

**EXPANDING THE PARTICIPATION OF VIETNAMESE NON-
GOVERNMENTAL ORGANIZATIONS IN LEGAL AID**

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Part I

GENERAL ISSUES ON LEGAL AID

1. Viewpoints on legal aid

Today, the market economy prevails in most countries in the world so that in different countries even have different political, social conditions, and the market mechanism may have diversities colors but the common is that it causes a big gap between the rich and the poor and creates unequal conditions for people to access the social and nature resources as well as law. The right to legal aid is a recent concept, which is recognized by different theories. Under Roman law, legal aid is viewed as important place in the sphere of a political patronage system. During the middle Ages, it falls as one of sphere of morality. Legal aid was performed as charity, pro deo, to the Glory of God. Only after the French revolution, the right to legal aid falls into the juridical field and principle of equal access to the courts for all citizens was proclaimed. Nonetheless, as a result of the attitude that all citizens have right to defend their rights themselves, so legal aid remains only for not affordable poor people. In many countries, especially countries in common law system, people have to spend a lot of money for their litigation due to big fee for lawyers. For example, in Germany, the lawyer fee to claim the ownership of a property is about half of the property value¹. In the United States and some other countries, the lawyer fee is several hundreds USD per hour. Therefore, the poor cannot pay lawyer fee and sometimes justice turn back against them². At the same time, by the changes of the economy, society and management of the countries, the existing legal aid needs increase in every countries, in industrialized societies such as Denmark, Sweden, and Norway even legal need in some major areas occurred of almost 50% of the populations³. The above analysis expresses the interests of legal aid beneficiaries. The other aspect of the issue is the interest of State and the society. This aspect is related to the management of the society by law and the principles “State ensures citizen rights”, “citizens are equal before the law”. Because of economic reason or

¹ Udo Reifner, *Type of Legal Needs and Modes of Legalisations: The example of the Berlin Tenants Initiative*, (Innovations in the Legal Services) Gunn & Hain, Publishers, Inc. 1980 page 38.

² Reginald Heber Smith, *Justice and the Poor* (New York: Carnegie Foundation, 1919; reprint, 1964).

³ Jon T. Johnsen, *Problems in Planning Legal Services*, (Innovations in Legal Services) Gunn & Hain, Publisher, Inc. 1980 page 20.

individual's financial circumstances and of the nature of the legal aid procedure, so from welfare theory views legal aid as one aspect of a more social policy, such as, the suppression of poverty, social insecurity, or dependence⁴. Legal aid became a part of the reducing poverty program in such countries as the United States of America, Vietnam, and China, etc. One more important thing is how to make the law enter the life, how to make each citizen able to use the law as an important tool to deal with their relations with State and the society or how to make them can "live and work in accordance with the Constitution and the law" as Vietnamese people say. If conditions for accessing and using the law are not guaranteed for a community, the law does not exist for it. Considering the issue on this aspect, the Minister of Justice of South Australia said: *"It can not be said that we are living in the framework of the law with the full meaning of this word if all citizens can not exert and protect their legitimate interests and access the court for this purpose. In our legal system and, in essence, in all civilized societies, this requires the existence of the professional assistance. If any person who needs this assistance to exert and protect their rights and legitimate interests is refused, the law to some extent does not work. Therefore, the principle "the State manages the society by the law is logically related to the principle "the State ensures citizen rights", including essential conditions for people to equally use their rights. And this is also a manifestation of the equality of all citizens before the law. The equality is in both legal aspect and socio-economic aspects of the issue, but not only in paper"*⁵. In fact, providing legal aid to part of the population is a contribution to implementing the above-mentioned principles.

The development of legal aid began together with the development of States of capitalism and originated from social functions of those States. Legal aid appeared earliest as moral aspect in Rome, after that as legal itself in Germany (1919), Britain (1949), the Netherlands (1957), the United States (1962), France (1972) and Quebec-Canada (1973), etc. In Australia, legal aid appeared later, in the beginning of the 20th century. For other countries, legal aid only developed in the second half of the 20th century, especially after the Second World War. The establishment of legal aid organizations in China (1996) and in Vietnam (legal aid appeared as duty of civil services rightly after the 1946 when Vietnam ended with French colonial and the

⁴ Kees S chuyt, *Dilemmas in the Delivery of Legal Services*, (Innovations in the Legal Services) Gunn & Hain, Publishers, Inc. 1980 page 55.

⁵ The Message of the Minister of Justice of South Australia addressed to lawyers at the Conference on legal aid of the Commonwealth, May 1984.

Rule of Law was declared in Constitution 1946, and was set up as separately and professional organization in 1996-1997) originated from the constitutional principle “the power belongs to people” and the essence of the socialist State. Though legal aid has developed for more than 150 years, it is still a totally new field for many countries in the world, especially in Vietnam. The organization and operation of legal aid in the world is very diversified. Each country has its own model, depending on its economic, cultural and social conditions.

Since there are many legal aid models with different conceptions on beneficiaries, scope, forms and costs of legal aid, a common conception on legal aid has not been reached. Every country have their own conceptions on legal aid, which are considered from different angles, but in general the conceptions focus on economic, humanitarian and legal aspects of legal aid. The economic and humanitarian aspects mean that financial resource are provided to people who are not able to pay costs of legal services. The legal aspect of legal aid means that beneficiaries are supported to solve their legal problems (for that many differences view’s on what are legal problems?).

With economic and humanitarian aspects, some countries such as Germany suppose that legal aid is partial or overall financial support to people who cannot pay for costs of legal advice or legal representation.

According to the laws of Britain and Wales, legal aid is the legal support to people who are not able to pay for legal advice and legal representation. The same points are declared in the Singaporean law⁶.

Considering the purpose of legal aid, Australians suppose that legal aid is the support to a person so that he/she can have similar conditions to other people in accessing the law.

Studying the history of legal aid, some scholars have given out a definition of legal aid with wide meaning, namely “legal aid is the direct or indirect support of State agencies, social organizations or individuals to legal aid beneficiaries (usually the poor) so that they can have similar conditions compared with other people in accessing the law”.

The above definition has the following notable contents:

⁶ Article 2 of the Legal Advice and Legal Representation Act issued in 1995 by Singapore Parliament

?? Legal aid can be provided by State agencies, social organizations (lawyer organizations, professional organizations, charity organizations, etc) or individuals (lawyers or legal experts). This proves potential resource of legal aid providers.

?? The legal aid beneficiaries are the poor, who do not have enough financial resource to pay for legal services, or people who live in remote areas, having difficulties in accessing legal aid services.

Generally, when mentioning legal aid, we think about the poor and legal need. Each country has its own regulations on who is the poor. However, if we think that legal aid is not only financial support but also support to overcome “legal hunger”, legal aid beneficiaries will include both the poor and communities in remote areas where residents have difficulty to assess the law as well as Aborigines or ethnic minorities. In practice, beneficiaries are mainly the poor. In addition, the countries where that have “opener” social and financial policies, scope of beneficiaries is wider. Also there are many researches on to determine what are legal needs and legal services as well as when social problems become the legal matters. What the legal problems as private citizens need lawyers dealing with? And almost the researches supported for the theory that the poor can seek or not to seek lawyer for them in dealing with personal non-business legal matters.

Scope of legal aid can be understood as areas or kinds of work that legal aid actors carry out. Based on experience of different countries, scope of legal aid includes legal advice, legal representation and legal dissemination. Among these types of work, legal advice and legal representation are more prevailing and closed to the poor. Besides, these two services are more costly. The poor usually lag behind and get disadvantaged. The determination of legal aid scope in its turn is related to objectives and strategies of legal aid. And these objectives, strategies depend on social policies and financial resource of each country.

The above presentation on conception, beneficiaries and scope of legal aid is only at the general level. In practice, the laws of countries specifically regulate in which circumstances beneficiaries will be provided legal aid. For example, in Australia, legal aid is provided in cases relating to interests of women, children, spirit or physical damage, right to freedom, rights of Aborigines, etc.

Modes of legal aid are diversified, depending conditions and policies of each country. The modes are as follows:

- ?? To give oral, written advice or by telephone, by mail and e-mails;
- ?? To provide legal advice at the office or to organize mobile clinics;
- ?? To provide legal aid by permanent staffs or by hiring lawyers to represent beneficiaries in courts, etc.

2. Legal aid models in the world

Legal aid models were established on the basis of socio-economic development policies and political targets of countries. Each country has its own model depending on its economic, cultural, social conditions, there for the almost there exist 3 legal aid models as follows:

2.1 Charitable model

Charitable model was born earliest in the development history of legal aid. This first appeared in Rom, Germany, the Netherlands and Britain in the middle of the 19th century. Nowadays, this model still exists in some countries such as France, Italy, Belgium, Spain and Ireland. Under this model, in some countries lawyers are obliged to provide some free legal services to the poor as a standard for their professional conduct. But in some other countries, law firms voluntarily provide free legal aid services (usually legal advice) to the poor. The strength of this model is that lawyers act enthusiastically on the basis of volunteer wish. However, since lawyers deliver services without compensation, forms of services are limited to legal advice but not legal representation, which take a lot of time and money.

Charitable legal aid has the following characteristics:

- ?? Legal aid was spontaneously provided based on lawyers' will. They do this job voluntarily;
- ?? Legal aid depends on the charity of lawyers and law firms. Enjoying legal aid is not a citizen right. It is only provided when lawyers are willing to do it. Therefore, this model bears humanitarian character;

?? Legal aid for the poor is provided free of charge. In some countries, there is no free legal aid services in representation cases but beneficiaries only have their costs reduced;

?? Legal aid services are usually provided by young lawyers because of lower fee and not so overload cases as experience lawyers.

2.2. State-funded model

In this model, lawyers receive salary from State. Its strength is that lawyers provide legal aid as their civil duty and do not have to look for clients. However, the financial resource depends on State budget and financial policy of State.

This model has been applied in the United States of America, Quebec of Canada, Singapore and some other countries. Under this model, legal aid is managed by an independent Committee and mainly provided by public lawyers and some private lawyers who receive fixed salary from State.

The following characteristics clarifies the most importance role of State in this models:

?? Legal aid is provided free of charge. All costs are paid by State budget;

?? Public and private lawyers providing legal aid receive fixed salary but not case by case salary;

?? Legal aid beneficiaries cannot choose lawyers, who are appointed by the agency in charge of managing lawyers.

?? The number of legal aid cases is limited. Since State budget is limited, it is difficult for State budget to cover costly cases and therefore, legal aid needs are not fully met, for example, in the Netherlands and the United States. At present, most of legal aid organizations under this model have to seek external financial resource.

2.3 Mixed model

This model was created to combine good characteristics of the two above models and to limit their weaknesses. This model combines support of State and the charity of the society in terms of human and financial resources. Nevertheless, the combination is very different in countries, depending on the economic, social, traditional, and political conditions of each country.

The mixed model combines the operation of State legal aid organizations and services provided by private lawyers, and paralegal that work voluntarily or are supported by the State. Their tasks are to provide legal aid to the poor. The most specific following characteristics of this model:

- ?? Beside providing legal aid services, State legal aid organizations work as bodies that connect lawyers and clients, manage legal aid budget and pay fee for lawyers providing legal aid;
- ?? State partially or totally finances legal aid activities;
- ?? In some countries, legal aid beneficiaries have to pay part of costs in their cases (10%-30%), depending their financial situation;
- ?? Legal aid is provided in various kinds of cases;
- ?? Legal aid beneficiaries can select lawyers, as they desire.

This model has been applied in Britain, Japan, the Netherlands, Australia, South Africa, and Sweden... Under this model, each country has a National Legal Aid Committee at the central level. Under the Committee are Legal Aid Boards (in Sweden) or Legal Aid Offices (in Britain, South Australia). Under Legal Aid Offices are Legal Aid Centers. In China, there is a legal aid system from the central level to the local level. At the central level, there is a Legal Aid Center under the Ministry of Justice that has public lawyers in charge of providing legal aid. In the Netherlands, Legal Aid Committee is under the Ministry of Justice. Under the Committee are Legal Aid Bureaus. At present, the Committee has 57 independent legal aid offices under its management. In Australia, there is 126 State Legal Aid Centers. In the Philippines, there is one National Legal Aid Agency under the Ministry of Justice, 16 regional offices, 252 district offices with 991 public lawyers providing legal aid.

Legal aid is mainly provided by public lawyers with fixed salary (in Australia, the Philippines, China...), who like State officers, or provided by private lawyers and paralegals, their works are voluntarily or partially funded by State.

Whatever forms of legal aid may be or in any country, an essential feature of legal aid is that it is a legal profession that bears charitable and humanitarian characters and aims to support persons not able to pay costs when they want to access to justice. Legal aid is not an activity of State power but it is one of social functions as well as humanity of the State.

3. Common characteristics of legal aid models in the world

3.1 Legal aid providers

Legal aid providers are legal aid organizations of State, public lawyers or private lawyers, and paralegals who are supported by the State or work voluntarily in the legal, charitable and humanitarian basis.

3.2 Legal aid beneficiaries

Legal aid beneficiaries are generally the poor, who has legal problems but can not cover expenses of legal services or other disadvantaged people such as women, juveniles, the single elderly, aborigines, ethnic minorities, etc.

However, countries have different provisions on poverty line based on average income per capita in families.

For example, in Singapore, legal aid beneficiaries include guardians of minors and people having average income below USD 7000/year.

In Britain, the 1988 Legal Aid Act provides that a person shall be eligible for legal aid if their income and savings are below a certain fixed amount based on four areas as follows:

?? For legal advice: The income is below £77/week.

In addition, the property value is below £1,000 for people who do not have dependents or below £1,335 for people who have 1 dependent...

?? For legal representation: the income is below £166/week and their property value is below £3,000 in case they do not have dependents or below £3,335 in case they have 1 dependent, ...

?? For criminal legal aid: the income is below £49/week and their property value is below £3,000.

In the Netherlands, about 70% of populations are eligible for legal aid during the past decade. In criminal cases, free legal defense is provided to all people regardless of their properties in case they are detained. In civil legal aid, some criteria have been provided. However, very few cases were refused due to criteria reasons. According to the law, all legal aid applicants in civil cases must contribute in accordance with their financial conditions but the contribution is not high.

In South Australia, legal aid beneficiaries are the poor, the handicapped, the disadvantaged and refugees, etc.

In the United States, legal aid beneficiaries are juveniles, people over the age of 60, guardians or mothers of juveniles who ask for subsidy, AIDS patients, and the poor whose income is below USD 7,890/year (applied to single people), etc.

In the Philippines, legal aid beneficiaries are the poor and aborigines, etc.

3.3 Scope of legal aid

Scope of legal aid includes legal advice and legal representation. Generally, in the world, legal aid is not provided in cases concerning investment, business and commercial laws. Besides, in some countries, criteria for legal aid are provided.

For example, according to legal aid law of Germany and Australia, there are 3 conditions for legal aid eligibility:

?? Legal aid beneficiaries have financial difficulties or can not pay for legal services;

?? There is a possibility to win the case;

?? Legal aid request must be reasonable and lawful.

In some countries such as Australia, it is stipulated that legal aid is provided in the following cases:

?? Small disputes, such as a quarrel;

?? Small civil cases with the value below 5,000 Australian dollars...

In Singapore, legal aid is not provided in the following cases:

?? Applicants violate honor or dignity of other people;

?? Wife or husband wants to be separated from the partner;

?? Cases concerning election petitions.

In the United States, legal aid is not provided in cases which may result in arguments leading to legal reform, cases relating to tax, certification of will, bankruptcy with big value and criminal cases.

3.4 Legal aid costs

In general, legal aid beneficiaries in almost all countries in the world must pay fee but at lower rate compared with other clients. In addition, some people can enjoy free legal aid services. For example, in Singapore, those whose income is below USD 7000/year or people over 60 years old and their savings value is below USD 30,000 are eligible for free legal aid. In Germany, those whose average income is below USD 850/year are eligible for free legal aid. In some countries such as Germany, Australia, Britain, in criminal cases, applicants do not have to pay costs if the court find them not guilty, otherwise they have to pay all the costs. In Australia, in civil

cases, applicants do not have to pay the costs if they lose the case. In case they win, they have to pay for all the costs.

There are other elements of legal aid that undoubtedly interact with effectiveness of types, criteria of lawyers, paralegals, the courts; the legal system and others are general. So I am here put only the things, in my opinion are the most specific importance in legal aid definition in learning from my study tour and laws or materials from other countries on legal aid, accordingly, for coming to clarify legal aid in Vietnam. Perhaps one of the major contributions of this review is that it demonstrates the fundamental reasonableness with legal aid system and its problems. It suggests that unmet effectiveness legal aid network, particularly in choosing suitable models and problem relating of lack of resources working with governmental agencies, are an important measure attributable to within the system and in solving with or by the public (among that very important role of NGOs). Vietnam should learn from other countries but at the same time it must develop its own concept and theory based on the specific circumstances of our history, tradition and culture according to the society of our development.

Part II

THE SITUATION OF LEGAL AID ORGANIZATION AND OPERATION IN VIETNAM

1. The establishment and development of legal aid in Vietnam

In essence, legal aid has been available in Vietnam since the establishment of the Democratic Republic of Vietnam in 1945. It was naturally performed in a centrally planned mechanism and not many people paid attention to its existence. The legal aid at that time had certain strengths in its mechanism resulted from the some reformed of the socialist political system. That legal aid system was featured by the fact that all costs for legal advice and trials (criminal, civil cases, etc.) were subsidized by State. The parties did not pay anything, even lawyer fee. Besides, social organizations, social-professional organizations and state organs also provide free legal advice and legal representation to their members. In that mechanism, the concept of “legal aid” was the same as the concept of “legal subsidization”. When Vietnam’s economy was converted to a market-oriented economy, this legal aid mechanism became outdated.

As a result of abolishing the subsidization regime, people have to pay for their own costs including cost of legal services.

On the basis of the general analysis on the organization and operation of lawyers from 1946 to 1987, we can have the initial assessment as follows:

?? From 1946 to the end of 1987, legal aid was not organized in a complete professional system. It was the part of the duty of administrative and jurisdiction services.

?? Lawyers mainly focused on defending the accused in criminal cases when appointed by the court. Legal advice was given for any citizen as civil and professional of every government agency's staff.

?? Lawyers' work is not really a profession. The court appointed a lawyer to work in a criminal case and paid him remuneration. Public organizations assigned their experts to defend their members in courts, as well as family could assign its member to defend their relative.

The 1987 Ordinance on Lawyers was regarded as an important landmark in the development of the law on the organization and operation of lawyers in Vietnam. This was the first legal document at high level to provide unified and relatively detailed provisions on the organization of lawyers. The Ordinance provided a legal basis to develop lawyers' work as a profession, corresponding to the trend of the development of socio-economic relations in the market mechanism.

According to the Ordinance, the Bar Association was a social-professional organization of lawyers, which was established in each province to give legal assistance to individuals and organizations. Besides defending clients in courts, lawyers could provide legal advice and other legal services. Individuals and organizations that asked lawyers for legal assistance had to pay fee for the lawyers. However, the Regulations on the operation of the Bar Associations regulated that some groups of people have the right to free legal assistance.

Besides, some social-political organizations such as Lawyers' Association, Fatherland Front, Trade Union, Women's Union, etc. also provided free or fee exempted legal services to their members. This work was humanitarian and charitable.

In practical, legal aid is not totally new for Vietnam. It existed and developed through many different forms in different historical periods with different characters. The Bar Associations used to be under the Legal Committee (the former Ministry of Justice) and lawyers receive salary from State. Before the issue of the Ordinance on Lawyers, Associations of People's Defenders provide charged legal representation. After the Ordinance was promulgated, according to the Regulation on the Operation of the Bar Associations, people do not have to pay fee or are exempted fee in some cases.

However, legal aid provided by State agencies in this period is only part of their duty. Legal aid provided by Bar Associations is charitable and humanitarian. There is no legal basis for this activity. There are no regulations to force lawyers to work for the community. There are only provisions on in what cases legal aid was provided but not provisions on who were eligible to receive legal aid⁷.

The reality shows that if this mechanism still remains, legal aid needs of the poor and preferential groups cannot be adequately met. Especially, in this period, after more than 10 years of economic as well as political reforms with the market economy under a socialist orientation and with a new Constitution 1992(amendment in 2001), which repeatedly recognized Vietnam is socialist state of law. The state based on Constitution enacts laws to govern the society and to protect the socialist democracy and the freedoms, rights of citizens and makes the conditions for fulfill their rights and obligations. Under Constitution, and laws all people are equal before the law and have the same rights to protect and defend themselves before the law without exception. Even economic market in Vietnam significant economic achievements have been made, increased living standards for people and at the same time has raised the differences income within citizens, a part of people still have a low living standard and very poor. And the trend of differentiating between the poor and the rich, the unequal development between areas, parts of population, the difference in level of people knowledge are creating different conditions in accessing the law. Accordingly with big numerous of new laws although state has different program to disseminate the laws, but a part of people still have a low legal awareness. They do not know what their rights are and how to implement them. Moreover, a lot of legal documents have been enacted during the recent years and these documents have been replaced very fast. It is very difficult for people, especially the poor and the disadvantaged to access the law and legal services. Thus,

⁷ Article 33 of the Regulations of the Bar Association, Vietnam, issued in 1987 by Vietnam Government.

consolidating and improving lawyers' activities with the orientation of training specialized lawyers with appropriate legal knowledge and skills, the establishment of legal aid organizations for the poor and the preferential groups is a necessary and objective requirement.

The Vietnam Communist Party paid special attention to this problem. The Party guided that *“legal advice needs to be expanded to meet people’s legal aid need for contributing to improving people’s legal awareness in daily life. A free legal advice system needs to be set up to help people live and work according to the law”*⁸. In the third Conference of the Standing Committee of the Communist Party (the 8th term) dated 18 June 1997, this problem was mentioned again *“it is necessary to organize forms of legal advice to be provided to state organs, organizations and people, creating favorable conditions for the poor to enjoy free legal advice”*⁹.

Implementing Decision No. 734/TTg dated 06/9/1997 of the Prime Minister on establishing legal aid organizations for the poor and preferential groups, legal aid system that includes the National Legal Aid Agency (NLAA) at the central level and Provincial Legal Aid Centers (PLACs) at the local level, has been established.

Together with consolidating legal aid organizations, the NLAA proposed the Minister of Justice to permit the establishment of the Legal Aid Centers under some political-social organizations (The Lawyers' Association, the Farmers' Association, the Communist Youth's Union, etc).

At present, legal aid in Vietnam can be understood as free legal assistance and legal dissemination to the poor, preferential groups and ethnic minorities in order to raise legal awareness of these people and ensure that all citizens are equal before the law. The establishment of legal aid organizations aims to implement poverty reduction policy of the State of Vietnam and ensure the social equality.

2. Legal aid organizations in Vietnam

2.1 The National Legal Aid Agency under the Ministry of Justice

2.1.1 The organization and functions

⁸ Announcement No. 485/ CV–VPTW dated 31 May 1995 of the Central Communist Party Office

⁹ Resolution of the third Conference of the Standing Committee of the Communist Party dated 18 June 1997

The NLAA has the function to help the Minister of Justice perform state management in the field of legal aid, to provide legal aid services when necessary. The NLAA is a legal entity having its own seal and account. Its operation is financed by State budget. It became an independent, professional agency in charge of legal aid in Vietnam.

The NLAA has five functions, namely Administrative Division, Professional Management and Training Division, Legal Aid Center, Financial Division and Legal Aid Fund. The Fund was established by the decision of the Minister of Justice¹⁰.

The office of the NLAA is located in Hanoi. Besides, it has two branches in Ho Chi Minh City and Hoa Binh province.

The NLAA has the following duties and powers¹¹:

- ?? Draft or participate in drafting legal documents on legal aid to be submitted to the Government for the issue or to be issued by the Ministry of Justice; organize the implementation of these documents;
- ?? Submit to the Minister for the issue or issue professional guidelines on legal aid; supervise the implementation of these guidelines;
- ?? Guide the operation of the Legal Aid Centers;
- ?? Provide legal aid in complicated cases referred from the PLACs and relevant agencies.
- ?? Perform international cooperation in legal aid;
- ?? Manage Legal Aid Fund;
- ?? Organize professional training for legal aid staff;
- ?? Carry out legal education, dissemination to the poor and people enjoying preferential policy;
- ?? Administer staff, budget and working facilities of the NLAA according to the Government's regulations;

¹⁰ Decision No. 258/2002/QĐ-BTP dated 10 July 2002 of the Minister of Justice.

¹¹ Decision No. 734/TTg dated 6 September 1997 of the Prime Minister.

?? Pursuant to Directive No. 05/2000/CT – TTg dated 01/3/2000 of the Prime Minister, the NLAA has the duty to supervise and provide professional guidelines to Legal Aid Centers under the political-social organizations.

?? The branch in Ho Chi Minh City has the function to provide free legal aid to the poor and the preferential groups, to supervise the operation of the PLACs in the southern provinces.¹²

?? The branch in Hoa Binh province has the function to provide free legal aid to ethnic minorities, especially complicated cases referred from PLACs in the northern provinces.¹³

2.1.2 The NLAA staff and collaborators

In the early days, the NLAA had only 06 staff members. So far, it has 33 persons. The staff number is still very few compared with the workload of the Agency. In the past time, the work of the NLAA staff mainly focused on providing professional guidelines and training courses to legal aid staff of the PLACs, providing legal aid in complicated cases, conducting some studies on how to provide effective legal aid services to particular groups or in different areas of law, organizing forum for legal aid nationwide to exchange their points of view and experience in legal aid... Besides, the NLAA has not gone far in resolving some new issues, such as legal aid in environmental law, population law, and protection of consumers, genders issues, protection of children...

To date, the NLAA has a network of 146 collaborators, who collaborate with the NLAA in drafting legal documents on legal aid, providing legal advice and legal representation to the poor and the preferential groups, conducting studies and writing articles for the Legal Aid Magazine. 72 collaborators are lawyers¹⁴.

2.2 The Provincial Legal Aid Centers (PLACs)

2.2.1 Organization and functions

Each province has own PLAC. The PLACs are under the Provincial Departments of Justice. Their function is to provide free of charge legal aid services and to carry out

¹² Decision No. 874/1998/QĐ-TTg dated 27 November 1998 of the Minister of Justice.

¹³ Decision No. 258/2002/QĐ-BTP dated 10 July 2002 of the Minister of Justice.

¹⁴ The Report on operation of the collaborators made by the National Legal Aid Agency, 2002 addressed to Minister of the Ministry of Justice

legal dissemination and education to the poor and people enjoying preferential policy in their provinces.

The PLACs are legal entities, having their own seals and accounts. They work under the organizational management of the Departments of Justice and the professional management of the NLAA.

2.2.2 Staff and collaborators

At present, the PLACs have such titles as Director, Vice Director, legal aid experts and accountants. On average, each PLAC has 4 or 5 legal experts. However, some newly established PLACs only have 2 or 3 legal experts. Total of staff members in all centers is 292 persons among which there are 245 legal aid experts. Annually, all experts participate in national or regional training courses on legal knowledge, legal aid skills and exchanging legal aid experience.

The PLACs established a network of legal aid collaborators at grassroots levels. Now, there are 3,918 collaborators nation-wide. The Center in Ho Chi Minh City has the largest number of collaborators (454 collaborators), the PLAC in Hanoi has 185 collaborators, Nghe An: 136 collaborators, Hoa Binh: 129 collaborators, Binh Phuoc: 128 collaborators, Can Tho: 122 collaborators, etc. Some Centers have their collaborators at branches of the PLACs at district level, or send lawyers to villages in rural and remote areas to provide legal aid services.

All legal aid organizations do not collect any fee when providing legal aid. Their fund is provided by State, domestic and overseas individuals and organizations.

Most PLACs have very poor working facilities and limited budget except for some PLACs supported by foreign donors. At present, offices of most PLACs are located in the Provincial Departments of Justice, not convenient for people to access. Only some PLACs have their own independent offices, which are easily accessible for people.

2.2.3 Forms of legal aid networks

Besides providing legal aid at the office and in mobile clinics, the PLACs have developed other ways to provide legal aid. Some PLACs have organized legal clubs for local people to help one another improve legal knowledge and solve their legal problems. Some PLACs opened legal aid mailboxes. When people have legal problems, they can send their questions to the PLACs through these boxes. Some

other PLACs use the mediators at commune level to work as their legal aid collaborators. After being trained on legal knowledge and legal aid skills, these mediators can provide legal aid to local people in simple cases and refer complicated cases to the PLACs.

3. Legal aid beneficiaries

Legal aid beneficiaries include *the poor and preferential groups*.

3.1 The poor

At present, Vietnam is in the group of poor countries in the world. The proportion of poor households in Vietnam is still high. According to the result of a survey conducted by the Department of Statistics with the support of some international organizations such as UNDP, SIDA, and WB... the rate of hunger and poverty in 1998 was over 37% (based on international poverty standards). Based on poverty standards of the National Poverty Reduction Program, at the beginning of 2000, Vietnam has about 2.8 millions of poor households, accounting for 17.2% of the total households.¹⁵

Although Vietnam has made great success in poverty reduction in the past time, the achievements are fragile. Income of a large part of population is closed to the poverty line; therefore, a small adjustment of poverty line can make considerable increase in poverty rate. Most of income of the poor comes from agricultural production. 90% of the poor live in rural areas. 64% of the poor live in mountainous northern region, the northern Central Vietnam, the Central Highland and the coastal central Vietnam. These areas have difficult living conditions, poor infrastructure and natural resource, regular disasters and bad climate. According to the 2000 statistics, Vietnam had 1,870 especially difficult communes. The increase of the poor's income is much slower than other groups of people. Therefore, rich-poor distance gets increased.¹⁶

One of the important reasons of the poverty is that the poor cannot access charged legal service and, therefore, get disadvantaged when they have problems concerning the law. For this reason, Decision No. 734 dated 6 September 1997 of the Prime Minister and Joint Circular No. 52 provide that the poor are beneficiaries of free of

¹⁵ "The Strategy for comprehensive growth and poverty reduction in Vietnam", 2001 approved by Prime minister in May 2002.

¹⁶ "Above

charge legal aid services. According to Circular No. 52, the poor are persons living in poor households that have average income lower than poverty line declared by the Ministry of Labor, War Invalids and Social Affairs every year. Thus, the poverty status of one person depends on his family's economic situation. One person, who has high income, may still be free legal aid beneficiary if other person his household have low income because he has more economic responsibility in his household.

The poverty line for average income of a household member in the period 2001 – 2005 is as follows¹⁷:

?? Mountainous, rural areas, island areas: VND 80,000/month, VND 960,000/year;

?? Plain, rural areas: VND 100,000 Vietnam/month, and VND 1, 200,000/year;

?? Urban areas: VND 150,000/month, VND 1,800,000/month.

3.2 Preferential groups

The preferential groups include the following persons:

?? People involved in the revolution before August 1945;

?? Martyrs' families;

?? Persons who are awarded titles: Heroic mothers (their sons or husband died in the war); armed force heroes, labor heroes.

?? Wounded soldiers, people enjoying the same policies as wounded soldiers, sick soldiers;

?? Revolutionary activists who were imprisoned by enemies;

?? People who provided support to the revolution.

Number of people of the preferential groups is nearly 7 millions. To the end of 1997, the State awarded the title "Heroic Mother" to around 40,000 women, among whom 11,000 persons are still alive.¹⁸

Many people of these groups used to live in the war. They usually have poor health or may be invalids or the disabled. They have many economic difficulties. Many of

¹⁷ Decision No. 1143 dated 01/11/2000 of the Minister of Ministry of Labor, War Invalid and Social Affairs

¹⁸ "The combination of economic growth with the development of social equality" Nguyen Thi Thinh, Communist Magazine, issue 6, 1999.

them do not have children. Due to their bad health and poor knowledge, they have many difficulties in finding a job. They do not have capital to do business. Therefore, most of them have relatively low income. Many of them are the poor.

3.3 Ethnic minorities

Vietnam has 54 ethnic groups, among which the Kinh is the largest group. The other 53 ethnic minorities have 10 millions persons compared with a population of nearly 80 millions people. Populations of groups are not even. Some groups have more than one 1 million people but some others have only several hundreds people or several tens people.

Although ethnic minorities only account for about 14% of population but they account for 29% of the poor¹⁹. Ethnic minorities live in all regions, but mainly in mountainous and remote areas. Only few ethnic groups have high knowledge and living standards such as the Hoa in Ho Chi Minh City, the Khmer in Cuu Long delta, the Cham in some southern provinces. Other groups have low knowledge, poor economic conditions, shifting cultivation and nomadic life. Due to poor living conditions and less developed health care system, health of ethnic minority people is bad. The superstitious evils are widespread. As a result of lacking teachers and poor working facilities, undeveloped infrastructure and difficult transport, the education for ethnic minorities is less developed and the rate of illiteracy is high. People have low knowledge and are affected by backward customs.

Although the Vietnamese Government had many priority policies to shorten the gap between ethnic groups in economic development, ethnic minorities still have many difficulties in their life. Therefore, they are eligible for free legal aid services.

3.4 People exempted from court fee

According to Decree No. 70 dated 12 June 1997 of the Government on court fee, people in some kinds of cases are exempted from court fee. And these people are also legal aid beneficiaries.

3.5 Foreigners

¹⁹ "The Strategy for comprehensive growth and poverty reduction in Vietnam" approved by Prime minister in May2002

Foreigners will be legal aid beneficiaries if the Judicial Assistance Agreements between Vietnam and their countries of origin provide so. The Agreement between Vietnam and China regulates this issue.

Even legal aid organizations of State are established and financed by the Government but it has difficulty in short finance because of high fee for lawyers. There for, many domestic and foreign organizations or individuals support these organizations. The NLAA and some PLACs have been supported by international organizations such as Nobib, Sida, Radda Barnen, DCHR, and SDC... for the purpose of strengthening their capacities and expanding legal aid activities.

Legal aid beneficiaries do not have to pay any costs, even administrative expenses and allowance for legal aid providers.

4. The achievements of legal aid organizations

Action programs of the legal aid organizations in recently years were accompanied by a series of grants of activities and research. For research aimed such as: effectiveness of services and broadening understanding about the legal aid of the target groups of populations.

4.1 Provision of legal aid services

To date, PLACs in all 61 provinces have been established. Many ways of legal aid have been carried out:

- ?? Provide oral, written advice or through mail, telephone;
- ?? Represent clients before State agencies, organizations and courts according to the law;
- ?? Provide legal aid at the office or in mobile clinics;
- ?? Combine legal aid with justice and mediation activities at grassroots levels;
- ?? Provide legal information through legal talks or leaflets;
- ?? Transfer legal complaints to competent bodies;
- ?? Provide legal aid through mass media, etc

Table 1: Legal aid cases as of March 2002²⁰

Total number of cases					215,643
By legal aid scope					215,643
Legal advice	Petition making	Civil representation	Criminal defense	Mediation	
199,908 (92.7%)	2,562 (1.19%)	2,828 (1.31%)	5,526 (2.56%)	4,819 (2.24%)	
By areas of law					215,643
Civil cases	Criminal cases	Administrative	Labor cases	Land	Other
82,745 (38.37%)	13,662 (6.34%)	39,266 (18.21%)	5,464 (2.53%)	47,803 (22.18%)	26,703 (12.37%)
By kind of beneficia ries					222,605
Male	Female	The poor	Preferential groups	Ethnic minorities	Children Other
120,645 (54.19%)	101,960 (45.81%)	107,501 (48.29%)	46,492 (20.89%)	41,397 (18.59%)	5,577 (2.51%) 30,922 (13.89%)

The quality and effectiveness of solving cases are relatively satisfactory. In 215,643 received cases, 212,925 cases have been completed (accounting for 98.73%).

In Vietnam, legal advice is based on the principle of orienting to grassroots levels; actively seeking people's legal aid needs, attaching importance to areas where many people have legal problems, etc. One of important means is to organize mobile clinics at grassroots levels. Through these mobile clinics, people were provided legal information, had their questions solved and understood citizen rights and obligations. As a result, a number of people were provided legal aid services in their villages. In mobile clinics, many PLACs coordinated with local authorities to solve legal problems of people, to resolve disputes between people and the authorities, creating dialogues between them, etc.

²⁰ The report of Vietnam National Legal Aid Agency on legal aid progress, April 2002 addressed to Minister of Justice, Vietnam.

In addition, legal aid organizations, through particular legal aid cases, can find loopholes and overlapping provisions of the law and recommend to relevant bodies to amend, supplement and replace inappropriate legal provisions.

4.2 Participation in legal dissemination and education

Through legal aid activities, legal aid experts and collaborators have disseminated and educated laws to people. The National Legal Aid Agency has printed thousands of legal pamphlets of over 40 types with specific and simple contents in different legal areas in order to distribute free of charge to citizens. In the areas with a large number of ethnic minorities, PLACs have edited and translated legal pamphlets into ethnic minorities' languages so that any citizen who does not know Vietnamese can know the State laws.

In addition, legal dissemination and education were conducted through answering specific cases or clusters of cases, which is effective for each person. Some provinces opened Legal Aid programs on TV, newspapers in rush hour. Also, PLACs have already collaborated with other organizations, social-political organizations at different levels in introduction of legal aid organization and operation to the public.

4.3 Training, workshop

The National Legal Aid Agency annually carries out a national training in order to further improve legal knowledge of legal aid staff in different legal areas such as criminal law, land and housing law, family and marriage law, complaint and denunciation law... and their legal aid skills. Besides, in the framework of some projects supporting to the NLAA and PLACs, the National Legal Aid Agency has organized some training courses on methods to manage, improve organization and operation of PLACs, skills to use legal aid software, to conduct survey on legal aid needs of people, to build village conventions, to implement grassroots democracy, etc.

After participating in training courses organized by the NLAA, the PLACs experts organized training courses for local legal aid experts and collaborators. To date, hundreds of people have participated in such courses. This helped grassroots legal aid staff enhances their legal knowledge; learn experience in organizational consolidation and raising effectiveness of legal aid activities.

In addition, the NLAA has organized many workshops, roundtable discussions including three international legal aid workshops on such topics as legal aid for ethnic minorities, women, children, the disabled, ex-prisoners, the single elderly, round table discussions on building legal aid documents, regional round table discussions on experience in legal aid organization and operation, etc.

4.4 International cooperation in the legal aid field

Legal aid is very new in Vietnam but many international organizations have paid attention to and developed cooperation programs in this field. At present, the Netherlands Organization for International Development Cooperation (NOVIB) is supporting the NLAA and 20 PLACs (phase II, 2000 – 2004); the Danish Institute for Human Rights (DIHR) supports PLACs in Gia Lai and Dak Lak and a branch of the NLAA in Hoa Binh province; Save the Children Sweden (Radda Barnen) supports the Legal Aid Center in Ha Noi, the Asia Foundation supports PLACs in An Giang, Thai Nguyen, etc.

With State budget and support from international organizations, about 30% of PLACs have been provided with sufficient necessary resources to effectively implement legal aid activities. The NLAA, in co-operation with project consultants, regularly pays monitoring visits to the PLACs so as to evaluate properly the project implementation, to duplicate their experience as well as to review the use of project budget and project's impact on the operation of PLACs.

In addition, with support from donors, the Ministry of Justice, the National Legal Aid Agency organized study tours to countries that have developed legal aid systems such as Australia, Singapore, Thailand, Indonesia, Malaysia, the Philippines, China... to learn their legal aid models and experience.

5. State management on legal aid organization and operation

State management bodies responsible for legal aid organization and operation are as follows:

?? The Government manages legal aid organization and operation nationwide.

?? The Ministry of Justice helps the Government to manage legal aid organization and operation nationwide and has the following rights and duties:

1. To build legal documents on legal aid and propose them to the Government for the promulgation or to promulgate within its competence and to deploy the implementation of such documents;

2. To guide the Departments of Justice how to propose the establishment of Legal Aid Centers.

3. To provide professional guidelines to the PLACs and supervise the implementation of these guidelines;

4. To provide training courses to legal aid staff;

5. To guide PLACs how to review legal aid activities;

6. To reward or propose to reward organizations or individuals who have achieved success in legal aid activities;

7. To co-operate with Provincial People's Committee to solve problems arising in reality or at request of the People's Committees or at proposal of the Departments of Justice;

8. To implement the international co-operation in the legal aid field and supervise the implementation of projects funded by international organizations.

9. To manage Legal Aid Fund and support legal aid organizations that have difficulty;

10. To implement other state managerial activities on legal aid organization and operation pursuant to legal provisions.

The NLAA is responsible for helping the Minister of Justice implement the above-mentioned duties and rights.

?? The People's Committee at the provincial level manages legal aid organization and operation at the local level and has the following duties and rights:

1. To build and promulgate legal documents on legal aid within its competence and deploy the implementation of such documents, promulgate organizational and operational regulations of PLACs.

2. To decide the establishment of Legal Aid Centers;

3. To appoint or dismiss Director of PLAC, provide staff and working facilities to PLAC.

4. To monitor legal aid activities at the local level;

5. To reward or propose relevant bodies to reward organizations or individuals who make great deeds in legal aid activities;

6. To implement other state managerial activities on legal aid organization and operation according to the law.

The Departments of Justice is responsible for assisting Chairmen of Provincial People's Committees to realize the aforementioned duties and rights.

6. Cooperation between governmental legal aid organizations and NGOs in legal aid activities

In Vietnam, legal aid has been existing for a long time in different forms and provided by different organizations such as State bodies, social-political organizations and individuals. Only after the establishment of State legal aid organizations under Decision No. 734/TTg dated September 6, 1997 of the Prime Minister, legal aid activities were officially and systematically implemented. There have been State officers who specialize in these activities. However, to date, state management on legal aid organization and operation has not been fully regulated. Presently, there are only provisions on State management of governmental legal aid organizations but not NGOs involved in legal aid such as Lawyers' Associations, Bar Associations, legal consultant offices of Vietnam General Confederation of Labor, Vietnam Fatherland Front, Vietnam Farmers' Union... Therefore, there has not been a unified mechanism in co-operation between governmental legal aid organizations and NGOs in legal aid activities.

In reality, to meet legal aid needs of citizens, the governmental legal aid organizations have mobilized a large number of collaborators who work in State bodies, social, political organizations and mass organizations. These collaborators

sign collaborating contracts with legal aid organizations, receive allowance on case-by-case basis or monthly allowance. They mainly provide legal advice and mediation. For representation cases, legal aid organizations sign collaborating contracts with Bar Associations who will appoint lawyer to deal with these cases. According to the current regulations, staffs of legal aid organizations are not allowed to represent clients in courts. Hiring private lawyers to represent clients in courts causes many difficulties for legal aid organizations. Sometimes, legal aid organizations cannot hire lawyers to defend clients because their budget is limited and the number of lawyers in some provinces is very few.

Legal aid organizations also signed agreements with some social-political organizations, social-professional organizations to co-ordinate in providing legal aid. In 2002, the Ministry of Justice and Vietnam Farmers' Union signed a joint program on providing legal aid and legal dissemination to farmers. This program focused on building a network of collaborators who are members of Farmers' Union, mediation groups. These collaborators help solving disputes among farmers. The program also had training courses on legal knowledge and legal aid skills for the collaborators. From July to October 2002, the NLAA co-ordinate with the Vietnam Farmers' Union, the two PLACs in An Giang and Thai Nguyen to organize 3 rounds of training for 75 persons. The courses concentrated on legal dissemination skills and areas of laws directly related to daily life of local citizens such as land law, family and marriage law, complaint and denunciation law, civil procedural law, administrative law... After participating in these training courses, participants will actively take part in legal aid clubs and become legal disseminators to meet legal aid demand of local citizens.

Generally, the co-operation between governmental legal aid organizations and NGOs has not been clearly, systematically, consistently regulated. Legal aid activities of NGOs are still out of State control. Therefore, the State management should be combined with the self-management of NGOs and the core role of State in legal aid activities should be emphasized. This will help creating an effective mechanism to mobilize the contribution of NGOs to legal aid.

Part III

THE EXPANSION OF THE PARTICIPATION OF VIETNAMESE NON-GOVERNMENTAL ORGANIZATIONS IN LEGAL AID IN THE CURRENT CONTEXT OF VIETNAM

1. The background of non-governmental organizations (NGOs) in Vietnam

1.1 Organization

In Vietnam, NGOs mainly include political-social unions (Trade Union, Youth's Union, Farmers' Union, Women's Union, Veterans' Union), public Associations and religious organizations. At present, there are over 200 public Associations at the central level and over 1400 public Associations at the local level²¹.

The political-social unions have their networks from the central level to provincial, district and commune levels, including 610 districts and 10,320 communes. These unions gather a great number of people, in which the Trade Union has around 4 millions members, Youth's Union: 4.2 millions, Farmers' Union: 7.8 millions, Women's Union: more than 10 millions.

The large Associations include²²:

²¹ *The role of Associations in the innovation and the country development*, Thang Van Phuc, National Political Publishing House, Vietnam, page 45.

²² *The role of Associations in the innovation and the country development*, Thang Van Phuc, National Political Publishing House, Vietnam, page 55.

- ?? Scientific-technical Associations: include 45 Associations at the central level and 27 Associations at the local level with 200,000 members;
- ?? Literature-art Associations: include 10 Associations at the central level and 60 Associations at the local level with 10,000 members;
- ?? Friendship Associations: include 40 Associations at the central level and 27 Associations at the local level;
- ?? Sport Associations: 19 Associations;
- ?? Economic Associations: nearly 100 Associations;
- ?? Red-Cross Association;
- ?? Lawyers' Associations;
- ?? Bar Associations;
- ?? Gardening Association;
- ?? Others.

1.2 Characteristics of the operation of NGOs

2.2.1 Social-political character

NGOs have social character since NGOs only appear once the human beings paid attention to the strength of the cooperation among groups of people. The more developed the society is, the more the activeness of people and the need of people to cooperate are promoted.

NGOs have political character because in a society with classes and class conflict, no one and no group can stand outside political relations and political life though sometimes names of NGOs do not sound political.

2.2.2 Voluntary character

All NGOs have been organized based on the voluntary wish of the public. The voluntary character is manifested in the selection of objectives and contents of NGOs activities. Members of NGOs implement their duties voluntarily without any requirements. This character shows the social activeness of individuals.

The voluntary character of NGOs is really one principle in their operation and activities of the external relations. Thanks to this character, different NGOs can cooperate and be separate from one another without difficulties. This is one big difference between NGOs and GOs.

2.2.3 Characters of occupation, community, gender, age and likes

The needs of people to coordinate with one another depend on the level of development of each country. This coordination is not based on political standards but on occupation, community, gender, age and likes. These factors are also the ground to manage divide NGOs.

2.2.4 Non-profitable character

NGOs gather people from the same occupation, gender, like... to satisfy the same needs. These needs do not aim to profit. During the operation, they may appear some profit. This profit is not divided to members of NGOs but for implementing the objectives of NGOs. Of course, some members may be paid salary or allowance for carrying out their duties, but that is not profit. This character shows the difference between NGOs and businesses.

1.3 The role of NGOs in Vietnam

1.3.1 Contribute to building a society with socialist orientation

To build a socialist society, the Communist Party and State have to mobilize the strength and potential of all forces in the society. NGOs play an important role in promoting this strength. They attract their members to implement policies of socialist orientation.

1.3.2 Contribute to strengthening the leadership of the Communist Party and the State management

The Party uses NGOs as an important channel to gather people. NGOs reflect needs of their members so that the Party has appropriate policies. Based on policies of the Party, NGOs guide their members to implement well their functions.

In addition, NGOs give comments to policies of the Party and State in their fields of operation. Some NGOs become reliable addresses for State to consult when necessary.

1.3.3 Impact on NGOs members

Since NGOs are voluntary organizations, their members believe in them and trust NGOs to represent their interests. NGOs play an important role in promoting the social activeness of each individual and are good environment for individuals to educate themselves.

2. State policy and the development of NGOs in Vietnam

2.1 Policy of State on NGOs in Vietnam

In 1957, the State of Vietnam promulgated important laws to serve as a legal basis for the operation of NGOs.²³ According to these laws, all citizens have rights to meetings and set up Associations. The State ensures these rights of citizens.

To ensure the State management on the organization and operation of Associations, in 1989, Ministerial Council (the Government now) and the Standing Committee of the Communist Party issued two important documents on this issue.²⁴

According to these two guidelines, the operation of the Associations have to be based on the needs of their members, protect their legitimate interests and contribute to implement the law and policy of the State. The establishment and the operation of Associations have to follow procedures regulated by the Prime Minister. The Charters of the Associations have to be approved by relevant agencies. The operation of Associations is based on the voluntary principle. The Associations have to manage and mobilize the operational budget by themselves, and follow the law. The State may provide financial support to Associations based on projects conducted by

²³ Act No. 101/SL/L003 on The Right to Meeting issued by the Parliament on 20 May 1957, and Act No. 102/SL/L004 on the Right to Setting Up Associations issued by the Parliament on 20 May 1957.

²⁴ Directive 01/CT dated 05 January 1989 on the Management of the Organization and Operation of Associations and Directive No. 42/CT-TW dated 06 October 1998 on Strengthening the Leadership of the Party on the Organization and Operation of Public Associations.

Associations in order to implement policies of socio-economic development. Associations have to work under the leadership of the authorities and party committee at their level and relevant bodies in their fields of operation.

2.2 The development of NGOs in Vietnam

In the feudal time, Associations were established on the basis of charity, occupations, religions or cultural activities. Although the feudal State did not have specific regulations to manage the operation of Associations, it paid attention to exploiting the capacity of Associations in contributing products to the King. When natural disasters occurred, Associations participated in mobilizing their members' work. Communes set up farming land fund, rice fund to subsidy widows, orphans... or other funds to support the poor.

During the French time, because the ruling class realized the role of associations in gathering the public, it set up associations to serve its purpose of ruling. Therefore, there were two systems of associations, namely the associations of the public and the associations of the ruling class. Public associations of patriotic and revolutionary people were established on the need of protecting their interests against the suppression of the ruling class. At first, the associations were set up based on gender, occupations and likes. Then, political associations were established to fight against the invasion.

In 1930, the Vietnam Communist Party was born. Beside promoting traditional associations, the Party set up some patriotic and revolutionary associations such as women's association, farmers' association... These associations carried out both social and political activities. The ruling class and the feudal State tried to undermine these associations.

After the success of the Revolution in August 1945, the role of public associations was affirmed. The associations developed strongly in terms of quantity, quality and forms of operation. Some associations became political unions such as Youth's Union, Women's Union, and Farmers' Union...

The 6th National Congress of the Communist Party began the process of the comprehensive innovation of the country. The innovation-helped individuals improve their responsibilities and creativeness. People have the need to contribute more to the social development. As a result, public associations have chance to develop strongly.

3. The operation of NGOs in the legal aid field

3.1 The NGOs involved in legal aid

Before legal aid system was established, some NGOs such as the Lawyers' Association, the Trade Union, the Bar Association, the Farmers' Union, and the Communist Youth Union... had established offices providing legal advice and legal dissemination to their members and other people. By 2000, there had been 69 law offices of NGOs²⁵. At present, many other law offices have been set up to meet increased legal aid needs.

3.1.1 Lawyers' Association

Lawyers' Association is the largest political-social organization of lawyers in Vietnam. Its branches have been set up at provincial level with hundreds of members.

In 1998, the first Legal Advice Center of the Association was set up. So far, there have been 2 more legal advice offices of the Association (1 in Hanoi and 1 in Ho Chi Minh City).

To the end of 2001, beside 3 legal advice offices under the Central Lawyers' Association, there had been 51 legal advice offices under Local Lawyers' Associations including²⁶:

?? In Hanoi: 11 legal advice offices set up by Hanoi Lawyers' Association, among which there is an office providing free of charge legal service to the poor and preferential groups. This office was established in 1997. The Association has 71 lawyers, 9 secretaries. In addition, it has 22 collaborators working in other agencies of the city.

?? In Ho Chi Minh city: The Lawyers' Association of Ho Chi Minh City has 13 legal advice offices. On average, each office has 10 – 15 lawyers.

²⁵ "The legal advice of social organizations - the situation and directions for the improvement", Nguyen Van Thao - Director of Lawyers Administration Department/Ministry of Justice, Vietnam, 2001.

²⁶ "Developing legal advice activities and improving the quality of legal advice provided by Lawyers' Associations in Vietnam" - Luu Van Dat, General Secretary of Vietnam Lawyers' Association, 2001

?? Other Associations has one legal advice office each.

3.1.2 Vietnam Trade Union

Vietnam Trade Union is a large political-social organization of laborers and intellectuals, which has a long development history since 28 July 1929. To date, Vietnam Trade Union is a unified and unique organization, gathering 61 provincial Trade Unions, Trade Unions of more than 20 sectors and over 30,000 local Trade Unions. They represent interests of millions of their members.

The Trade Union participated in building the legal system, guiding its members to comply the law. It protects its members when their rights and legitimate interests are violated. It provides legal assistance to help its members understand their rights and obligations.

In 1991, the first legal advice office of Vietnam Trade Union was established. To date, there have been 11 legal advice offices in the trade union system, namely offices under the Vietnam Trade Union, Labor Newspaper, provincial Trade Unions in Dong Nai, Can Tho, Nghe An, Hai Duong, Long An, Kien Giang, Vinh Phuc, Ba Ria – Vung Tau, Ho Chi Minh city. Besides, legal advice branches are located at district level or in industrial zones to provide legal advice to workers (3 branches in Ho Chi Minh City, 2 branches in Dong Nai, etc).²⁷

The legal advice offices now have 32 persons, including 23 bachelors of law, 5 lawyers. Besides, the offices employed have a large network of collaborators who are legal experts from other agencies.²⁸

3.1.3 Bar Associations

After the Ordinance on Lawyers' Organization was issued in 1997, Bar Associations were set up in all provinces. Up to now, there are 61 Bar Associations with nearly 2,000 lawyers. Most of Bar Associations have branches located at district level. For example, Bar Association in Ho Chi Minh City has 22 branches.

3.1.4 Other NGOs

²⁷ "Legal advice activities of Trade Union" Nguyen Hoa Binh, Director of Legal Committee of Vietnam Trade Union, addressed in Legal Advice Conference held by Vietnam Trade Union, December 2001

²⁸ Above

Some other NGOs such as the Women's Union, Vietnam Fatherland Front, the Farmers' Union, the Youth's Union, etc, also established legal advice offices or centers to provide legal assistance to their members.

3.2. The achievements of NGOs in the legal aid field

Before the establishment of State legal aid system, Lawyers' Associations and Bar Associations provide free legal advice to the poor and preferential groups. Bar Associations focused on providing legal representation. Law offices of Lawyers' Associations mainly provided legal advice. Law offices under Vietnam General Confederation of Labor provided legal aid through answering legal questions, guiding the implementation of labor law, assisting employees to draft labor contracts, guiding the realization of the right to complain and denounce, advising trade unions in negotiating, signing collective labor contracts, solving labor and economic disputes in which trade union is a party, etc.

According to the statistics of Vietnam General Confederation of Labor, from June 1991 to December 2001, its law offices already provided legal advice to nearly 15,000 clients, including:

- ?? Legal aid in 526 labor disputes of which there are 56 collective cases;
- ?? Regularly providing legal advice to 15 organizations and 01 Ward People's Committee.
- ?? Assisting 270 grassroots trade unions to build and sign collective labor agreements, directly drafting 156 collective labor contracts, working regulations, co-operative mechanism between organizations and their trade unions, participating in drafting regulations on salary promotion and category, usage of welfare and reward budget for 39 businesses;
- ?? Legal aid and representation to protect rights and interests of 824 workers before the court;
- ?? Proposals to presidiums, standing committees and monitoring committees of Trade Unions at all levels to solve 300 laborers' complaints.

In 2000, the Lawyers' Association of Ho Chi Minh city and its law offices as well as Lawyers' Associations at district level provided 4,800 advice cases, 107 defense

cases to clients free of charge²⁹. The forms of legal aid are diversified. There were legal aid points at each ward. The Associations co-ordinate with People's Committee, Fatherland Front, Women's Union, Youth Union, Veterans' Union... to set up law offices and send lawyers to villages, residential quarters or to answer legal questions of people through letters, newspapers, radio and television...

In 2001, law offices for the poor and preferential groups of Hanoi Lawyers' Association alone provided legal aid for more than 100 cases in different areas of laws such as criminal law, civil law, family and marriage law, labor law...

In general, legal aid provided by NGOs has met a significant part of legal aid needs of the poor, preferential groups nationwide.

Although NGOs paid special attention to the management of their law offices, they still have many difficulties due to lacking guidelines of State. Legal consultant experts of these offices do not have favorable conditions to improve their legal knowledge and update legal information, thus, advice quality of these offices is different and generally not high. Their working facilities are poor. Also, there have not been consistent provisions on legal aid activities of NGOs.

4. The possibility and contents of the expansion of the participation of NGOs in legal aid

4.1 The possibility to expand the participation of NGOs in legal aid

The participation of NGOs in providing legal aid is a common trend of many countries in the world. It is an obvious trend in order to raise the effectiveness of the State operation and promote the role of State in the present social changes.

As a developing country, Vietnam cannot stand out of globalization process. Over the past decade, in the process of converting from centrally planned economy into market economy, Vietnamese people have gained notable achievements. However, the international integration process requires Vietnam to change.

The State of Vietnam is a State of people and laborers. One policy of the State is to promote the role of people. Therefore, the State of Vietnam always pays the attention to expand the participation of people in the management for State and the society.

²⁹ "The report of legal advice activities of Lawyers' Associations in Ho Chi Minh City, Vietnam" addressed in Legal Advice Conference held by Vietnam Lawyers' Association, Hanoi, December 2001

The promotion of the role of NGOs is necessary not only to improve the effectiveness of the State machinery but also to promote the activeness of the people. At present, the State of Vietnam encourages NGOs to participate in different fields of social life. The expansion of the participation of NGOs in legal aid is also a part of that policy.

Although the Constitution provides that the State takes responsibility for providing legal assistance to people, there still exist various conceptions about this issue. Some hold that the provision of legal aid to the poor and the preferential groups is the work of the society but not a function of the State. On the contrary, others regard it as a social function or an obligation of the State. Moreover, this work benefits not only the citizens but also the State and the entire society. This is more significant when Vietnam is in the process of building a law-governed socialist State.

The practice in the past decades shows that the Vietnamese NGOs always have a significant role in charitable activities and protecting the interests of their members. Therefore, under the current context, Vietnam needs the mixed legal aid model, which both promotes the role of governmental legal aid system and mobilizes the assistance of the staff of NGOs.

The mixed model of legal aid is suitable for the Vietnamese situation and the viewpoint of the Vietnamese Communist Party on the socialization in some fields. The former General Secretary of the Communist Party, Mr. Do Muoi, in his speech at the 8th National Congress of the Party affirmed, *‘To take care of people is the responsibility of the entire society, organizations and families, the cause of the Party, State and the society. We will solve social problems in a socialization-oriented way in which the State holds the core role. The revolutionary cause is of the people, for the people and by the people. State and people work together. Everything should be based on people’*³⁰. At the 3rd Meeting of the 8th session Standing Committee of the Communist Party, Mr. Do Muoi once again emphasized *“within its functions, the State is both a “path guide” for people and a servant in all social activities. We need a clear perception and an appropriate way to deal with this difference. The socialization does not mean non-Statization or privatization. The fundamental policy is that the State and people work together and the State plays a key role, guides citizens to implement social activities and, in particular circumstances, takes part in the implementation of such activities. The State does not take over all jobs from*

³⁰ Document on the National Congress of the Communist Party, published in 1996.

*people as well as leave all jobs for people to do*³¹. The expansion of the participation of NGOs in legal aid is suitable for Vietnam in the current context.

4.2 The contents of the expansion of the participation of NGOs in legal aid

4.2.1 Actors that provide legal aid

In a mixed model of legal aid, legal aid providers include both State and the society, namely legal aid organizations of the State, NGOs and individuals who have legal knowledge and experience in legal aid and provide legal aid voluntarily. In this model, governmental legal aid organizations play a key role because they are part of State bodies and their work are financed by State budget.

4.2.2 Actors that manage legal aid

The State carries out managerial measures at macro level. The State directs the development of legal aid activities, organizes training courses to improve knowledge and skills of legal aid staff. NGOs directly run legal aid activities implemented by their staff and improve professional knowledge of their members. However, it is necessary to have a cooperation mechanism between State bodies and NGOs.

5. Measures to expand the participation of NGOs in legal aid

5.1 To improve the legal basis for the participation of NGOs in legal aid

In Vietnam, legal documents on legal aid only include Decision No. 734/TTg dated September 6, 1997 of the Prime Minister on the establishment of legal aid organizations, some joint circulars and decisions of the Minister of Justice. Generally, these legal documents are not at a high level and do not correspond to the role of legal aid.

The current legal documents have not comprehensively regulated the relationships arising in legal aid activities. Some issues have not been prescribed such as the legal status of legal aid providers, their rights and obligations in proceedings, their relationship with State agencies and citizens, principles in the professional conduct, the rights and obligations of legal aid beneficiaries, etc. Legal aid activities of NGOs are out of control, spontaneous and charitable. They have not been regulated by legal documents. The Lawyer Ordinance dated July 25, 2001 does only encourage lawyers

³¹ Document on the 3^d meeting of the 8th session Standing Committee of the Communist Party, published in 1998.

to provide legal aid freely to the poor and the preferential groups. Lawyer's offices, law partnership companies provide freely or reduce fee for the poor and the preferential groups in accordance with the regulations of Bar Associations.

The weaknesses of the current legal documents affect the participation of NGOs in legal aid. Therefore, in long term, there should be a legal basis for the legal aid activities of NGOs, determining the scope of State management in these activities, mechanism to co-ordinate between governmental legal aid organizations and NGOs, regulating the compulsory responsibility of NGOs and lawyers to provide free legal aid to the poor and the preferential policy beneficiaries.

In order to create a legal basis for the development of the legal aid system, the NLAA is actively cooperating with relevant organizations to build the draft Ordinance on Legal Aid and guiding documents.

5.2 To improve professional capacity of legal aid staff of NGOs

It is necessary to improve legal knowledge and legal aid skills of legal aid staff of NGOs participating in legal aid so that they can provide effective legal aid services to NGOs members, the poor and the preferential groups.

5.3 To build a mechanism to cooperate between governmental legal aid organizations and NGOs

To ensure the effectiveness of the operation of legal aid offices under NGOs there should be close cooperation between legal aid organizations of State and NGOs in legal aid activities. Legal aid organizations of State can share with NGOs their experience in management of the organization and operation of legal aid.

5.4 To strengthen the international cooperation

Legal aid organizations in Vietnam have been operating for 5 years and the legal aid staff still lack legal knowledge and legal aid experience. Therefore, the experience of other countries in mobilizing the participation of NGOs in legal aid and the external support to NGOs providing legal aid are valuable for Vietnam.

Conclusion

Legal aid in Vietnam was born on the basis of legal aid achievements and experience of other countries in the world so as to meet citizens' needs for the State support and protection as well as to show the State's responsibility in managing the society by the law. The State provides free legal aid to the poor with the aim to creating a mechanism to ensure the social equality. Every citizen is equal before the law and enjoys equal access to legal services. The Vietnamese Government is aware that raising legal awareness and education level in order to help citizens know how to behave in accordance with the law is an effective measure to ensure citizens' beliefs in the State and the law, contributing to the political stability, social order and security and the protection of citizens' lawful rights and interests.

After 5 years of operation, the legal aid system in Vietnam has affirmed its role in protecting interests of organizations, bodies and citizens' rights and interests before the law, implementing the social equality. However, to meet increased legal aid demand of citizens, the legal aid system should be improved in the time to come. One of important measures is to expand the participation of NGOs in legal aid activities, creating a mixed legal aid mechanism, which both promotes the key role of the governmental legal aid system and mobilizes efforts of legal aid staff from NGOs.

The expansion of the participation of NGOs in legal aid is appropriate for the current context of Vietnam. Nevertheless, this work should be gradually done with concrete steps appropriate for the process of legal reform and the improvement of the effectiveness of administrative management mechanism. Besides, the key role of the governmental legal aid organizations should be strengthened together with the improvement of the capacity of legal aid staff. The expansion of the participation of NGOs in legal aid must be based on the legal aid experience of other countries as well as the specific conditions of Vietnam. The target of the expansion is to meet increased demand for legal aid of citizens in order to ensure the equality of all citizens before the law and contribute to strengthening the Rule of Law.