

## **PUBLIC PARTICIPATION IN LEGISLATIVE PROCESS DURING THE STATE OF EMERGENCY IN VIETNAM**

PARTICIPACIÓN PÚBLICA EN EL PROCESO LEGISLATIVO DURANTE EL ESTADO DE EMERGENCIA  
EN VIETNAM

*Hanh Dang Thi My\**  
*Minh Tuan Nguyen\*\**

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**Abstract:** This research attempts to comprehensively analyze the role and requirements of people's participation in the legislative process during Vietnam's state of emergency. Using conventional, trusted legal research methods, most notably desk review of legislation and case law analysis, this research affirms that, during a state of emergency, procedures involving public participation cannot follow the usual process. However, a pandemic must never be used as an excuse to erode democratic principles, and only when citizens actively take part in regular circumstances will they have the motivation to engage during emergencies. With Vietnam, many legal documents were issued by executive agencies instead of the National Assembly. Therefore, although the timely issuance of policies and laws was ensured during the pandemic, the principles of the legislative process were not fully upheld or implemented, leading to many debates regarding the legality of the documents issued during this period. In that sense, this research focuses on analyzing the current legal system and several typical cases of law enforcement in Vietnam and other

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\* Master of Law of the Faculty of Theory, History of State and Law, University of Law, Vietnam National University, Hanoi. main author. ORCID ID: <https://orcid.org/0009-0008-6755-4880>. [hanhdangthimy1210@gmail.com](mailto:hanhdangthimy1210@gmail.com).

\*\* Associate Professor and Acting Dean of the Faculty of Theory, History of State and Law, University of Law, Vietnam National University, Hanoi. corresponding author. ORCID ID: <https://orcid.org/0009-0007-0650-986X>. [tuannguyenminh1979@gmail.com](mailto:tuannguyenminh1979@gmail.com).

countries to identify the legal gap and propose solutions to improve the legal framework on this issue in Vietnam.

**Keywords:** People's participation, Legislative process, Vietnam.

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**Resumen:** Esta investigación intenta analizar de manera integral el papel y los requisitos de la participación ciudadana en el proceso legislativo durante el estado de emergencia en Vietnam. Utilizando métodos convencionales y confiables de investigación jurídica, en particular la revisión documental de la legislación y el análisis de jurisprudencia, esta investigación afirma que, durante el estado de emergencia, los procedimientos que implican la participación pública no pueden seguir los procesos habituales. Sin embargo, una pandemia nunca debe usarse como excusa para socavar los principios democráticos, y solo cuando los ciudadanos participan activamente en circunstancias normales pueden tener la motivación para involucrarse durante emergencias. En el caso de Vietnam, muchos documentos legales se emitieron por agencias ejecutivas en lugar de la Asamblea Nacional. Así, si bien se garantizó la emisión oportuna de políticas y leyes durante la pandemia, los principios del proceso legislativo no se respetaron ni implementaron plenamente, lo que generó numerosos debates sobre la legalidad de los documentos emitidos en este periodo. Por tanto, esta investigación se centra en analizar el sistema legal vigente y varios casos típicos de aplicación de la ley en Vietnam y otros países para identificar las lagunas jurídicas y proponer soluciones que mejoren el marco legal sobre este tema en Vietnam.

**Palabras clave:** Participación ciudadana, Proceso legislativo, Vietnam.

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## **I. INTRODUCTION**

Global climate change and rising geopolitical tensions have increased states' vulnerability to both natural and man-made disasters. In response to such unpredictable and unavoidable events, emergency management has largely followed a top-down approach, emphasizing centralized planning, rapid crisis response, and post-event policy development. Yet from a participatory governance perspective, public engagement remains vital, as local communities hold contextual insights, which are essential for designing effective emergency measures. Public consultation is a core element of legislative and policy review, helping ensure that adopted norms reflect the interests and rights of affected groups, and this participation also reduces the risk of impractical or interest-driven policies. However, states of emergency often allow authorities to circumvent democratic processes in the name of urgency. For example, during the COVID-19 pandemic in Vietnam, emergency measures were enacted without public input or legislative debate. This situation raises pressing concerns about the legal safeguards and democratic accountability applied during states of emergency in Vietnam and similar contexts.

Given the aforementioned, this article adopts a qualitative legal research approach, combining doctrinal and comparative methods. It focuses on Vietnam's constitutional and legislative framework, with reference to selected foreign jurisdictions. The analysis draws on publicly available legal documents and academic sources, primarily covering the period of the COVID-19 pandemic (2020-2022). Finally, principles of participatory democracy and rule of law under emergency conditions provide the normative basis for evaluation.

## **II. STATE OF EMERGENCY AND THE CRUCIAL ROLE OF PEOPLE'S PARTICIPATION IN LEGISLATION**

As defined by the Britannica Dictionary, an “emergency” is an unforeseen and potentially perilous situation that demands immediate intervention. This is a definition consistent with the legal understanding of urgent circumstances (The Britannica dictionary, s.f.). Likewise, an emergency is an unexpected and unforeseeable situation that seriously affects or threatens the life, health, and property of individuals, organizations, or the state; as well as national defense, national security, and social order and safety.

Emergency situations often occur in the event of major disasters caused by natural or human factors, exceeding the government's ability to respond using ordinary measures and procedures. But the law on the promulgation of legal documents does not clearly define what is considered an emergency. However, certain specialized legal documents provide regulations on emergency cases; for example, clause 10, article 2 of the National Defense Law defines a "state of national defense emergency" as a social condition of the country when there is a direct threat of invasion, or acts of armed rebellion or aggression have occurred but have not yet reached the level of declaring a state of war.

Similarly, article 42 of the Law on Prevention and Control of Infectious Diseases states that declaring a public health emergency must follow the principle: "When a disease spreads rapidly on a large scale, posing a serious threat to human life, health, and the socio-economic stability of the country, an emergency must be declared". This procedure covers emergencies as defined by law, plus urgent situations like natural disasters, epidemics, fires, explosions,

and other critical issues demanding immediate action. In that sense, emergencies can happen locally, regionally, or nationwide.

Legislative activity is the formal process through which state authorities create and adopt legally binding normative instruments. As the holder of state power, people may participate in reviewing and providing feedback on policies, including legal policies. Under normal circumstances, such participation follows a bottom-up model; however, in emergency situations, due to the need for rapid responses and efficient risk prevention, a top-down management model is prioritized. In this model, particularly when governments exercise "emergency powers", there is a risk of power abuse and the adoption of policies or laws serving vested interests.

To limit this risk and reduce mistakes in adopting legal policies during emergencies, public participation and critical feedback are essential. Based on citizens' democratic rights, the top-down model cannot exclude public involvement, especially in legislative processes. Public participation is a key factor in ensuring the legitimacy and reasonableness of such policies or laws. As the German Chancellor stated at a European Conference, "[...] a pandemic must never be used as an excuse to erode democratic principles" (Merkel, 2020). Since citizens are the ones most directly affected by flawed policies or laws, they must hold a role in the legislative process. Even in emergencies, democratic participation remains indispensable; nonetheless, given the specific demands of emergency contexts, procedures for public participation cannot fully follow ordinary processes.

This raises key questions: How is public participation in legislation carried out during emergencies in Vietnam and other countries? How has such

participation been implemented in Vietnam? What challenges must be addressed to align with democratic principles while meeting the urgency of emergencies, ensuring both legality and public involvement in lawmaking?

### **III. PEOPLE'S PARTICIPATION IN LEGISLATION DURING THE STATE OF EMERGENCY IN VIETNAM AND SOME OTHER COUNTRIES**

#### **III.1. Legislation during state of emergency - some principles**

Legislative rules influence policy outcomes and the lives of people, which are the primary subjects of the application of these policies. They can reinforce power structures or unjustifiably expand the authority of executive bodies; and, when rules cannot follow democratic norms and practices, they can severely undermine the legitimacy of enacted policies. Depending on the political system and model of each country, the legislative process varies. Public participation in the legislative process also differs based on each form of government. Basically, all participatory processes must comply with the principles of transparency, feasibility, and full involvement of affected stakeholders. Moreover, in emergency contexts, the legislative process is often carried out through simplified procedures; however, fundamental democratic principles must still be obeyed in balance with the urgency situations. Therefore, within the scope of this study, and based on the principles of public participation in the regular legislative process, the author proposes several principles aimed at ensuring citizen involvement in the legislative process during emergencies:

- Public participation must be established as a mandatory principle.

While the forms of participation may be adapted to real conditions,

they must remain comprehensive and resemble normal circumstances as much as possible. As noted above, emergencies may require adjustments due to time constraints and restrictions on gatherings. However, sudden disruptions to established democratic practices should be avoided; the methods of implementation may change, but the essence of democracy and participation must be preserved. This requires ensuring meaningful and substantive participation, as well as genuine feedback from citizens. Only under such conditions can policies and laws enacted in emergencies retain both legitimacy and reasonableness. For instance, meetings, discussions, and policy reviews usually held in person may be organized online, and the collection of public input may take place through live-streamed hearings or consultations, provided that secure digital records are maintained.

- The principles of transparency and openness must be upheld to the greatest extent possible. Emergency legislative procedures should guarantee transparency and create opportunities for public involvement. Transparency and openness also function as mechanisms enabling citizens to oversee policy-making and legislative activity, both in emergencies and under normal conditions.
- The participation of affected groups in the legislative process should be maximized. Broad inclusion helps prevent undemocratic actions or the adoption of policies and laws serving vested interests.

- All processes and public contributions must be thoroughly documented. Likewise, explanations and justifications must be fully recorded and preserved.
- Laws and procedures adopted under urgent time constraints should be subject to review and opened for public feedback as soon as possible.
- Measures and procedures must ensure that citizens and their representatives continue to participate fully. Any adjustments made during emergencies should remain temporary and end once normal conditions are restored. Returning to normal should involve implementing supportive measures that allow discussions to proceed as usual (online discussions, in-person meetings with social distancing, or hybrid formats combining in-person and online participation).
- It should be emphasized that these principles can only be effective in emergency legislative processes if the ordinary legislative process itself fully respects democratic principles and actively promotes public participation.

### **III.2. People's participation in legislation during state of emergency in some countries**

In an emergency, maintaining legislative operations is already challenging, but ensuring democratic principles and public participation in the legislative process is even more difficult. Through historical experiences and, most notably, the recent COVID-19 pandemic, some countries have sustained legislative activities with public participation through various models and



methods, adapted to their specific national contexts. Within the scope of this study, the author analyzes public participation in the legislative process in several countries by describing the measures and approaches they have used to maintain and ensure participation during emergencies. These include representation through elected officials (such as members of Parliament or Congress); flexible application of technology to facilitate virtual meetings and discussions, allowing flexibility in location and format; delaying the adoption or implementation of policies and laws; granting greater legislative and decision-making authority to local governments; simplifying legislative procedures; and temporarily suspending or postponing certain legislative activities, etc.

### ***The case of Germany, the United States, and several other countries***

In Germany, the United States, and several other countries, simplified legislative procedures and the extensive use of technological applications were applied flexibly and effectively to ensure continuity and public participation in the legislative process. In Germany, simplified procedures were introduced during the COVID-19 pandemic to maintain legislative operations and guarantee participation. Measures included streamlining procedures, establishing an Emergency Committee when it was impossible to convene all members of Parliament, extending voting periods to allow social distancing, canceling or postponing legislators' official engagements, and implementing proxy voting when a significant number of members were infected and unable to attend sessions (Gesley, 2020).

Similarly, the simplification of procedures –particularly by reducing the number of participating members– was adopted in countries such as Australia,

France, Malta, South Africa, Sweden, and the United Kingdom (UK). Pairing agreements were used to ensure sufficient votes, reflecting a flexible and adaptable approach. In Sweden, for instance, Parliament reduced the number of required members to 55 instead of the full 349, with votes proportionally representing each party's overall strength (Boomer, 2020). In the UK House of Commons, only frontbench reporting judges and a few others were allowed to enter the chamber under strict social distancing, maintaining a two-meter distance, and voting periods were extended to comply with these requirements (Boomer, 2020).

Moreover, alongside procedural simplification, many countries adopted online meetings, videoconferences, and other electronic tools during emergencies. Examples include Argentina, Azerbaijan, Brazil, China, Mexico, New Zealand, Norway, the Philippines, Portugal, Spain, and Taiwan. Brazil authorized remote discussions and voting, while Mexico temporarily suspended regular sessions, allowing members to submit bills and work remotely (Boomer, 2020). In New Zealand, proxy voting and online discussions were used, and Spain extensively applied online conferencing and electronic voting (Boomer, 2020).

As for the United States, the country has faced numerous crises and emergencies while sustaining legislative continuity and ensuring the participation of lawmakers. Public involvement in the legislative process occurs through representatives from different political parties across the country. Legislative operations have been maintained even under emergency conditions. During World War I, Congress and state legislature continued to meet and pass laws (Bassetti & Weiner, 2020). During the Cold War, continuity plans were established to ensure operations in case of a nuclear attack (Bassetti & Weiner,

2020). Both chambers also met after the terrorist attacks of September 11, 2001, despite the United States Capitol being a target (Bassetti & Weiner, 2020). Finally, during the COVID-19 pandemic, lawmakers combined virtual meetings, reduced the number of required representatives, and used pairing arrangements to sustain legislative activity (Bassetti & Weiner, 2020). Therefore, the United States has consistently sought to maximize legislative participation under all circumstances.

### ***The case of Nepal***

Besides participation through representatives and members of Parliament, the direct participation of citizens in the legislative process during emergencies also needs to be analyzed and considered. Typically, direct citizen participation in the legislative process is more common at the local level, where it is easier to create discussion forums and where citizens have direct rights and obligations. In the case of Nepal –with the participatory budgeting model conducted annually–, citizens may take part in almost all stages, from the initial analysis phase to the compilation of proposals in the budget allocation process, or the shaping of local policies and laws (Bhusal, 2020). Citizen participation is a requirement in the policy and legislative process at the local level in Nepal; however, the question remains whether citizens' opinions in these forums are truly reflected in the policies and laws enacted. Actually, the participatory budgeting process in Nepal primarily serves to fulfill the requirement of organizing community consultations and providing opportunities for discussion among participants. Nevertheless, there is little to no mechanism ensuring that citizens' opinions are incorporated throughout the various stages of the budgeting process and reflected in actual decisions (Bhusal, 2020).

During the COVID-19 pandemic, leaders used the crisis as justification to bypass citizen participation in local policy-making, despite constitutional provisions guaranteeing the right to self-determination. Alternative discussion formats, such as online meetings, were rarely implemented due to inadequate infrastructure, the high cost of upgrading technology, and disparities in citizens' technological skills, which hindered smooth participation. Local administrators themselves lacked experience in managing discussions on online platforms. A study on participation in Nepal's budgeting process during COVID-19 showed that no city had the technological capacity to enable all citizens to express their views in the annual policy and budgeting process (Bhusal, 2020).

Although organizing citizen participation in local budgeting and policy-making faced many obstacles, which resulted in the failure to uphold citizens' right to participate during the pandemic, the dissemination of information through television, radio, and local media was carried out in a relatively systematic way. This ensured that information reached the public. Citizens were also invited to share their opinions on local public policies, which created a perception that the government sought to respect democratic rights (Bhusal, 2020). These communication efforts not only strengthened transparency but also had the potential to encourage greater participation in the future.

A review of legislative practices during the pandemic shows that many democratic countries, including Germany, the UK, and New Zealand, attempted to preserve core legislative procedures while adapting participatory mechanisms to the demands of crisis governance. Nevertheless, participation was often limited to representative forms, and opportunities for direct citizen involvement remained scarce. In jurisdictions where public consultation is legally required, such as Nepal, emergency circumstances were invoked to

exclude citizens from legislative processes. These developments highlight the persistent tension between the need for swift decision-making and the imperative of maintaining democratic legitimacy in lawmaking during emergencies.

However, emergency contexts are not the only reason for excluding citizens from legislative participation. Even under normal institutional conditions, many countries fail to guarantee effective and legitimate public involvement. In some cases, participation is preserved but with a significantly reduced scope. Public opinion gathering has become highly restricted, with most policy decisions made primarily through parliamentary discussions representing the people. Expanding the use of online platforms can improve transparency and promote public participation in lawmaking, not only during emergencies but also in ordinary circumstances. In that sense, citizens' active participation in regular contexts is essential for motivating their involvement during crises.

### **III.3. People's participation in legislation during the state of emergency in Vietnam**

#### ***Legal basis for people's participation in legislation during state of emergency in Vietnam***

The 2013 Constitution of Vietnam establishes that citizens have the right to participate in the legislative process through both direct and representative means. Article 6 states that “the people exercise their state power through representative democracy”, entrusting legislative authority to the National Assembly. This body consists of deputies elected by universal suffrage who act on behalf of the people's will and interests. Beyond voting in elections, citizens

may participate directly by providing opinions on draft laws, proposing legislative initiatives where permitted, and engaging through mass organizations and consultative processes regulated by law.

Citizens also exercise direct democratic rights through activities such as voting and standing for election to the National Assembly or people's councils: "The right to remove National Assembly deputies when they no longer deserve the confidence of the people; citizens may vote when the state holds a referendum; citizens may take part in state and social management, engage in discussions, and recommend state agencies on issues arising at the local, regional, and national levels. The state creates conditions for citizens to take part in state and social management, ensures transparency, and guarantees openness in the process of receiving and responding to citizens' opinions and recommendations".

Through these mechanisms, citizens can contribute directly to draft laws when competent state agencies seek public input and propose amendments to address legal inconsistencies. They can also participate via representatives or representative organizations, such as the Vietnam Fatherland Front (VFF), which "serves as the political foundation of the people's government [...] overseeing and providing social criticism of the activities of state agencies, elected representatives, and officials", and the Vietnam Trade Union, which "takes part in inspection, monitoring, and supervision of the activities of state agencies". The involvement of citizens and their representative organizations in drafting, providing feedback, and overseeing legislation plays a significant role in enhancing the quality of enacted legal policies.

Under the normal legislative process, citizens can participate in various forms, both direct and indirect. Their involvement extends beyond providing input on draft documents to monitoring the legislative process and implementing legal documents. While multiple participation avenues exist, most citizens engage by contributing to draft policies and laws, with the VFF and other mass organizations serving as key channels for public opinion. In recent years, advances in information technology have allowed the government to expand online platforms for accessing, reviewing, and commenting on draft policies and legal documents. Portals such as the Government's E-Participation website and the National Assembly's legislative information system provide tools for submitting feedback electronically and monitoring legislative proposals.

The Law on the Promulgation of Legal Normative Documents (amended in 2020) sets procedural requirements for public consultation during policy and legislative development. Drafting agencies must solicit opinions from affected stakeholders, publish draft texts for public comment, and consider feedback before submitting drafts for appraisal and adoption. In emergencies, public consultations and impact assessments follow a simplified procedure with significantly shortened timelines. The simplified process removes the requirement for public participation, allowing the “drafting agency [to] conduct public consultations with affected stakeholders”<sup>1</sup> at its discretion. This grants legislative bodies the power to decide whether to solicit public input, making it more difficult for affected citizens to voice concerns and protect their rights. Legal documents issued under the simplified process take effect immediately

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<sup>1</sup> Amended and supplemented in 2020, clauses 2 and 3, article 146.

upon approval or signing. While this regulation addresses the need for urgent legislative action, it undermines democratic rights and public participation. According to legislative principles for emergencies, public participation should remain mandatory; if immediate consultation is impossible, supplementary consultations and policy evaluations with public input should be conducted within a specified timeframe or under certain conditions.

An examination of the constitutional basis for public participation in lawmaking during emergencies shows that the 2013 Constitution does not explicitly limit this right in such situations. Rather than specifying restrictions, the Constitution outlines general conditions under which human rights and citizens' rights may be limited, including national defense, national security, social order and safety, public health, and social morality, as stated in article 14.

In that sense, article 14 affirms that “human rights and citizens' rights shall not be restricted except as prescribed by law where it is necessary for reasons of national defense, national security, social order and safety, social ethics, and public health; the exercise of human rights and citizens' rights must not infringe upon national interests, or the lawful and legitimate rights and interests of others”. According to the 2000 Ordinance on the State of Emergency and other relevant laws, rights such as freedom of movement, assembly, and protest may be restricted during a state of emergency. However, in principle, citizens' right to participate in the legislative process is not limited during emergencies. In practice, public participation remains ineffective under both normal conditions and emergency situations.



***The current situation of people's participation in legislation during the state of emergency in Vietnam***

Under current legal provisions, critical review of public policy has yet to be formally institutionalized as a core mechanism for ensuring broad-based participation from individuals and organizations. In Vietnam, public consultation on draft legislation remains procedural and ineffective. The volume of feedback submitted via the electronic portals of drafting agencies and other consultation platforms remains limited and falls short of expectations. Substantial public engagement is observed only in relation to high-profile draft laws, such as the Land Law, the Road Traffic Law, and the Criminal Code, which directly affect broad segments of the population. In contrast, other legislative proposals, including the Anti-Corruption Law, the Inspection Law, and the Law on Emulation and Commendation, receive minimal public input, reflecting limited outreach, awareness, or perceived relevance among citizens.

Given the aforementioned, the limited individual engagement in policy and legislative consultations is understandable, as the time and effort required to study draft proposals and plan responses often outweigh the perceived personal benefits. Therefore, the consultation process should prioritize an input from subject-matter experts and professional associations, which serve as intermediaries capable of articulating public concerns and contributing substantively to legislative development. However, only a few socio-political organizations, under the leadership of the VFF, are legally mandated to engage in the legislative process. Even so, The VFF's involvement in legislative consultation is often passive, with feedback typically limited to appointed officials or affiliated experts, rather than reflecting broad-based public input. As a result, mechanisms for social criticism are inconsistently applied, and

collecting public opinion frequently appears formalistic, lacking genuine emphasis on the substance and impact of public feedback.

Meanwhile, social organizations remain limited, leading to a lack of citizens' opinion and influence as a collective. During the COVID-19 pandemic, the ability to promote the participation of civil society organizations was virtually absent. Vietnam emphasized strict isolation measures with the slogan "Families isolate from families, villages isolate from villages, communes isolate from communes, districts isolate from districts, provinces isolate from provinces" (The Prime Minister of Vietnam, 2020) during the crisis.

Moreover, compared to legislative practices in other countries during emergencies, Vietnam also made appropriate adaptations in the COVID-19 pandemic. The National Assembly swiftly transitioned to online meetings to maintain legislative continuity and enable partial public participation (Anh, 2020), and draft legislation continued to be discussed online to ensure timely economic and social development.

Some of the draft laws discussed online during the COVID-19 period included the Cinema Law (2021), the Road Traffic Law (2020), the Insurance Business Law (2021), the Law on Drug Prevention and Control (2020), the Intellectual Property Law (2021-2022), the Inspection Law (2022), and the Law on Emulation and Commendation (2021-2022). However, for policies and laws implemented immediately to prevent and control the pandemic, discussions in the National Assembly were limited. During this time, policies and laws were passed as resolutions, such as Resolution No. 30/2021/QH15 on special measures to respond to COVID-19 and Resolution No. 43/2021/QH15 on fiscal and monetary policies supporting the economic and social recovery program.

Reviewing the legal documents issued during the COVID-19 period in Vietnam, the policy review process and public participation were largely bypassed. Most regulations were promulgated by the executive branch and its subordinate agencies rather than through the formal legislative process under the authority of the National Assembly. This trend reflects a concentration of regulatory power in the executive branch during emergency conditions, often reducing legislative oversight and participatory mechanisms (The Prime Minister of Vietnam, 2020).

In principle, legislative authority belongs to the National Assembly and the people's councils at the local level, as they represent the people. During the COVID-19 pandemic, however, a significant number of legal documents were issued by executive agencies instead (Vietnam National Assembly, 2021). While regulatory measures were issued promptly during the crisis, core principles of the legislative process were not consistently upheld, giving rise to legal debates about the legitimacy and enforceability of many documents from this period (Luat Vietnam, 2022; Thu Vien Phap Luat, s.f.).

A notable example is Directive No. 16 of the Prime Minister, which, although not a legal document, was applied with sanctions comparable to those of formal law. Therefore, under article 4 of the 2015 Law on Promulgation of Legal Documents, amended in 2020, a directive in Vietnam is not recognized as a legal document and cannot establish binding obligations for the public; it is intended only as an internal administrative guideline. Nevertheless, the directive and its implementation guidelines require state agencies to "strictly handle" violations, effectively creating de facto regulatory norms outside the formal legislative framework.

In that sense, other documents such as resolutions and urgent official dispatches were also used to establish regulatory norms for pandemic prevention and control<sup>2</sup>. Finally, during a National Assembly session summarizing legislative work during COVID-19, the Chairman of the Law Committee emphasized: “Although the National Assembly has granted this authority, it should not be overused. Any content that can be issued in a normative legal document should be regulated within such a document, following the simplified procedures to ensure both urgency and timeliness” (Yen, 2021, p. 1).

During the COVID-19 pandemic, a substantial number of directives and executive documents were issued at both central and local levels in Vietnam. Most of these documents took effect immediately, leaving little time for dissemination, public communication, or stakeholder engagement (Yen, 2021). Implementation of these regulations was often inconsistent, as some had to be amended shortly after public feedback and media criticism<sup>3</sup>. For example, Directive No. 16 initially used the term “social isolation” without clear guidance. The ambiguous and internally inconsistent provisions led to widespread confusion among the public and local authorities. On the nights of January 31 and February 1, 2020, many people, particularly in major urban centers, mistakenly believed a complete lockdown was imminent. This misinterpretation triggered panic buying at markets and supermarkets, with consumers rushing to stock essential goods such as food, groceries, and hygiene

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<sup>2</sup> Some notable resolutions and directives include Resolution No. 128/NQ-CP, Resolution No. 86/NQ-CP, and Directive No. 19/CT-TTg.

<sup>3</sup> During two months of social distancing, Hanoi changed the travel permit regulations four times.

products. Prices for sanitary items, including face masks and hand sanitizer, surged sharply, and overcrowding in supermarkets increased the risk of community transmission (Pham et al., 2021).

The challenges were not limited to centrally issued directives; local regulations also lacked consistency and coherence. In an era where transportation and technology have largely reduced geographical barriers, the absence of uniformity in local travel and quarantine rules significantly affected daily life. Some provinces maintained normal transportation, while others imposed strict lockdowns, including complete restrictions on entry and exit. For example, Quang Ninh province implemented a “no one in, no one out” policy, erecting physical barriers to block external access (Communist Party of Vietnam Online Newspaper, 2020). In Hanoi, on the afternoon of March 31, transport inspectors announced plans to set up 26 checkpoints at major city entry points to restrict movement, except for special cases (Manh, 2021). Elsewhere, local authorities closed businesses selling non-essential goods and services without defining “essential”, leading to confusion and inconsistent enforcement across regions (Communist Party of Vietnam Online Newspaper, 2021).

From the perspective of public participation in the legislative process, policies and legal documents issued during the COVID-19 period were marked by haste and minimal citizen engagement. Citizens had almost no opportunity to review or comment on these measures before enactment. This exclusion was largely due to the regulatory form of these instruments, which were issued as executive directives or administrative orders rather than through formal legislative procedures. As a result, there was no legal obligation for public consultation, reducing transparency and limiting public involvement in policy

and lawmaking. Even under normal circumstances, most policy impact assessments (PIAs) and reports are superficial and of low quality (Tuan, 2020). Factors contributing to their ineffectiveness include methodological limitations, a predominant reliance on qualitative over quantitative analysis, insufficient prioritization of PIAs during legislative review, and formalistic approaches to public consultation where citizen and expert feedback is often perfunctory (Tuan, 2020).

Public participation in legislative drafting is already limited under normal conditions, and during emergencies such as the COVID-19 pandemic, barriers were further amplified by quarantine measures and restrictions on information exchange, making meaningful citizen input nearly impossible. In practice, many policies and laws issued during the pandemic created loopholes that enabled corruption (Ho, 2023). Two major cases were the “rescue flight”<sup>4</sup> and the “Việt Á”<sup>5</sup> incidents, in which officials exploited the emergency context

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<sup>4</sup> From April 2020, the Government authorized rescue flights to repatriate citizens, allowing them to return home by paying only for their airfare, with quarantine costs covered. Later, combo flights were introduced, where citizens voluntarily paid for all expenses. From early 2020 to mid-2021, authorities approved and organized over 1000 flights, bringing back more than 200 000 citizens from 62 countries and territories. Specifically, the Ministry of Foreign Affairs proposed that the Government approve 772 repatriation flights, including 400 rescue flights and 372 combo flights.

<sup>5</sup> To secure approval for the research project on COVID-19 test kits, the General Director of Việt Á Company bribed numerous officials across various ministries and agencies at every stage of the process: being assigned the research project, undergoing acceptance testing, obtaining circulation permits, and distributing the test kits. During the research process, defendants from Việt Á Company, the Ministry of Health, the Ministry of Science and Technology, and several other entities committed a series of violations, effectively converting the COVID-19 test kit research results from state assets into private property. Việt Á Company then produced over 8.7 million test kits, inflated input material costs, and sold them to medical facilities nationwide, illegally profiting over VND 1235 trillion (Tuyen, 2024).

to harass businesses, resulting in excessively high prices for rescue flights and COVID-19 test kits and severely affecting citizens' rights and welfare.

Therefore, based on the regulations and practical implementation of public participation in the legislative process, particularly during emergencies, Vietnam's legislative approach in crisis situations differs significantly from that of many other countries. While numerous nations maintain parliamentary operations even in emergencies, Vietnam's National Assembly delegates the authority to promulgate emergency policies to the executive branch. This delegation, especially regarding the issuance of policies and laws for emergency management, increases the risk of power abuse and potential infringement on citizens' rights and interests. Legal documents issued in response to COVID-19, at both central and local levels, often lacked expiration clauses, and public participation was entirely absent. As noted, the legal validity of several documents from this period—such as Directive No. 16, Directive No. 15, various resolutions, and local official dispatches—imposed mandatory regulations on citizens, yet their legal status remains widely debated. This raises significant concerns about the legitimacy of rule-making during emergencies and the absence of public involvement in policymaking and lawmaking.

In that sense, the analysis of Vietnam's legislative process during the COVID-19 pandemic highlights that the lack of public participation and critical policy review poses substantial risks to good governance. The proliferation of legal documents, public confusion caused by vague and inconsistent regulations, and the emergence of serious corruption cases demonstrate systemic weaknesses. These developments underscore the urgent need to strengthen both direct and indirect public participation and mechanisms for independent policy critique to ensure legality, accountability, and rationality in

emergency laws and policies. Based on this assessment, several key limitations and deficiencies in Vietnam's legal framework governing public participation, particularly during emergencies, can be identified.

1. The absence of mandatory regulations on public participation in the legislative process during emergencies represents a major loophole. This gap creates opportunities for corruption and directly affects citizens' lives during crises.
2. Mechanisms defining the responsibility of state agencies in collecting and responding to public opinions remain unclear. Accountability and the incorporation of public feedback are superficial, limiting the influence of citizens' voices in legislative deliberations and undermining principles of participatory governance and democratic legitimacy.
3. Vietnamese law currently lacks provisions regulating public and media participation in legislative processes conducted via online platforms. This gap hinders responsiveness in emergencies and limits transparency in legislative activities.
4. Forms of public participation remain limited. While citizens can engage through feedback on draft legal documents, voting in constitutional or legal referendums, and presenting legislative initiatives or citizen agendas, the legal framework formally recognizes only feedback on draft documents and referendum voting.
5. In addition to regulations allowing political organizations representing the people to critique party and state policies, civil organizations and associations should also be granted the right to



express opinions, supervise, and formally critique legal policies. Multi-dimensional participation and feedback from various political groups are likely to strengthen the policymaking and legislative process.

#### **IV. SUGGESTIONS ON VIETNAM IN ENHANCING PEOPLE'S PARTICIPATION IN LEGISLATION DURING THE STATE OF EMERGENCY IN VIETNAM**

Given the existing limitations and inadequacies in public participation in the legislative process in Vietnam, both under normal circumstances and in emergencies, as well as disparities in technological capacity, civic awareness, and engagement levels across localities, promoting public participation must be approached incrementally. This includes establishing and improving the legal framework to ensure public participation in the legislative process, ensuring adequate technological infrastructure, and enhancing public awareness and willingness to engage in legislative activities. Therefore, the author proposes several recommendations to strengthen public participation in the legislative process during emergencies in Vietnam, following the roadmap below.

First, the legal framework must be amended to ensure that public participation remains a protected principle even during emergencies, in line with constitutional requirements of legality, necessity, and proportionality. A robust legal mechanism should guarantee citizen engagement in the legislative process under normal conditions and specifically during crises. A comprehensive Law on Emergencies should be enacted to codify the procedures, scope, and limits of extraordinary powers. This law should clearly define what constitutes an emergency, identify competent authorities for

decision-making, specify the temporal and territorial scope of emergency measures, and establish conditions for their termination or renewal. But, most importantly, the law must include explicit provisions safeguarding public participation in legislative processes, ensuring that democratic principles are maintained and appropriately adapted to emergency contexts.

The Law on Emergencies should also incorporate provisions for public consultations and legislative discussions conducted via digital platforms. To ensure effective and inclusive participation online, operational principles must prevent misuse and maximize accessibility. These principles should include: a) user-friendly interfaces to facilitate broad participation; b) secure systems for storing and recording contributions to ensure transparency and accountability; and c) a flexible mix of participation formats, such as written submissions, interactive platforms, and live-streamed public hearings or forums. With current technological capabilities, ensuring both the security and openness of online consultations is feasible with adequate investment and long-term planning. Virtual meetings should be fully leveraged to maintain participatory democracy, even under emergency conditions.

Likewise, when pre-enactment consultation is impracticable, particularly during emergencies, a mandatory post-enactment feedback process must be established. This process should apply to legal documents issued by the National Assembly or by executive bodies exercising delegated legislative authority. Post-enactment consultations must be streamlined, accessible, and clearly structured, avoiding unnecessary bureaucratic barriers.

Moreover, the simplified legislative procedure under the Law on Promulgation of Legal Documents should be amended to require review of

policies and legal documents with public participation, even during emergencies. In cases of extreme urgency where prior consultation is not feasible, post-enactment feedback should be mandated within a clearly defined and enforceable timeframe.

Also, expanding forms of public participation in the legislative process, including during emergencies, is essential. In addition to contributing to draft laws, citizen-initiated legislative proposals should be explicitly regulated to provide a legal basis for public involvement. These initiatives may be submitted through citizen organizations, but a legal framework is necessary to facilitate implementation. One key form of direct democracy is the legislative agenda initiative, which allows citizens to propose issues for inclusion in the policy or legislative agenda. While emergencies may temporarily limit such initiatives, prolonged crises make citizen legislative proposals particularly valuable. Effective implementation requires a robust personal identification system and advanced technology to facilitate signature collection and submission procedures.

Second, transparency and public participation in the digital environment must be promoted through a long-term, well-defined plan. A nationally coordinated plan led by the government should prioritize developing digital infrastructure for participatory governance, ensuring consultation systems are accessible, reliable, and adaptable to crisis conditions. Only with a strong infrastructure can efforts to guide citizens in using technology and enhance digital participation succeed. Pilot programs could be implemented to test citizen participation applications and platforms in selected urban and rural areas before expanding to a nationwide system.

After establishing and standardizing technological infrastructure, it is essential to implement training programs to enhance the capacity of government officials and citizens to use digital applications. Government officials and civil servants should be trained first, enabling them to provide support and further training to the public, especially to local-level officials, such as community police officers, neighborhood group leaders, and leaders of political and social organizations. A notable example of efforts to improve digital literacy and public awareness in Vietnam is the recent implementation and promotion of the iHanoi<sup>6</sup> application.

In that sense, technological infrastructure should not be reserved solely for use during emergency situations but should be integrated regularly into the standard legislative process. The adoption of digital tools and platforms has already proven to be, and will increasingly remain, a critical element in improving the efficiency, transparency, and inclusiveness of the legislative process, particularly in facilitating public participation during emergencies.

Third, once a comprehensive legal framework and technological infrastructure for public participation are in place, it is crucial to strengthen state accountability and raise public awareness of citizens' rights in the legislative process. Ensuring state responsibility for protecting citizens' right to participate in lawmaking is fundamental. A key component of promoting meaningful engagement is establishing institutional mechanisms that guarantee substantive

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<sup>6</sup> The campaign encouraging citizens to use the iHanoi app to report administrative issues and daily concerns has been actively supported by local officials, who have enthusiastically guided residents in installing and using the application. Moreover, the response and resolution of public complaints through the app have been swift and effective. Reported violations or issues have been promptly addressed by the relevant authorities, fostering trust and motivation among citizens to continue using and promoting the app. This has helped create a proactive, transparent, and participatory environment.

participation. Information on policy and legislative drafts should be publicly available in a clear and accessible format, including summaries of objectives, target groups, and expected impacts, to facilitate understanding and informed input. Accountability mechanisms must hold drafting agencies responsible if their explanations of policy decisions are insufficient. These explanations should be publicly accessible rather than limited to internal discussions within drafting or legislative bodies.

Raising public awareness of citizens' legislative rights is equally essential for fostering genuine civic engagement. The state has a responsibility to equip citizens with the legal knowledge and practical skills needed to exercise these rights. Public education initiatives should focus on strengthening citizens' understanding of their rights and their relationship with the state. These efforts should also encourage proactive participation in legislative activities, enhancing citizens' ability to exercise democratic rights and contribute to a more participatory legal system.

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