

**“Strengthening the Capacity of the Vietnam Lawyers
Association (VLA)”**

End-of-Project Evaluation

Final Report

22 November 2009

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1 Executive Summary

Background

The project “Strengthening the Capacity of the Vietnam Lawyers Association (VLA)” was signed in September 2006 between UNDP and VLA for a period of 3 years. The project is scheduled to close by the end of 2009.

The evaluation of the project was commissioned by the UNDP in collaboration with the VLA. The mission in Vietnam took place in August 2009.

Structure of report

The report is divided into two roughly equal parts. The first concerns the evaluation of the project including an assessment of its achievements. The second part is a wider discussion of methodological and substantive issues in the field of access to justice with options for future activities to promote the legal aid environment in Vietnam.

The project

The project “Strengthening the Capacity of the Vietnam Lawyers Association (VLA)” was signed in September 2006 between UNDP and VLA for a period of 3 years. The project is scheduled to close by the end of 2009. The project budget is USD 886,802.

Main findings

The project document identifies three main outputs with a number of subsidiary deliverables attached to each:

- 1) VLA long-term strategic vision in the context of on-going legal and judicial reform identified.
- 2) VLA capacity to provide input to legal and judicial reform agendas strengthened.
- 3) VLA’s role in enhancing access to justice increased through strengthening of its legal aid clinics.

In the overall assessment of the evaluation team, the project has achieved the objectives and expected outputs as set out in the project document. Specifically, the project is found to have:

- Achieved all agreed activities according to work plans (with some activities rolled over to subsequent years); all agreed activities for 2009 are under implementation;
- Generated useful knowledge and lessons learnt within the scope of its outputs;
- Been able to promote discussion and participation among the membership of VLA;
- Established the VLA as a cooperation and dialogue partner on CSOs, law-review, legal aid and legal dissemination for both UNDP and other actors.
- Been managed and implemented in a professional manner by the PMU;

Issues arising from project implementation

In the discussion part of the report both methodological and substantive issues are discussed. A number of institutional issues are raised regarding the identity and structure of the VLA in respect to its role as a membership organization providing legal aid and submissions of law and policy. The “agency problem” understood as some risks and effects of donors providing large project budgets to financially weak organizations is highlighted. Substantive issues concerning the current environment and constraints for providing access to justice are highlighted in respect to Legal Consultancy Centres, mobile clinics and prison visits. The scope for improving and developing methodologies of dissemination and advisory services is highlighted, including the need for interdisciplinary cooperation.

Overview of legal aid provides

The report surveys the current field of CSOs, mass organizations and state legal aid providers and briefly discusses elements of the legal framework now in place. The report finds that the actors in the short and medium term are likely to include the following:

- The VLA will remain more or less the only organization with a law-based mandate and internal structure for providing legal consultancy and legal aid on a national scale;
- Law offices are in practice the only organizations able to represent clients in judicial proceedings, although LCCs under decree 77 may employ lawyers full-time under labour contracts;
- The university-based law clinics and possibly a small number of research institutes remain the only basis for methodological and pedagogical innovation.
- The National Legal Aid Agency will remain the exclusive provider of state-funded legal aid;

Options for UNPD and VLA and the wider group of stakeholders

Finally the report discusses a series of options addressed to the UNDP and VLA, but not excluding other actors, for further activities in the areas of legal consultancy, legal dissemination and legal aid.

2 Introduction

The evaluation team would like to extend its thanks and appreciation to all partners of the project, who have generously shared their knowledge and time with the team, with special thanks to the Chairman of the VLA and members of the PMU and to the members of the UNDP Governance Cluster, who have assisted the team throughout the mission.

In the course of the fact-finding mission, the team has met with and interviewed a representative group of project partners, including the VLA president, the PMU, the legal consulting centers in Hanoi, Bac Giang, Quang Nam and at the Faculty of Law at the National University of Economics. The Team had two working sessions and extensive discussions with the PMU and presented preliminary findings for discussion and received valuable feedback in the course of these meetings. A preliminary debriefing was held with the UNDP and the team was accompanied and supported by the UNDP during the two field trips. The team worked in Vietnam on 17-25 August 2009.

The views and assessments presented in this report are those of the team and should not be attributed to any single partner or individual interviewed during the mission.

The evaluation of the project was commissioned by the UNDP in collaboration with the VLA. The evaluation team was requested to present its findings and assessments in relation to the following areas:

- Providing an overall assessment of the project achievements as well as shortcomings, impacts and sustainability of the Project;
- Drawing lessons learned on all aspects of project management and implementation;
- Providing an overall assessment on current development context of the society and civil society organizations, their involvement in policy making and advocacy;
- Suggesting options and possible scenarios for VLA and UNDP consideration for support in the coming years.

The team was composed of:

Mr. Jacob Gammelgaard, legal adviser, team leader

Mr. Hoang Ngoc Giao, professor of law, Vietnam National University

Mr. To Van Hoa, Legal consultant, Vietbid

3 Project Background

Vietnam Lawyers Association (*Hoi Luat Gia*) is a professional socio-political organization under the Vietnam Fatherland Front established in 1955. Its current membership is around 46.000 persons all of whom hold law degrees and who are or have been employed in a professional capacity. The VLA operates based on its statutes, which were revised last in 2004.

The project “Strengthening the Capacity of the Vietnam Lawyers Association (VLA)” was signed in September 2006 between UNDP and VLA for a period of 3 years. The project is scheduled to close by the end of 2009.

The project budget was originally established at USD 602,212 with a contribution from DfiD of USD 84,250, but project funds were subsequently increased to a total of USD 886,802. As of 30 June 2009 the balance of unspent funds amounted to USD 222,848.

The project is implemented by the VLA Project Management Unit established under the supervision of the chairman of the VLA. The majority of project activities are carried out by central and local offices of the VLA with the exception of two law clinics established at the Law university in HCMC and the Economics University in Hanoi.

4 Overall Assessment Of Project Achievements

4.1 Project main outputs

The main outputs of the project are grouped in three components:

1) Institutional capacity building;

Output1: VLA long-term strategic vision in the context of on-going legal and judicial reform identified.

2) Participation in Legal and Judicial Reform Process;

Output 2: VLA capacity to provide input to legal and judicial reform agendas strengthened.

3) Legal Aid and Dissemination of Legal Information;

Output 3: VLA’s role in enhancing access to justice increased through strengthening of its legal aid clinics.

The project documents contains the following main expected deliverables for each expected project output:

Output 1: Long term strategic vision for the development of VLA:

- VLA Needs Assessment Report completed;

- Long-term strategic plan for VLA developed;
- Training in management and professional skills to implement strategic plan;
- VLA website designed and operational;
- Membership database established and used.

Output 2: Strengthened capacity to provide inputs to legal and judicial reforms:

- Training workshops on professional skills in providing inputs to legislative drafting and policy inputs, including development of two manuals;
- Research, including comparative studies;
- Pilot exercise in providing VLA comments for draft bill(s) and policy submissions;

Output 3: VLA's role in enhancing access to justice increased through strengthening of its legal aid clinics.

- A number of existing VLA legal aid centers strengthened and legal aid clinics established at law universities in Hanoi and HCMC
- Training; Financial support; Manuals on legal aid provision;
- Establishing mobile legal aid clinics;
- Drawing lessons for future centers under VLA.

4.2 Project achievements

In collaboration with the PMU, the team has reviewed the expected outputs and the work plans for the three years from 2007 to 2009, including progress reports. On this basis, and supported by field visits, the team concludes that the project has achieved the outputs and results as set out in the programme document and the agreed annual work plans, as follows:

4.2.1 Institutional Capacity Building

- A Capacity Needs Assessment for the VLA has been conducted in 2007 with the support of international and national consultants. The plan has subsequently informed the development of the VLA strategic plan.
- A substantial strategic plan has been elaborated in a participatory and country-wide process over the course of 2 years. The plan is to be submitted to the Executive Committee of the VLA for approval in October 2009 and subsequently presented to the VLA Congress in November for final adoption. In addition, the VLA has elaborated a 4-year action plan for the years 2010-2014 based on the strategic plan.
- The project has supported a review and elaboration of draft amendments to the Charter of VLA elaborated in participatory process; The amendments are due to be submitted to the executive organs of the VLA for adoption.
- A website for VLA has been developed and is in the process of being uploaded and made publicly available.
- A membership database has been developed and is expected to be uploaded to the VLA website. The database contains basic data and contact details for all members of the VLA.

- The VLA has conducted a study tour and a subsequent agreed on a twinning arrangement with the India Association of Lawyers, a fellow member of the International Association of Democratic Lawyers. It is however not clear to what extent this cooperation can or will be sustained in the future.

4.2.2 *Inputs to legal and judicial reforms*

- Comparative research on the participation of national lawyers associations in the law and policy making process.

The research was done by two national legal experts during the last quarter of 2007 and delivered in February 2008. Comparison on the participation of national lawyers associations have been made between Vietnam and six other countries, namely China, New Zealand, Singapore, Canada, Russia and USA.

- Comments/inputs to the draft law on state compensation.

To introduce the recommendations from the comparative research, VLA held a consultation workshop in second quarter 2008 in Da Nang to contribute to the then ongoing drafting process of the law on state compensation. Discussions at the event were consolidated and sent to the MOJ.

- Comparative research on the participation of the legal profession in the selection and appointment of judges and prosecutors in some countries .

The research was conducted by a national legal expert in 2008. In contrast to the title, which implies a primary focus on the participation of the legal profession, the research addresses a broad range of issues concerning judicial selection, including selection criteria, working conditions and selection process. Countries compared were Australia, New Zealand, England, Russia, Canada and Vietnam. A number of recommendations were made to enhance the role of the VLA in the Vietnamese judicial selection process. But otherwise this activity was not pursued as the VN system was seen as being too remote in structure and principles form that of other countries covered by the research.

- Pilot review of selected laws and regulations by provincial VLAs.

In March 2009, the central VLA instructed provincial offices to conduct review process in their respective provinces. Eighteen provincial VLAs contributed analyses on legal normative documents, including major laws such as the Criminal Code, Civil Code, Criminal Procedure Code, Law on Complaint and Denunciation, a number of governmental decrees, circulars and even provincial administrative regulations. The central VLA consolidated all these reports into a comprehensive report and sent it to the Standing Committee of the National Assembly, Ministry of Justice, Supreme People's Court and Supreme People's Procuracy.

- Technical assistance to the drafting of the law on commercial arbitration (2008-2009).

With the assistance of the project, VLA has undertaken a series of activities for the preparation of a draft law on arbitration, including workshops, an international seminar and conducting a regulatory impact assessment of existing Law on Commercial Arbitration. In April 2009, the drafting committee and editorial group finalized the draft of the new Law on Commercial Arbitration for submission to the National Assembly's Standing Committee.

4.2.3 *Legal Aid and Legal Dissemination*

Below is a summary of achievements of this component. As there are a number of observations of relevance to future activities and projects in this area, a more detailed report of the team's findings is appended as *Annex 1*.

- Support for operation of two Legal Consultancy Centres in Hanoi and two provinces, including mobile clinics;
- Support for operation of mobile clinics in prisons and legal advice offices in courts in 18 provinces;
- Support to establishment and operation of law clinics at universities in Hanoi and HCMC;
- Development of legal aid manual, operational guidelines and training materials;
- Development of manual and electronic case registration system;
- Survey of legal aid provision, including lessons learnt, and follow-up to survey;
- Survey of user needs for legal aid in 6 provinces;

4.3 Project Management

The project is handled under the UNDP guidelines for Nationally Executed Projects (NEX). Implementation and financial management is therefore the responsibility of the national project partner, with the UNDP country office assuming the role of general grant management, approval processes for quarterly and annual activity plans and monitoring.

4.3.1 *Management*

The project has been managed by a Project Management Unit as provided for in the Project Document and set up in the VLA central headquarters. The PMU has been staffed and operational as foreseen in the project document. Project implementation has been supervised on an on-going basis by the PMU and it is clear that the VLA management has been involved and supportive throughout the project.

The project has covered full-time salary for the Project Manager, part-time salaries for the project legal specialist, accountant, project officer and interpreter. The project has provided an international consultant for 2 years, who has spent 4 weeks per year in Vietnam.

In addition, the PMU has contracted a number of international and national consultants for various assignments during the course of the project.

The project has been implemented on the basis of quarterly and annual work plans and budgets, which have been drawn up by the PMU and approved by UNDP. A number of activities have been rolled over into the subsequent year, and two activities from the programme document have been cancelled as not relevant or feasible

4.3.2 Reporting

The PMU has submitted quarterly and annual progress and financial reports on time. All project activities in the programme document and work plans implemented and/or accounted for.

4.3.3 Finances

The evaluation team was not requested to consider the financial management of the project nor assess the use of funds (“value for money”). The project will be subject to an external audit as required by UNDP project management guidelines.

4.3.4 Cooperation with UNDP programme units

Work plans have been elaborated and approved on a regular basis, but without the use of a formalized structure or procedure in the form of a steering committee or similar. Cooperation and consultation between the PMU and UNDP has taken place on an needs basis. There were no reported problems in cooperation or communication.

4.4 Project Assessment

In the overall assessment of the evaluation team, the project has achieved the objectives and expected outputs as set out in the project document. Specifically, the project is found to have:

- Achieved all agreed activities according to work plans (with some activities rolled over to subsequent years); all agreed activities for 2009 are under implementation;
- Generated useful knowledge and lessons learnt within the scope of its outputs;
- Been able to promote discussion and participation among the membership of VLA;
- Established the VLA as a cooperation and dialogue partner on CSOs, law-review, legal aid and legal dissemination for both UNDP and other actors.
- Been managed and implemented in a professional manner by the PMU;

The team has a number of specific observations on the assessment of the three components, set out below:

4.4.1 Institutional capacity building

The Strategic Plan has been developed in a thorough and participatory process, something that is rarely seen among Vietnamese institutions. The development of the plan was preceded by a careful capacity needs assessment and the drafting process involved wide consultation of the membership. Subsequently, a 4-year plan of action for the VLA has been drawn up based on the strategic directions and will be submitted to the executive committee for approval together with the plan itself. It will likely take a concerted effort to maintain the plan and planning process and to improve it.

The Action plan is developed for the central level, while the provincial VLAs are expected to develop their own plans. It may be questionable if the provincial VLAs will in fact be able to develop their own strategic plan in view of the small size of staff at the and the overall low level of membership participation.

A website and membership database have been developed based on the recommendations of the needs assessment. Both activities are aimed towards improving communication with and mobilization of membership. At the time of the evaluation, both applications were in the final stage of development and waiting for uploading on the VLA server. The team has not made any specific observations or recommendations in this respect.

4.4.2 Legal drafting and law comments

The activities in this component were divided into three target areas:

- Strengthening the knowledge and professional skills of VLA members to contribute to the law making process and the overall policy dialogue with the government;
- Enhancing VLA's capacity to take part in the process of selecting judges and procurators;
- Drafting a code of conducts for VLA members.

The first main target area, strengthening the knowledge and professional skills of VLA members, is very strategic for the VLA future role vis-à-vis the state and the society. Achievements of the project in this regard deserve to be complimented. Activities are planned and carried out in a systematic and strategic manner, particularly the legal review and drafting of the law on commercial arbitration. Implemented activities usually lead to concrete results such as research, review and RIA reports, which are quite well documented for future use. The legal review and RIA are strategic choices for project support in 2009 because they would help further consolidate the VLA's role in the law and policy making process in the future. However, the review process at the provincial level still present heavy intervention by the local authorities, which diminishes the ability of the reports to represent the society at large. The review report is also very narrative, which makes it very difficult to follow. The RIA is a good and successful venture by the VLA. However, it will be even more successful in the future for the sake of the VLA's role in judicial and legal reform if it is carried out entirely rather than external experts..

The second target area, enhancing VLAs capacity in the selection of judges and procurators, contained only one activity, a comparative research that is not as good as one would expect. The current judicial selection would not change much as the VLA does not play a decisive role in the selection process, and consequently further activities were abandoned. This appears a reasonable choice in the opinion of the evaluation team.

The third target of developing a Code of Conduct for VLA, was dropped completely. The activity in the programme document was considered by the PMU to be

misinformed, since a general code of conducts for all VLA members would be unfeasible as the VLA membership covers a diversity of different legal professions, such as practicing lawyers, judges, prosecutors, non-practicing lawyers. The evaluation team concurs with this view, and notes that legal aid providers under the VLA are instructed in the code of ethics applicable within the National Legal Aid Agency.

4.4.3 Legal Aid and Legal Consultancies

Although VLA has developed a Strategic Plan and 4 year action plans – phase 1 (2010 – 2014) on legal aid, it is not yet clear what will be VLA's role and visions in providing legal aid services compared with other state and non-state legal aid providers. What would be priorities in developing legal aid services? What target individuals and communities would be under focus of VLA? What areas of social, economical life would be of strength of VLA to provide legal aid? In short, for VLA there still a big question that 'Where and how to go in providing legal aid?' It is worthy to pay attention to the point made in the Do-Scott report that "without the VLA having a long term strategic vision of where their legal aid program is heading it may be hard to persuade donors to provide long term sustained support". This would also ensure VLA's leading role and capacity in providing legal aid, compared to other related stake holders.

At central level and in Hanoi, legal aid provided by VLA LCCs is now to some extent financially stable and well organized and have received support from both donors and through the central VLA. There are many legal consultants and legal specialists providing good legal services, including legal aid to the public. While doing 50 fee-exempt cases, one office of LCC in Hanoi has gotten 80 millions VND for the first 6 months of the year 2009. As to quality of the service, "[Clients] They spoke particularly about the ability of staff and collaborators to develop a trusting empathic atmosphere and the fact that the staff worked from the highest ethical standards, particularly with regard to refusing payment or gifts." (Do-Scott report).

In provinces, many LCCs have been established quite recently (Quang Nam – in 2008, Bac Giang – in 2006). By the time of the present evaluation in August 2009, 40 LCCs had been established in the country, up from only 12 LCCs in the beginning of 2008. Major constraints for provincial LCC are related to institutional capacity, budget and human resource.

Among LCCs under VLA network, it is commonly believed that the LCC on Health and HIV is quite innovative, dynamic and successful in providing actual help HIV infected and affected people to enjoy and protect their rights. Certainly, without funding of international donors, this LCC would hardly be successful. However, It is quite impressive that legal aid services are undertaken jointly with other actions, such as dialogue with school administration, business employers; awareness raising campaign on HIV for parents association; policy advocating action for the rights of HIV infected and affected; etc. This kind of 'comprehensive' legal aid services should be a good practice to be learnt and replicated into other areas of the legal aid.

Among two legal consultation institutions at Universities supported by VLA, the one of HCM Law University operates well and is at higher level of development. The legal consultation of National Economic University was established very recently and

In July 2008, the VLA project began providing support for the LCC. At HCM Law School, the Center of Law Application and Popularization (CLAP) was established in October 2007. later was renamed as the Center for Legal Consultations in October 2008. The evaluation team did not have an occasion to visit the HCM Center for Legal Consultations, but is reported that the Center has developed a community teaching program for students to provide mobile legal consultation and legal dissemination for street children and on children's rights with skills acquired from the training workshops with technical support of Hanoi Law University and BABSEA (Bridges Across Borders, South East Asia).

VLA understands about importance of the training for legal aid service development. However, there are still a lot of things to do as to subject matters of training, methodology of delivering skills and knowledge, training quality control.

4.5 Impacts And Sustainability

The assessment of impacts of this and other similar projects present a number of methodological difficulties. The project does not operate with indicators for impact measurement, and this in itself is a complex task fraught with difficulties in defining what to measure and in obtaining reliable data. Impact assessment studies can be undertaken, but they are costly and involve a large number of interviewees. In terms of sustainability and impact it may therefore be a better option to consider the outputs of the project and to make an assessment (albeit rather anecdotal) of the value-added of the project activities.

In the opinion of the evaluation team, the project has made valuable contributions at least three areas:

- 1) The **documentation and surveys** produced in the course of the project in particular with regard to the **provision of legal aid**, which contribute to the stock of knowledge and is able to inform current and future activities in this area;
- 2) The support to **university-based legal aid clinics** under the project, while not in itself a new development, brings additional resources and institutions into the field of legal aid. Likewise, the extension of **mobile clinics to a number of prisons** are, despite the constraints encountered, a novel development in Vietnam that may be qualitatively and quantitatively developed in the future;
- 3) The process of planning and membership discussion has resulted in what appears to be an **internal appraisal of the functions and purposes of the organization** and to planned amendments to the charter regarding the structure of the organization. Sustaining the planning process is a challenge to the organization, and at the time of writing it is not known to what extent the organization is willing and able to build on the results achieved.
- 4) The **law-review process** under the project has involved provincial VLAs and resulted in the production of law commentaries submitted to the both MoJ and the National Assembly. While this activity is at the centre of VLAs mandate and important for the positioning of the organization in the on-going legal reform process of the country, it is nevertheless questionable, in the view of the evaluation team, whether the project has been able to bring value-added to the

process in terms of methodology or influence among law-makers. In other words, the

The team also wishes to point out that there are a number of structural and social constraints outside the scope of the project that impede impact and sustainability. These constraints will be discussed further in the chapter below.

5 Main Issues Arising From Project Implementation

The issues raised below concern some aspects of the project and the project implementation environment that have come up during discussions held during the evaluation mission. A number of these issues are also raised and discussed in the reports produced during the project in particular the *Assessment Report on Legal Aid Performance of the VLA* produced by Do Dinh Luong and Tom Scott, the *Capacity Needs Assessment* produced by Ngo Duc Manh, Nguyen Quy Thanh and Andrea Redway, and the report on *Assessment of Legal Aid Needs in Vietnam's Six Provinces* produced by a team lead by Vasavakul Thaveeporn.

5.1 Institutional issues

5.1.1 VLA identity

Elsewhere in this report, the question of the VLA's identity - in relation to its members and in relation to the outside world - has been pointed out. The VLA does not represent a particular interest group in society, unlike the Farmers Union or trade unions, but in principle it joins all persons with a legal education, the majority of whom are currently or formerly state employees. In regard to law commenting and policy submissions the VLA does not represent any defined interest group or set of policies, but more a vague sense of the "legally educated class", which are perhaps assumed to be more "objective" and qualified in their points of view. In reality the members are more likely to reflect the diverse opinions of an active minority of present and former state officials, rather than that of "society" at large.

In relation to law commentaries and policy submissions there is little convincing argument that the VLA is better suited to this purpose than for example the staff of the respective state agencies, such as judges, prosecutors, justice officials. It is probably a matter of choice if, say, a judge comments on a given law in his capacity as an official of the court or as a member of the VLA. Either way, the person is likely to represent a judiciary point of view. An illustrative example is given of comments on a particular law made by a group of jurists employed by the Office of the National Assembly, but who submitted their comments in their capacity as members of the VLA section of the ONA. Without passing comment on the qualities of the legal submission concerned, it seems likely that the jurists of the ONA represented opinions of their institution rather than that of the VLA, the more so since VLA presumably did not have an official "position" on that particular law formulated by the politically competent organs of the VLA. In other words, there is a considerable challenge for the VLA to creating itself a "public profile" and thereby establish a recognized area(s) of VLA expertise in the field of legal reforms.

In relation to legal consultancies and legal aid, the identity issue of the VLA presents

itself in even stronger terms. The fact that many, if not most, of VLAs members have or have had official positions in the state apparatus is likely to influence the way that they perceive their functions as legal advisers. Similarly, this blurring of identity risks drawing into question the impartiality of the VLA legal services as perceived by its users, especially in contentious cases, where the issue of violation of the law or procedures may be the most acute.

The issue of the identity of the VLA arises in yet another relation, namely in the way that the VLA is able to provide members with a sense of shared purpose, and thereby to mobilize the energy and motivation of its membership. From both reports and interviews it appears quite clearly that the challenge to VLA of providing “value” and motivation to its members stems in no small measure from its lack of a strong identity and organizational profile. Evidence of this seems to be the small number of active members, stated several places to be around 1% of the members, low levels of fee-collection, and the on-going debate within the organization about how to create “membership value”.

5.1.2 VLA structure

As pointed out in several reports, the VLA is a hierarchical membership organization with a rather top-heavy management structure and a wide, but largely passive membership base distributed throughout the country.

The VLA is not a dedicated legal aid provider and does not have a management structure geared towards providing legal consultancies and dispensing legal aid consultancies. Similarly, the VLA could improve its internal structure and guidelines for providing legal commentaries and policy submissions. It is clear that the legal aid and consultancy activities cannot be managed on a daily basis by the PMU, which exists for the purpose of managing a donor-financed project. If the VLA is to develop its capacity as a legal aid provider – and in some degree also as a law and policy-commenting organization - it would seem that discussion about its mission and structure should be addressed in the strategic plan and in the action plans. While the strategic plan has many good qualities, it does not seem to address these issues at present.

5.2 Law-commenting and policy submissions

Supervision, commenting and research in law is part of the core mandate of the VLA according to its charter and is widely considered to be an important function given its membership base, professional capacities and socio-political status. The law-comments produced with support from the project show that many issues and important problems in regard to law implementation and consistency are raised by the membership.

Nevertheless, experience from the project would seem to indicate that the methodology of the law-commenting can be improved, and that the organizational structure can be made more effective in gathering, processing and directing the law and policy inputs from the membership.

It is observed by the mission and in the Do-Scott report that the quality and focus of the law commenting might improve considerably through systematically using experience gathered from legal consultancies and legal aid, which can serve as indicators of problems in the application and coherence of law. This would seem a direct and effective way of obtaining social feed-back on the working of the legal and administrative system. The topics and problems raised can be systematically recorded and relayed back to provincial and central level for analysis and decision regarding the focus and priorities for themes for policy submissions and research.

The procedures and nature of law-making also poses challenges to this part of VLA's activities. While draft laws are made available on the NA website and VLA has privileged access to many state bodies, many organisations with an interest in the matter will face difficulties in obtaining access to addressing the process of negotiations for the shaping and adoption of the law. Hence, personal networks, political platform and intellectual status play an important part in obtaining access and influence on law-making. For an organization with limited resources it thus becomes important to have a way of making choices and priorities on which issues / laws / regulations to pursue, and to make such choices based on an assessment of the comparative strengths of the organization in terms of knowledge, access and ability to mobilize these resources.

Recommendations:

It is recommended that the VLA consider ways of strengthening its organization in the following areas:

- 1) To consider the internal structure of the organization in deciding, analyzing and monitoring law-comments, e.g. through establishing a central level committee and dedicating staff at the central level;
 - 2) To make annual and clear priorities of the areas of law-commenting, taking into account areas of particular expertise in the organization, the ability of the organization to make an impact, and also to consider issues that are likely to raise the public profile and credibility of the VLA;
 - 3) To mobilize resources in the provincial VLAs on specific law-commenting issues directly linked to the annual priorities of law-comments; and
 - 4) To monitor closer the issues arising from the LCCs and select either themes for law-commenting or policy-submissions or specific issues that are cause for concern.
- On this issue see also the detailed recommendations in the Thaveeporn report.

5.3 Legal consultancies

Legal consultancy and legal aid to the poor are part of the mandate of the VLA. Decree 77 details the manner in which these consultancies are to be established and run. Essentially they are an unfunded mandate in the sense that no additional budgets for their operation is available, and that costs are expected to be covered through the existing budget of the mass-organisations and through the LCCs to engage in fee-based activities.

The LCCs have been thoroughly surveyed in the Do and Scott report from 2008, and this report can only provide a few additional observations.

The main observation of the evaluation team is that it is difficult to assess demand for such services. While the activities of Hanoi and HCMC LCCs have reached a certain scale and capability to respond to clients' requests, the two provinces visited by the team suggest that the demand for legal consultancies is quite limited in the provinces, but with higher case loads in Hanoi and HCMC (see Annex 1 for more details).

The observations of the team suggest (but does not confirm) that the ability of LCCs to generate income that can bolster the budget of the provincial VLAs is very limited, and certainly not sufficient to cover the expenses of dispensing free legal services. Thus, annual income in 2007 and 2008 from LCC's in Bac Giang province amounts to VND 300.000 and 900.000 respectively. In Quang Nam the figures were not mentioned but appears to be similar. Hanoi LCCs generate about VND 80 million per year due to large and varied client base, especially among many migrant workers.

LCCs operate under same fee scale as law firms, and it remains an open question whether in fact the LCCs can offer services that can compete in timeliness and quality with those of law firms.

After issuance of the Decree No. 77 in 2008 LCCs may perform all kinds of legal aid service that the State Legal Aid Centers are mandated to serve. This is not in question in Hanoi and in many other provinces. However, Director of Quang Nam LCC complains that interpretation of the Decree No.77 given by Quang Nam DOJ and even by an official of MOJ shows that LCC may contract only 'with those lawyers who is practicing in his/her personal capacity'. Therefore, it prevents LCC from hiring almost all lawyers, as in fact it is hard to find a lawyer not working with any law office/firm. Under the Law on Lawyers (article 23 Law on Lawyers) 'lawyers practicing in his/her own personal capacity' may be interpreted as lawyers who do not run their own office, or those who are not in a contractual relation with a law office/firm. Obviously, this is the way that Quang Nam DOJ interpreted article 7.1 of the Decree No.77.

Recommendations:

It is suggested that the VLA makes an internal assessment of the LCCs to include:

- 1) An assessment of the demand for and economic basis for continuing this type of activity;
- 2) Possible alternative ways of organizing such services, e.g, jointly with other mass organizations or in direct partnership with local law-firms; and
- 3) Recommendations to the VLA management for future interventions regarding LCCs.

5.4 Legal aid

Demand for legal aid is generally assumed to be large, but existing data and surveys do not bear out this fact. There is little or no assessment of demand for legal aid, although the draft report by Visavekul Thaveeporn et. al. commissioned by the project may provide additional valuable data. The number of persons approaching the LCCs for free legal aid is small (10-30 persons per month) in the two provinces visited. The

figures in the Do-Scott Report provides additional data, which tends to confirm that use of legal aid services of the LCC is low.

The reason why people appear not to avail themselves of free legal aid in any great number are not substantiated by any data, and it is therefore left largely to guess-work (this report included). There is as yet no available means of assessing user response and results. This issue is addressed in the Do-Scott report and the project PMU has initiated a complaint formula to try and capture some of that response. However, the problem remains that dissatisfied clients may not be likely to return to complain. Moreover, the LCCs have little or no information on the outcome of the cases in which they have provided assistance, which might have shed some light on user response.

Among the factors that are cited as barriers to the use of legal aid services are a) the existing legal culture, whereby citizens are expected to obey the law rather than actively use it to defend their interests, will dissuade people from seeking redress to grievances; b) the widespread identity between state institutions and legal aid providers creates a barrier to providing legal aid that is perceived by users to be impartial; c) the physical placement of legal aid offices in the same building with the departments of justice does not encourage potential users to seek assistance of a contentious nature; d) the legal framework and administrative complaint system are complex and the application of law is difficult, creating big challenges for developing effective legal aid; e) local authorities tend to be distrustful of legal aid providers organized in mobile clinics, thus diminishing the outreach ability of legal aid providers.

The report by Thaveeporn Vasavakul et. al. on “*Assessment of Legal Aid Needs in Vietnam’s Six Provinces*”¹ was released in August 2009, and is a product of the present project. The report carries detailed analysis and describes strategies for legal aid in six selected provinces in Vietnam. The report is likely the most detailed and thorough analysis of legal aid needs and legal aid provision in Vietnam undertaken to date, and that alone makes it remarkable. The field research appears to be based on solid methodology and observations. The report goes a long way in meeting the needs for better understanding of the demands for legal aid among poor and social beneficiaries, while at the same time providing detailed recommendations for improving legal aid services, methodologies and contents. The report provides a wealth of information on the institutions, methods and environment for legal aid in Vietnam, and specifically highlights the different conditions and levels of service in each province.

Of particular relevance are the recommendations of the report regarding the need for improving systematically the local understanding of legal aid needs, of better outreach to individual beneficiaries, of focusing on particular areas of advice and to produce relevant and informative materials and packages of information. Similarly, recommendations on systematically keeping records of services provided and to

¹ *Assessment of Legal Aid Needs in Vietnam’s Six Provinces: Rationale, Methodology, Findings, and Recommendations on the Linkage between Legal Aid and Local Governance*, Thaveeporn Vasavakul, Nguyen Hong Tuyen, Ha Hoa Ly, Hanoi, August 2009

provide feedback to central VLA on issues encountered during legal aid work are very much to the point.

By outlining in detail the needs and strategies for strengthening delivery of legal aid at local level, the report also indirectly highlights the main weakness of the VLA in this field, namely that the VLA is not a dedicated legal aid provider with an organization and structure that is directed at this activity. The VLA only provides legal aid among many other activities and objectives, and therefore it will most likely find itself struggling to adapt to and fulfill the recommendations of the report. Hence, the recommendations of the report are ideally not only directed to the VLA, but to the wider social task of legal aid provision in general.

Recommendations:

The team supports the findings and recommendations of the Thaveeporn report and recommends that the VLA make a thorough assessment of these recommendations. However, the team believes that it is unrealistic for the VLA to implement these recommendations fully, and therefore suggest that a limited number of key recommendations are adopted as the basis for developing a plan of action.

The team recommends the VLA to consider establishing a unit at central level responsible for planning, promoting and monitoring legal aid activities within the organization. The team recommends that the PMU, given its responsibilities for project management, should not be given such a task.

The team further recommends that the provincial VLA, with strong support from the central level, considers and adopts all possible measures to establish its own identity as an independent provider of legal aid separate from the justice departments and the state legal aid agency.

5.5 Mobile clinics

Mobile clinics are constrained by a high degree of mistrust from local authorities, and monitoring of the events by local officials creates difficulties in creating an atmosphere in which clients will feel confident in presenting their problems and grievances. Respondents pointed out that they had to engage in the discussions with local authorities prior to any visit to a given locality. Moreover, local authorities are present at the mobile clinic events, although the team was assured that individual consultations during mobile clinics take place in private and are not monitored by local authorities.

Setting up advice centers at the courts seems to have attracted a number of clients seeking various forms of advice and could be a promising activity. Again, mistrust and resistance from the court officials need to be overcome, and the LCC are generally unable to accompany clients to judicial proceedings.

The Thaveeporn report considers the mobile clinics as entry-points for identifying legal aid needs and for outreach to local communities. At the same time, it recognizes shortcomings in the way that mobile clinics are conducted, in particular that they often address whole communities, and not individuals, that they do not in general have sufficient specified knowledge to be of direct assistance to people and that they

generally do not offer individuals the possibility of following up on their complaints.

Recommendations:

The team recommends to continue and strengthen cooperation with university mobile clinics to continue to develop better forms of conducting mobile clinics and in particular to develop experience, materials and forms of interaction with clients .

5.6 Dissemination techniques

There seem to be wide scope and need for developing and improving communication and pedagogy in both legal dissemination and instruction materials. Much of the existing dissemination material and manuals are heavy in text, copy out large sections of laws and regulations, and lack plain language explanations and illustrations, adapted to needs and concerns of various target groups. Producing material is a demanding professional task, which seems largely not to be well understood. That being said, there are good examples of innovative approaches and legal disseminators, who are mindful and receptive to the needs of their audiences and able to adapt. (Legal clinics using role plays, or HIV/Aids LCC producing attractive and pedagogical information material).

Recommendations:

The team recommends continued interaction with universities and professional providers of legal aid, including also international organizations, to develop better dissemination techniques. The Thaveporn report identifies a significant number of areas in which citizens are in need of accurate, reliable and specialized knowledge. As a minimum, the team recommends that 2-3 issues be selected for which well-trained legal advisers and modern, innovative information material is gradually developed.

5.7 Prisons and correctional institutions

Legal dissemination and advice to inmates is undertaken with support from the project and now reportedly takes place in 18 provinces. This is a neglected area and a positive development. Given the conditions and security surrounding access to prisons, it is not surprising that many constraints are encountered. Notably, legal advice and assistance offered to inmates is tightly monitored by prison authorities, which therefore clearly compromises the ability of the legal advisers to act as impartial advisers and to facilitate the clarification and obtaining of such rights of inmates as are provided for in existing prison regimes. The fact that LCCs have obtained access to prisons in 18 provinces is an important achievement that can hopefully be expanded and qualitatively improved in spite of the constraints facing legal aid providers.

Recommendations:

The team recommends that the VLA continue to carry out these activities and to gradually develop ways of providing legal advice that is seen to be more independent of the prison authorities and with the aim of obtaining access to advising inmates on an individual basis without the presence of prison guards, or, at a minimum, to provide group sessions for inmates in which prison guards are not present in the room.

6 Assessment of Current Development of Civil Society Organisations with Regard to Legal Consultancy and Legal Aid

6.1 Access to justice in the current political and legal context of Vietnam – CSOs and VLA.

Legal aid is understood by the law as *“the provision of pro bono legal services to legal aid beneficiaries, in accordance with this Law, to help them protect their legitimate rights and interests and improve their legal understanding, as well as their sense of respect for and observance of law; to contribute to law dissemination and education, protect justice, ensure social equity and prevent and restrict disputes and violations of the law”*.²

This stipulation of the law contains a comprehensive reflection, or wide interpretation, of the legal aid as the general term to promote fair access to justice. However, from service providers' point of view, there are 3 terms, 'legal dissemination' (in Vietnamese 'legal propaganda' - *tuyen truyen phap luat*), 'legal consultation' and 'legal aid', that need to be clarified. Each mode of legal aid is undertaken by a major stakeholder, either mass organizations or state agencies on legal aid.

6.1.1 Legal dissemination.

To guide and execute legal dissemination activities, by now the Government has set up an institution called “Coordination Council for legal education and dissemination”. This kind of Council is operating in all provinces and in some sector like labors, women's, youth's affairs. Under directions of these Councils, various forms of legal dissemination have been providing in province: direct introduction of legal documents for citizen, legal quizzes at communities, legal books shelves for each commune, pamphlets, operation of grassroots conciliation groups, etc. It is obvious that operation of the legal dissemination Councils aims mainly at encouraging people to obey laws.

Since 2004, with the Decision No. 212/QĐ-TTg, the Prime Minister approved the National Action Program on Legal education and dissemination to increase awareness to obey laws among public servants, people at communes, wards, and towns, for the years 2005-2010 (Coded name: Program 212). Under the program 212, many mass organizations like Father Land Front, Women's, Farmers', Youth's Unions, Veterans' have been providing a lot legal dissemination activities in provinces.

In first half of 2009, Prime Minister has approved Project “Legal propaganda and dissemination for farmers and ethnic minorities for years 2009-2012”. This project is funded by the State budget at the amount of 75.298 billions VND (more than 4 millions USD). The project will be implemented by Ministry of Agriculture and Rural Development; Government Committee on Ethnic Affairs; Farmers and Women's Unions.

² The Law on Legal Aid, article 3, No 69/2006/QH11.

As to quality of legal dissemination, it's hard to comment. However, the way that laws are disseminated is very close to introduction of legal provisions for people to understand to respect and follow. In Vietnamese legal dissemination is often used as 'legal propaganda' (*tuyen truyen phap luat*). Using this term may lessen practical use of laws.

6.1.2 *Legal consultation*

Practically, legal consultation may be understood with two kinds of activities as fee-exempt legal consultation and fee-base legal consultation. Decree No 65/2003 and then Decree No. 77/2008 allow social mass organizations, law research and law teaching institutions to set up Legal Consultation Centers which may do both fee-exempt and fee-base legal consultations. This means that part of LCCs' activities may be legal aid in real meaning. Under this framework, mass organizations have established LCCs. Together with VLA; legal consultation has been undertaken by some mass organizations as following:

Federation of Trade Unions of Vietnam.

The Federation has providing legal consultation for workers since some time before 2003. For the period of 2003 – 2008, Trade unions at all levels have provided legal consultation and legal aid, handling more than 42 000 cases, among those 35500 cases related to labor disputes, helping grassroots trade union in signing collective labor agreements (<http://www.molisa.gov.vn/news/>). Currently, LCCs of Trade Union have been operating in many provinces like Hanoi, HCM City, Dong Nai, Binh Dinh, Tra Vinh, etc. There are 16 LCCs, 32 LC offices, 394 LC groups of Trade Unions at all levels providing services (<http://sgd.binhduong.gov.vn/>). LCCs or LC groups of the Federation are most popular in provinces with concentration of labor forces for industrial parks, export-processing zones.

Women Union.

Legal consultation, especially in areas related to women's interests like marriage, civil matters, domestic violence, women's rights, etc. has been provided by women unions for many years. Women Unions has been providing legal aid for it's' members-women at all levels through units of family's and society's affairs. Women unions in some provinces like Quang Nam, Thua Thien – Hue, are active in seeking partnership with other provincial institutions (Provincial Legal Aid Centers, the Bar, or Provincial VLA LCCs, or the Youth union) to provide fee-exempt legal consultations for women. At the central level, the Union does not establish an independent LCC. In stead, there is a division within their central office called the Legal and Policy Consultancy Board, which provide legal consultancy services for those members who need it.

In some provinces like Quang Nam, An Giang, the Marriage Consultation Centers do also provide legal consultation on marriage issues for women, especially for those who are going to get married with foreigners.

Vietnam Farmers' Union.

No information available notes about a LCC of Vietnam Farmers' Union. Anyway, in some provinces like An Giang, Lam Dong, LCCs of Farmers' Unions were established in 2004 and 2005 respectively.

VFUs at all levels have been directly providing legal consultations since 2001, following the Prime Minister's Instruction about the role of VFUs in handling public administration complaints from farmers, and implementation of grassroots democracy in communes. For the period of 5 years (2003 – 2008), VFUs has been providing legal dissemination and legal aid for millions of farmers. (<http://www.tapchicongsan.org.vn/>)

Vietnam Veterans' Union.

Vietnam Veterans' Union doesn't have an independent LCC. But, there is the so-called Law Consultancy Office, which is located at the central office of the Union. Legal consultation for war veterans may also be found in some provinces like HCM City at LC groups at district level. For instance, LC groups in Binh Thanh District of HCM City have been actively providing legal consultations for last 14 years. There no information about existence of a LCC of Vietnam Veterans' Union.

Vietnam Father Land Front. (VFF)

VFF does not have LCC. Someone at VFF finds that it would be difficult financially to run a LCC, while VFF is providing legal consultations through citizen's receiving office where VFF at all levels holds key role.

Vietnam Youth Unions. (VYU)

Under the Youth Research Institute of the VYU at the central level there is a LCC called the Youth's Law Consultancy Centre, which has been operating for quite a number of years. Within VYU's network there also are many kinds of Centers like 'Center for jobs introduction', 'Center for supporting young workers', 'Center for Advanced Youth', etc. These Centers, on their own or in cooperation with other mass organizations (women's, farmers', etc.); do also provide legal consultations for the youth in areas of employment, marriage, civil matters.

Law schools, law research institutions.

Under Decree No. 77/2008, law schools, law research institutions may establish LCCs. This regulation has opened opportunities for law school to set up LCC in the form of Law Clinics with autonomous status to provide clinical education for teachers and students to serve marginalized people.

HCM Law has established a LCC since 2007. VNU Law LCC called LERES (Center for legal research and services) has been providing legal consultation and dissemination at rural and ethnic communities since 1997.

Institute on Policy, Law and Development – PLD, an organization under VUSTA (Vietnam Union of Sciences and Technology Associations), together with BABSEA (Bridges Across Borders, South East Asia), is now providing technical support for development of Law clinics at the Law Faculty of the Trade Union University, Law Faculty of Vinh University, Law-economics college of VNU HCM City.

6.1.3 Legal Aid

The term of Legal aid (*tro giup phap ly*) is only used in Vietnamese for following cases:

- a) pro bono legal services provided by State legal aid institutions called Legal Aid Centers, which assume the main responsibility of legal aid provision in Vietnam. At the Central level legal aid institution is called **National Legal Aid Agency**, and operates under MOJ. In provinces, Legal Aid Center operates as part of Provincial District of Justice. Annually, Legal aid Centers are allocated state budget to conduct legal aid services for listed by law groups of people. Legal aid Centers may provide services by themselves, or by contracting lawyers.
- b) Pro bono legal services provided by “participating institutions”, such as lawyer’s businesses (law firms, law offices) or LCCs of mass organizations. To be able to provide state-funded legal aids, such institutions must register for that purpose with respective local DOJs and subscribe, usually via state-run legal aid centers, for the reimbursement of a limited number of legal services, ie. participation in mobile clinics organized by the NLAA and cases referred to them by the NLAA.

Besides the above-mentioned legal aids, a person can have free legal representation by way of the so-called assigned lawyers (or *luật sư chỉ định* in Vietnamese). This may happen in 3 kinds of criminal cases: i) potentially with capital punishment; ii) juvenile conviction; and iii) the accused is mentally or physically retarded (Article 57 of the 2003 Code of Criminal Procedures). The fee for assigned lawyers is quite low, 120,000 VND per day. It is believed lawyers hardly get paid for assigned cases due to bureaucratic clearance procedures at government authorities. In addition to this, someone questions about quality of handling such cases, because some judges or lawyers may regard handling these cases as charities.

6.1.4 Law firms

Legal consultancies are believed increasingly to be provided on a commercial basis by law firms organized under the Law on Lawyers from 2007. Local bar associations are not known at present to organize legal aid on their own, but will in most provinces have a contractual arrangement with the provincial legal Aid Centers under the respective Departments of Justice to represent clients in court cases. There are indications that this arrangement is the source of some tension and disagreements as regards the number of cases assigned to lawyers and settling the fees for the lawyers’ services. The major part of the court work by lawyers in the provinces would appear to be cases assigned by the courts or investigating agencies as provided under the Criminal procedure Code. This area of judicial work remains largely undescribed.

6.2 VLA and other non-governmental legal aid providers.

Comparing with other mass organizations in providing legal aid, VLA has the following advantages:

- having biggest numbers of LCCs at central level and in 40 provinces.
- being able to mobilize wide range of its members-jurists, including retired legal experts, or public servants with legal background working in judiciary,

executive and law making institutions. To this point, one thing should be kept in mind is that jurists and legal experts, while often having professional experience from positions in the legal and judicial fields, are not *per se* good legal aid service providers. To perform legal aid and consultancies, providers need experience in dissemination techniques, to build a professional identity and their role as advisers, to acquire and adapt their knowledge to the specific areas of expertise, to acquire mediation and negotiation skills and to be aware of and abide by requirements for documenting their activities..

At the same time, VLA has some disadvantages as follow:

- VLA is an association of jurists, legal experts, coming from very different agencies, with background and interests in various professions. So, this feature of VLA makes it hard to represent interests of any specific group in the society. Therefore, this challenges VLA in mobilizing its members.
- The VLA remains a broad-based membership organization with a structure that favours member representation and organs of political decision-making. While this may be suitable for a mass-organization, it is not ideal for legal aid and legal consultation, which requires a strong operational focus, professional management and the ability to fund its activities on a continuous basis.

7 Possible Future Scenarios for UNDP and VLA

The preceding chapter provides a brief overview of the known actors within the field of legal dissemination, legal aid and legal consultancies in Vietnam that are established based on the Law on Legal Aid and the Government Decree 77/2008/ND-CP. The field remains small with the National Legal Aid Agency dominating the legal aid work. Free legal consultancies and mobile clinics are dominated by the mass organizations, in particular the VLA, and with three known legal clinics established at universities in Hanoi and HCMC. Private law firms (often acting through the local bar associations) are increasingly active in providing legal consultancies on a commercial basis, while also having a role as contracted legal aid providers under NLAA and the mass organizations. The team does not possess data on the volume of work done by law firms in the field of legal aid.

Decree 77 assigns and encourages “socio-political organizations and professional socio-political organizations, training institutions and specialized law research units” to perform legal consultancies and free legal aid. This formulation would indicate that civil society organizations outside this rather narrow delimitation of institutions are precluded from providing legal consultancies, and that a CSO formed for the purpose of providing legal aid, but which is not affiliated to or an integrated part of a training institution or a “law research unit”, may not perform legal aid.

Apart from the university clinics, there is little or no evidence of any civil society organization outside the mass organizations being active in legal aid or legal consultation. As for legal aid in relation to judicial proceedings, it seems unlikely in the foreseeable future that CSOs will have any wider access to clients or be able to represent or otherwise assist people in proceedings. Such assistance is only likely to

happen through certified lawyers / law offices acting on behalf of clients and/or the Legal Aid Centers and the Legal Consultancy Centers.

Given that the number of actors in the field of legal consultancy and legal aid is bound to be quite narrow in the foreseeable future include only the following:

- The VLA will remain more or less the only organization with a law-based mandate and internal structure for providing legal consultancy and legal aid on a national scale;
- Law offices are in practice the only organizations able to represent clients in judicial proceedings, although LCCs under decree 77 may employ lawyers full-time under labour contracts;
- The university-based law clinics and possibly a small number of research institutes remain the only basis for methodological and pedagogical innovation.
- The National Legal Aid Agency will remain the exclusive provider of state-funded legal aid;

7.1 VLA

The VLA has the opportunity of using its near exclusive access to provide legal consultancies on a national scale and making good use of its comparative strengths. However, this opportunity faces a number of challenges.

First, legal consultancy is an unfunded mandate and hence the VLA is forced to seek additional funding for the activity. However, VLA is not experienced in nor structured to be a fund-raising organization, and neither is the VLA a dedicated legal aid provider; using the law-based opportunity for legal consultancies will present a considerable challenge to the organization in adapting and securing a stable funding base.

Secondly, focusing on legal aid and consultancies may lead to a change in the focus of the organization and therefore to a change in its public profile. This may well be for the good, but without a well-defined strategy and political motivation it is likely to lead to internal disagreement and tension in the organization. In this respect, the strategic plan and the 4-year plan for legal aid and consultancy activities are good instruments for managing such a process.

Thirdly, the VLA may increasingly find itself in conflict with professional legal consultants within the expanding base of law offices. There is space for both, but the VLA would need to identify its comparative advantages and how to distinguish themselves from the law offices in relation to their potential client-base.

Fourthly, a systematic effort to motivate and train members for legal consultancy and legal aid work is a recognized need. The VLA has many advantages, but having a legally-trained membership base does not in itself mean that the organization is well-suited to do legal consultancy.

Reference is made to chapter 5, in which a number of recommendations for the consideration of the VLA are presented with regard to the key areas of activities under the present project.

7.2 UNDP

In a limited field of actors, the UNDP has opportunities to work on smaller projects to promote an environment and legal culture conducive to legal aid and consultancies. Such work can include research, development of teaching material, methodologies, building working relations with organizations and doing pilots. The lack of experienced actors and organizations in the area of access to justice combined with the numerous constraints on their practical work calls for experimentation and development of working relations with partners.

Below, the evaluation team presents a number of options for continued work and initiatives. The options build on the response received during interviews and on the observations made in the course of the mission. The options can, if UNDP so chooses, be explored further as to their feasibility and suitability for project activities.

7.3 Strategic areas of activities

Based on the discussion in Chapter 5 of issues arising from project implementation, the following is list of strategic areas of activities for consideration in future projects and institutional development in collaboration between UNDP, VLA and other possible partners:

- Hold a series of user-feedback workshops on the relevance, quality and usefulness of legal aid and to further develop knowledge of user expectations and needs for legal aid and legal consultancy;
- Further develop manuals for legal aid providers in specific areas of law and administrative procedures;
- Further develop methodology, pedagogy and materials for legal dissemination.
- Promote the development of the legal aid environment through cooperation with or contributions from existing providers among CSOs, universities, practicing lawyers, bar associations and the business sector;
- Support VLA in developing cooperation between legal counseling centers of the mass organizations as a means of pooling resources in legal aid provision;
- Develop thematic areas of legal aid in cooperation between legal aid providers and one or two line ministries, e.g. on land and environmental issues, civil registration, women's rights, labour rights or other relevant and suitable topic.
- Enhance supports for LCC on Health and HIV.
- Focus on capacity building for PVLA in some prioritized selected provinces.
- Pilot LCCs specialized in thematic areas like migrant workers, environment problems of public interest, prisoners' issues.

- Review policy and strategy at central level for policy submissions and law drafting;
- Review and adapt organization structure at central level to increase effectiveness and impact on law commenting and policy submissions;
- Develop the internal structure and reporting mechanisms for linking feedback from citizens through legal aid, consultancy etc, with law commenting and policy advocacy;
- Consider using a (national or international) management expert to facilitate the continued development and implementation of the VLA strategic plan; the management expert should come from outside the VLA and facilitate discussion within the VLA on issues relating to the implementation of the strategic plan and the structural, organizational and financial issues that arises from here. The expert may also facilitate the discussion in VLA management of the recommendations contained in this and other reports, e.g. the Thaveeporn report.

Annexes

Annex 1

Legal aid and Legal Dissemination – extended report on findings

The following report present the detailed findings of the evaluation team with regard to the project activities on legal aid and legal dissemination. The report contains information and observations of relevance to all legal aid providers in Vietnam and may inform future project activities in this area.

1) Support for operation of two Legal Consultancy Centres in Hanoi and two provinces, including mobile clinics.

Hanoi.

Hanoi Lawyers Association has one main LCC with 8 branches the subsidiary LCC in HaTay. 51 legal consultants working Hanoi LA LCCs. Hanoi LCC has a unit providing online legal consultation through telephone.

The LCC has been often providing mobile legal aid social reeducation schools.

Process of providing mobile legal aid service:

- Needs survey trip;
- Working out legal aid agenda at communities
- Selection of legal consultants;
- Provide legal aid at communities.

Mode of providing mobile legal aid service:

- Introduction of relevant areas of law.
- Providing legal consultation in 5 groups with 2 legal consultants each.
- Giving sometimes legal opinions to people having administrative complaints.

Number of cases done for first half year 2009 at main office of the Hanoi LCC:

- Providing legal consultation of 300 cases, among these 50 cases were handled for free.
- Providing online legal consultation for 7625 telephone calls with length of 41849 minutes.
- Legal consultation at the main office generated 80 millions VND.

1) Support for operation of mobile clinics in prisons and legal advice offices in courts in 18 provinces;

Under the project there are 12 Provincial Lawyers' Associations registered to provide mobile legal aid service to the court house and the prisons; 4 PLAs registered to provide legal aid in the prison; and, 2 PLAs registered to provide legal aid at the court

house. Bac Giang LA registered to provide legal aid at the Court house. Quang Nam LA registered to provide legal aid in prison.

By the end of first half of the year 2009, 45 mobile trips to prisons have been organized by 15 provincial VLAs where laws were disseminated to 1,387 prisoners and legal advice was given to 294 questions; Legal aid at courts was carried out in 16 provinces. 307 legal advice cases were handled at courts. (*Quarter report 2009*)

Bac Giang and Quang Nam Provinces.

Starting from April 2009, the Bac Giang LCC has placed mobile consultation desk at the Court House to provide legal aid for people in needs. For last 6 months, 30 cases of legal aid done. Most of cases were of civil and marriage matters, land use rights, administrative complaints, civil registration, etc.

As to providing legal consultation in prison, Bac Giang LCC finds that it is not doable as a special permit from Ministry of Public security is required.

Since May 2009, under the VLA – UNDP project the LCC of Quang Nam LA placed legal aid desk at the Court house. Among requests on legal consultation there are many questions about fairness and legality of Judgments. Legal consultants of LCC are reluctant to answer on these questions because of complexity of cases and consideration of political correctness. Another challenge for providing legal aid at the court house is that few of people do not trust legal consultants, thinking that they are working on the side of judiciary agencies.

Under the VLA-UNDP project, the LCC of Quang Nam LA has organized 4 mobile legal aid trips to prison. Mobile legal aid service contains 2 parts: legal dissemination and legal consultation. At the first session, legal consultant, in this case vice-chief Judge, lectures on matters of Criminal law, Law on amnesty, Law against trafficking and using drug, Regulations of prison; civil issues in criminal cases. In the afternoon, legal aid group of LCC provides legal consultation for prisoners. Requests from prisoners are considered and discussed in the administration office of the prison. After discussing with prison's authorities about answers to be given to prisoners, legal consultants get back to the meeting hall and give answers in public.

To be able to provide legal aid service at the court house and in prison, the Quang Nam LCC has signed a document called “the inter-institutional commitments” with the court and the prison respectively.

2) Support to establishment and operation of law clinics at universities in Hanoi and HCMC;

There are two Law clinics at the Universities are supported by the VLA-UNDP Project. VLA would like to pilot law consultation activities at Universities (* Ms. Thanh – Project Manager of the PMU).

Law Clinic at the National University of Economics.

The Law clinic of NEU has provided not much in-office consultation (about 20 cases up to now).

The Law clinic has conducted 10 Mobile legal aid activities to communities. These outreached activities are financially supported by the Project. VLA has been guiding and supervising activities of the Law Clinics of NEU. The clinic has periodically reported to the PMU. Together with progress and financial reports, all records of activities at communities with endorsement of local authorities should be also submitted to make sure that the activities did take place (Ms. Thanh – PMU).

Two major parts of the clinical activities at communities are legal dissemination and legal consultation. Legal dissemination – presentation of basics on various laws in needs for communities (morning session). Legal consultation – answering on issues requested individuals (afternoon session). Students assisting teachers to give consultation to people. Consultation is given in groups.

Giving interview, Law clinics of NEU confirmed that there are some lawyers associated with the Faculty on contract basis. However it is not clear if these lawyers have taken part in LCC activities.

There is no information that students and teachers at the Law clinics have receive a special training on Clinical Legal Education as it happens at the Law Clinics (LERES) of the VNU Law Faculty.

Legal dissemination has been conducted in various forms like pamphlets, lecturing. There seems to be no use of interactive methodology in delivering law information. Anyway, some students said that they were trying to use skills as the role play to make legal dissemination more attractive.

Students have not been trained on the Law on administrative complaints. Not knowing about petition procedures would cause difficulties for the Law clinics to provide consultation to people with petitions who would like to settle their complaints/petitions to authorities.

During legal consultations, students were asked to bring to Hanoi some complaints/petition letters from individual farmers to submit them to authorities at central levels. Some of these complaints letters were brought by students to Hanoi. Then, students feel very difficult to take follow-up actions to help those individuals with their complaints/petitions.

The Dean of the Law Faculty of NEU is willing to develop this institution as an autonomous law office, with its own legal personalities to better support communities.

3) Development of legal aid manual, operational guidelines and training materials

Producing a manual on legal aid activities at the VLA's legal aid clinics was planned as Activity 3.1.4 under Output 3 for 2007. According to the 2007 plan, the manual is expected to provide staff working at the VLA's LLC with guidelines on practical matters and formalities that they have to follow in the course of legal aid provision at

the LLC. The drafting of the manual started in late 2007 and preparation has been very thorough. At first the manual was drafted by a group of experts at the VLA central and then gone through a number of consultation sessions before published in October 2008 under the title “Manuals on professional guidelines in legal aid activities” (“*Sổ tay hướng dẫn nghiệp vụ trợ giúp pháp lý*” in Vietnamese) with a printed note that it is a product of the UNDP-VLA project.

The manual has the form of a text book with a length of over 300 pages. Its content covers a broad range of legal aid issues such as general policy on legal aid provision to the poor and policy favored beneficiaries (Chapter 1), socio-political and socio-professional organizations’ participation in legal aid (Chapter 2), process and formalities of legal aid provision (Chapter 3), some skills to provide legal aid services (Chapter 4), and professional ethics of legal aid personnel (Chapter 5). Copies of the published book have been supplied to all legal consultancy centers and clinics of the VLA.

In contrast to the original practical purpose of the manual, which is demonstrated in the 2007 and 2008 work-plans, it is indicated in the Preface of the book that the target group of readers covers also scholars and ordinary readers who wish to obtain general knowledge about legal aid policy. As a consequence, the final product contains much academic information and concepts. This makes the book rather difficult to read and use to practitioners who work at the LCCs. In addition, instruction concerning how to carry out a mobile legal clinic in a commune or prison is unfortunately not included as a separate part of the manual.

The manual is also one of the only two of this kind which are made with donor’s support. The other manual was a product of a Swiss funded legal aid project at the Ministry of Justice, which was implemented from 2003-2007.

Training and consultation workshops

VLA organized 2 training workshops, May 2007 and December 2008, on legal aid service for legal consultants of VLA LCCs network in 40 provinces.

Under the project, VLA supported financially the Law University in HCM City (HCM LAW) to organize one 3-days-training workshop held in December 2007 on Clinical Legal Education for Law Clinics’ students and law lecturers. 60 participants, half of which coming from the Center for Legal Application (CLAP) of the HCM LAW. Many participants coming from other law schools (Hanoi Law, VNU Law, NEU Law, CanTho Law, Hue Law, Dalat Law, Law-Economics VNU).

In 2008 CLAP was renamed as LCC. With support of VLA’s project, June July 2008, LCC in cooperation with district youth unions provided legal dissemination and consultation for about 6000 young people working in industrial parks Tan Thuan, Linh Trung, Binh Chanh, Cat Lai, Le Minh Xuan, etc.

Reviewing training materials for these 3 training workshop, most appreciation should be given to the efforts to include major subjects on legal aid for training. Firstly, it is necessary to have clear understanding of legal framework for providing legal aid, legal consultation services and for operating an LCC. Secondly, some skills like consultation skills, filling and casework recording skills may be found in some

presentations of the training materials. Most of these are written in full text without exercises, or, even questions for discussion.

Among those training materials, the training materials for Students' Law Clinics at HCM Law appears to be most impressive with completeness and the easily understanding and exercising nature of full range of methodology for legal aid activities.

4) Development of manual and electronic case registration system;

Developing software to record all cases with necessary means to extract and analyze data, including data on law reform and recommendations (*Project review 2008*). A contract with an IT team has been entered to serve the building of the software. The software will be ready for operation in the 3rd quarter of 2009; (*Quarter report 2009*)

5) Survey of legal aid provision, including lessons learnt, and follow-up to survey;

An Assessment Report on the lessons learnt from the performance of the VLA's LCC was done in April 2008 by Do Dinh Luong and Tom Scott.

In this report, many lessons have been drawn from legal aid provision by VLA's and PVLA's LCCs, including case recording system, identification of targeted groups as legal aid beneficiaries, forms of casework, prioritizing locations and targeted groups for mobile legal aid, assessment of quality of casework, management of case work, quality of training on legal aid service, financial sustainability.

During interviews and field visits, the team of this assignment finds that these lessons reflect current situation of legal aid provision by VLA at central and provincial levels.

As to following-up actions, the report recommends some strategic suggestions about the needs for VLA to develop a medium term strategic plan for its legal aid in Vietnam, to advocate legislative change for social organizations to provide full range of legal aid, and to access to the state legal aid fund, to develop a uniform case recording system, to identify target individuals and communities in needs of legal aid, but are denied access by laws, such as migrant population.

The team of this assignment finds that VLA has taken into its consideration and action major suggestions as following:

1. VLA has developed 4-year action plan on strengthening the legal aid network under the VLA. This Action plan addresses major issues of legal aid development, such as: expanding VLA legal aid network nationwide; extending cooperation relationship with government authorities, local political mass organizations (Women's, Farmers', Youth', ...); developing materials for legal aid; training for legal aid services providers.
2. VLA was actively involved in drafting process of new regulations on legal consultation, replacing Decree No 65/2003 by the Decree No. 77/2008. The

Decree No. 77 allows LCC to assign lawyers to represent clients to provide legal aid at the court which had not been previously under LCCs' mandate.

3. VLA started with development of software to record caseworks at LCCs.
4. Under VLA-UNDP project, a survey of user needs for legal aid in 6 provinces has been conducted to identify areas of needs for legal aid, and target individuals and communities in needs of legal aid.

Annex 2:

TERMS OF REFERENCE

“Strengthening the Capacity of the Vietnam Lawyers Association”

INDEPENDENT EVALUATION MISSION

I. Background

Aiming to enhance “capacities and mechanisms for local associations, organizations and other non-state actors to actively involve in, oversee and contribute to the reform process”¹, UNDP Viet Nam has launched its initial support to the Vietnam Lawyers Association under a project entitled “Strengthening the capacity of the Vietnam Lawyers Association (VLA)” in September 2006. The Project’s overall objective was to strengthen the VLA capacity to play an active role in the ongoing legal and judicial reform process in Viet Nam over a three year period.

With the current project drawing to an end by December 2009, UNDP in coordination with the VLA is commissioning an external review of the project against its objectives which also aims to identify possible options and scenarios for future support to local associations, organizations and other non-state actors in furthering the reform process and civil society development in Viet Nam.

In order to assist UNDP and VLA on this final project evaluation, a team of one international and two national consultants will be engaged according to these Terms of Reference (TOR).

II. Objective

The consultant team shall work with UNDP and VLA to assess the current project accomplishments, lessons learned; and to recommend possible options and scenarios for UNDP to program its future support.

III. Expected output

The final output of this assignment will be a mission report to be submitted to UNDP within four (4) weeks after fieldwork in Viet Nam. The report should focus on the followings which are also seen as the consultants’ specific tasks:

- (i) providing an overall stock-taking and assessment of the project achievements as well as shortcomings and constraints, impacts and sustainability of the Project against its expected outcomes;
- (ii) drawing lessons learned on all aspects of project management and implementation including but not limited to issues of aid coordination, implementation modalities and institutional arrangement;
- (iii) providing an overall assessment on current development context of the society and civil society organizations², their involvement in policy making and advocacy,
¹ See One Plan 2006-2010 between Government of Viet Nam and 14 United Nations agencies, Outcome 4.9 of the respective Results and Resources Framework ² Civil Society Organization (CSO) is meant herewith by its largest spectrum covering: mass organization, socio- professional associations, umbrella organizations, Vietnamese NGOs, and community-based organization, etc.promotion of access to justice and protection of rights at national/sub-national level; and
- (iv) suggesting options and possible scenarios for VLA and UNDP’s consideration for support in the coming years..

IV. Methodology

It is proposed that the Evaluation will be a participatory exercise considering the views and suggestions of a wide range of stakeholders and beneficiaries within and outside the context of the Project.

Therefore, the following roadmap is suggested to be taken by the team:

- Desk studies of all materials relevant to evaluate the project outputs and outcomes (see Annex of the TOR for a suggested reference list). Methodology and working agenda of mission are to be worked out in agreement with UNDP and VLA
- Working agenda of the mission to be sent to UNDP and the VLA’s Project Management Unit (PMU) for arrangement of meetings
- Field visit and interviews of organizations/individuals as suggested by project stakeholders

- Presentation of the team's initial findings and recommendations at a stakeholder workshop at the end of the mission in Viet Nam
- Drafting the first draft report to be sent to UNDP within two (2) weeks after the mission in Viet Nam
- Completion of the final report incorporating comments and suggestions from project stakeholders on the earlier draft

V. Mission arrangement

- Timetable:
 - The mission to be conducted during July-September 2009 and start as early as practical arrangements allow
 - Number of working days for each consultant: a total of **24 working days** including both home-based and fieldwork in Vietnam
- The team composes of one international (team leader), one national specialist and one national resource person to be recruited on individual basis and have clearly defined roles and tasks required qualifications (see Section VI of this TOR)
- Reporting:
 - The team will report to UNDP through the focal point – UNDP Programme Officer for legal/judicial reform during the assignment
 - The team is fully responsible for its independent report which may not necessarily reflect the views of the VLA, Government, UNDP or other donors

VI. Consultants' specific responsibilities and qualifications

6.1 The international consultant – team leader will have the overall responsibility for the quality and timeliness of the entire assignment. S/he will supervise and lead the team in all aspects of the work, in particular of the followings:

- Defining methodology for the assignment
- Presenting the team's key findings, lessons learned and recommendations at a stakeholder meeting (at the end of the mission in Viet Nam)
- Drafting, editing and completing the assignment report

Qualifications of the international consultant – team leader:

- Advanced university degree in law, public administration, political science, or related field
- A minimum of 12 years of relevant professional experience in governance reform, experience in the area of legal/ judicial reform and/or CSO development is highly desirable
- In-depth understanding of democratic governance issues in Asia and/or countries in transition. Previous work experience in Viet Nam is a distinct asset
- Knowledge of donor support work in developing countries is essential
- Strong analytical, conceptualization, presentation and facilitation skills;
- Excellent team leadership and proven ability to work with diverse stakeholders in politically sensitive areas. Strong English proficiency, both written and spoken

6.2 The national specialist will be supervised by the team leader and work closely with the national resource person, and in particular, will be responsible for

- Providing contextual and substantive inputs to the team leader on all outputs under this TOR
- Verification of information as required by the team leader
- Realizing other tasks including semi-product reports as specified/assigned by the team leader

Qualifications of the national specialist:

- Advanced university degree in law, public administration, political science, or related field;
- A minimum of 12 years of relevant professional experience in governance reform, experience in the area of legal/ judicial reform and/or CSO development is highly desirable;

- Extensive experience in institutional capacity building, and training and learning for legal and judicial officials;
- In-depth knowledge of the legal and judicial system of Vietnam and donor assistance in the sector;
- English proficiency is a must.

6.3 The national resource person will be supervised by the team leader and work closely with the national specialist, and in particular will be responsible for

- Providing programmatic inputs to the team leader on all outputs under this TOR
- Facilitation of all working sessions of the mission with key stakeholders including interpretation for working sessions and translation of documents as might be required.
- Realizing other tasks including semi-product reports as specified/assigned by the team leader

Qualifications of the national resource person:

- Advanced university degree in law, public administration, political science, or related field;
- A minimum of 8 years of relevant professional experience in governance reform, experience in the area of legal and judicial reform is highly desirable;
- Good knowledge of the legal and judicial system of Vietnam and donor assistance in the sector;
- English proficiency is a must.

ANNEX:

1. List of document to be reviewed by the mission, including but not limited to

- Project document
- Annual work plans and progress reports
- Project-printed products and non-printed consultancy reports
- Relevant documents on LSDS, JRS and its Action Plans
- Relevant documents on VLA mandate, and implementation of Gov's regulations on civil society organization

2. Suggested organizations/individuals to be met with during the mission

The team will work in Hanoi and visit two other provinces in Viet Nam (to be decided).

In Hanoi, they should meet with:

- Project Director (VLA president); ! Project Manager and PMU members
- Hanoi VLA:
 - Chairman of the Hanoi VLA
 - Director and staff of the Legal Consultancy Center under central VLA
 - Director and staff of Center advising on HIV/Aids policy and law;
- Donors who actively support VLA/ legal aid/ CSOs in Viet Nam
- Vietnam Bar Associations ! Hanoi Bar Association
- MOJ's National Legal Aid Agency
- Other CSOs (if necessary) ! Lawyers and law academics
- Ordinary VLA members in Ha Noi

In two selected provinces the team should meet with:

- Chairman of the provincial VLA
- Director and staff of the Legal Consultancy Center under provincial VLA
- Provincial bar associations and other organizations actively providing legal/legal aid services to local residents
- Ordinary VLA members in the provinces