chi Minh City are two courts that publicise the status of handling petition forms at the “one-stop shop” division.

As noted, to enhance the transparency of adjudication activities and form a basis for subsequent case law development, the tribunal sector has adopted the policy of developing audio and video recording for provincial courts. All court houses of provincial courts surveyed (see Appendix 1) have been installed with audio and video recording systems. The percentage of judges advocating the policy of audio and video recording was quite high in both the questionnaire survey (see Figure 15) and field survey. Supporters of the policy said that it aimed to ensure the principle of public trial and to improve the quality of trials. Among the surveyed courts, Vinh Long provincial court has already installed modern audio video recording systems funded by the Judicial Development and Grassroots Engagement (JUDGE) Project.¹⁰² As noted already, some judges and court clerks of other courts revealed that they themselves did the tape recording in several trials using their personal equipment to assist in completing trial minutes. However, some judges did not advocate this policy, as they believed that audio and video recording would significantly influence the psychology of the Adjudication Panel (see further analysis in Part II, Chapter II, Section 4).

3. Managing to guarantee the principle of “collective adjudication”

Also as already noted, the “*principle of collective adjudication*” has been constitutionalized.¹⁰³ Collective adjudication limits the potential for arbitrary bias in the decisions of judges. The ruling of an Adjudication Panel may protect every individual in the panel, as well as allow individuals to become more independent in making their

¹⁰² JUDGE Project supported to install voice recording system in three province courts of Vinh Long, Thua Thien Hue, and Hung Yen.

¹⁰³ Constitution 1992, Article 131

decisions. The model of collective adjudication in the first instance with the participation of jurors is intended to ensure the people's representation in the adjudication activities of the court. For this model to achieve this intention, each individual on the Adjudication Panel must take initiative in the hearing, and limit the potential for empty formality in the implementation of the principle of collective adjudication.

The mechanism for implementing the "*principle of collective adjudication*" is "decision-making by majority" for each judgment. Therefore, if judges consult with leaders of the court where they work, or "consult the higher court", this circumvents the principle of collective adjudication (see further analysis in Part II, Chapter II, Section 3).

4. Managing to guarantee "the principle of people's representation in adjudication activities"

As stated above the "*principle of people's representation in adjudication activities*" is also a constitutional principle.¹⁰⁴ In this respect, jurors have "equal rights with judges", and are entitled to "vote" on par with judges to achieve a majority judgment. Judges may exchange their views on "the way to resolve the case" with other members of the Adjudication Panel (including other judges and jurors).

The institution of the people's jury is considered as the expression of the idea of "taking people as the root" of power, to ensure that the principle of people's power is exercised in the judicial activities of the Court. The institution of the people's jury aims to allow the people to directly participate in judicial activities of the Court¹⁰⁵ and also to permit the people to directly participate in the exercise of state power (judicial power)¹⁰⁶. During the academic conference of judicial staff in 1950, President Ho Chi Minh said: "*in adjudication work, judicial staff must be fair, honest, and clean. But that is not enough. Judicial staff should not limit their activities to within the frame of court operation. They must be close to the people, understand the people, help the people ...*"¹⁰⁷. To make judgments of the court conform to the life experiences of the people, the Adjudication Panel must have knowledge, understanding of life, and social experience ("social capital"). The People's jurors supplement such "social capital" for judges.

Jurors also play an important role in helping the people gain access to justice. In

¹⁰⁴ Constitution 1992, Article 129 and Article 131.

¹⁰⁵ Judicial Academy, Manual for jurors, Social-Labour Publishing House, 2005, page 13.

¹⁰⁶ Chief Justice Truong Hoa Binh, Some issues about the institution of people's jurors, http://toaan.gov.vn/portal/page/portal/tandtc/299083?p_page_id=1753011&pers_id=&folder_id=&item_id=23071817&p_details=1.

¹⁰⁷ Ho Chi Minh, State and Law, Legal Publishing House, Ha Noi, 1985, page 188.

the two courts in mountainous areas, each Chief Judge said that jurors of ethnic minorities were usually assigned to participate in solving cases related to ethnic minorities. These jurors help judges to interpret the law for the ethnic minorities, and help judges understand the customs and practices of ethnic minority people so that the hearing is fairer and more accurate.

According to procedural laws, jurors are only engaged in the adjudication process once the court decides to bring the case to trial. Jurors do not participate in the pre-trial period.¹⁰⁸ Therefore, jurors need to have enough time to study the case file before hearing the case in order to successfully implement their roles. However, the survey results reveal that some jurors have been accessed to the case files before the hearing in short time therefore they could hardly implement their adjudication role successfully.

The practices of “exchanging the way of adjudicating”, “case instruction”, “and case report” discussed above display a lack of respect for the role of jurors, which violates the principle of people’s representation in adjudication activities. It requests the juror should have adequate knowledge and firm stuff in order to improve productively their adjudication roles.

One of the reasons that judges do not consider adequately the role of jurors is that judges bear the main responsibility for judgments made. This responsibility is imposed by the provisions of the tribunal sector on emulation, commendation, discipline and reappointment, and by laws such as the Law on Cadres and Civil Servants and the Law on State Compensation. The responsibility borne by the juror is less than that of the judge, and the jurors’ task is equivalent in time to part-time work of other officers or retired officers.

Some jurors recognised that they have a particular role in the adjudication work of the court but that this role is not actually appreciated. The jurors also recognized a number of reasons for this, such as: legal knowledge of the jurors is not as good as that of judges; and juror’s work is done as part-time work so they cannot spend a lot of time studying the case file. The jurors also said that because the time given by the court for case file study before the trial is not sufficient for them to understand all the circumstances of the case, so jurors often must take into consideration the opinion of judges. This reality has also existed for many years¹⁰⁹.

¹⁰⁸Civil Procedure Code, Article 195; Law on Administrative Procedure, Article 123.

¹⁰⁹The report on the Survey of the Needs of District Courts nationwide, Project VIE/02/015, support for implementation of Vietnam’s legal system development strategy to 2010, Judicial Publishing House, 2007, 47.43% of the jurors admit that they considered the opinion of judges in resolving the case, page 88.

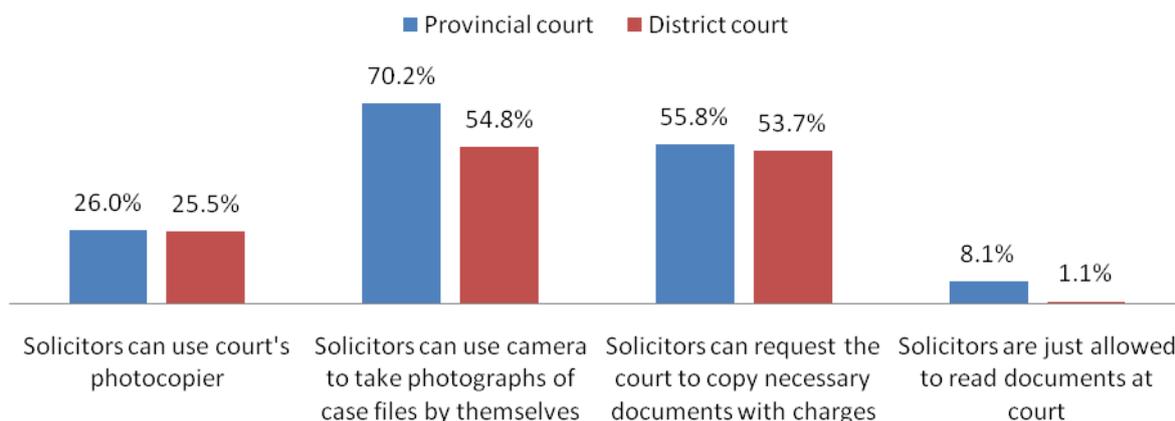
The difficulties mentioned above need to be absolutely resolved by the tribunal sector. It should be noted that the disrespect of jurors' opinions is also considered as an act of "obstructing the jurors in the performance of their duty."¹¹⁰ The Chief Judge of each local court has an important role in monitoring and managing to ensure respect for the role of jurors in adjudication activities.

5. Guaranteeing the quality of litigation at the trial

"Improving the quality of litigation at trial and considering it will be the breakthrough of judicial activity" is seen as a key task of judicial reform¹¹¹. Currently, the "guaranteed principle of litigation in adjudication" has been included in the draft amendment to the 1992 Constitution. To ensuring the quality of litigation it is necessary to ensure a citizens' right to counsel. This is a constitutional right and a necessary condition in the right to a fair trial according to the International Convention on Civil and Political Rights.¹¹²

Although the requirement of "ensuring the quality of litigation" has not been specified in the legal documents of Vietnam, the tribunal sector has implemented several conferences and training courses to improve the quality of litigation in trials. In the courts surveyed, the judges and court leaders all confirmed that their courts have taken seriously the assurance of the quality of litigation at trial.

Figure 39: Solicitors are facilitated to take copy of case files at courts



¹¹⁰Civil Procedure Code, Article 12.

¹¹¹ Resolution No. 49/NQ-TW on 02/06/2005 of the Politburo about the Judicial Reform Strategy to 2020.

¹¹² The International Covenant on Civil and Political Rights Political (ICCPR), Article 14. Vietnam joined this Convention.

The results of the questionnaire survey shows that the majority of judges have facilitated the creation of favorable conditions for lawyers to copy case files at courts (Figure 39).

However, the litigation in the court will become difficulty and formality only if there are still some judges lay on the consultation of other bodies' opinions in case settlement (see Part 2, Section 3).

All interviewed Judges in person affirmed that trials with qualified litigation help the judges better decide the case. Some judges reported that they only "consult others' opinions" for reference to superior legal analysis in cases where the law is not clear enough, but that they do not consult on specific judgments or the settlement result of particular cases; and therefore, each judgment is still entirely dependent on the outcome of litigation at trial. Other judges think that in the proceedings model in Vietnam, "*the responsibility to prove offences is vested in the bodies conducting proceedings. The accused or defendants have the right but are not forced to prove their innocence*".¹¹³ Judges are obligated to prove that an accused or a defendant is guilty. Therefore, the consultation of opinions aims to ensure that the proving of crime is conducted thoroughly, and that errors and subjectiveness are avoided in defining crimes and punishments. The trial is the last stage of the proceedings. If the judgment is only based on the results of litigation at the trial, mistakes cannot be avoided when deciding on the judgment.

The interviewed judges said that the principle should be codified to ensure quality litigation at trials. The model of proceedings from mere interrogation must be converted into interrogation in combination with litigation. Then, the principle of litigation will not be merely an initiative from the courts, but also require the active participation of the procuracy, lawyers, accused and involved person who will recognize their responsibilities in the trial to find out the nature of the case.

6. Guaranteeing the principle of the two-level trial

The principles of the two-level trial, including first instance and appellate trial stages, is stipulated in both the Law on Organization of People's Courts and procedural laws. The two-level trial ensures the thorough settlement of cases. Each trial level should be independent from each other in settling cases and there must not be a relationship between higher and lower courts similar to that in the system of administrative agencies.

¹¹³ Criminal Procedure Code, Article 10.

The survey results show that the practice of judges of lower courts consulting the opinions of judges of superior courts in settling cases has broken this rule (see Figure 11 and Figure 12).

The first-instance trial level is indispensable and crucial in the process of settling cases. If the first-instance trial adjudicates accurately and seriously, the first-instance judgment will rarely be appealed or protested under the appellate procedures, and consequently the case will not be extended. If a first-instance judgment which has been seriously given is appealed or protested against, the appellate procedures will not take much effort, time or budget of the government or of persons participating in the proceedings.

In in-depth interviews, some judges commented that the "consultation of opinions from the judges of superior courts" occurs to improve the quality of first- instance judgments. Such consultation it is suggested merely serves as a reference to develop the profession and skills beyond the trials, and thus should not be considered in violation of procedural law. However, as discussed above, other court leaders and judges interviewed said that "consultation of opinions of the judges of superior courts" is only for reference to superior legal judgment in cases where the law is not clear enough, but they do not consult on specific judgments. Court leaders said they strictly prohibit judges of their court from bringing specific cases to superior courts for the purpose of "consulting opinions" (*see further Section 2: Establishing and ensuring the operation of the Adjudication panel*).

The Chief Judge of a provincial People's court shared his experience in limiting the consultation practices of judges from junior courts by assigning cases to the judges of the provincial People's court in a sequential process, with necessary adjustments made by the Chief Judge. In this way, if a judge of a junior court "consults on a case" with a judge of the provincial court, he/she cannot make sure whether the first-instance case will be settled by the judge consulted.

As stated above, the "consultation of opinions from superior judges" has resulted from the current regime of judge reappointment within the tribunal sector. The judges of the first instance court are often concerned that their judgments may be cancelled or modified by the superior court on appeal, and as a result, their re-appointment will be jeopardised. Thus, the current regime for reappointment and tenure of judges need to be appropriately adjusted.

CHAPTER II: Construction of a court system that “is close to the people, understands the people, and helps the people” - improving the right to access to justice and fair trial

The function of the court is adjudication. This is regulated in the Constitution of 1992. The court has the mission to “*protect the socialist legislation, the socialist system, and the people’s rights as masters, State and collective property, and to protect the lives, property, freedom, honour and dignity of citizens*”¹¹⁴. The people’s courts are “*the people’s mainstay in protecting justice and human rights. They are also an effective tool to protect the socialist rule of law and legislation to effectively combat certain types of crimes and violations*”¹¹⁵. Especially, courts “*cannot confine their activities to the frame of court only. Courts must be close to the people, understand and help the people*”¹¹⁶. Court administration and governance must both be aimed at implementing such duties and objectives.

1. Publicising to bring the Courts “close to the people” and facilitate people’s access to justice

Publicising court activities enhances the ability of the people to supervise adjudication activities and improves the accountability of judges in particular and of the court system in general. It also assists to bring the tribunal sector “*close to the people*”. The Judicial Reform Strategy to 2020 sets the requirements for the task of renewing the organisation and activities of the people’s courts system, including “*improving judicial procedures to ensure that they will be consistent, democratic, and transparent, as well as respecting and protecting human rights; reforming administrative procedures within judicial bodies to provide favourable conditions for the people to access justice. A litigant is expected to file a claim with a court, which then has a duty to accept the claim and take follow-up actions; moving incrementally towards the publication of court judgments, except those cases involving crimes against national security, social morality or traditional ethical values; and ... applying, on a step-by-step basis, information technology to the operations of judicial organs*”¹¹⁷.

On the basis of this major policy, Truong Hoa Binh, the Chief Justice of the SPC, has determined the development goals of the tribunal sector until 2015 to include “*publicising the full activities of the Courts at all level to agencies, organizations, and*

¹¹⁴Constitution 1992, Article 126.

¹¹⁵Resolution 49/NQ-TW on Judicial Reform Strategy to 2020, dated 02/06/2005, Preamble.

¹¹⁶Ho Chi Minh, State and Law, Judicial Publishing House, Ha Noi, 1985, page 188.

¹¹⁷Resolution No. 49/NQ-TW of the Politburo dated 02/06/2005 on Judicial Reform Strategy to 2020, Preamble.

individuals, except for the information and documents relating to the state secrets or affecting the habits and customs of the nation"¹¹⁸. This is a great goal that presents great challenge to the tribunal sector.

Issues relating to the publication of judgments have been raised throughout this survey report and were also mentioned by many judges in the survey, including which stages of adjudication proceedings should be publicised; which contents of court activities should be publicised and what the purposes of publicising judgments.. This section will address some of the meanings and purposes of the publicization of court activities relating to the work of court administrative management and Court governance, so that people could understand the tribunal sector better. Relevant purposes include (i) publicising to make the court's operations transparent, (ii) publicising to improve the quality of litigation and ensure the right of citizens to counsel, and (iii) publicising judicial administrative procedures at courts for easy access by the people.

a. Publicising to make the court's operations transparent

As mentioned above, the SPC has determined since 2005 to "*publicise procedures on how to access documents; and to provide documents, information, extracts of court judgments and decisions in accordance with law*"¹¹⁹. In 2009, the SPC completed the electronic portal website of the People's Court. This portal gathers a lot of information about the activities of the SPC and the local people's courts, including: information about the appointment of judges; statistics of cases under different jurisdictions across the country; the Bench book; the manual of the court clerk; cassational review decisions of the Judge Council and the Economic Court of the SPC; legal normative documents; work schedules of SPC leaders; and other contents. Through the field survey, judges highly evaluated these sources of information on the SPC portal website (www.toaan.gov.vn). 53.5% of the judges at district courts and 57.2% of the provincial judges said that they collect legal documents from the portal (Figure 37); and 30.1% of the judges in district courts, and 33.7% of provincial judges read the cassational review decision of the Supreme People's Court in hard copy and on the portal (Figure 37). Meanwhile, 83.3% of provincial judges and 80.7% of district judges have computers connected to the Internet (Figure 34).

It is necessary to confirm that the electronic portal of the SPC is public to all visitors, except for some parts relating to particular professional information of the statistics and information technology division.

¹¹⁸ Truong Hoa Binh, Chief Justice of the Supreme People's Court, *Some contents on the reform of administrative judicial procedures in the operation of the courts*,

http://toaan.gov.vn/portal/page/portal/tandtc/299083?item_id=23071379&p_details=1, 2013.

¹¹⁹ Plan No. 122/BCS the Party's staff committee of the SPC on 26/12/2005.

At the time of the 2011 survey results, at the local level only the Court of Ho Chi Minh City had an electronic information website publishing information on hearing schedules, forms and activities of the court. At the time of completion of this study (2013), the People's Court of Vinh Long, Thua Thien Hue, Hung Yen, Bac Ninh, and Ha Tinh province also had published their own websites.

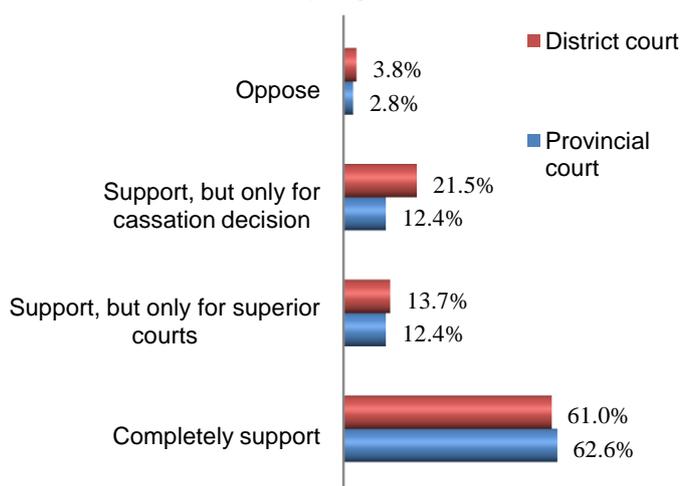
The project concerning the overall application of information technology in the tribunal sector for 2011-2015 is being actively implemented. Two ongoing projects are estimated to be completed in 2012 (namely the project of building an online handover system, and the project of constructing a data centre and software system that manages case types). During the field survey, 17 of the 18 local courts that the Research Team visited were already using the case statistic software of case provided by the SPC (see further Part 1, Chapter II, Section 1: Assistance to judicial activities).

In fact, operations of the local courts are made public through the mechanism of regular reporting by the Chief Judge of the local court to the People's Council of the same level, in accordance with the provisions of law. The local People's Councils run annual programs to monitor the activities of the executive and judicial bodies. The local party committees monitor and lead the party cells of local courts. As interviewed, representatives of the People's Council and Party Committee of the relevant province or city agreed that their agency primarily listens to reports on the general operation of the tribunal system, and rarely comments on particular cases. However, according to the survey by questionnaire, the judges still consult opinions of the relevant provincial Party Committee in specific cases (see Figure 11 and Figure 12).

Other information relating to the operation of the tribunal sector is also publicly available on the websites of other sectors, such as information on the budget of the tribunal sector on the website of the Ministry of Finance¹²⁰.

b. Publicising to improve the quality of litigation and ensure the right of citizens to counsel

Figure 40: Judge's views on publicising court' judgments



¹²⁰ Source: Website of the Ministry of Finance. (http://mof.gov.vn/portal/page/portal/mof_vn/1351583/2126549/2115685).

The budget estimates in 2011 of the Ministry of Finance announced that there is no value budget for the Ministry of Public Security.

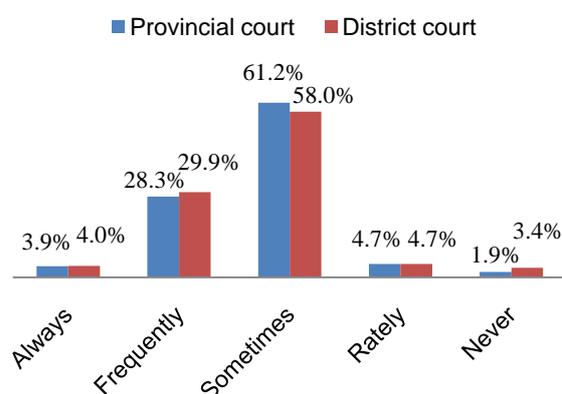
The Constitution stipulates that "the People's court adjudicates publicly, except for cases determined by law"¹²¹. Publicising the operation of the courts also fosters social education. As mentioned above, the plan of the SPC's Party Committee in 2005 stipulates that courts must "*publicise the procedures to access documents; provide documents, information, extracts of court judgments and decisions in accordance with law*"¹²² in order to facilitate the people exercise their right to counsel.

In the survey of lawyers' opinions (including court appointed counsel) about the right to counsel in criminal procedure law and practice in Vietnam, the Court was identified as the body that creates the most favourable conditions for exercising the right to counsel, in comparison to the investigation body and the Procuracy¹²³. According to the Chief Justice of the SPC, Truong Hoa Binh, one of the tasks up to 2015 is "*building and implementing regulations on creating favourable conditions for lawyers and counsel to access and study case files upon request, in strict accordance with regulations of law*"¹²⁴.

As mentioned above in Part IV, Chapter I, the judges surveyed said that they fairly create favourable conditions for lawyers to copy necessary case files (see Figure 39). The judges interviewed shared the view that they do not limit the ability of lawyers to copy documents of the court, except for cases where such documents contain national secrets, are protected by confidentiality of the proceedings body or affect the fine traditions and customs¹²⁵.

In order to improve the transparency of adjudication activities and make transparency the basis of the development of case law, and also to improve the quality of litigation, the tribunal sector plans to develop an audio and video recording system for all provincial Courts. As

Figure 41: Judges' reference to judgments, decisions of courts



¹²¹ Constitution 1992, Article 131.

¹²² Plan No. 122/BCS of SPC's Party's staff committee on 26/12/2005.

¹²³ Right to defend in criminal law of Vietnam, 2011, page 42,

http://www.undp.org.vn/digitalAssets/31/31317_Vietnam_R2C_Report_23-05-2012-VN-final.pdf;

Appointed lawyers in criminal law and practice in Vietnam, 2010, page 38 ,

<http://www.undp.org.vn/detail/publications/publication-details/?contentId=4399&languageId=4>

¹²⁴ Truong Hoa Binh, Chief Justice of the Supreme People's Court, *Some contents on the reform of judicial administrative procedures in the operation of the people's court*,

http://toaan.gov.vn/portal/page/portal/tandtc/299083?item_id=23071379&p_details=1, 2013.

¹²⁵ The interviewed judges implied the cases which contain documents and visual evidence related to sexual crimes.

mentioned above, the offices of the surveyed provincial Courts (see Appendix 1) have been installed with audio and video recording systems. Audio and video recording will guarantee the principle of public trial and improve the quality of court hearings. Of the field surveyed courts, the Provincial People's Court of Vinh Long has been installed with a modern hearing recording system as part of the Judicial Development and Grassroots Engagement Project, sponsored by Canadian International Development Agency (JUDGE Project)¹²⁶. The Chief Judges of surveyed Provincial People's Courts indicated that they were willing to share the content of the audio and video recording of trials to lawyers if required. However, the SPC has not yet developed specific guidelines for this. The tapes of recorded sound and images are not filed at the national registrar, and are not submitted to the superior court as part of each case file.

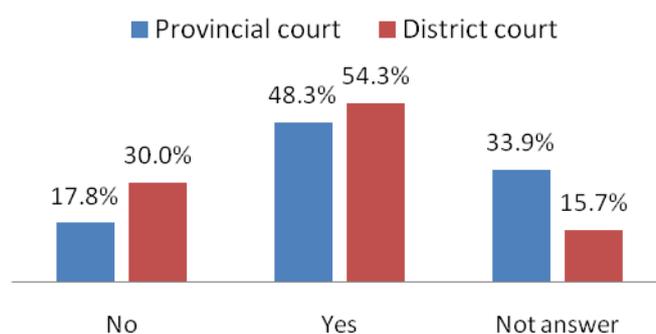
The SPC has also published cassational review decisions regularly since 2004 in both printed book and online formats. Publicising judgments is significant in making adjudication activities transparent; it demonstrates an acceptance by the tribunal sector of external supervision of the quality of its adjudication activities. At the same time, publicising judgments enhances the quality of litigation because the judgments will better reflect the outcome of litigation. Consequently, the people's right to counsel will be better guaranteed. The majority of judges surveyed, whether by interview or questionnaire, supported the publicization of judgments after trials (Figure 40). It is certain that such a practice must incorporate limitations to take into account factors of confidentiality such as personal secrets and state secrets.

c. Publicising judicial administrative procedures at courts for people's easy access

Publicising judicial administrative procedures at courts is a policy of the tribunal sector, and has been raised by the Chief Justice of the SPC as one of the key tasks to be fulfilled up to 2015.

To encourage people to trust the operation of the courts, the Chief Justice of the SPC asserted that *“the reform of administrative procedures must aim at best ensuring the legitimate rights and interests of the people in publicity and transparency;”*

Figure 42: Templates provided free of charge to the people



¹²⁶ JUDGE Project supported to install recording systems in 3 provincial Courts of Vinh Long, Hue and Hung Yen.

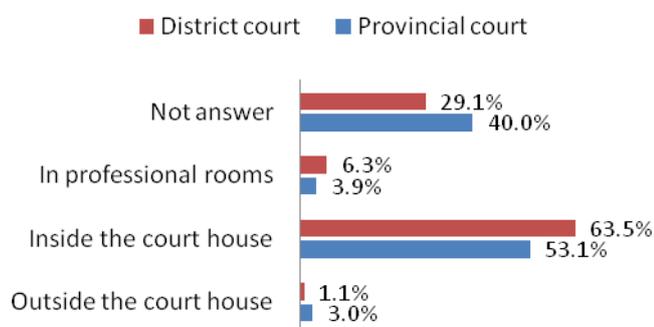
creating most favourable conditions for people once they have related issues to receive prompt and thorough service by the courts; and ensuring the efficient and effective operation of Courts”¹²⁷. As has been described herein, judicial administration plays a crucial role in facilitating people’s access to the services and activities of the courts. The people experience the attitude and quality of courts from their interactions with judicial administrative activities (or in other words, activities supporting adjudication). The survey results mentioned in Part I Chapter I Section 4 indicate that most provincial and district courts already supply petition forms and information about court filing procedures; some courts also publish their petition forms on their website (see Figure 3 and Figure 4).

Petition forms should be updated regularly and provided free of charge to people so as to increase the convenience of visiting the court to submit case files. In some of the field surveyed areas, such as Vinh Long, Ninh Thuan, and Lao Cai, it usually takes the people one or two day to travel from home to the head office of the district court.

When they arrive at the court, if their petition form is declared irrelevant, it is tough for them to go back home and return to court successive times in order to successfully submit case files. Therefore, supplying petition forms free of charge is rather necessary. However, the rate of provincial and district judges who reported that petition forms are supplied freely in their court was not high, only approximately 50% (see Figure 42).

Furthermore, according to the opinions of 75.8% of the district judges and 66.4% of the provincial judges (Figure 4), courts need to better implement the display of information about proceedings activities in the court office. Most information boards are placed within the courts or in a professional room with limited access (Figure 43), which limits the ability of the people to access information. According to one judge, when the people attend court during office hours, they invariably try to get necessary information from responsible officials; yet some people seem to be afraid when they enter the court office, for various reasons. Some judges proposed that information about adjudication procedures and petition forms should be posted somewhere outside the office of the

Figure 43: Places where bulletin boards are posted



¹²⁷ Mr. Truong Hoa Binh, Chief Justice of the SPC, *Some contents on the reform of judicial administrative procedure in the people’s court activities*, http://toaan.gov.vn/portal/page/portal/tandtc/299083?item_id=23071379&p_details=1, 2013.

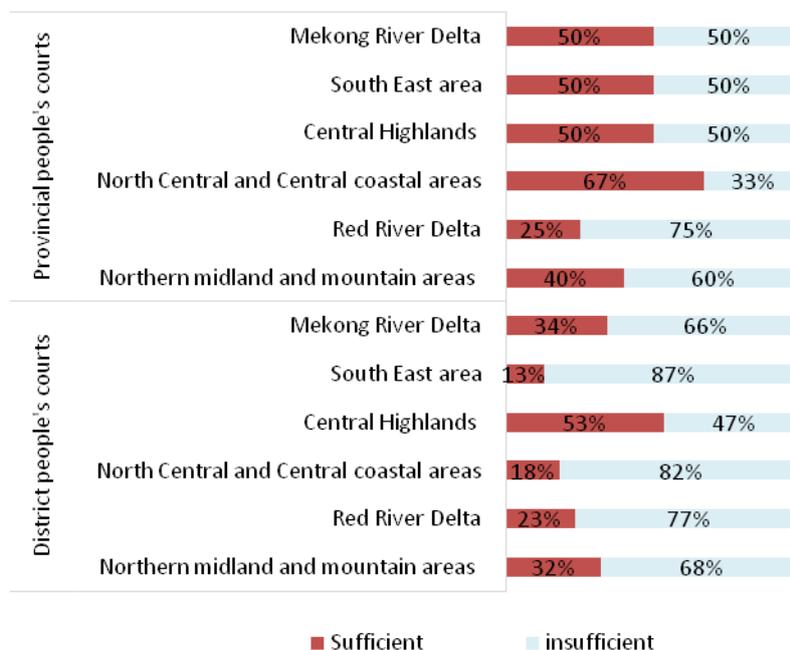
court so that the people can easily approach and obtain this information any time. This has only been applied by some courts (Figure 43).

In Vinh Long, the Provincial People’s Court has drafted a handbook to guide judicial administrative and proceedings procedures at courts, together with contact information for the Courts, Bar Association, Justice Department, and Legal Aid Centres. This handbook was delivered to all state bodies within the province and to communal people’s committees. The Chief Judge of Vinh Long Province reported that the wide delivery of this information aims to help the local people know about types of procedures in a convenient manner. This handbook is also highly appreciated by the representatives of the provincial Party Committee, People’s Council, and People’s Procuracy. Some communal people’s committees have even had this handbook broadcasted on the commune’s public loudspeaker to inform the illiterate of its contents. However, this loudspeaker service was only conducted in Vinh Long, and was not reported in any other of the surveyed provinces¹²⁸.

2. Some issues to ensure the right to a fair trial

The administrative management and governance of courts is greatly significant in ensuring the right to a fair trial. In the above analysis of survey results, a number of issues related to ensuring the right to a fair trial have been mentioned, such as the right to have an independent, impartial and competent adjudication panel; the right to a public trial; the right to counsel; and the right to have a case adjudicated within a suitable period of litigation. The following analysis further addresses the issues of: "the right to be adjudicated in one’s own language", which in

Figure 44: Expense for hiring translators



¹²⁸ According to the opinions of the provincial Party Committee, provincial People’s Committee and provincial Procuracy of Vinh Long in the in-depth interviews.

practice entails "the right to have the free assistance of an interpreter if the defendant cannot understand or speak the language used in court"; "the right to appraisal": and the right to access legal aid in appointed cases.

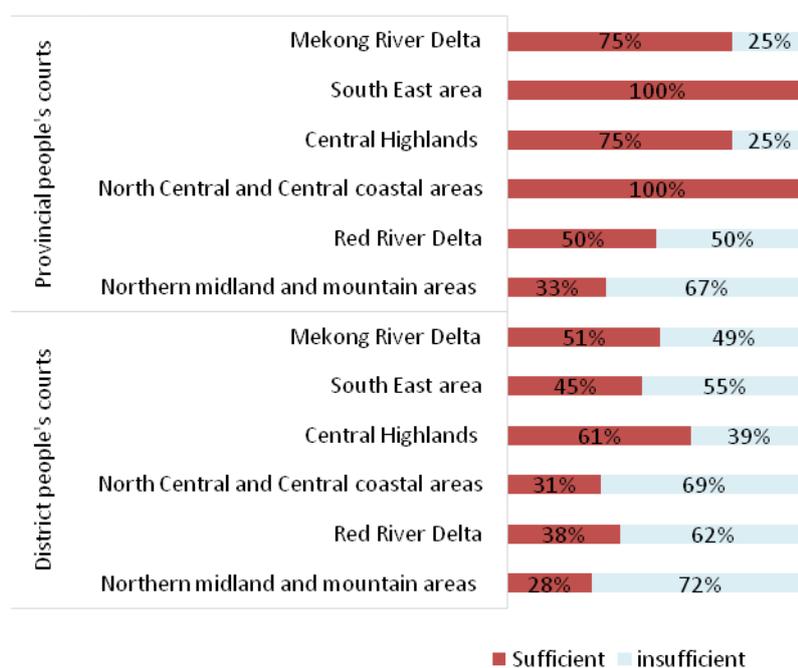
Through the survey, the majority of judges said that the budget currently provided to courts is insufficient to pay for a number of support roles such as providing an interpreter, an examiner or an appointed lawyer (see Figure 44, 45, and 46). If these support activities are not fully provided, there will be an impact on ensuring the right to a fair trial as provided by the International Covenant on Civil and Political Rights, and other relevant conventions. As per the analysis results in Figure 44, only 50% of the Chief Judges and court

leaders of the provinces located from the central area back to the Mekong Delta consider the funds available cover the cost of interpreters at trial hearings in provincial courts to be sufficient. While in the first instance (District Courts), majority of the Chief Judges and court leaders in all areas said that the fund for translators is insufficient. In some areas, this funding is considered

sufficient by only 13% of the judges and court leaders. It should be noted that Vietnam has 54 ethnic groups in which the minority groups (non-Kinh ethnic) account for approximately 12% of the total population. Therefore, the demand for translation from ethnic languages for ethnic parties is considerable. During the process of field study, the Research Team found that in Ninh Thuan, a number of judges of local ethnic groups are maintained on the bench so that they can both adjudicate in the Kinh language and be able to explain and understand the language and culture of the local ethnic people.

With respect to the funds available for hiring a lawyer to participate in appointed cases, in two areas, 100% of the Chief Judges of provincial courts reported that the funding for appointed counsel is sufficient, namely in the Southeast and the North Central and Central Coast areas (Figure 45). However, the majority of Chief Judges in the district courts said that the funding for appointed counsel is still insufficient; only

Figure 45: Expense for hiring appointed counsel



28% of the Chief Judges of the provincial court in Midlands and Northern mountainous provinces reported that there was enough money to pay for appointed counsel.

With respect to the funds available for hiring an appraiser, the majority of Chief Judges at both provincial and district courts confirmed that such funding is not enough, except for those in the Southeast. It is notable that these three types of support costs are estimated in the budget forecast by courts themselves, then collated and allocated by the SPC. Some judges said that, in criminal cases, the tribunal sector rarely has to call for appraisal because this activity is carried out during the period of investigation and prosecution. If the evidence and facts relevant to a case need further examination, the court may return the files with clear reasons to the investigation body for further investigation.

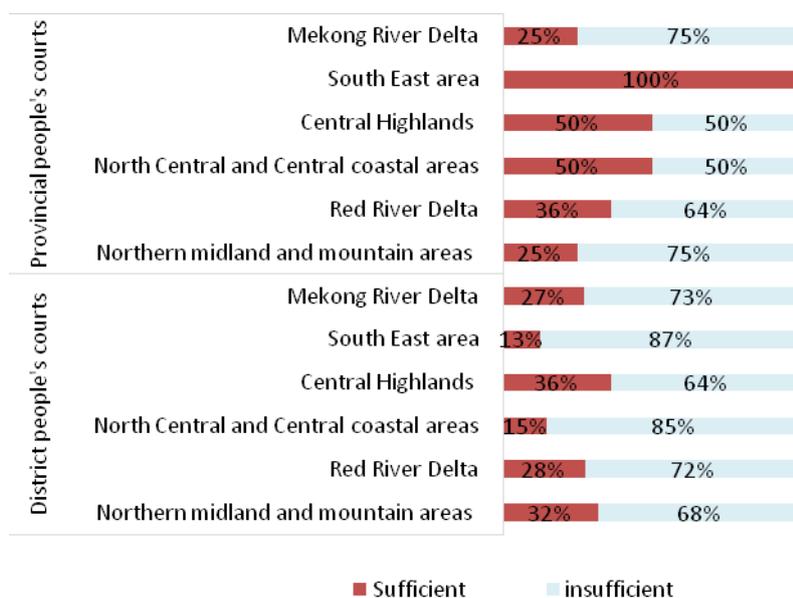
On the other hand, in civil, commercial business, labour and administrative cases, the courts' demand to use appraisal services is quite high. Thus, the courts need the budget forecast to actively request funds for appraisal in the SPC budget allocation.

However, the problem is that, if the results of the trial are based on the trial proceedings and are the outcome of the 'democratic litigation process' (tranh tung dan chu), the demand for using examination services of the court will be very high irrespective of the type of case.

Sub-conclusion for Part IV

It is necessary to study the reciprocal interactions between judicial administrative procedures at courts, the model of administrative management of courts, and the model of court governance. The studies and analysis presented in this part indicates the administrative management authority and judicial authority between senior courts and junior courts, and between the Chief Justice and judges, must be separated. The status quo including practices such as "case instruction", "case report", "exchanging case settlement direction with court leaders" and "consulting opinions of superior courts"

Figure 46: Expense for hiring appraisers



breaches constitutional principles applicable to judicial activities. These principles include “independence in adjudication”, “collective adjudication” and “people’s representation”. The practice of “case instruction” and “case report” undermine the organisational structure of the adjudication system, and caused the functions of superior courts in appellate adjudication, cassational review, and examination to be rendered meaningless. It has also led to disqualification of trial judgments and undermines the citizens’ right to counsel. In order to eliminate that practice, regulations with strong sanctions that strictly forbid such acts must be promulgated.

For the people’s court system to actually be a system of bodies exercising “judicial rights”¹²⁹, all courts from the central out to the local level, being state power bodies, must have a certain and independent position in the power system. The mechanism of examination and control among state power bodies is necessarily different from that in the court system and vice versa. This requires future improvement. Accordingly, such problems of “case instruction” and “case report” must be completely eliminated.

In order to construct a court system that is ‘close to the people’ (gan dan), the tribunal sector needs to concentrate on making public the activities of courts, and also on taking measures to protect information related to security, national defence, fine tradition and customs, and individuals’ private lives. Making court activities public will enhance the accountability of the court system, improve the ability of the people and other proceeding bodies to supervise the activities of courts, and facilitate easier access of the people to information about court activities.

Finally, the tribunal sector need a sufficient financial source to implement strictly all requirements regarding fair adjudication, ensuring that the people have access to justice in the activities of the courts.

¹²⁹ Draft for amendment to the Constitution 1992, Article 107, http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_NGHIQUYET/View_Detail.aspx?ItemID=32&TabIndex=1.

Part V: OTHER MATTERS REQUIRING FUTURE REFORM

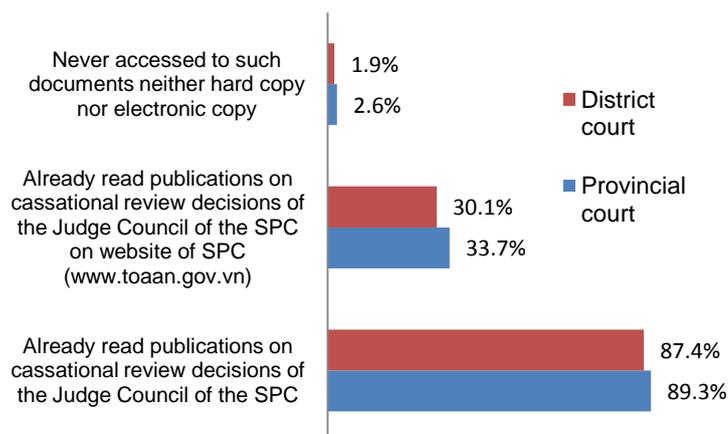
1. Applicability of case law

The Judicial Reform Strategy to 2020 stipulates that “*the SPC has the mission to summarise adjudication experience, guide the consistent application of law, develop case law and exercise cassational review, and retrial and so on*”¹³⁰.

The 2006 survey¹³¹ found that 52.85% of the surveyed district court judges referred to previous judgments before deciding the cases they accepted. This is similar to the results of this survey (see Figure 41). In addition, judges also had a high demand for access to the cassation decisions of the SPC to develop adjudicating expertise. These findings show that many judges are interested in handling legal situations through case law (see Figure 47). This is the basis for the development of case law in Vietnam as directed in the Judicial Reform Strategy to 2020. When interviewing local judges, the Research Team observed that all judges had several collections of cassation decisions of the Judge Council of the SPC. In Vinh Long, the Provincial Court also printed and collected the SPC’s cassation decisions and appellate judgments made on judgments of the Vinh Long courts. According to the Chief Judge of the Vinh Long Provincial Court, the purpose of this collection was for judges and state agencies in Vinh Long Province to understand the adjudicating views of the SPC and its manner of applying law for the cases and problems raised in the province. Judges in the province are aware of their responsibilities and develop adjudicating expertise in this way.

The SPC has a policy to “*send the examination and review conclusions of examined courts to the provincial People’s Courts to develop common experience on*

Figure 47: Judges' access to cassational review decisions of the SPC



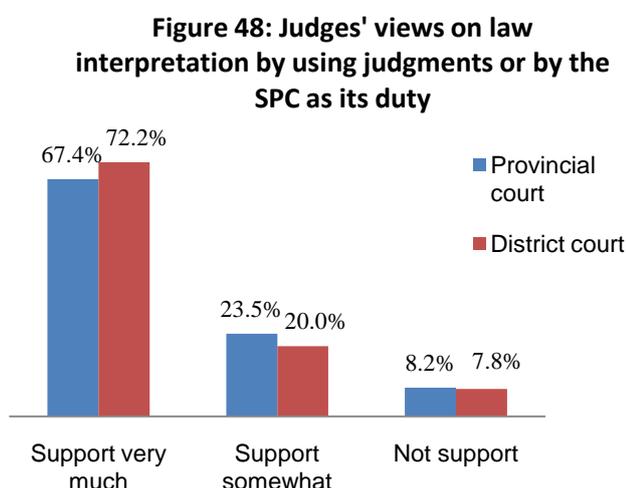
¹³⁰ Vide report of JICA, Vietnam-Japan joint research on case law in Vietnam, page 196.

¹³¹ Report on Survey of Needs for District Courts Nationwide, page 140.

adjudication work. The provincial People’s Courts also have to send the examination conclusions on criminal hearings and criminal judgment enforcement to the courts under their management. The examination conclusions on criminal hearings and criminal judgment enforcement of the superior courts can be posted on the electronic portal of the Supreme People’s Court but the editorial board must edit the judgments so that the courts are not mentioned by their specific name”¹³². Recently, the SPC has formulated a project on developing the case law of the SPC.¹³³

Case law that is easy to access and study is a very valuable source of information to illustrate the applicability of law into practice for judges, legal practitioners, law lecturers, researchers and students. In the legal education, case law is mentioned as an important source of reference to better understand the application of the law. Studying past judgments helps Vietnamese students to understand the law in practice and restrict the over-emphasis on legal theory as is currently the case. Furthermore, making judgments public and developing case law also encourages the mandate of “fortifying the internal inspection and examination of judicial agencies; and organising annual sessions to comment and evaluate on the responsibility, morality, virtue and capacity of staff with judicial title...”¹³⁴. The publication of judgments is a pre-condition of improving legal education and developing case law.

The judges interviewed directly and surveyed by questionnaires advocated that the SPC take on the role of interpreting the law so that the law is applied consistently (see Figure 48). The courts with day-to-day trial work will then better understand the application of the law in practice, hence the interpretation practised by the courts will narrow the gap between legal theory and real life.



¹³²Conclusion Announcement of the Chief Justice dated 03/02/2010.

¹³³Decision No. 74/QD-SPC of the Chief Justice of the SPC dated 31/10/2012.

¹³⁴Resolution No. 49-NQ/TW dated 02/6/2005 of the Politburo.

2. Application of the regional court model

	Provincial courts				District courts			
	Support very much	Support	Not support	Oppose	Support very much	Support	Not support	Oppose
There should be only one basic-level court in each district	47.5%	21.1%	28.4%	3.1%	54.5%	24.0%	18.5%	2.9%
There should be one basic-level court in charge of several districts	47.3%	36.4%	12.5%	3.8%	43.7%	30.3%	19.9%	6.1%
There should be no relationship between the jurisdictional boundaries of basic level courts and local governments	47.5%	28.4%	16.3%	7.8%	44.1%	25.1%	22.5%	8.3%

According to Resolution No. 49/NQ-TW, the court system is organized in such a way that the courts will be on “*jurisdiction-based, rather than the existing geographic affiliation, which consist of first instance regional courts, each of which will be set up in one or more geographic administrative units, at the district level; appellate courts responsible primarily for hearing appeals and protests against the decisions of the courts of first instance, as well as trying select cases in the capacity of courts of first instance; high courts, to be established on a regional basis, with appellate jurisdiction, the Supreme People’s Court has the task of summarising the adjudication experience, guiding the uniform application of the laws, case law development and cassation review, re-trial. The establishment of specialised courts must be based on the fact of adjudication work of each court level, each area*”¹³⁵.

The provincial judges surveyed by questionnaire do seem to strongly support this plan for the organisation of the court system. The district judges support the idea of “one court of first instance in each district” which is, in fact, the current model (see Table 8). Less than a half of provincial judges (47.5%) strongly support the proposition that “there should be no connection between the geographical boundaries of the jurisdiction of the first instance court and the local authorities” is; but over 70% of the provincial judges and district judges overall reported supported this proposition to some degree..

According to judges interviewed directly, judges in district courts which will be used as headquarters of the regional court are not concerned about the new organisation of the regional court. However, judges of the district courts which are to be “merged”

¹³⁵ Resolution 49-NQ/TW of the Politburo dated 02-6-2005 on Judicial Reform Strategy to 2020

into a regional court headquartered elsewhere are concerned about travelling conditions and the re-organisation of their family lives if they have to work in remote areas.

In the survey of localities (undertaken from July to October 2011), discussions about the plan for organising the regional court model were held in six provinces by the Provincial Steering Committee for Judicial Reform. Each province has its own characteristics to be considered when implementing the regional court model. A common issue in each of those six provinces is that the exact organisation of the regional court model should be based on the number of cases, court personnel and the geographical area of each district. If a court is responsible for two districts, those two districts must be adjacent to each other so that citizens may easily access them. The goal set forth in those discussions is that citizens in the farthest region from the regional court should be able travel to the court and back home again within a day.

Sub-conclusion for Part V

As stated above, publicising the court's activities enhances the ability of citizens to supervise adjudication activities and improves the accountability of judges. The development of case law of the SPC is directed at *"improving the quality of judgments and decisions of the tribunal sector... and contributing to ensure the correct and consistent application of law, thereby ensuring the equality of all organisations and citizens before the law"*¹³⁶. Case law will replace direct instructions on specific cases from the superior court to the junior court, or from the Chief Judge to other judges.

The model of regional court organization separate from the local administrative management authority is a way to enhance the independence of the courts. To realise this model, the working conditions of and need for a stable life for judges and their families must be considered and arrangements made to accommodate them.

Part VI: CONCLUSIONS AND RECOMMENDATIONS

Judicial power as exercised through the courts' adjudication role plays an important role in the socio-economic development of a country, due to its function of dispute settlement in society, and also of creating a channel for the people to implement their right to supervise the exercise of both legislative power and executive power by the State. If judicial power is not guaranteed, the courts will meet many difficulties in

¹³⁶Decision No. 74/QD-SPC of Chief Justice of the SPC dated 31/10/2012.

development¹³⁷ making it difficult to guarantee the rights of the people¹³⁸. The Constitution and other legal documents affirm clearly that judicial power belongs to the courts (including the SPC and local people's courts). The relationship between the courts and other agencies of state power (legislative and executive) must be improved in order to better respect the judicial power of the court.

In order to effectively exercise judicial power, the courts themselves must reform judicial administrative management and internal administration of the courts, so that the courts will have better capacity in performing their judicial responsibilities, and in fulfilling the objectives and functions of the courts. In light of the results of this survey, the Steering Committee for Judicial Reform and the SPC may wish to focus their attention on the following findings:

- The “one stop shop” model on handling administrative work – as implemented in various administrative bodies as well as in the people's courts of Ho Chi Minh City, Vinh Long Province, and Thua Thien Hue Province - demonstrates transparency and publicness in the operation of the courts. This model simplifies procedures for the people when accessing court services and limits the possible influence of the people on the judge in charge of case handling and vice versa.
- In implementing the “one-stop-shop” model, it is necessary to separate and make independent the court's functions of judicial administration (receiving petitions, assigning cases etc) and adjudication. In the current management model of local courts, the Chief Judge and court leaders participate in the case assignment process, as the Chief Judge is in charge of the general operations and administrative governance of the court. Judges are independently responsible for the legality of their adjudication. Increased application of the “one stop shop” model in the tribunal sector does not require the amendment of any provision in procedural laws, the Law on People's Court Organisation or the Ordinance on Judges and People's Jurors. The Chief Justice of the SPC would simply need to issue a document providing for “supporting apparatus of the people's courts at all levels” and submit this document to the Standing Committee of the National Assembly for approval.

¹³⁷ John Gillespie (2007), *Rethinking the Role of Judicial Independence in Socialist-Transforming East Asia*. *International and Comparative Law Quarterly*, 56, pp 837-870 doi:10.1093/iclq/lei203. John Gillespie, citing other works mentioned this view including: Martin Shapiro, *Courts: A Comparative and Political Analysis*, (1981) page 32-35; Michael Kammen, *A Machine that Would Go of Itself: The Constitution in American Culture*, (1986) page 31; Alec Stone, “The Birth and Development of Abstract Review: Constitutional Courts and Policymaking in Western Europe”, (1990), *Policy Studies Journal* Vol. 81.

¹³⁸“Basic Principles on the Independence of Judiciary”, issued by the United Nations in the 7th Meeting for criminal prevention and offender treatment, Milan, from 26/08 to 6/09/1985 and supported by Resolution No. 40/32 of United Nations General Assembly dated 13/12/1986, http://193.194.138.190/html/menue3/b/h_comp50.htm.

- In order to promote the efficiency of “one stop shop” model of handling administrative work, and also to cut down on the compliance costs of performance of administrative procedures for both the courts and the people, local courts must publicise and update information in relation to court procedures, time and process of handling petitions, denunciation letters and templates of documents, and other papers necessary for citizens in court procedures. In addition the local courts need to apply information technology (through case management software) to help to make the work of case assignment clearer, more transparent and more likely to comply with procedural time-limits.
- In human resources affairs, judges should be selected on the basis of qualifications, quality and independence. Judges may be appointed from persons working in various fields which will help adjudication activities be closer to the reality of citizens’ lives, and make judges more diversified in their life experiences. The process of judge selection needs to be studied for opportunities to reduce the pressure on judges in the selection process. The institution of the local judge selection board must be reformed in accordance with selection demand and independence of judges. Staff rotation should also be considered further regarding possible modes of application in, as well as impacts on, the tribunal sector.
- The policy of rotation and re-assignment of managing officials has shown positive effectiveness in several sectors in various localities¹³⁹. The staff rotation mechanism breaks down insularity and localness, and limits corruption in the operation of various agencies. In the tribunal sector, the survey has found positiveness from the staff rotation. However, in staff rotation in the tribunal sector, it is necessary to take into consideration factors that affect the independence and specialisation of courts, and the staff rotation should not appear in practice as a reaction against specific decisions of judges.
- The tenure of judges should be prolonged further than its current length. The mechanisms for re-appointment, reward, commendation, and discipline of judges also need to be improved with a view to encouraging the career development and capacity for responsibility of judges, which will encourage judges to feel assured in their jobs.
- Judges must be entitled to satisfactory preferences, appropriate working conditions, and appropriate working and resting regimes to most effectively

¹³⁹ Resolution No. 11/NQ-TW dated 25/01/2002 of the Politburo on the rotation of leaders and managing officials.

perform their functions and objectives and also to attract the best talent to work in the tribunal sector.

- The supervision mechanism over the moral conduct of Party members and judges needs to be supplemented and improved. The Steering Committee for Judicial Reform and the SPC may wish to consider the establishment of a judges' association under the Vietnam Lawyers' Association. A judges' association - together with Vietnam Lawyers' Association, Vietnam Bar Federation and other socio-political organisations - should formulate a code of conduct for judges. If such a code of conduct is adopted, socio-political organisations and the people will be able together to supervise the moral conduct of judges, instead of a state agency.
- The manner of promoting, rewarding, and disciplining judges should also be reformed in order to stimulate judges in their work. The current reward mechanism is not enough to encourage judges to better their work, yet causes heavy pressure on judges. The mechanism of reappointment and the material sanctions for acts of judges (such as compensation for wrongful judgments under the Law on Compensation Responsibility of the State) also require a complete study to understand its effects on the performance quality of judges, and to ensure that it does not appear as a measure of reaction by other state power bodies against individual judges' activities.
- Judges need regular education and training to improve their professional knowledge including newly promulgated legal provisions, adjudication skills, and other knowledge about specialisation of judges to increase their self-confidence in giving their own decisions, and in their readiness to take accountability for such decisions.
- The organisational structure of of the court apparatus must ensure the independence of the court system and judges from internal pressures of the tribunal sector. The court should have self-governance ability in term of court finance, and the judge contingency should be competent and assured of their tenure, appropriate income and clear appointment and reappointment mechanisms.
- The budget for court operations needs to be guaranteed based on the general situation of the country. The budget allocation and utilisation mechanisms of the court should be considered, and may be different from that of state administrative agencies. To limit the negative practices in the self-management of the budget,

the transparency of mechanisms of finance and court operation, and oversight mechanism over financial activities of the courts, must be strengthened.

- The current method of budget allocation from the SPC to the local courts is supported by judges. When the tribunal sector can take more initiative regarding its budget for operation, it will have better independence. In order to restrain poor practices in the self management of budget at courts, the financial management practices of courts must be transparent and public.
- The “fixed amount grant” mechanism for allocating budgets for administrative activities of the courts is a matter which should be studied thoroughly. In fact, this mechanism can only be suitable for administrative activities which can be anticipated by their simplicity and repetition. In contrast, judicial activities depend heavily on the level of complexity or the nature of the cases, so it is difficult to apply the “fixed amount grant” to their administration. Application of this mechanism may even cause consequences such as: (i) The courts will lack budget for their operation; (ii) The courts will decrease the “quality” of judicial reform in order to reduce expenditure, such as by not requiring judicial appraisal, or by cutting down the workload of appointed counsel invited by the courts.
- Judicial administrative work must aim to facilitate easy access for citizens to information and services of the courts. The court should also create conditions or cooperate with other agencies to provide the support citizens need to access legal information relating to court operation and any entitlements they may have to legal aid.
- Judicial administrative work needs to be organised into consistent models for easy application for courts and to be convenient and understandable for citizens. The tribunal sector should study and apply the process of receiving and accepting cases via the “one-stop-shop” model in order to separate and make independent distinctions between judicial administrative work (petition acceptance, case assignment) and adjudication work. The Chief Judges should take primary responsibility in supervising such processes. Application of information technology may help the management of case files and acceptance processes to be better and more transparent.
- Local court management methods need to be transformed from the current method of direction and management according only to leadership discretion, without oversight by any institution, to a method of improving the responsibility and role of the court leader via a clear and transparent mechanism. Any such

regulations must be in accordance with the law and practice of tribunal sector operations and guarantee the independence of the court and judges.

- In case of management reform, it is necessary to separate the practices of administrative management and judicial jurisdiction both between the superior and the junior court, and between the Chief Judge and other judges. This way, the tribunal sector will be able to limit and entirely eliminate the status quo of “instruction to the case” and “reporting about the case” in order to ensure the principles of “independence in adjudication”, “collective adjudication” or “people’s representation” and the ‘two-level trial’. Practices of “case instruction” and “case report” have rendered the organisational structure of the adjudication system meaningless, including the function of superior courts in appellate adjudication, cassational review, and examination. These practices also lead to poor quality in the litigation at trials and in fulfilling the right to counsel of citizens. In order to eliminate these practices, regulations with strong sanctions strictly forbidding such acts must be promulgated.

- For the people’s court system to be an actual system of bodies exercising “judicial rights”¹⁴⁰, all courts from the central to local level, being state power bodies, must have an assured independent position in the state power system.. The mechanism of examination and control among other state power bodies is different from that in the court system and vice versa, a distinction which requires future perfection. In this process, such problems of “case instruction” and “case report” must be completely eliminated.

In order to construct a court system that is “close to the people” (gan dan), the tribunal sector needs to concentrate on making public the activities of courts, whilst also implementing measures to protect information related to security, national defence, fine tradition and customs, and privacy. Making court activities public will enhance the accountability of the court system, improve the supervision ability of the people and other proceeding bodies over activities of courts, and facilitate easier access of the people to the court’s activities.

- The roles and tasks of People’s jurors should be guaranteed in adjudication activities so that People’s jurors actually become the representative of the people in adjudication activities. The selection and training for People’s jurors should not only be assigned to the tribunal sector - the local People’s Council also needs to

¹⁴⁰ Draft for amendment to the Constitution 1992, Article 107, http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_NGHIQUYET/View_Detail.aspx?ItemID=32&TabIndex=1

actively participate in this work so that the People's jurors actually represent the local community in adjudication activities.

- Publicising the operation of the courts, including adjudication activities, is necessary to improve the accountability of the tribunal sector and reinforce the supervision capacity of the people and other procedural bodies over the operation of the courts. Case law should be applied in Vietnam to restrain the practice of "guiding case settlement", "requesting instructions for case settlement", prto prevent the bias of the judge, and to improve adjudicating skills and quality.
- The model of independent regional court organisation separate from the local administrative management authority is a way to enhance the independence of the courts. To realise this model, the working conditions and the demand of stable life of judges and their families must be considered and arranged comfortably for them.

The Steering Committee for Judicial Reform should make a study on the supervision of the Party over the courts' operation with the guaranteeing of the independence in adjudication of the court in the socialist rule-of-law State of Vietnam. The new study needs to identify clearly the role of each supervision mechanism and each apparatus of the Party and the State related to the operation of the court, in order to introduce measures that prevent negative impacts on the independence of the courts.

The Steering Committee for Judicial Reform and the SPC should also study mechanisms and measures to enhance the role of the people's and community's supervision over judicial activities. In addition to the reports of the Chief Judge of local courts at the local People's Councils, People's jurors teams and local bar associations also need to render reports in relation to the legal aid available for the people.

APPENDIX 1: RESEARCH METHODOLOGY

I. Desk review:

- This methodology aims to find out theoretical and practical matters of the Vietnamese court system's governance in other research and to study the legal provisions and the internal regulations of the tribunal sector on the court administration of the Supreme People's Court, a number of provincial people's courts (including 6 provinces in the survey area and other localities if convenient), including:
 - The policies of the Party for the judiciary and the protection of human rights; and
 - The literature research on the courts in particular and judicial activities in general, regarding judicial reform in Vietnam studied by domestic and foreign scholars.

II. Sociological survey methodology:

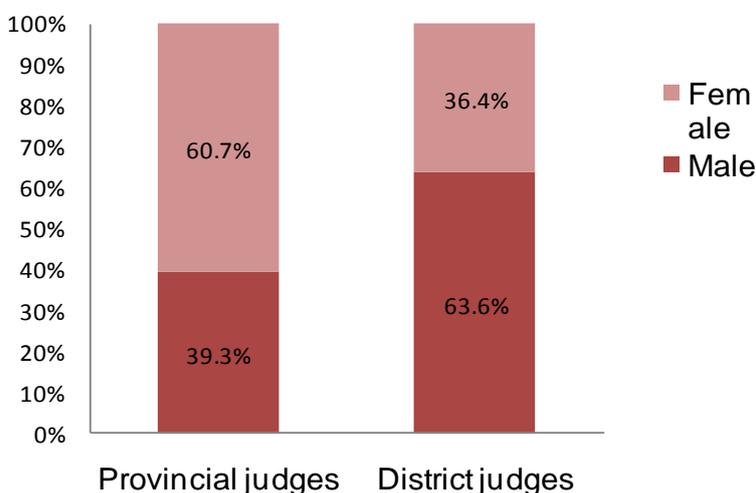
1. Survey by questionnaires:

Statistical methods and sociological survey are used to collect and process figures from current documents and reports from the sociological survey (in-depth interviews and survey questionnaires) on the status quo of court administration in Vietnam at present.

The contents of questionnaires are prepared and completed in several stages including:

- **In early February 2011:** Contents of the preliminary questionnaire were drafted on the basis of interviews with a number of judges in Hanoi.
- **In late February and early March 2011:** The Research Team surveyed and carried out pilot interviews with some other judges and experts specialising in court study, also in Ha Noi;

Figure 49: Total Judges surveyed by gender



In late March and early April 2011:

The Research Team continued completing and field-checked the questionnaire with 42 respondents at such bodies including the provincial Party Committee, the People’s Committee, the People’s Council, court and procuracy at provincial and district level in Hai

Phong City and Lao Cai province. This survey aimed at checking the questionnaire, interview sheet, and the research outline in strict accordance with requirement of the Project.

From April to July 2011: The Research Team continued fulfilling the research outline, questionnaires and the Secretariat of the Central Steering Committee also commented for completion. In this stage, the Secretariat of the Central Steering Committee organised a seminar on Chinese experience in management of court operations.

30/07/2011: The seminar to consult the opinions of experts studying judicial activities in general and court activities in particular was held by the Secretariat of the Central Steering Committee.

From August to October 2011: The research outline and questionnaires were completed after the Research Team conducted surveys and directly interviewed in 5 remaining provinces/cities with 84 respondents from the provincial Party Committee, the People’s Committee, the People’s Council, court and procuracy at provincial and district level in the four remaining provinces including Da Nang, Ninh Thuan, Ho Chi Minh city, and Vinh Long. The questions and language of the questionnaire

Figure 50: Law degree of Judges

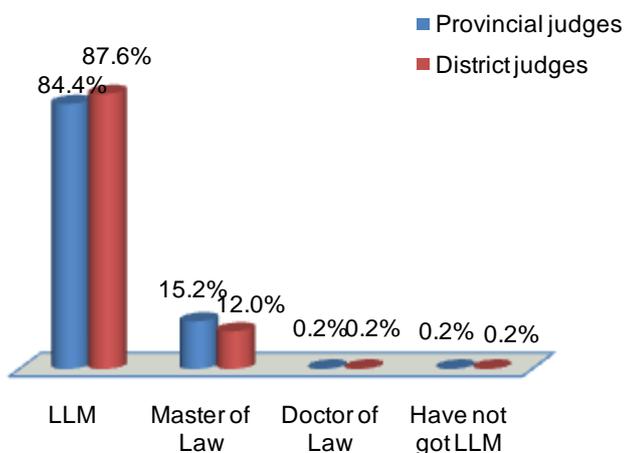
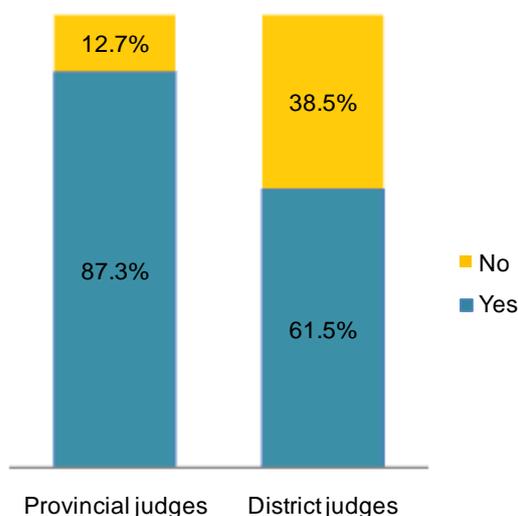


Figure 51: Total Judges attending political training courses



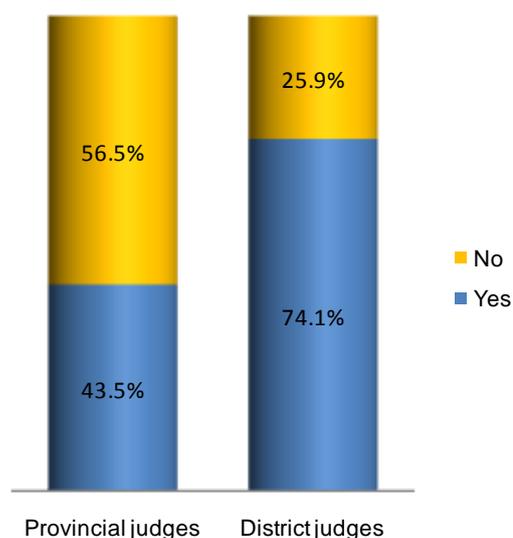
were counter-checked in each of our interviews.

- **11/11/2011: 5,336** questionnaires were sent directly from the Secretariat of the Central Steering Committee for Judicial Reform to all judges working in provincial and district people’s courts in all over the country; not including military courts (63 provincial people’s courts and 697 district ones, as of 31/12/2010). The questionnaire was also posted on the website www.khaosattuphap.net.

The delivery of questionnaires to a judges is not for the purpose of “general survey” of the sector but only to increase the capacity of collecting responded samples.

The Research Team also set up an online survey website with the contents of the questionnaires at the domain: www.khaosattuphap.net. This site was developed on the platform of the professional online survey website www.surveymonkey.com. The online survey method has also been suggested by some judges in the recent surveys of the tribunal sector¹⁴¹. The data collected from hard questionnaires and the survey website were used and handled similarly.

Figure 52: Total Judges attending judge training course at the Judicial Academy



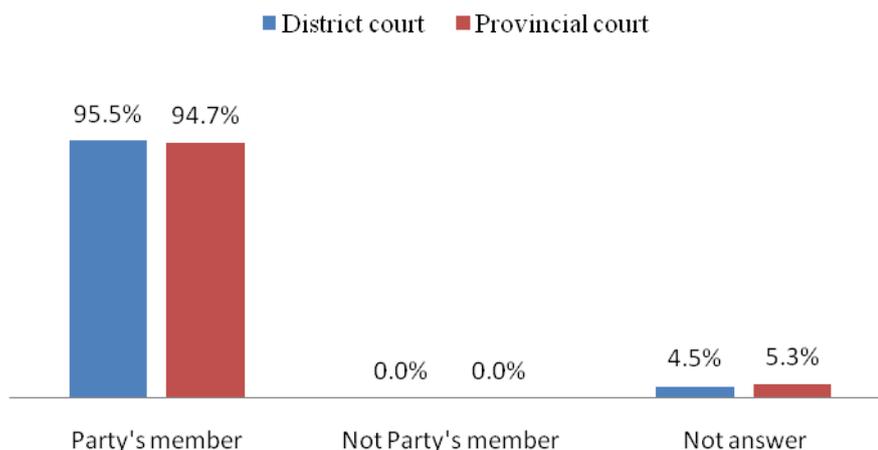
Each questionnaire was assigned an individual code so that judge can respond via a written questionnaire or online answer (see the Questionnaires in the Appendix 3) and to restrict the situation of copy of the answer. Carefully, the questionnaires have been input twice to avoid inconsistencies about the feedback results. Data are processed and checked by software like Stata, SPSS and Excel. The questionnaires of provincial judge and district judge are almost the same but there are some situations having different options related to the management and competence characteristics of each court.

2,516 questionnaires are filled in, including 488 provincial judges and 2,028 district judges. The response rate is approximately 47% of the total number of judges nationwide. Making comparison with other previous surveys in the tribunal sector, such as the survey on gender equality of the tribunal sector and in adjudication activities

¹⁴¹ Report on Survey on Needs of District Courts Nationwide, *ibid*, page 28.

(2008)¹⁴², the responding rate reached only 15.3% of the total number of judges nationwide; or in the survey on the needs of district courts nationwide (2006), the returned questionnaires was approximate 10.4% of the judges nationwide¹⁴³. There are several reasons affecting the responding rate in surveying judges, namely: several judges are in period waiting for re-appointment, some just retire, or some others are busy with adjudication; thus, they cannot participate the survey.

Figure 53: Political status of Judges



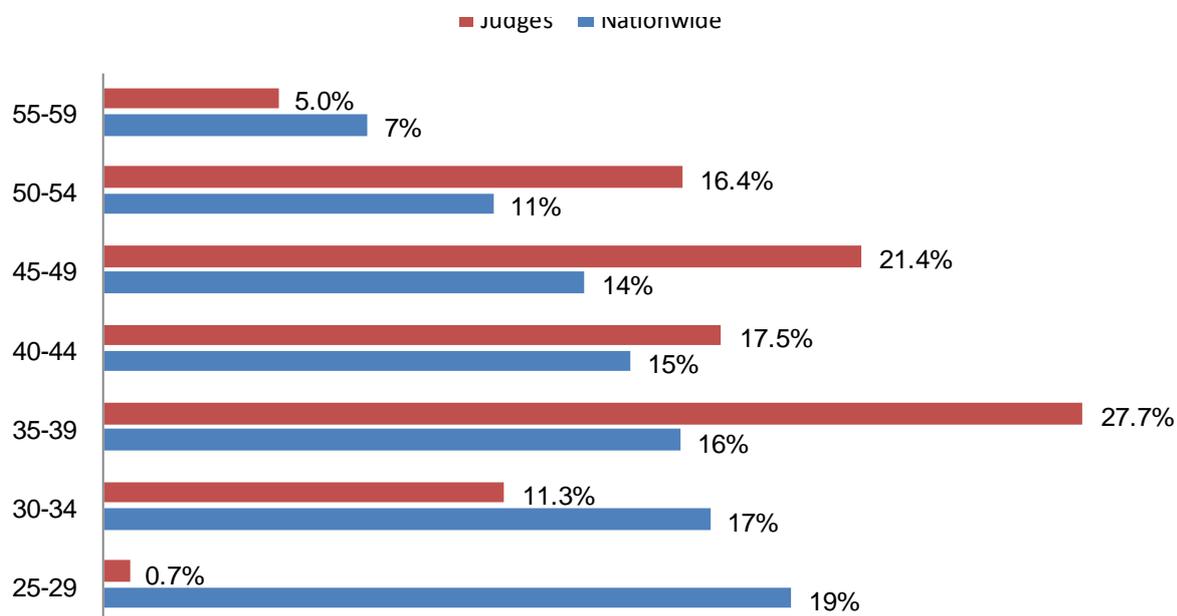
In order to determine other knowledge and standards of judge, this survey also finds out information about the number of judge who participate in political training sessions in the Party's school, participate in judge training programs of the Judicial Academy and being Party members or not. This information will be useful for the Tribunal sector in planning training schedules and fostering knowledge suitable with the characteristics of judges.

The rate of party-member judges does not only have critical political meaning, but it also presents the qualification of politics, laws, and ethics of judges. Normally, for a citizen to become a party member, he must undertake to nurture his ethics and be subject to the Party cell's supervision in terms of ethics. Party members are usually requested to participate courses for fostering political theoretical level according to the tasks undertaken by such member. In addition, the rate of judges being minor ethnics participating in this survey is 8.6%, relatively equalling the rate of minor ethnics nationwide (11,9%).

¹⁴²Survey on gender equality in the tribunal sector and in adjudicating activities in 2008, the SPC and the Projection Support to Legal and Judicial Reforms in Vietnam (JOPSO).

¹⁴³ Report on Survey of Needs of District Courts Nationwide, *ibid*, page 49.

Figure 54: Age structure of Judges



2. In person interview and field survey

The Research Team interviewed three groups of subjects related to the local court governance with **126** interviews, including:

- The group of subjects directly managing local courts who are the leaders of the provincial and district people’s courts. In each surveyed province, the Research Team interviewed the Chief Justice or Deputy Chief Justice. There were six leaders of provincial courts and 12 ones of district courts arranging time to answer the questions of the Research Team.
- The group of subjects under the court administration in adjudication activities, including in the provincial court interviewed: two judges (one male and one female, age difference), two People’s jurors (one male and one female, age difference) and one court clerk. In two (02) district people’s courts, we interviewed one judge, one People’s juror, one court clerk. The Research Team implemented 72 direct interviews with the above subjects.
- The group of subjects related to the court administration: Provincial Party Committee (officers in charge of internal-judicial affairs), the provincial People’s Council (officers in charge of judicial, budget and financial affairs), the provincial People’s Committee (officers in charge of internal – judicial affairs),

the provincial People’s Procuracies (prosecutors exercising the right to prosecute and supervise judicial activities) and two district People’s Procuracies (prosecutors exercising the right to prosecute and supervise judicial activities). The Research Team conducted 36 in person interviews with the above subjects.

The Research Team carried out in person interviews in six selected provinces under the survey area which represented in terms of such factors as geographical areas, the number of cases, residential areas, social-economic conditions, etc. For districts, the Research Team selected districts under the criteria of “time of jurisdiction enhancement” of the district from 2004 to 2009¹⁴⁴. The selected districts must also be established before 2002 (the commencement time of judicial reform under Resolution 08-NQ/TW of the Politburo) to avoid survey at courts newly established due to adjustment of administrative land border. The specification of surveyed areas is as follow:

PRACTICAL INFORMATION ABOUT SURVEYED LOCALITIES

(-) : No data found

Province/City Criterion		LAO CAI	HAI PHONG	DA NANG	NINH THUAN	HO CHI MINH CITY	VINH LONG
Population (thousands of people)		637.5	1878.5	951.7	569.0	752.1	1028.6
Rank according to PCI Index ¹⁴⁵	2011	45/ 63	1/63	5/63	46/63	20/63	54/63
	2012	3/ 63	50/63	12/63	18/ 63	13/ 63	5 / 63
Rank according to PAPI Index ¹⁴⁶	2011	44/63	22/63	11/63	49/63	9/63	25/63
	2012	44/63	14/63	2/63	45/63	9/63	12/63
Quantity of district courts		9	15	7	7	24	7

¹⁴⁴ According to the selection method of district courts for jurisdiction enhancement in Resolution No. 24/2003/QH11 dated 26/11/2003 of the Standing Committee of the National Assembly on implementation of the Criminal Procedure Code and Resolution No. 32/2004/QH11 dated 15/06/2004 of the Standing Committee of the National Assembly on implementation of the Civil Procedure Code, those courts that are qualified will be granted with further jurisdiction. The last moment for the courts to be granted with further jurisdiction was in 2009 under such Resolutions.

¹⁴⁵ PCI is the abbreviation of Provincial Competitiveness Index (PCI), which is used as a crucial tool for measuring and evaluating the work of economic management and operation of 63 provinces and cities in Vietnam. This index is announced annually from 2004 (www.pcivietnam.org)

¹⁴⁶ PAPI is the abbreviation of Vietnam Provincial Governance and Public Administration Performance Index. This index is announced annually from 2009 (www.papi.vn)

Total provincial judges	2011	10	22	17	9	104	12
	2012	11	22	17	10	108	14
Total district judges	2011	40	80	54	31	322	56
	2012	44	83	58	32	333	62
Courts with jurisdiction enhanced to adjudicate criminal cases	From 01/7/2004	Lao Cai Township	Hong Bang, Kien An, Le Chan, Ngo Quyen	Hai Chau, Thanh Khe	Phan Rang Township	District 1, 3, 5, 8, 9, 10, Go Vap, Phu Nhuan	Vinh Long Township
	From 01/8/2006	Bao Thang				District 11	Tra On
Courts with jurisdiction enhanced to settle civil cases	From 01/8/2006		Hong Bang, Kien An, Le Chan			District 1, 3, 8, 9, 10, Go Vap, Phu Nhuan	Vinh Long Township
Courts with jurisdiction enhanced to adjudicate criminal cases provided in Article 170.1 CPC & to settle civil cases provided in Article 33 of the Civil Procedure Code	From 01/8/2006		An Lao, An Duong, Cat Hai, Thuy Nguyen		Ninh Hai	District 6, Binh Tan, Binh Thanh, Hoc Mon, Tan Binh, Tan Phu, Thu Duc	
	From 01/11/2007	Bao Yen, Bat Xat, Bac Ha, Muong Khuong, Sa Pa, Si Ma Cai	Do Son, Tien Lang, Vinh Bao, Kien Thuy	Cam Le, Ngu Hanh Son, Son Tra, Lien Chieu	Ninh Phuoc, Ninh Son	District 2, 4, 7, 12, Binh Chanh, Cu Chi, Nha Be	Binh Minh, Mang Thit, Tam Binh
Court sector of the whole province and city	2011	1584 cases handled ¹⁴⁷	-	5600 ¹⁴⁸	-	1782 cases handled ¹⁴⁹	-

¹⁴⁷ Lao Cai_Annex 1

¹⁴⁸ Report of the conference "Summary report of 2011 and orientation and implementation of tasks for 2012" <http://www.baodanang.vn/channel/5399/201201/Nang-cao-hon-nua-chat-luong-xet-xu-2147729/>

¹⁴⁹ "The People's Court industry of Ninh Thuan organising the Conference for implementing 2013 tasks" http://toaan.gov.vn/portal/page/portal/tandtc/12575921?pers_id=1751931&item_id=25489969&p_details

	2012	1984/ 2005 ¹⁵⁰	-	-	5409 / 5462 ¹⁵¹	1726/ 1789 ¹⁵²	-
Provincial court	2011	-	-	-	-	-	-
	2012	174/174	-	-	713 / 722	-	-
District court	2011	-	-	-	-	-	-
	2012	1810/ 1831	-	-	4696/ 4740	-	-

¹⁵⁰ Lao Cai_Annex 1

¹⁵¹ "Summary report of 2012 and implementation of tasks for 2013"

<http://www.baomoi.com/Nganh-TAND-Tp-Da-Nang-No-luc-phan-dau-hoan-thanh-tot-nhiem-vu/144/10217337.epi>

¹⁵² As 4

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APPENDIX 3: QUESTIONNAIRES SENT BY POST

QUESTIONNAIRE

SURVEY OF COURT ADMINISTRATION

(For Provincial judges)

Under the Project “strengthening Access to Justice and Protection of Rights”, Judicial Reform Secretariat (JRS) of Judicial Reform Steering Committee (JRSC) of the Party Central conducts a sociology survey on Court Administration nationwide by sending questionnaires to all judges of local courts. This Survey is to help to assess current situation and seek solutions to enhance the administration of the courts during the implementation of judicial reforms under Resolution No. 49-NQ-TW of the Politburo on Judicial Reform Strategy to 2020.

The Survey Team sincerely thank you for your support to provide the most honest and accurate information to the Judicial Reform Secretariat of Judicial Reform Steering Committee. In particular:

- ✓ **Answers required for all questions contained**
- ✓ **No consultation of others’ opinions**
- ✓ **No meeting to discuss answers**
- ✓ **No more copy of the delivered questionnaires**
- ✓ **Only one questionnaire for each judge under either of the following options:**

Option 1: Answers could be filled in this printed questionnaire and send back to the Secretariat in the available envelope without postal charge

or

Option 2: Answers could be filled online at www.khaosattuphap.net/tinh, using the unique CODE provided herein:

The Deadline for delivery of this questionnaire and also electronic questionnaire is 10 December 2011.

All information that you provide in the Questionnaire shall be kept in secrecy and used for scientific purposes only of the Judicial Reform Secretariat. For all questions and concerns about this Survey and this Questionnaire, please send us via phone at 04-35376939 or the email khaosattuphap@gmail.com

Thank you very much for your precious cooperation and support to the Survey.

QUESTIONNAIRE
SURVEY OF COURT ADMINISTRATION
(For Provincial judges)

1. Personal Information

a. Year of Birth:

b. Sex: Male Female

c. Ethnic group:

d. Party member Admitted in (Enter 0000 if you are not a Party member)

e. Law degree(s)

1.LLB 2.Master of Law 3.Doctor of Law 4. None

2. Did you attend any specific political training course through the Party School?

1.No 2.Yes (Year completed:))

3. Have you participated and completed the judge training course at the Judicial Academy?

1.No 2.Yes (Year completed:))

P4a. When did you first start working at the provincial court where you are currently working?

Year:

P4b. So far, how long have you been taken the judge occupation?

1. Number of Years:

P4c. In which, number of years that you are a judge at district court:

(Enter 0000 if you do not have any time working as a district judge):

4a. Which position were you in charge of before judge occupation:

1. Position: 2. Started from:

P5a. Which department are you working for at the provincial court (for instance, economic court, civil court, personnel organisation department, etc.)

Department:

P5b. Do you currently hold any of the below title at your court?

- 1.Chief Justice 2.Deputy Chief Justice 3. Chief Justice of a specialised court
 4.Deputy Chief Justice of a specialised court 5 Judge seconded from other provinces 6. Judgment appraiser
 7.Head of a department 8 Judge awaiting for re-appointment decision
 9. Other title(*please specify*):.....

COURT ADMINISTRATION

P6. How many cases were assigned to you LAST MONTH?(*If you were not assigned with any case in any category, please enter “0”*)

		Criminal	Civil	Comm- -ercial	Administ- -rative	Labour	Family
a. On-going cases	1. First- instance	.....	.....	.....	.....	.....	.....
	2. Appellate	.....	.....	.....	.....	.....	.....
b. New cases	1. First- instance	.....	.....	.....	.....	.....	.....
	2. Appellate	.....	.....	.....	.....	.....	.....

7. The leader of your court assigned cases to you on the basis of: (*Multiple choices*)

	Criminal	Civil	Commercial	Family & marriage	Labour	Administra- -tive
1. Your personal expertise/ experience	<input type="checkbox"/>					

2. Your own preferences	<input type="checkbox"/>					
3. Your existing workload compared with other judges in the court	<input type="checkbox"/>					
4. At the sole discretion of court leaders	<input type="checkbox"/>					
5. Based on clear case assignment procedures	<input type="checkbox"/>					
6. Hard to say	<input type="checkbox"/>					
7. Other elements (specify)	..... .....				

8. In your opinion, how should cases be assigned to judges? [Single choice]

	Criminal	Civil	Commercial	Family & marriage	Labour	Administrative
1. Your personal expertise/experience	<input type="checkbox"/>					
2. Your own preferences	<input type="checkbox"/>					
3. Your existing workload compared with other judges in the court	<input type="checkbox"/>					
4. At the sole discretion of court leaders	<input type="checkbox"/>					
5. Based on clear case assignment procedures	<input type="checkbox"/>					
6. Other elements (specify)					

P9. Regarding the cases which you ruled in LAST THREE MONTHS, please tell me whether you exchanged viewpoints with the following people and bodies about the outcome of cases? (Multiple choice)

	Crim- inal	Civil	Comm- ercial	Family & marri- age	Labour	Admi- nistrat -ive
1. Other members of the Adjudication Panel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Leader of your court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Meeting of inter-judicial agencies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Party Committee of the province or City	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. People's Committee of the province or City	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. People's Procuracy of the province or City	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. judges or leaders at Higher level(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Other officials or bodies (<i>specify</i>)					

P10. Thinking about the cases which you ruled in LAST THREE MONTHS, can you tell me how many times the following situations occurred? (if a situation listed in the table below did not occur, please enter "0")

	Crimi- nal	Civil	Comm- ercial	Family & marriage	Labo- ur	Admin- is- trative
1. Dismiss petition, suspense the case or reject prosecution due to lack of evidence (<i>first-instance case only</i>)
2. Reject the protest or appeal, remain the first-instance judgment (<i>appellate case only</i>)						
3. Announce to amend the first-instance judgment (<i>appellate case only</i>)						

4. Annul the first instance judgment and send the case files to the first-instance court for revision (<i>appellate case only</i>)						
5. Annul the first-instance judgment for re-investigation or re-hearing (<i>appellate case only</i>)	.....				
6. Annul the first-instance judgment and suspend the case (<i>appellate case only</i>)						
7. All jurors voted differently from you	.....	.....	.....	.....	.....	.....
8. All jurors requested the court to summon additional witness	.....	.....	.....	.....	.....	.....
9. Parties in civil, commercial labour cases decided to withdraw petition after successful mediation at the court		.....	.....	.....	.....
10. You must ask for renewal of the time for case handling to continue studying case files, collecting evidences or other professional work	.....	.....	.....	.....	.....	.....

11. Regarding the cases which you ruled in LAST THREE MONTHS, how much time did other adjudication members have to review case documents prior to the hearing?

	Criminal	Civil	Commercial	Family & marriage	Labour	Administrative
1. Less than 1 hour on the day of the hearing	<input type="checkbox"/>					
2. A few hours on the day of the hearing	<input type="checkbox"/>					
3. More than one day	<input type="checkbox"/>					
4. More than one week	<input type="checkbox"/>					

P11. Regarding appellate judgment/decision in which you had to announce to amend the first-instance judgment, which of the following factors did you consider (*multiple choices*):

- 1. There are not very severe mistakes in first-instance procedures
- 2. The first-instance judgment/decision contains some mistakes in term of judgment preparation technique
- 3. The first-instance judgment/decision contains mistakes in term of substantive law application
- 4. Regulations of laws becoming effective at the time of appellate hearing have some changes in comparison to those at the time of first-instance hearing
- 5. New guiding or interpreting documents for legal provisions have some changes in comparison to those at the time of first-instance hearing
- 6. There are new circumstances and evidences at the appellate hearing
- 7. Other reasons:

12. In case where both People’s jurors in the Adjudication Panel have different opinions from yours, you usually: [multiple choices]

- 1. Consult with the heads of your court
- 2. Consult with superior courts
- 3. Confer with members in the Adjudication Panel until you reach an agreement
- 4. Allow the decision by majority vote even if you disagree with it
- 5. Delay the ruling
- 6. Other (please specify)

13. Regarding the cases which you ruled in LAST THREE MONTHS, did you exchange viewpoints on solutions to cases with the court leaders upon existence of:

- 1. Professional issues
- 2. Inconsistent opinions among members of Adjudication Panel
- 3. Opinions from other bodies
- 4. In all cases

14. Regarding the cases which you ruled in LAST THREE MONTHS, apart from details of the cases and relevant legislation, which of the following factors were taken into your consideration in handling the cases? (Multiple choices)

- 1. Opinions of superior courts when there is professional content or law application requiring instruction
- 2. Opinions of the leaders of your court
- 3. Technical opinions of experienced judges who are your colleagues
- 4. Opinions of leaders of local authorities
- 5. Comments on press (if the case is of public concern)
- 6. Opinions of legal experts who are prestigious in law field
- 7. Legal valid judgments of previous similar cases or cases with similar circumstances
- 8. Other (please specify)

BUDGET AND COURT FACILITIES

15. It is the Project’s concern about your viewpoint on the measure of budget allocation to courts. Do you agree or disagree with each opinion following:

	Completely agree	Agree	Disagree	Completely disagree
a. The NA directly grants budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Both the SPC and the local authority grants budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Only the SPC grants budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Only the local authority grants budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16. Are you provided with your own computer or a shared computer? (Check the box that best describes your situation)

- 1. Yes, I have my own computer provided by the court and I alone use this machine
- 2. Yes, I have my own computer provided by the court and my clerk also uses it

3. Yes, I have access to a computer provided by the court which is shared by several judges

4. No, but I bring a personal computer to work

5. No, I do not use any computer at work

If you choose “No, I do not use any computer at work,” please skip question number 17, 18, 19, and continue with question number 220

17. Is your computer connected for information sharing within the court?

1. Yes

2. No

3. I don't know

18. Does your court use any software to administrate cases, work load, and administrative procedure and sequences?

1. Yes

2. No

3. I don't know

C18a. What is such software? (for Chief Justice only)

1. A computing program consistently used which is equipped and popularised by the SPC

2. A computing program which is consistently equipped for depending district courts by the provincial court

3. A computing program which is developed and launched by your court itself

4. I don't know

19. Is your computer connected to the Internet?

1. Yes

2. No

3. I don't know

20. From what sources do you often keep yourself updated with legal documents? (Multiple choice)

1. Collecting legal documents by yourself and systematising them for your own use when necessary

2. Relying on legal documents and instructions of the court sector filed at your court

3. Collecting electronic legal documents by yourself on the internet

4. Collecting documents by yourself from the website of the SPC namely www.toaan.vn

5. Collecting documents from paid legal websites such as www.luatvietnam.vn

6. Requesting your clerk to find and collect legal documents on contents related to the case you are ruling

21. What sources of legal documents are most convenient for your reference?

- 1. Printed legal documents collected by yourself
- 2. Printed legal documents provided by your court
- 3. Documents collected by yourself from www.toaan.gov.vn
- 4. Documents collected by yourself from www.luatvietnam.vn
- 5. Documents collected by yourself from other websites namely

C22. In your opinion, in 2010, whether the budget of your court was distributed with fixed amount or based on actual expenditures? (for Chief Justice only)

- 1. Granted in fixed amount 2. Granted based on actual demand 3. Don't know



C22a. If the budget was granted in fixed amount, how do you evaluate this form? (For Chief Justice only)

- 1. Appropriate and satisfying operation demand 3. I don't know
- 2. Appropriate but not satisfying operation demand 4. Inappropriate



C22.b. If you choose “Appropriate but dissatisfying operation needs” or “Inappropriate”, please specify whether the applicable budget is sufficient for the following activities? (This question is for the Chief Justice only)

	Yes	No
a. Employing interpreters	<input type="checkbox"/>	<input type="checkbox"/>
b. Employing appraisers	<input type="checkbox"/>	<input type="checkbox"/>
c. Employing appointed counsel	<input type="checkbox"/>	<input type="checkbox"/>
d. Mobile court expense	<input type="checkbox"/>	<input type="checkbox"/>
e. Other costs (please specify):	<input type="checkbox"/>	<input type="checkbox"/>
.....		

23. How are solicitors facilitated to take copy of case files at your court?

- 1. They can use the photocopier of the court

27. Please tell me your opinion about sources for judge appointment, which of the following should be facilitated to become judges:

	Support very much	Support somewhat	Somewhat Oppose	Oppose very much
a. Lawyers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Law professors, jurists	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Prosecutors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Investigators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other state officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Court clerks and other court officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

28. Which of the following regimes of judge appointment do you support?

- 1.5-year term of office, renewable
- 2. 10-year term of office
- 3. Up to mandatory retirement age

28a. If you support 10-year terms of office or appointment up to mandatory retirement age, please state your reasons:

.....

29. Which of the following rules for the retirement of judges do you support?

- 1. 55-year old for women and 60-year old for men
- 2. 60-year old for both men and women
- 3. Higher age: (Specify:))

P30. Would you support a system in which judges in general only specialise in specific areas of law?

- 1 Support very much 2. Somewhat support 3. Oppose somewhat 4. Oppose very much

↓

↓

P30a. If you choose “support very much” or “somewhat support”, in which area of law would you personally wish to specialise in?

- 1.Criminal 2.Civil 3.Commercial
 4.Administrative 5.Labour 6.Family

P31. In your opinion, if a system in which judges are rotated out of courts after five years is applied, which of the following impacts would it cause?

1. Improving work experience
 2. Fighting against corruption and negativeness
 3. Having no effect in term of profession and work
 4. Causing difficulty to judges' daily life

32. We are interested in your views about the principle that reappointments of judges should be tied to the proportion of decisions that are annulled or amended by superior courts. What percentage of annulled (or amended) cases is acceptable for:

a: Number of annulled cases

1. The percentage should not matter (*if you choose this option, please skip Question 33*)
 2. less than 1 % 3. between 1% and 2% 4. between 2% and 5% 5. more than 5%

b: Number of amended cases

1. The percentage should not matter (*if you choose this option, please skip Question 33*)
 2. less than 4 % 3. between 4% and 10% 4. more than 10%

33. If you agree with a percentage of annulled (or amended) cases for reappointment, which of the following basis do you think should be considered? (Multiple choice)

1. Only cases annulled due to mistakes in performing litigation procedures should be accounted
 2. Only cases with technical mistakes in writing judgment should be accounted
 3. Only cases with wrong decision should be accounted
 4. All of the above circumstances

34. We are interested in your views about the procedure of appointing/reappointing judges and the effectiveness of appointment councils for judges. Please tell me whether you agree with each of the following statements, and specify the degree of your agreement.

	Completely Agree	Agree somewhat	Disagree somewhat	Completely Disagree
a) Judicial selection councils for judges are effective because they actually dismiss incompetent judges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Judicial selection councils for judges are unduly influenced by applicants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Judicial selection councils reinforce popular supervision over the judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Judicial selection councils for judges are useless because they always re-appoint everyone under consideration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Judicial selection councils for judges effectively prevent immoral behaviour within the judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Judicial selection councils for judges never promote judges who do not have sufficient experience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Judicial selection councils undermine judicial independence by giving too much influence to local authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) There are still many shortcomings in judge reappointment procedure, wasting time and delaying work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) In the current selection of judges, officials with several years of work experience but limited ability receive more disadvantages than those with good professional ability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

35. Is there any internal regulation or rules at your court?

- 1.No 2. Yes



35a. If yes, which of the following contents are provided in such internal regulations or rules (Multiple choice)

1. Trial Rule
2. Labour Regulations as stipulated by the Labour Code
3. Internal Working Rules, including:
- a.regulation on case assignment,
 - b. regulation on case receiving,
 - c. regulation on case reporting,
 - d. regulation on financial management, use of public properties,
 - e. regulation on receiving guests, involved persons,
 - f. other regulations(*Please specify*):

P36. If you performed well in your work during a given year, which of the following rewards would you prefer? (multiple choice)

1. To be given one-off bonus, as is the case in the current regime (materially and with certificate of merit)
2. To receive an increase in your salary
3. To be promoted to a higher position in your court
4. To be promoted to seniorjudge level
5. To be promoted to the provincial court

37. In your opinion, which skills should court clerks have to best assist judges? (Multiple choice)

1. Substantive and procedural law understanding 2.Document preparing skills
- 3.Shorthand and fast typing skills 4. Case analysis skills

1. Completely support courts

2. Support but only at superior courts

3. Support but only cassational review decisions

4. Oppose

46. Do you support video or tape-recording in hearings to support adjudication work?

1. Not recommended 2. Necessary, but not always 3. Necessary and always

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↓

46a. Why (please provide the reason):

47. Do you support video or tape-recording in hearings to support adjudication work?

1. Not recommended 2. Necessary, but not always 3. Necessary and always

↓

↓

47a. Why (please provide the reason):

48. There are currently different measures for the reorganisation of courts and the possible creation of regional courts in Vietnam. Please advise how much you agree or disagree with each of the reforms set out below.

	Support very much	Support somewhat	Oppose somewhat	Oppose very much
There should be only one basic-level court in each district	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There should be one basic-level court in charge of several districts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There should be no relationship between the jurisdictional boundaries of basic level courts and local governments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

49. Do you have any other suggestions to enhance your performance or the performance of provincial courts:

.....

QUESTIONNAIRE

SURVEY OF COURT ADMINISTRATION

(For District judges)

Under the Project “Strengthening Access to Justice and Protection of Rights”, Judicial Reform Secretariat (JRS) of Judicial Reform Steering Committee (JRSC) of the Party Central conducts a sociology survey on Court Administration nationwide by sending questionnaires to all judges of local courts. This Survey is to help to assess current situation and seek solutions to enhance the administration of the courts during the implementation of judicial reforms under Resolution No. 49-NQ-TW of the Politburo on Judicial Reform Strategy to 2020.

The Survey Team sincerely thank you for your support to provide the most honest and accurate information to the Judicial Reform Secretariat of Judicial Reform Steering Committee. In particular:

- ✓ **Answers required for all questions contained**
- ✓ **No consultation of others’ opinions**
- ✓ **No meeting to discuss answers**
- ✓ **No more copy of the delivered questionnaires**
- ✓ **Only one questionnaire for each judge under either of the following options:**

Option 1: Answers could be filled in this printed questionnaire and send back to the Secretariat in the available envelope without postal charge

or

Option 2: Answers could be filled online at www.khaosattuphap.net/huyen, using the unique CODE provided herein:

The Deadline for delivery of this questionnaire and also electronic questionnaire is 10 December 2011.

All information that you provide in the Questionnaire shall be kept in secrecy and used for scientific purposes only of the Judicial Reform Secretariat. For all questions and concerns about this Survey and this Questionnaire, please send us via phone at 04-35376939 or the email khaosattuphap@gmail.com

Thank you very much for your precious cooperation and support to the Survey.

2011

QUESTIONNAIRE

SURVEY OF COURT ADMINISTRATION

(For District judges)

1. Personal Information

a. Year of Birth:

b. Sex: Male Female

c. Ethnic group:

d. Party member Admitted in (enter 0000 if you are not Party member)

e. Law degree(s)

1.LLB 2.Master of Law 3.Doctor of Law 4. None

1. Did you attend any specific political training course through the Party School?

1. No 2. Yes (2a. Year completed:

3. Have you participated the judicial training course at the Judicial Academy?

1.No 2.Yes (3a. Year completed:

4. So far, how long have you been taken the judge occupation?

Number of Years:

4a. Which position were you in charge of before judge occupation:

1. Position: 2. Started from:

5. Which of the following job assignment are you in charge of? If not, please skip this question

1. Chief Justice

2. Deputy Chief Justice

3. Judge awaiting for re-appointment decision

4. Other title:

TECHNICAL ADMINISTRATION

6. How many cases were assigned to you LAST MONTH? (If you were not assigned with any case in any category, please enter "0")

	Criminal	Civil	Commercial	Administrative	Labour	Family
On-going cases
New cases

7. Cases are assigned to you on the basis of:

(Multiple choice, please check the appropriate boxes in the table below)

	Criminal	Civil	Commercial	Family and marriage	Labour	Administrative
1. Your personal expertise/ experience	<input type="checkbox"/>					
2. Your own preferences	<input type="checkbox"/>					
3. Your existing workload compared with other judges in the court	<input type="checkbox"/>					
4. At the sole discretion of court leaders	<input type="checkbox"/>					
5. Based on clear case assignment procedures	<input type="checkbox"/>					
6. Hard to say	<input type="checkbox"/>					
7. Other elements (specify)					

8. In your opinion, how should cases be assigned to judges? [Single choice]

	Criminal	Civil	Commercial	Family and marriage	Labour	Administrative
1. Your personal expertise/ experience	<input type="checkbox"/>					
2. Your own preferences	<input type="checkbox"/>					
3. Your existing workload compared with other judges in the court	<input type="checkbox"/>					
4. At the sole discretion of court leaders	<input type="checkbox"/>					
5. Based on clear case assignment procedures	<input type="checkbox"/>					
6. Other elements (specify)					

9. Regarding the cases which you ruled LAST THREE MONTHS, please tell me whether you exchanged viewpoints with the following people and bodies about the outcome of cases? (Multiple choice)

	Criminal	Civil	Commercial	Family & marriage	Labour	Administrative
7. Other members of the adjudication panel	<input type="checkbox"/>					
8. Leader of your court	<input type="checkbox"/>					
9. Meeting of inter-judicial agencies	<input type="checkbox"/>					
10. District Party Committee	<input type="checkbox"/>					
11. District People's Committee	<input type="checkbox"/>					
12. District People's Procuracy	<input type="checkbox"/>					

7. judges or leaders at Higher level(s)	<input type="checkbox"/>					
8. Other officials or bodies (specify)	..... .....				

10. Thinking about the cases which you ruled in LAST THREE MONTHS, can you tell me how many times the following situations occurred? (if a situation listed in the table below did not occur, please enter "0")

	Crimi- nal	Civil	Comm- ercial	Family & marriage	Labo- ur	Admin- istrative
11. Dismiss petition, suspense the case or reject prosecution due to lack of evidence
12. Send criminal case files back to the prosecutor for further investigation
13. All jurors voted differently from you
14. All jurors requested the court to summon additional witness
15. Parties in civil, commercial labour cases decided to withdraw petition after successful mediation at the court
16. You must ask for renewal of the time for case handling to continue studying case files, collecting evidences or other professional work

11. Regarding the cases which you ruled in LAST THREE MONTHS, how much time did People’s jurors have to review case documents prior to the hearing?

	Crimi- nal	Civil	Comm- ercial	Family & marriage	Labour	Adminis- trative
--	---------------	-------	-----------------	----------------------	--------	---------------------

5. Less than 1 hour on the day of the hearing	<input type="checkbox"/>					
6. A few hours on the day of the hearing	<input type="checkbox"/>					
7. More than one day	<input type="checkbox"/>					
8. More than one week	<input type="checkbox"/>					

12. In case where in considering verdict, both People’s jurors in the Adjudication Panel have different opinions from yours, you usually: (multiple choice)

- 1. Consult with the heads of your court
- 2. Prolong time of verdict consideration to consult with superior courts
- 3. Confer with these jurors in the Adjudication Panel until you reach an agreement
- 4. Allow to give the decision by majority vote even if you disagree with it
- 5. Have a break at the hearing to delay the ruling
- 6. Other solutions (please specify)

13. Regarding the cases which you ruled IN LAST THREE MONTHS, did you exchange viewpoints on solutions to cases with the court leaders upon existence of: (Multiple choice)

- 1. Professional issues
- 2. Inconsistent opinions among members of Adjudication Panel
- 3. Opinions from other bodies
- 4. In all cases assigned

14. Regarding the cases which you ruled IN LAST THREE MONTHS, apart from details of the cases and relevant legislation, which of the following factors were taken into your consideration in handling the cases? (Multiple choice)

- 1. Opinions of superior courts when there is professional content or law application requiring instruction
- 2. Opinions of the leaders of your court
- 3. Technical opinions of experienced judges who are your colleagues
- 4. Opinions of leaders of local authorities
- 5. Comments on press (if the case is of public concern)

- 6. Opinions of legal experts who are prestigious in law field
- 7. Legal valid judgments of previous similar cases or cases with similar circumstances
- 8. Other (please specify).....

BUDGET AND COURT FACILITIES

15. It is the Project’s concern about your viewpoint on the measure of budget allocation to courts. Do you agree or disagree with each opinion following:

	Completely agree	Agree	Disagree	Completely disagree
1. Both the SPC and local authority grant budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Only the SPC grants budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Only the local authority grants budget to provincial and district courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Other body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16. Are you provided with your own computer or a shared computer? (check the box that best describes your situation)

- 1. Yes, I have my own computer provided by the court and I alone use this machine
- 2. Yes, I have my own computer provided by the court and my clerk also uses it
- 3. Yes, I have access to a computer provided by the court which is shared by several judges
- 4. No, but I bring a personal computer to work
- 5. No, I do not use any computer at work

If you choose “No, I do not use any computer at work,” please skip question number 17, 18, 19, and continue with question number 20.

17. Is your computer connected for information sharing within the court?

1. Yes 2. No 3. I do not know

18. Does your court use any software to administrate cases, work load, and administrative procedure and sequences?

1. Yes 2. No 3. I do not know



C18.a. What is such software? (this question is for the Chief Justice only)

1. Software consistently used which is equipped and popularised by the SPC
2. Software which is consistently equipped for depending district courts by the provincial court
3. Software which is developed and launched by your court itself
4. I do not know

19. Is your computer at court connected to the Internet?

1. Yes 2. No 3. I do not know

20. From what sources do you often keep yourself updated with legal documents?

1. Collecting legal documents by yourself and systematising them for your own use when necessary
2. Relying on legal documents and instructions of the court sector filed at your court
3. Collecting electronic legal documents by yourself on the internet
4. Collecting documents by yourself from the website of the SPC namely www.toaan.vn
5. Collecting documents from paid legal websites such as www.luatvietnam.vn
6. Requesting your clerk to find and collect legal documents on contents related to the case you are ruling

21. What sources of legal documents are most convenient for your reference? (multiple choice)

1. Printed legal documents collected by yourself
2. Printed legal documents provided by your court
3. Documents collected by yourself from www.toaan.gov.vn
4. Documents collected by yourself from www.luatvietnam.vn

5. Documents collected by yourself from other websites namely

22. In your opinion, in 2010, whether the budget of your court was distributed with fixed amount or based on actual expenditures (this question is for the Chief Justice only)

1. Granted infixed amount 2. Granted based on actual demand 3. I do not know



C22a. If the budget was granted in fixed amount, how do you assess this method (this question is for the Chief Justice only)?

1. Appropriate and satisfying operation needs 2. Appropriate but dissatisfying operation needs
3. Inappropriate 4. I do not know

C22.b. If you choose “Appropriate but dissatisfying operation needs” or “Inappropriate”, please specify whether the applicable budget is sufficient for the following activities? (This question is for the Chief Justice only)

	Yes	No
f. Employing interpreters	<input type="checkbox"/>	<input type="checkbox"/>
g. Employing appraisers	<input type="checkbox"/>	<input type="checkbox"/>
h. Employing appointed counsel	<input type="checkbox"/>	<input type="checkbox"/>
i. Mobile court expense	<input type="checkbox"/>	<input type="checkbox"/>
j. Other costs (please specify):	<input type="checkbox"/>	<input type="checkbox"/>
.....		

23. How are solicitors facilitated to take copy of case files at your court?

1. They can use the photocopier of the court
2. They can use camera to take photograph of case files by themselves
3. They can request the court to copy necessary documents with some charges
4. They are not facilitated

24. Are petition forms for case filing available at your court for people to use?

1. No 2. Yes 3. Yes, they are also available on the court's website at



24.a. If yes, are those forms provided to people free of charge?

1. No 2. Yes

25. Is a bulletin board explaining filing procedures available at your court?

1. No 2. Yes 3. Yes, guidance is also available on the court's website at

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25.a. If yes, please tell us where is the board posted?

1. Outside the court house 2. Inside the court house
 3. In professional rooms

26. Which facility (ies) do you need to be added to enhance your work?

(Please number from 1 to 4 to show the priority, 1 for the highest priority, 4 for the lowest priority)

	1	2	3	4
a. Personal computer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Photocopier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Furniture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Vehicles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

COURT PERSONNEL

27. Please tell me your opinion about sources for judge appointment, which of the following should be facilitated to become judges:

	Support very much	Support somewhat	Oppose somewhat	Oppose very much
e. Lawyers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

f. Law professors, jurists	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Prosecutors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Investigators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other state officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. court clerks and other court officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

28. Which of the following regimes of judge appointment do you support?

- 1.5-year term of office, renewable
- 2. 10-year term of office
- 3. Up to mandatory retirement age

↓

28.a. If you support 10-year terms of office or appointment up to mandatory retirement age, please state your reasons:

.....

29. Which of the following rules for the retirement of judges do you support?

- 1. 55-year old for women and 60-year old for men
- 2.60-year old for both men and women
- 3.Higher age: (Specify:)

30. Would you support a system in which district judges only specialise in specific areas of the law?

- 1.Support very much 2.Somewhat support 3.Oppose somewhat 4.Oppose very much

↓

↓

30.a. {If you choose “support very much” or “somewhat support”} In which area of law would you personally wish to specialise in?

- 1.Criminal 2.Civil 3.Commercial
- 4.Administrative 5.Labour 6.Family

31. In your opinion, if a system in which judges are rotated out of courts after five years is applied, which of the following impacts would it cause? (multiple choice)

- 1. Improving work experience
- 2. Fighting against corruption and negativeness
- 3. Having no effect in improving professional qualification and work position
- 4. Causing difficulty to judges' daily life

32. We are interested in your views about the principle that reappointments of judges should be tied to the proportion of decisions that are annulled or amended by superior courts. What percentage of annulled (or amended) cases is acceptable for

a: Number of annulled cases

- 1. The percentage should not matter (if you choose this option, please skip Question 33)
- 2. less than 1 % 3. between 1% and 2% 4. between 2% and 5% 5. more than 5%

b: Number of amended cases

- 1. The percentage should not matter (if you choose this option, please skip Question 33)
- 2. less than 4 % 3. between 4% and 10% 4. more than 5%

33. If you agree with a percentage of annulled (or amended) cases for reappointment, which of the following measures do you think should be considered (multiple choice):

- 1. Only cases annulled or amended due to mistakes in performing litigation procedures should be accounted
- 2. Only cases with technical mistakes in writing judgment should be accounted
- 3. Only cases with wrong decision should be accounted
- 4. All of the above circumstances

34. We are interested in your views about the procedure of appointing/reappointing judges and the effectiveness of appointment councils for judges. Please tell me whether you agree with each of the following statements, and specify the degree of you agreement.

	Completely Agree	Agree somewhat	Disagree somewhat	Completely Disagree
a) Judicial selection councils for judges are effective because they	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

actually dismiss incompetent judges				
b) Judicial selection councils for judges are unduly influenced by applicants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Judicial selection councils reinforce popular supervision over the judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Judicial selection councils for judges are useless because they always re-appoint everyone under consideration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Judicial selection councils for judges effectively prevent immoral behaviour within the judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Judicial selection councils for judges never promote judges who do not have sufficient experience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Judicial selection councils undermine judicial independence by giving too much influence to local authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) There are still many shortcomings in judge reappointment procedure, wasting time and delaying work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) In the current selection of judges, officials with several years of work experience but limited ability receive more disadvantages than those with good professional ability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

35. Is there any internal regulation or rules at your court?

- 1.No 2.Yes



35.a. If yes, which of the following contents are provided in such internal regulations or rules (Multiple choice)

- 1. Trial Rule
- 2. Labour Regulations as stipulated by the Labour Code
- 3. Internal Working Rules, including:
 - a. regulation on case assignment,
 - b. regulation on case receiving,
 - c. regulation on case reporting,
 - d. regulation on financial management, use of public properties,
 - e. regulation on receiving guests, involved persons,
 - f. other regulations(*Please specify*):

36. If you performed well in your work during a given year, which of the following rewards would you prefer? (multiple choice)

- 1. To be given one-off bonus, as is the case in the current regime (materially and with certificate of merit)
- 2. To receive an increase in your salary
- 3. To be promoted to a higher position in your court
- 4. To be promoted to senior judge level
- 5. To be promoted to the provincial court

37. In your opinion, which skills should court clerks have to best assist judges(multiple choice)?

- 1. Substantive and procedural law understanding
- 2. Document preparing skills
- 3. Shorthand and fast typing skills
- 4. Case analysis skills
- 5. Case file storing and arrangement skills
- 6. This question is difficult to answer

38. In your opinion, in order for judges to well fulfil their tasks and to ensure adjudication independence, it is suggested to have (multiple choice):

3. Support but only cassational review decisions 4. Oppose

46. Would you support the measure to use judgments as a source of law interpretation or to assign the SPC to take over the task of law interpretation?

1. Completely support 2. Support 3. Not support

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46.a. Why (please specify the reason):

47. Do you support video or tape-recording in hearings to support adjudication work?

1. Not recommended 2. Necessary, but not always 3. Necessary and always

↓

↓

47.a. Why (please provide the reason):

48. Which category (ies) of cases is/are the most difficult for you to handle upon your court's jurisdiction increase? (Please use number from 1 to 4 to show degrees of decreasing difficulty, from more difficult to less difficult)

	1. Very Difficult	2. Difficult	3. Not difficult
a. Criminal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Civil	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Commercial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Family & Marriage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Labour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Administrative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

49. There are currently different measures for the re-organisation of courts and the possible creation of regional courts in Vietnam. Please advise how much you agree or disagree with each of the reforms set out below.

	Support very much	Support somewhat	Oppose somewhat	Oppose very much
There should be only one basic-level court in each district	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

There should be one basic-level court in charge of several districts, depending on population size	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There should be no relationship between the jurisdictional boundaries of basic level courts and local governments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

50. Do you have any other suggestions to enhance your performance or the performance of district courts:

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THANK YOU FOR YOUR PARTICIPATION

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