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PROJECT

*“Strengthening Access to Justice and
Protection of Rights in Viet Nam”*



*Empowered lives.
Resilient nations.*

OVERALL REPORT

**STUDY AND ASSESSMENT OF FUNCTIONS AND
RESPONSIBILITIES OF COMPETENT STATE AGENCIES AND
COOPERATION MECHANISM AMONG THESE AGENCIES ON
IMPLEMENTATING MUTUAL LEGAL ASSISTANCES**

Implementation unit:

Department of International Law, MOJ

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Within 2012 working plan of the Project “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the team of independent consultants conducted activity “study and assessment of functions and responsibilities of competent state agencies and cooperation mechanism among these agencies on implementing mutual legal assistances. The general objectives of the project is to support Ministry of Justice to comprehensively assess functions and tasks of competent agencies and cooperation mechanism among these agencies. Based on the findings, the study will provide suggestions and recommendations for enhancing the effectiveness of implementation in mutual legal assistances.

In the report, the team of consultants refer to materials, reports and results relevant to mutual legal assistances.

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PART I

INTRODUCTION

I. Background and necessity

The introduction of the Law on Mutual Legal Assistance 2007 and then the Decree No. 92/2008/ND-CP dated 22/8/2008 detailing and guiding the implementation of some articles of the Law on Mutual Legal Assistance have institutionalized the policy of the Party and State on mutual legal assistance in the context of judicial and legal reform and deeply integration into the world and region. After more than 4 year enforcement of Law on Mutual Legal Assistance, mutual legal assistance activity has made a positive and comprehensive step forward.

One of the important effects when Law on Mutual Legal Assistance has promulgated and put into enforcement is that it has contributed to raising awareness of the state agencies, officials and people on the role of judicial assistance activities, the functions and duties of each particular agency in the work of mutual legal assistance. The new legal documents in this area quite clearly stipulate the responsibilities of state agencies in the field of mutual legal assistance. The organization and staffs implementing mutual legal assistance activities in the central level are concerned to accomplish by the assignment of clear responsibilities. The national organ is the Ministry of Justice. The Supreme People's Procuracy, the Ministry of Public Security, the Supreme People's Court, and the Ministry of Foreign Affairs have organs responsible for mutual legal assistance including qualified staffs with professional legal capacity.

For more than 4 years since the promulgation of the Law, negotiation and conclusion of international treaties in the field of mutual legal assistance are more developed in both quantity and quality. The ministries have negotiated 2 bilateral treaties or agreements on all 3 areas of civil, criminal, extradition and transfer of sentenced persons. In addition, international co-operation and participation in forums, multilateral treaties on mutual legal assistance are promoted. The national organs for judicial assistance has actively participated in international conferences, regional forums on private international law in general and on mutual legal assistance in particular; such as in the framework of cooperation in ASEAN, in Hague Conference.

Regarding the implementation of legal mandate, the request of legal mandate is annually increasing in figure, more complex and diverse in content, objects and requested countries of legal mandate. However, with the specific and detailed provisions on the functions and duties of the focal agencies, clear procedures of performing legal mandate, the implementation of legal mandate is going into stability. The implementing agency for legal assistance activities have been trying to fully and

strictly implement the Law on mutual legal assistance, to settle quickly, timely and effectively legal mandate.

Regarding coordination between the implementing agencies for legal assistance, to implement the provisions of Law on Mutual Legal Assistance, Ministry of Justice, Ministry of Foreign Affairs, the Supreme People's Court, the Ministry of Public Security and the Supreme People's Procuracy have established coordination in the formulation of legal documents guiding the implementation of the Law, negotiate and conclude treaties on mutual legal assistance in civil matters, receive, transmit, perform request for legal assistance. Currently, a network of agencies and officials working in the legal assistance at the national level has been established gradually and increasingly collaboration, information-sharing in the process of implementing tasks. The propaganda of law for mutual legal assistance has been initially implemented.

However, besides the initial encouraging results as above, mutual legal assistance activity still has shortcomings and limits. Specifically:

- The ministries have not yet developed overall plans to negotiate agreements for mutual legal assistance in the long-term to facilitate the coordination of organizing negotiation

- The national management on mutual legal assistance is not really effective. The Ministries have not had adequate investments and attention to the work of mutual legal assistance in their sectors and in coordination with other ministries, slowly handling of the practical problems. The Ministry of Justice has yet to promote good and effective role to assist the Government in unified state management of mutual legal assistance. For agencies directly implementing mutual legal assistance, as the provincial people's court or provincial civil judgment enforcement agency, People's Procuracy at different level, the agency conducting the proceedings... the attention to deploy this mission still depends on the localities, but generally it is not professional.

- A number of contents of state management have been specified in Law on Mutual Legal Assistance, Decree No. 92/2008/ND-CP but they have not been implemented in practice as the inspection of the implementation of the request for legal assistance, interdisciplinary meeting held periodically to exchange information, discussion, decision and coordinating measures to solve difficulties and problems in the implementation of mutual legal assistance. The inspection activity to implement mutual legal assistance shall not affect. This has affected the situation; promptly propose measures to solve difficulties and problems in operations mutual legal assistance, which affects the efficiency of state management of mutual legal assistance.

- The propagation and dissemination of domestic and international legislations on judicial assistance, training activities and professional guidance on mutual legal assistance for the implementing agency has not been given due attention.

Mutual legal assistance activities include building content from legal documents, negotiation and conclusion of agreements, implementing legal mandate and state management in the field to monitor law enforcement. Besides, mutual legal assistance work related to various ministries, from the central to the local level, from the state management agencies, policy making bodies to direct law enforcement agencies. The effectiveness of judicial assistance activities directly impact the adjudication, investigation, enforcement of our state agencies and directly impact on the legal rights of related individuals and organizations. Therefore, improving the efficiency of mutual legal assistance is urgent need of development, it is a task set for the relevant agencies, requires ministries, relevant agencies at all levels to implement comprehensive and effective solutions.

Starting from the situation and requirements of the country's development process for mutual legal assistance work, it is needed to study, evaluate overall and comprehensive mutual legal assistance work, functions and tasks of state bodies and coordination mechanisms between ministries and agencies involved in the implementation of mutual legal assistance in order to offer suggestions for proposing solutions, improving efficiency and quality of this work.

II. Objectives of the Report

1. The general objective of the report is to assist the Ministry of Justice in an overall and comprehensive evaluation on the mutual legal assistance since the issuance of the Law on Mutual Legal Assistance so far, functions and duties of state competence agencies and coordination mechanisms between these agencies in the enforcement of the law on mutual legal assistance, thereby making proposals and recommendations to improve the effectiveness of law enforcement for legal assistance.

To achieve common goals mentioned above, this report aims objectives namely:

- Assess institutional regulations on the functions and duties of the state agencies involved in the work of mutual legal assistance, including the validity of the assignment of functions to the relevant authorities in at central and local levels,

- Status of implementation of functions, which in practical tasks: achievements and shortcomings, the advantages and disadvantages, causes and lessons learned;

- To study the status of coordination mechanisms (between central agencies, between central agencies to local agencies) in the work of legal assistance: results achieved and the remaining points, limitations, advantages and disadvantages, causes and lessons learned;

- Propose recommendations to adjust, change, rationalize functions and tasks of the Ministry of Justice and other relevant agencies, coordinated manner in the work of

mutual legal assistance in order to enhance efficiency and quality of the organization of the work of legal assistance.

- Contributing to provide the information needed to study amendments and supplements to the Law on Mutual Legal Assistance.

III. Scope and content of the research

The content of the report is to study, evaluate overall and comprehensive mutual legal assistance work in recent years, functions and tasks of state bodies and coordination mechanisms between the ministries and agencies involved in the implementation of mutual legal assistance in accordance with the Law on Mutual legal Assistance. The group of agencies was selected for study and evaluate include:

1. Supreme People's Procuracy and the provincial people's procuracy
2. The Supreme People's Court and the Provincial People's Court
3. The Ministry of Justice
4. The Ministry of Public Security and the investigative agencies
5. The Ministry of Foreign Affairs and diplomatic missions overseas of Vietnam.

IV. Research Methodology

The research implementation and evaluation are conducted in both qualitative and quantitative methods, including research, synthesis and literature review, questionnaire survey.

Experts gather, study and review of documents related to the functions and responsibilities of the state competent agency and coordination mechanisms between these agencies in the enforcement of relevant legislation on mutual legal assistance (such as documents and resolutions of the Party, the laws, the professional guidelines of the Ministry of Justice, the final reports, data and information out there...), set research reports on mutual legal assistance activities (as much as possible) of the ministries related to analyze, synthesis and evaluate according to the main part of the report.

V. Structure of the Report

Part I: Introduction

Part II: Functions, tasks, organization and coordination on implementing mutual legal assistance of the relevant authorities.

Part III: Status of implementation of mutual legal assistance

Part IV: Evaluation, proposals and recommendations

PART II
FUNCTIONS, TASKS, ORGANIZATION AND COORDINATION
ON IMPLEMENTING MUTUAL LEGAL ASSISTANCE OF THE RELEVANT
AUTHORITIES

On November 21, 2007, the Law on Mutual Legal Assistance was enacted by the National Assembly, which has become effective since July 1, 2008. The Law has important implications to create uniform legal basis for mutual legal assistance activities of the state bodies of Vietnam in all four matters of civil, criminal, extradition and transfer of sentenced persons. The Law on Mutual Legal Assistance also specifies the functions, duties and powers of the agencies involved in the work of mutual legal assistance. Along with the advent of Law on Mutual Legal Assistance, organization and implementation of operational staff for mutual legal assistance was concerned to consolidate by the central ministries with the formation of the units responsible for the relevant field of mutual legal assistance in the focal agency, the assignment of clear responsibilities for those units.

In the Ministry of Justice, a dedicated room for mutual judicial assistance activities was established. This division has function to implement content of general managing the work of mutual legal assistance, and is the focal point for receiving and implementing the request for mutual legal assistance in civil matters. In the Supreme People's Procuracy, the focal task of implementing mutual legal assistance on criminal matters is assigned to the Department of International Cooperation and Mutual Legal Assistance. In the Ministry of Public Security, the Department of Legal Affairs was tasked to receive and propose the implementation of a legal mandate on criminal matters for foreign country which is transferred by the Supreme People's Procuracy (including the requests related to criminal cases within the jurisdiction of the investigating agencies of people's Security forces and the investigating agencies of the People's Guard); receiving records, transfer records to the Court having jurisdiction to review and decide on extradition and transfer of sentenced persons. In the Ministry of Foreign Affairs, Bureau of Consular Affairs is the focal agency to perform functions relating to mutual legal assistance. In the Supreme People's Court, the two units which are the Institute of Judicial Science and International Cooperation Department assigned to perform the duties of judicial assistance, including the Institute of Judicial Sciences is responsible for providing professional guidance to perform legal assistance to the people's courts at all levels, coordinate comments, build legal documents and international treaties on mutual legal assistance; the Department of international Cooperation also perform the role of operating management for legal assistance in civil, extradition and transfer of sentenced persons, in charge of operational reports and statistics on mutual legal assistance each year. The staffs working in these units

are basically trained, having bachelor degree and higher, good at foreign language and proficient in computer skill.

For local agencies directly implementing mutual legal assistance, as the provincial people's court, provincial people's procuracy, provincial civil judgments enforcement agency, or the investigation agency... the attention to the organization of implementing this task depends on the locality.

Below is a report present the functions, tasks, organization and coordination on implementing mutual legal assistance of 5 agencies including: People's Procuracy, People's Court, Ministry of Justice, Ministry of Public Security and Ministry of Foreign Affairs.

I. The People's Procuracy

1. Functions and duties of the Procuracy in the work of mutual legal assistance.

Under the provisions of Law on Mutual Legal Assistance, the Supreme People's Procuracy (SPP) and the provincial People's Procuracy (PPP) have function and task specified in mutual judicial assistance as follows:

a. For the SPP

Under Article 64 of the Law on Mutual Legal Assistance, SPP has functions and tasks which are:

- Focal point of activities for mutual legal assistance on criminal matters, responsible for receiving, transferring, monitoring and supervising the implementation of legal mandate for criminal matters;

- To consider and decide on implementing requests of the People's Procuracy or the competent investigating agencies on legal mandate in criminal matter, refuse or postpone the implementation of legal mandate in criminal matter;

- To exercise the right to prosecution and supervision of judicial competence;

- To guide the People 's Procuracy at all levels implementing mutual legal assistance on criminal matters;

- To propose sign, accession and implementation of international agreements on judicial assistance;

- To propose amendments and supplements to improve the law of Vietnam on mutual legal assistance.

- Biannually and annually report to the Ministry of Justice the implementation of legal mandate in criminal matters.

b. For the PPP

Article 69 of Law on Mutual Legal Assistance regulates that the Provincial People's Procuracy shall have the responsibility:

- Implement legal mandate of foreign country prescribed by law on mutual legal assistance;
- Carry out other mutual legal assistance activities under its competence;
- Exercise the right to prosecution and supervision of legal assistance activities under the authority and report the results of judicial assistance for the SPP.

2. Internal coordination mechanisms of the Procuracy in the work of legal assistance

2.1. Mechanism of internal coordination between the units of the SPP:

In the process of implementing the focal role of judicial assistance in criminal matters, the SPP has researched and issued guidelines for internal coordination mechanisms between units in the SPP to carry out mutual legal assistance in criminal matters (Dispatch No. 2917/VKSTC-HTQT dated 29/9/2010, dispatch No. 117/CV-HTQT dated 03/11/2011 and dispatch No. 115/VKSTC-V4 dated 18/11/2011). These documents detailed guidelines for the process of receiving, settling and exchanging information about the request for legal assistance on criminal matters under the jurisdiction of the SPP and PPP.

On the basis of the contents of these documents, the receipt and handling of requests for legal assistance on criminal matters under the jurisdiction of the SPP and PPP units are performed in the following procedures:

(1) For mutual legal assistance request from the foreign country: upon receiving this request, the Department of International Cooperation and Mutual Legal Assistance will translate, research, classify and resolve as follows:

- If it is under the jurisdiction of the investigating police agency – Ministry of Public Security, the Department of International Cooperation and Mutual Legal Assistance will transfer the request to the Office of the investigating police agency - Ministry of Public Security to perform and at the same time, send it to relating Department to track and perform functional supervision under the authority (if any).

- If it is under the authority of the investigating Security Agency - Ministry of Public Security, the Department of International Cooperation and Mutual Legal Assistance will transfer to the Head of investigating security agency - the Ministry of Public Security to comply with the requests and send it to department concerned to monitor and implement supervision under the authority (if any).

- If it is under the jurisdiction of the PPP, the Department of International Cooperation and Mutual Legal Assistance will transfer to PPP to perform.

The performance results for legal assistance of the investigating police agency and investigating Security Agency of the Ministry of Public Security or the PPP are sent to the Department of International Cooperation and Mutual Legal Assistance - SPP to carry out the procedures of transferring to foreign jurisdiction agencies and notify the related units to know.

(2) For requests for mutual legal assistance by the agency conducting the proceedings in Vietnam which sent to the competent authorities of foreign countries shall comply with the provisions of the Law on Mutual Legal Assistance 2007 (Articles 18, 19, 20 and 22) under the following procedures:

- The agency conducting the proceedings in Vietnam if having the request on mutual legal assistance in criminal matters with foreign countries, shall make and send a dossier of legal mandate to the Department of International Cooperation and Mutual Legal Assistance - SPP to check the validity and it will transfer to the competent authorities of foreign countries. The dossier of legal mandate shall be made in accordance with the provisions of Article 18, 19 of the Law on Mutual Legal Assistance.

- If the dossier of legal mandate is not valid, the Department of International Cooperation and Mutual Legal Assistance- SPP will return it to the requesting agency; state the reason and guideline to re-request.

- Upon receiving the results of mutual judicial assistance from foreign country, the Department of International Cooperation and Mutual Legal Assistance will transfer to the requesting agency and inform the concerned unit under the SPP to know and supervise.

2.2. Evaluation:

The process of implementing mutual legal assistance activities in criminal matters of the People's Procuracy has been created by the process of coordination, efficiency and speed up the progress of the request for mutual legal assistance in criminal matters. The Department of International Cooperation and Mutual Legal Assistance closely manages the request for assistance is in the process of implementing, training for those personnel directly engaged in mutual legal assistance on criminal matters in the branch of People's Procuracy, issuing documents clear and timely guided units facing difficulties and obstacles in the implementation process and synthesis, research challenges and obstacles in practice to propose the SPP leaders solutions. However, in practice of the localities, officials still characterized concurrently, scattered yet so there is not yet professional staff, difficulty in accumulating experience resolving cases involving foreign elements which may

require mutual legal assistance on criminal matters. It leads to a problems but the Department of International Cooperation and Mutual Legal Assistance has to guide many times.

3. Inter-ministerial coordination mechanisms in operating mutual legal assistance in criminal matters

The Supreme People's Procuracy has collaborated frequently and closely with the authorities of the Ministry of Public Security, Ministry of Foreign Affairs and the Ministry of Justice in the process of receiving and handling requests for legal assistance as well as improving their responsibilities under the provisions of the Law on Mutual legal Assistance. Accordingly, the request for mutual legal assistance in criminal matters has been receiving and resolving by the Supreme People's Procuracy properly and timely with the law on mutual legal assistance. In the negotiation and conclusion of international agreements, the Supreme People's Procuracy began actively negotiating treaty on mutual legal assistance in criminal matters with some demanding countries. In the work of institutional construction, the People's Procuracy Supreme presides to develop legal documents guiding the implementation of the Law on Mutual Legal Assistance related to the field of mutual legal assistance inn criminal matters. In addition, the SPP has also actively cooperates with the ministries concerned in judicial assistance activities, specifically:

- Coordinate with the Ministry of Justice - State management agency on mutual legal assistance:

The coordination activities between the SPP and the Ministry of Justice for legal assistance work is done on the basis of the Law on Legal Assistance and Decree No. 92/2008/ND-CP dated 22/8/2008 of the Government detailing and guiding a number of articles of the Law on mutual Legal Assistance. Accordingly, the SPP coordinates with the Ministry of Justice in the array of legislative work on mutual legal assistance, in operating, negotiating treaties on mutual legal assistance, in resolving operational complicated assistance case in criminal matters which needs the inter-ministerial collaboration, in state management activities such as summarizing, reporting...

- The Ministry of Public Security shall be the authority directly performs the majority of requests for legal assistance on criminal matters: SPP has the division working relationships with C44 (Office of Investigating Police Agency), V19 (Department of Legal Affairs) and C55 (Interpol Office of Vietnam). The SPP coordinates mainly with C44 - MPS in the implementation of mutual legal assistance in criminal matters. Recognizing the importance of this activity and the practical effectiveness of coordination between the two units were built in the Coordination Regulations to implementing activities for legal assistance on criminal matters (Coordination Regulation dated 11/10/2011).

II. The People's Court

1. Functions and duties of the Supreme People's Court and the provincial People's Court in mutual judicial assistance activities

The Law on Legal Assistance has identified specific competence and responsibility of the Supreme People's Court and the provincial People's Court in mutual legal assistance.

a. The Supreme People's Court

The SPC has competence and responsibility in mutual legal assistance work which includes:

- Guide People's Court at all levels to carry out mutual legal assistance.
- To consider and decide the case of extradition, transfer of sentenced persons within its jurisdiction.
- Biannual and annual notify the Ministry of Justice on the implementation of mutual legal assistance under its jurisdiction.

To concretize some articles of Law on Mutual Legal Assistance, the Government issued Decree No. 92/2008/ND-CP dated 22/08/2008, which defined and detailed duties and powers of Ministry of Justice, the Supreme People's Court and a number of other authorities in the following activities: (i) domestic legislation; negotiations, signing and implementation of mutual legal assistance treaties, (ii) organize training courses on domestic laws and international treaties on mutual legal assistance, professional guidance on mutual legal assistance activities for staff implementing judicial assistance activities; (iii) organize inter-branch to examine the implementation of mutual judicial assistance in civil, criminal, extradition and transfer of sentenced persons matters; (iv) organize periodic meetings to exchange information, discuss and decide the measures to solve coordination problems and obstacles in the implementation of mutual legal assistance, and (v) review and report to the Government on judicial assistance activities annually.

b. The provincial People's Court, under the provisions of Article 68 of the Law on Mutual Legal Assistance shall have responsibility:

- To perform legal mandate of foreign country prescribed by law on mutual legal assistance.
- To review, decide extradition, transfer of sentenced persons or refuse extradition, transfer of sentenced persons prescribed by Law on Mutual Legal Assistance.

- To perform other mutual legal assistance activities under its judicial competence.

- To report on the results of legal mandate to the Supreme People's Court.

For the implementation of the tasks and powers defined in the Law on Mutual Legal Assistance 2007, on 15/09/2011, the Ministry of Justice, Ministry of Foreign Affairs and the Supreme People's Court issued the Joint Circular No. 15/2011/TTLT-BTP-BNG-TANDTC “Guidelines for the application of some provisions on mutual legal assistance in civil matters of the Law on mutual legal Assistance”. This Joint Circular guides specifically the procedures and orders to perform legal mandate and accountability of the Supreme People's Court, Ministry of Justice and Ministry of Foreign Affairs in operation for legal assistance on civil matters. In this stage, the Court's jurisdiction in mutual legal assistance activities continue to be confirmed in the mutual legal assistance treaty on criminal matters, extradition and transfer of sentenced persons that Vietnam has signed with foreign countries.

2. Coordination status of implementing the mutual legal assistance of the court

2.1. Coordination of negotiation, signing treaties on Mutual Legal Assistance

In this work, the Supreme People's Court has been actively coordinating with the agency in charge of the construction, negotiation and conclusion of treaties on mutual legal assistance. The Supreme People's Court has participated in 05 delegations to negotiate and conclude treaties on mutual legal assistance in criminal matters; 08 delegations to negotiate and conclude treaties on extradition, transfer of sentenced persons; 07 delegations to negotiate and sign treaties on mutual legal assistance in civil matters and 01 delegation to review the treaties on mutual legal assistance in civil matters.

2.2. Inter-ministerial coordination on issuing guidelines to implement the provisions of domestic law on mutual legal assistance

The Supreme People's Court has actively collaborated with the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Public Security and the Supreme People's Procuracy to develop guidelines to implement the provisions of the Law on mutual legal assistance on civil, criminal and extradition matters. On 15/09/2011, the Ministry of Justice, Ministry of Foreign Affairs and the Supreme People's Court issued the Joint Circular No. 15/2011/TTLT-BTP-BNG-TANDTC “Guidance on the application of some provisions of mutual legal assistance in civil matters of the Law on mutual legal Assistance”. At the same time, the Supreme People's Court has been also coordinating with the focal agencies which are the Ministry of Public Security and the Supreme People's Procuracy to develop the joint circular guiding some provisions of the Law on Mutual Legal Assistance about extradition and transfer of documents and evidence to require foreign country continue prosecuting the criminal offenders.

2.3. Coordinating the implementation of state management activities of mutual legal assistance

- In preliminary, summary activities, summarizing the work of mutual legal assistance began to be concerned by SPC since 2011, particularly in collaboration with the Ministry of Justice to conduct the preliminary of 03 years implementing the Law on mutual legal assistance 2007, followed by the construction of a report on mutual legal assistance to the Government submitted to the National Assembly at its fourth session of the XIII National Assembly (October, 2012). Also since 2011, the SPC has done biannual and annual preliminary summary to the Ministry of Justice to synthetic in accordance with the Law and Decree No. 92/2008/ND-CP of the Government.

- In coordination of review, evaluation, guides to perform legal mandate: the SPC in collaboration with the Ministry of Justice (presider) have done some training courses on the mutual legal assistance to the provincial courts across the country. At the same time, in October 2012, the Supreme People's Court in coordination with the focal agency, which is the Ministry of Justice, organized inter-branch delegation to inspect the implementation of civil legal mandate in certain provincial people's court.

- In coordination to solve problems arising in practical implementation of mutual legal assistance:

Inter-sectorial coordination: the SPC has not actively proposed initiative with the Ministry of Justice to hold regular meetings to discuss and decide on the measures to solve coordination problems and obstacles in the implementation of mutual legal assistance as well as to inform and exchange situation and coordination problems between the two agencies.

Internal coordination within the Court: Since the Law on Mutual Legal Assistance has come into effect; the SPC has no guidelines for local courts to handle matters arising in relation to legal mandate. Besides, the local courts often directly contact with the Ministry of Justice (the focal agency for mutual legal assistance in civil matters) to discuss issues and problems related to legal mandate.

The coordination between local courts and the SPC in proposing issues which need guidance and regulations have not been close-knit, especially in commenting, constructing documents guiding the implementation of the Law on Mutual Legal Assistance in the period of time (Circular on budget, Circular on fees and charges of mutual legal assistance).

2.4. The organization and implementation of mutual legal assistance activities under the provisions of the Treaties on Mutual Legal Assistance and the documents guiding the implementation of domestic laws on mutual legal assistance

During this period of time, mutual legal assistance activities of the People's Court arises primarily in the process of handling the civil case, marriage and family case that have a foreign party in which the country has not signed treaty on mutual legal assistance in this matter. For the mutual legal assistance activities in criminal matters, extradition and transfer of sentenced persons, there are only a case decided by the People's Court of Quang Nam Province accepted the request of the foreign competent authority to transfer abroad a sentenced person in Quang Nam to the requesting country and a case handled by the People's Court of Son La province accepted the request of the foreign competent authorities to transfer a sentenced person from Laos to Vietnam to continue the judgment execution. In addition, the provincial People's Court has not resolved any extradition request under the provisions of the Law on Mutual Legal Assistance 2007 as well as under the provisions of the mutual legal assistance treaties in criminal matters and extradition. Practical implementation of the mutual legal assistance treaty and the provisions of domestic law on mutual legal assistance in this stage show that mutual legal assistance activities in civil matters face many difficulties. Before issuing Joint Circular No. 15/2011/TTLT-BTP-BNG-TANDTC dated 15/9/2011 "Guidance on the application of some provisions of mutual legal assistance in civil matters", the provincial people's Court had been still confused and had many flaws in the implementation of mutual legal assistance activities. Flaws of the Court primarily related to making the dossier which does not comply with the rules and procedures for implementing mutual legal assistance. Therefore, most of the provincial People's Court has complied with the guidance in the Joint Circular No. 15/2011/TTLT-BTP-BNG-TANDTC dated 15/9/2011 when performing mutual legal assistance; therefore, it have no large errors. However, the situation of legal mandate abroad of the provincial People's Court in this phase also faces difficulty, the majority of requests for legal mandate are refused by or not getting the response from foreign agencies.

2.5. The organization of staff serving in the Supreme People's Court and the provincial People's Court in performing mutual legal assistance activities

During this period, the provincial People's Court still has not allowed to establish a division to perform mutual legal assistance activities. This work has been delivered to court officials that in many cases, the capacity of staff does not meet the requirements of the work.

In the Supreme People's Court, the work has some remarkable changes. The Institute of Judicial Sciences continues to be assigned as the lead agency, advising the Supreme People's Court in the constructing and instructing the implementation of the provisions of domestic law on mutual legal assistance and participating in the negotiation and conclusion of international treaties on judicial assistance in civil, criminal and extradition and participating in coordinating activities with the Ministry of Justice, Ministry of Public Security, Ministry of Foreign Affairs and Supreme

People's Procuracy to perform the tasks specified in the Law on Mutual Legal Assistance 2007. To accomplish the above tasks, in 2011, the Chief Justice of the Supreme People's Court has established the division of international law research under the Institute of Judicial Sciences.

III. The Ministry of Justice

1. Functions and duties of the Ministry of Justice in the work of mutual legal assistance in accordance with the laws

Under the provisions of the Law on Mutual Legal Assistance and Decree No. 92/2008/ND-CP dated 22/8/2008 detailing and guiding the implementation of some articles of the Law on Mutual Legal Assistance, the Ministry of Justice is assigned to assist the Government to unified manage the mutual legal assistance activities, and is the focal point of mutual legal assistance in civil matters.

The functions, duties and authority of the Ministry of Justice in mutual legal assistance activities are prescribed in Article 62 of the Law on Mutual Legal Assistance and Article 6 of Decree No. 92/2008, under which the Ministry of Justice has powers and duties as follows:

i) Receive, transmit, monitor and supervise the implementation of the judicial mandate in civil matters.

ii) Exchange information on the law and practice of mutual legal assistance with the competent authorities of foreign countries under the provisions of treaties to which Vietnam is a member.

iii) Suggest the signing, joining and implementing international treaties on mutual legal assistance and suggest amendment, supplement and improvement the law of Vietnam on mutual legal assistance, in particular:

+ Preside and coordinate with the Supreme People's Court, Supreme People's Procuracy, the Ministry of Public Security, Ministry of Foreign Affairs and other relevant agencies to develop, submit to the competent authority to issue legal documents on mutual legal assistance; issue under the authority legal documents, documents guiding the implementation of the legal documents in the field of mutual legal assistance and coordinate with the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the Ministry of Foreign Affairs to issue jointly legal documents guiding the mutual legal assistance activities.

+ Coordinate with agencies proposed signing international treaties on mutual legal assistance in building long-term plans and annual plans on signing, joining and implementing international treaties on mutual legal assistance in accordance with provisions of Articles 63, 64, 65 and 66 of the Law on mutual legal Assistance, presided the negotiation of treaties on mutual legal assistance in civil matters and

coordinate with the Ministry of Public Security, the Supreme People's Procuracy and the line authorities to negotiate treaty on mutual legal assistance in criminal matters, extradition and transfer of sentenced persons as prescribed by law; monitor and supervise the implementing plan of conclusion, accession to the international treaties on mutual legal assistance which approved by the competent authorities; chair or coordinate with the Ministry of Public Security, the Supreme People's Procuracy and other line authorities to develop the implementation plan of international treaties on mutual legal assistance to submit to the Government's decision; organize the implementation plan to perform international treaties on mutual legal assistance in civil matters and coordinate with the line agencies to organize implementation plans of international treaties on mutual legal assistance in criminal matters, extradition and transfer of sentenced persons.

iv) Implementation of other state management activities, including:

+ Preside and coordinate with the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the Ministry of Foreign Affairs to organize training courses about domestic law and international treaties on mutual legal assistance, organize professional guidance for legal assistance activities for the officials performing judicial assistance activities.

+ Preside and coordinate with relevant agencies to build a database of law for mutual legal assistance.

+ Preside and coordinate with the Ministry of Foreign Affairs and the Supreme People's Court to organize the inter-ministerial delegations to examine the implementation of legal mandate in the civil courts and Vietnamese representative offices abroad; coordinate with the Supreme People's Procuracy, the Ministry of Public Security and the Supreme People's Court examine the implementation of request for mutual legal assistance on criminal matters, extradition and transfer of sentenced persons to timely detect obstacles in the process of implementing the provisions of relevant laws.

+ Preside and coordinate with the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the Ministry of Foreign Affairs to organize regular meetings to exchange information, discuss and decide measures to resolve the difficulties and obstacles in the implementation of mutual legal assistance.

+ Preside and coordinate with the line agencies to review and report to the Government about mutual judicial assistance activities annually under the provisions of Law on Mutual Legal Assistance.

To carry out the functions and duties mentioned above, since the law on mutual legal assistance was enacted, organization and personnel in implementing mutual judicial assistance activities in the Ministry of Justice was concerned with the

consolidation of assigning clear responsibilities for the unit, staffing qualifications and capabilities. The Ministry of Justice has established a division specializing in mutual legal assistance (According to Decision No. 810/QĐ-BTP dated 16/4/2009 of the Minister of Justice regarding functions, duties, powers and organizational structure of the Department of international Cooperation, Division of Mutual Legal Assistance under the International Cooperation Department is an unit responsible for mutual legal assistance activities). This division performs the content of state management on mutual legal assistance and receives, handles requests for legal assistance in civil matters. The staffs in the division of mutual legal assistance are trained in law, have foreign language, information and knowledge of international law. Besides the division responsible for mutual legal assistance, there is coordination by the relevant units of the Ministry to carry out the duties and functions of the Ministry of Justice assigned under the provisions of the Law.

2. Inter-ministerial coordination of the Ministry of Justice for legal assistance activities

2.1. Preside and coordinate in the implementation of legal mandate in civil matters

According Law on Mutual Legal Assistance, the Ministry of Justice is a focal agency implementing the mutual legal assistance in civil matters, responsible for the receipt, transfer, monitor and supervision of implementing legal mandate in civil matters.

a. Perform legal mandate in civil matters under the request of the foreign competent authority (input legal mandate).

The process of legal mandate in civil matters under a request of the foreign competent authority shall be performed as follows:

- If there are international treaties on mutual legal assistance:

Competent agency of requesting state → Central Authority of the requested State → The Ministry of Justice of Vietnam → The competent authorities of Vietnam

- In the absence of international treaties on mutual legal assistance:

Competent agency of requesting State → The Ministry of Foreign Affairs of Vietnam → The Ministry of Justice of Vietnam → Competent Agency of Vietnam.

According to the diagram, the Ministry of Justice of Vietnam is the state agency authorized to receive legal mandate under the request of the foreign competent authorities. After receiving legal mandate dossiers, the Ministry of Justice will be sent to the provincial people's courts having jurisdiction (for service of documents, verifying and collecting evidence resolving civil cases) and in some cases sent to the

Department of Public Security (for verifying the authenticity of the driving license, ID card), the Ward People's Committees (for verifying address, marital status, personal status as well as information relating to the person concerned), schools (for verifying the authenticity of the diploma and certificate)... After getting the response from the competent authorities sent to Vietnam, the Ministry of Justice will notify the central bodies of requesting country under the provisions of the Treaty on mutual legal assistance or notify the Ministry of Foreign Affairs of Vietnam to notify the competent authorities abroad.

b. Legal mandate in civil matters under the request of the competent bodies of Vietnam to the competent bodies of foreign countries and representative offices overseas of Vietnam (output legal mandate).

The process of output legal mandate will be carried out as follows:

- If there are Treaties on Mutual Legal Assistance in civil matters:

The court or other competent authority performing mutual judicial assistance in Vietnam → Ministry of Justice of Vietnam → Central Authority of the requested State under the provisions of the Treaty → Competent authority of the requested country.

- If there is no treaty on mutual legal assistance in civil matters:

The court or other competent authority performing mutual judicial assistance in Vietnam → Ministry of Justice of Vietnam → Ministry of Foreign Affairs of Vietnam → representative office abroad of Vietnam → Vietnam Ministry of Foreign Affairs is required → the competent authority of the requested country.

If the concerned person has Vietnamese nationality, the legal mandate will be performed by representative office overseas of Vietnam (Embassies and consulate offices).

According to the diagram, the competent bodies of Vietnam (mainly are Provincial People's Courts and Bureau of Civil Judgment Enforcement) will compile a dossier of legal mandate and send it to the Ministry of Justice of Vietnam. If there is a mutual legal assistance treaty between Vietnam and requested country, the Ministry of Justice of Vietnam will transfer the request of legal mandate to the central agency of requested country under the provisions of the Treaty. If there is no mutual legal assistance treaty between Vietnam and requested country, the Ministry of Justice of Vietnam will transfer the dossiers of legal mandate to the Ministry of Foreign Affairs and then the Ministry of Foreign Affairs of Vietnam follow diplomatic channels as described above.

Thus, the process of performing input and output legal mandates in civil matters as mentioned above, in the implementation, the Ministry of Justice regularly

coordinates with the provincial People's Court, the Ministry of Foreign Affairs, SPC, representative offices overseas of Vietnam, as follows:

- Coordinate with the Ministry of Foreign Affairs of receiving and transferring dossiers of legal mandate

- Directly and closely coordinate with the provincial courts in professional guidance of performing dossier of legal mandate, receipt, and transfer and announce the result of legal mandate

- The Ministry of Justice also needs the cooperation of the SPC in the urge, guidance and overall lessons learnt for the local courts;

- Coordinate to collect information, perform legal mandate for the citizens of Vietnam.

Currently, a network of agencies and officials working in the mutual legal assistance at the national level has been established and increasingly collaborated, information-sharing in the process of implementing the assigned tasks.

In addition, the Ministry of Justice also regularly receives and processes the proposals to provide professional guidance implementing legal mandate from the local authorities as local courts and civil judgment enforcement agencies. The unit directly undertaking the implementation of legal mandate of the Ministry of Justice has established regular and close relations with many local courts having judicial authorization for timely guidance and handling dossiers quickly and more effectively.

2.2. In legislation, negotiation, conclusion and implementation of international treaties on mutual legal assistance

a. In the civil matters:

As the focal agency for mutual legal assistance in civil matters, the Ministry of Justice is a presiding agency in negotiation, conclusion and implementation of international treaties on mutual judicial assistance in civil matters. In addition, the Ministry of Justice is a presiding agency in researching, proposing to join the multilateral treaties on private international law in general and on mutual legal assistance in particular.

To perform this task, the Ministry of Justice has closely coordinated with relevant agencies including agencies directly involved in the work of mutual legal assistance as the Ministry of Foreign Affairs, Ministry of Public Security, the Supreme People's Court and other agencies such as the Government Office, the Office of the President. The coordination is done through activities for asking opinions, comments, inviting to the Council of evaluating international treaties, requesting the ministries and agencies to send representatives to participate in negotiating delegations.

After the treaty comes into force, the Ministry of Justice in collaboration with the ministries propagates and disseminates this commitment to the relevant authorities, especially to the localities to implement it consistently and with the true commitment.

Related to the implementation of international treaties on judicial assistance in civil matters, besides the internal interdisciplinary collaboration among agencies in the country of Vietnam, the coordination between the central agencies (the focal point) of the parties is also very important. For the treaty which is newly signed and executed after the Law on Mutual Legal Assistance comes into effect (since 2008) until now, the coordination between the Ministry of Justice of Vietnam, the focal point and foreign parties is quite close and established from the negotiating stage. However, for the treaties signed before this time, the coordination between the focal point of Vietnam with other parties is mostly not considered.

b. In the field of criminal matters, extradition and transfer of sentenced persons

As a state management agency for mutual legal assistance, the Ministry of Justice has actively collaborated with the ministries in drafting legal documents guiding the implementation of the Law on Mutual Legal Assistance; participated in negotiation, comment, revision the mutual legal assistance treaties in criminal matters, extradition and transfer of sentenced persons.

In addition, the Ministry of Justice also cooperates with the Ministry of Public Security and the Supreme People's Procuracy performing complex and sensitive requests of legal mandate.

3.3 Coordination in the formulation and completion of the domestic law on mutual legal assistance

In recent years, to implement the provisions of the Law on Mutual Legal Assistance in civil matters, the Ministry of Justice, which is the state management agency on mutual legal assistance and also the focal point for mutual legal assistance in civil matters, has chaired or coordinated with the Ministries to construct documents guiding the implementation of the Law on mutual legal assistance with 9 documents under the plan. The coordination is done through the direct participation in the drafting committee, editing group of the joint circular or in the form of comments.

Besides, the Ministry of Justice has also presided in collaboration with the ministries to conduct the comprehensive review of the entire system with current legislation relating to mutual legal assistance for proposing amendment or supplement or promulgation of legal documents in order to improve the legal system of mutual legal assistance in the future.

However, the practical organization and implementation of this activity also have many problems needed to be solved (will discuss in detail in later sections of this report)

3.4. Coordination to perform the role of state management agency on mutual legal assistance in general:

The Ministry of Justice in coordination with the ministries implementing a number of other state management activities, namely: organizing activities of summarizing and reporting work for mutual legal assistance under the provisions of Law on Mutual Legal Assistance; organizing inter-ministerial meetings to exchange information, discussions, decisions on measures to solve difficulties and problems in the implementation of mutual legal assistance; coordinating with the Ministry of Foreign Affairs, the Supreme People's Court to organize inter-agency working group to inspect the implementation of judicial mandate in the court of some provinces and cities to exchange, evaluate mutual legal assistance and collect the recommendations of the local court for improving mechanism; jointly organizing tutorial classes, professional training courses for legal assistance activities.

In fact, these activities are being implemented and interested in different levels. The Report will provide specific assessments in the later section.

IV. Ministry of Foreign Affairs

1. Functions and duties of the Ministry of Foreign Affairs in the work of legal assistance in accordance with the laws

According to the Law on Mutual Legal Assistance and the Joint Circular No. 15/2011/TTLT-BTP-BNG-TANDTC dated 15/9/2011 guidelines the application of some provisions on mutual legal assistance in civil matters of Law on mutual Legal Assistance, the Ministry of Foreign Affairs shall have the following powers and authority on mutual legal assistance in civil matters:

i) Preside and coordinate with other ministries and agencies for consideration and decision to apply the principle of reciprocity in mutual legal assistance in relation with the concerned countries; biannually and annually report to the Ministry of Justice the applying situation of the principle of reciprocity in mutual legal assistance in relation with the concerned country.

ii) Transfer dossiers of legal mandate with Vietnamese citizens or foreigners to representative office overseas of Vietnam under the request of the provincial Court which sent by the Ministry of Justice; transfer dossiers of legal mandate as the foreign side sent to the Ministry of Justice.

iii) Suggest the signing, joining and implementing international treaties on mutual legal assistance and suggest amending, supplementing and improving the law of Vietnam on mutual legal assistance;

According to the above document, the Vietnamese representative offices overseas have the responsibilities and powers on mutual legal assistance in civil matters:

i) Implement legal mandate related to Vietnam nationals in the host country under the request of the domestic authorized agency in accordance with the domestic law of Vietnam, international treaties to which Vietnam is a members and not contrary to the laws of the host country;

ii) Transfer dossiers of legal mandate from competent agencies of Vietnam to the Ministry of Foreign Affairs of the host country to turn to the competent authority of the country to consider and implement (dossier of legal mandate for the foreign citizens, legal entities).

iii) Receive requests of legal mandate from other countries and transfer to the competent authority in the country;

2. Situation and coordination to implement mutual legal assistance activities in the Ministry of Foreign Affairs

2.1. Coordination to perform dossier of legal mandate in civil matters

a. Coordination to handle dossier of legal mandate under the request of the competent authority of Vietnam

+ *Dossier service, taking of testimonies with Vietnam citizens residing in the host country:*

- Upon receipt of the dispatch of the Ministry of Justice, the Ministry of Foreign Affairs will send a dispatch accompanying the dossier to the representative office overseas of Vietnam to handle.

The representative office overseas will inspect and register them in a book and send invitations to involved parties to take testimony, service of the judgment and other documents and send a written notice of the result to the Ministry of Foreign Affairs.

+ *Service of dossier, taking testimony for citizens of the host country:*

- For the dossier of legal mandate served to foreign citizens, Vietnam representative offices registered in accordance with the provisions and send an official note attached to the dossier of legal mandate to the Ministry of Foreign Affairs or other competent authority of the host country in which requests to perform legal

mandate and pay the fees if it is required. After receiving the results, the representative agency will send it to the Ministry of Foreign Affairs to turn to the Ministry of Justice later.

- Under the provisions of the Law on Legal Assistance, for countries not signed the agreement or treaty on mutual legal assistance with Vietnam, the legal mandate must be made on the basis of the principle of reciprocity. The law on Mutual Legal Assistance also defines the responsibilities of the Ministry of Foreign Affairs is to preside and coordinate with ministries and agencies to consider adopting the principle of reciprocity; however, so far no country has yet issue the reciprocity principle in the implementation of civil mandate and we have not raised this issue with the concerned countries.

b. Coordination to handle the dossier of legal mandate under the request of the competent authorities abroad:

The Ministry of Foreign Affairs shall receive the dossier of legal mandate of foreign authorities if Vietnam and the requesting country have not signed the treaty on mutual legal assistance in civil matters, then moved it to the Ministry of Justice, the Ministry of Justice transfers it to the competent authority as prescribed or return it if the dossier is invalid. After receiving the results of legal mandate from the Ministry of Justice, the Ministry of Foreign Affairs sends a diplomatic note to inform foreign representative offices of Vietnam, propose to come to the Ministry of Foreign Affairs office to receive result of legal mandate with the temporary fee 550,000 VND/dossier.

2.2. Coordination to improve the institution

a. Constructing documents guiding the implementation of the Law on Mutual Legal Assistance

In recent years, the Ministry of Foreign Affairs collaborates with the Ministry of Justice, the Supreme People's Court, the Ministry of Public Security and the Supreme People's Procuracy in legislative work on mutual legal assistance through participation in Joint Circular drafting committees. Even though they are just coordinating agency but the staff of the Ministry of Foreign Affairs participated in the drafting team has actively proposed initiative, built content for mutual legal assistance legislation related to areas of need regulation of their management guidelines, and actively research, suggestions for other contents.

b. Negotiation and conclusion of the treaties on Mutual Legal Assistance

Responsibilities of the Ministry of Foreign Affairs in activities under the provisions of the Law on Mutual Legal Assistance and the Law On the conclusion, accession to and implementation of treaties which is shown:

- Propose the negotiation and conclusion of international treaties on mutual legal assistance;
- Examine the proposal, negotiation and signing treaties on mutual legal assistance;
- Coordinate and participate in the Governmental negotiating delegations, comments on the draft treaty and report to the Government on the negotiation and signing of the treaty;
- Review and compare the Vietnamese text of the treaty with the a foreign language text to ensure the accuracy of content and consistency of form prior to signing;
- Implement procedures for granting foreign authorized to negotiate and sign treaties.

V. The Ministry of Public Security

1. The provisions on the functions and duties of the Ministry of Public Security in the work of mutual legal assistance

Article 14 of the Law on People's Police provides the tasks and powers of the People's Police “3. *To receive and process reports and denunciations against crimes, initiate criminal lawsuits and investigate crimes, and perform other judicial tasks according to the provisions of law*”. One of the tasks is mutual judicial assistance under the provisions of the Law on Mutual Legal Assistance 2007.

Under the provisions of the Law on Mutual Legal Assistance 2007, the Ministry of Public Security shall have the following responsibilities:

- i) To receive, transfer, review and settle foreign requests for extradition, transfer of sentenced persons; review and transfer dossier to the People's Procuracy, the People's Court and implement mutual legal assistance under the authority.
- ii) Propose signing, joining and implementing international treaties on extradition and transfer of sentenced persons; propose amendments and supplements to improve the law of Vietnam on mutual legal assistance.
- iii) Biannually and annually inform to the Ministry of Justice on the implementation of extradition requests and transfer sentenced persons (Article 65 of the Law on Mutual Legal Assistance).

Article 7 of Decree No. 92/2008/ND-CP dated 22/8/2008 of the Government detailing and guiding the implementation of the Law on mutual legal assistance also specifies the responsibility of the Ministry of Public Security and the relevant Ministries in the work of mutual legal assistance “*No later than June 30 and*

December 31 each year, the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security and the Ministry of Foreign Affairs shall send to the Ministry of Justice notices on the performance of mutual legal assistance activities in domains under their respective competence under Articles 63, 64, 65, 66 and 67 of the Law on Mutual Legal Assistance”.

Currently, the Department of Legal Affairs - Ministry of Public Security was assigned to receive and propose the implementation of legal mandate in criminal matters with foreign country which is transferred by the Supreme People's Procuracy (including all the requirements related to criminal cases within the jurisdiction of the investigating agencies of the People's Security forces and the investigating agencies of the People's Guard); receive dossier, transfer dossier to the competent Court to review and decide on extradition and transfer of sentenced persons.

2. Practical implementation of the functions and tasks of state management on mutual legal assistance of the Ministry of Public Security

2.1. Negotiation and conclusion of international treaties on extradition and transfer of sentenced persons.

Since the Law on Mutual Legal Assistance comes in effect on 22/10/2012, the Ministry of Public Security is responsible for proposing, coordinating with the Ministry of Justice, the Ministry of Foreign Affairs to negotiate 02 treaties on mutual legal assistance in criminal matters, 04 treaties in extradition, 05 treaties in transfer of sentenced persons. Among them, 08 treaties have been signed. Currently, the Ministry of Public Security is officially negotiating or proposing to sign many treaties in extradition and transfer of sentenced persons with various countries such as South Africa, the Kingdom of Spain, the Kingdom of Cambodia, the French Republic, the Republic of Hungary, the Republic of Indonesia...

2.2. Construction of domestic legislation guiding the Law on Mutual Legal Assistance.

In recent times, the Ministry of Public Security has been promoting the process of drafting circular guiding the implementation of the Law on Legal Assistance. At the same time, the Ministry of Public Security is also taking steps to implement and develop mechanisms for coordination between units in its sector with the ministries concerned in performing the tasks of legal assistance on criminal matters, extradition and transfer of sentenced person. In particular, the Ministry of Public Security has issued a number of documents follows:

- Circular No. 63/2012/TT-BCA dated October 29, 2012 on the signing, joining and implementing international treaties; propose signing and implementing international agreements in the People's Police.

- Plan of negotiations, signing, approval, ratification, accession and implementation of international treaties related to prevention of crime, mutual legal assistance on criminal matters, extradition and transfer of sentenced persons (enclosed with the Decision No. 3547/QĐ-BCA-V19 dated 08.26.2011);

- Plan of implementing the Convention against Corruption of public security forces.

Besides, the Ministry of Public Security is further improving some draft circular includes:

- Draft Circular of the Ministry of Public Security on coordinating relations in the People's Police Forces in implementing mutual legal assistance on criminal matters, transfer of sentenced persons;

- Draft Circular of the Ministry of Public Security, Ministry of Justice, Ministry of Foreign Affairs, the Supreme People's Court, the Supreme People's Procuracy guiding the receipt, transfer, continuing enforcement for sentenced persons;

- The draft joint circular guiding several provisions of the Law on Mutual Legal Assistance in extradition.

2.3. The mechanism of coordination between the Ministry of Public Security and Ministries

First, a coordination mechanism between the Ministry of Public Security and the Ministry of Justice (the agency helps Government in unified state management of mutual legal assistance activities), the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Foreign Affairs is currently being implemented effectively. Biannually and annually, according to the provisions of Article 65 of the Law on Mutual Legal Assistance, the Ministry of Public Security informs the Ministry of Justice on the implementation of extradition and transfer of sentenced persons. The Ministry also plans to conduct the proposed signing, joining and implementing international treaties on extradition and transfer of sentenced persons; preside to establish interdisciplinary negotiating delegation (with the participation of the Ministry of Justice, the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Foreign Affairs) to negotiate these treaties.

Second, besides implementing joint coordination, due to historical conditions, there are many treaties on mutual legal assistance in civil, criminal matters, marriage and family signed with Eastern European countries previously provided the focal point for the extradition is the Supreme People's Procuracy. Since the Law on Mutual Legal Assistance was enacted in 2007, the Supreme People's Procuracy has no further deployed this function and the Ministry of Public Security is the focal point for extradition; therefore, it has caused difficulties in transferring, receiving the extradition

request. So, in the coming time, the competent authorities of Vietnam need to unify and exchange with the foreign parties about the change of the focal point of Vietnam's extradition in order to ensure the consistency between the provisions of international treaties and domestic law, to ensure effective implementation of the work of extradition.

PART III

ASSESSMENT, RECOMMENDATIONS AND PROPOSALS

I. Assessment

Practice of mutual legal assistance activities shows that the performance of functions and duties under their jurisdiction as well as coordinating activities of relevant agencies focus on the task group of issuing enforcement guidelines of the Law on Mutual Legal Assistance; negotiation, conclusion and implementation of treaties on mutual legal assistance, legal mandate activities and other state management activities. Therefore, the report gives an assessment of the results achieved as well as inadequacies in deployment of mutual judicial assistance activities as follows:

1. The implementation of Law on mutual legal assistance

a. Promulgating guidelines Law on Mutual Legal Assistance, it can be accessed that since Law on Mutual Legal Assistance and legal documents guiding the implementation of this law were enacted, the system of laws and regulations on mutual legal assistance was remarkably complete, uniform rules on the scope of legal assistance, the processes and procedures for the implementation of mutual legal assistance requests handling with legal mandates are clear. Activity of mutual legal assistance in the four matters of civil, criminal, extradition and transfer of sentenced persons was adjusted mainly on a specialized legal law, the Law on Mutual Legal Assistance. In particular, functions, duties and powers of the line ministries defined in Law on Mutual Legal Assistance and Decree No. 92 has created a legal basis for the agencies to actively cooperate in mutual legal assistance activities thereby enhance the operational efficiency of State management in this activities.

b. Propagation, dissemination and professional guidance on mutual legal assistance, professional training classes organized after the law was enacted along with propaganda, dissemination of the law above initially contributed to raising awareness of cadres and civil servants as well as of people about the meaning, role, content and the implementation of the activities on the legal assistance of state agencies. In addition, professional skills performing legal mandate of the local officials also initially enhance through training, professional exchange, help gradually improve operating efficiency of legal mandate.

c. Develop database on mutual legal assistance, the focal ministries are both aware of the necessity of establishing a comprehensive database on mutual legal assistance in which not only provide and update information on domestic law, but also includes international treaties, foreign laws on mutual legal assistance. In recent years, initially ministries have developed software to manage dossiers of legal mandate by

themselves, gathered and posted on the Ministry website legal documents, laws and international treaties on mutual legal assistance.

d. Negotiation, signing and implementation of international treaties on mutual legal assistance

Evaluation of the negotiating, signing, joining and implementing international treaties in the field of mutual legal assistance can be seen clearly remarkable strides. In the 4 years since the law on mutual legal assistance was enacted, negotiation and conclusion of international agreements in the field of mutual legal assistance is growing. The mutual legal assistance treaty that was negotiated, signed in recent times come with the content consistent with the provisions of the Constitution, laws on mutual judicial assistance and other legal documents of Vietnam;

The work of negotiating treaties on mutual legal assistance is appreciated. The number of treaties proposed to negotiate and sign is growing in all areas of legal assistance: civil, criminal, extradition and transfer of sentenced persons. These results have directly contributed to the realization of the policy and guidelines of the Party and State to promote international integration, implementation of the policy “Participation in multilateral treaties on mutual legal assistance” of the Resolution No. 48-NQ/TW dated 05/24/2005 of the Politburo on the issuance of building strategy and perfecting the legal system in Vietnam to 2010 and orientations to 2020 and advocated “Continuing signed mutual legal assistance treaties with other countries, especially neighboring countries, regional countries and countries with traditional relations” of the Resolution No. 49-NQ/TW dated 02/6/2005 of the Politburo on the Judicial Reform Strategy to 2020.

The treaties and agreements on mutual legal assistance signed and come into practice has created a legal basis to promptly contribute removing difficulties and promote co-operation in the field of mutual legal assistance between Vietnam and other countries. At the same time, it helps dealing with legal issues arising between individuals and organizations of the two sides.

Especially, the promotion of multilateral cooperation in the field of mutual legal assistance has achieved remarkable progress; contribute directly to the improvement of the position and role of Vietnam in regional cooperation as well as at the multilateral level. As the host country and the proposed deployment “Initiative to strengthen mutual legal assistance in civil and commercial matters between the member countries of ASEAN”, Vietnam has shown a positive role and actively responsible for judicial and legal cooperation in the ASEAN region , directly contributing to new developments in cooperation on mutual legal assistance in civil and commercial matters in ASEAN, raise awareness about the role and scope importance of mutual legal assistance in case of legal and judicial cooperation in ASEAN. At the multilateral level, when joining the Hague Conference on private international law, participating in

the Conventions of the conference, Vietnam will be directly involved in the process of developing and perfecting the international legal foundation, thereby bringing the perspective, the voice of Vietnam to the international forum, contributing to the development and enhance the role and position of Vietnam in active cooperation of private international law in the global level. Vietnam officially accedes to Hague Convention marks the further integration of Vietnam into the international legal life, as an evidence expressed willingness to cooperate of the State of Vietnam with the countries in region in particular and around the world in general, and support each other in addressing the legal requirements of international law.

e. Mutual legal assistance activity

Practical implementation of legal mandate in the past 4 years in all 4 areas of civil, criminal, extradition and transfer of sentenced persons shows some following points:

In the past period, the focal agency implementing judicial assistance activities have always tried to obey fully and seriously provisions of the Law on mutual legal assistance to resolve quickly, timely and effectively received legal mandate. Shortly after receiving the request for legal assistance, the agency will promptly study, review dossiers and perform procedures to transfer to the competent authorities of foreign countries or the competent authority of Vietnam to implement and rapid response to the requesting agency, the requesting country. The implementation of legal mandate began in discipline and standard, the legal mandate dossiers are kept, tracked in systems and have annual statistics.

Input/output annual request for legal mandate is increasing in quantity, complexity and diversity of content, object, requesting/requested country. The competent authorities of Vietnam received and implemented request of legal mandate of the foreign judiciary achieve good results (in the field of judicial mandate in civil matters, it reaches 34.9 %, in the field of criminal matters is 62.2 % as reported by the Supreme People's Procuracy). However, the results of foreign agencies implementing the requirements of legal mandate to Vietnam, there is a difference between the areas of criminal and civil matters. According to the report by the Supreme People's Procuracy, the foreign-made legal mandate in criminal matters for agencies of Vietnam achieved quite good results (54/68 requests for legal mandate are performed). Meanwhile, the amount of legal mandate from Vietnam to foreign countries are limitedly performed (only 16.7 %).

2. Organization and coordination

Since the law on mutual legal assistance was enacted, organization and personnel implementing mutual legal assistance was concerned by central ministries with the formation and consolidation of the units responsible for the mutual legal

assistance in the focal agencies, the clear assignment of responsibilities for the units, qualified personnel.

Implementing the Law on Mutual Legal Assistance, Ministry of Justice, Ministry of Foreign Affairs, the Supreme People's Court, the Ministry of Public Security and the Supreme People's Procuracy formed a network of specialized staff on mutual legal assistance, often closely coordinate in formulation of legal documents guiding the implementation of the Law on Mutual Legal Assistance, negotiate and sign treaties on mutual legal assistance; receive, transmit, perform request for legal assistance. Every year, the Ministry of Justice as an agency to help the government unify the state management of mutual legal assistance coordinates with ministries, agencies to organize a summary and report activities on legal assistance under Law on Mutual Legal Assistance to exchange information, discuss and decide on the measures to solve coordination problems and obstacles in the implementation of mutual legal assistance.

It can be assessed that the coordination between the central authorities in the field of mutual legal assistance in time is done very closely and effectively, in accordance with regulations. Recently, ministries coordinate to make a long-term and annual plan on signing, joining and implementing international treaties and coordinate to review the laws on mutual legal assistance; activities of negotiating treaties on mutual legal assistance in the areas of civil, criminal, extradition and transfer of sentenced persons both have the participation of the concerned ministries, operational coordination to organize regular meetings of mutual legal assistance, information exchange to solve difficulties in mutual legal assistance have been hold biannually and annually. In particular, inter-ministerial coordination activities supported very effectively in solving specific assistance requests and problems (for example, request of commitment related to the application of the death penalty in Vietnam before foreign country performs mutual legal assistance on criminal matters for Vietnam, the case involving subjects who are entitled to diplomatic immunity, complicated and sensitive cases...).

The coordinating relations between the central authorities and local bodies also begin to be established and strengthened. In the process of receiving the request of legal mandate, the focal point of the Mutual Legal Assistance in Central level regularly gives guidance to agencies to conduct required legal proceedings on how to make dossiers as well as content of legal should be required in order to ensure compliance with provisions of the Law on Mutual Legal Assistance, proactively help for making contact with the focal point to propose guidelines before making dossier of legal mandate submitted to the competent authorities of foreign countries to ensure proper procedures, shorten implementation progress, help solving the case involved foreign elements in favor of localities.

In summary, with a system of comprehensive legal and organizational structure of clear functions and responsibilities, it can be assessed that the performance of legal assistance initially had many positive changes. Mutual legal assistance in the four areas of civil, criminal, extradition and transfer of sentenced persons begins in discipline and professional standard: *On the organization*, it is formed a specialized unit at the focal point and set the system coordination among agencies and officials working in mutual legal assistance between ministries and between central agencies and local agencies; *On international treaties*, the activity of negotiating, signing, joining and implementing international treaties on mutual legal assistance in the four areas of civil, criminal, extradition and transfer of sentenced persons are not only promote in bilateral scope but also in the scope of regional and multilateral level; *On legal mandate activities*, ministries have performed a great number of legal mandates which is increasing in quantity and complexity of the content; though it have not achieved the desired results but it has gradually contributed to removing the difficulties and problems in civil and criminal proceedings; *Awareness on the role and importance of mutual legal assistance activities* have been having many positive changes, ministries spent the attention and investment in this activities. Despite having some limitations and inadequacies, the position and role of the legal assistance activity is increasingly enhanced cooperation on mutual legal assistance in-depth and more and more substantive to support the authorities perform their assigned tasks.

3. The shortcomings and causes

Besides the achieved results above, mutual legal assistance activity still has some limits. Specifically:

a. Coordination on implementing Law on Mutual Legal Assistance

- The dissemination of domestic law, international law and professional guidance for mutual legal assistance for staff implementing judicial assistance activities has not yet been regular and adequate investment.

- The joint inspection for judicial assistance activities are not interested to implement. Although the periodic assessment reports, experience learnt for mutual legal assistance work has been done but the ministries concerned have not yet properly invested. It is still administrative report but not in depth assessment and review as required by the law and judicial reform and international integration.

- The legal database construction (including domestic legislation and related international treaties) to cater for the mutual legal assistance newly performs at the first step in the individual agencies. It led to difficulties for the implementing agency for legal assistance.

- The supervision on the implementation of the new law is only made partly, focused on building guiding documents. However, the progress of this activity is not

planned. Other content such as planning law enforcement supervision, training and retraining of supervising the implementation of the law on mutual legal assistance has not been given due attention.

The cause of the shortcomings above may be mentioned which are: (1) the judicial assistance activities are regulated by several legal documents from many different fields; therefore, inevitably, legal documents was enacted before the effectiveness of the Law on Mutual Legal Assistance are inconsistent or inadequate with the requirement of judicial assistance activities; Besides, the guiding documents are mostly joint documents which should have direct participation and consensus of all concerned agencies. However, the internal organization and division of ministries for drafting documents are limited, unscientific and the interdisciplinary collaboration is not smooth and evenly in all four areas of mutual assistance: civil, criminal, extradition and transfer of sentenced persons. (2) Awareness of the ministries on mutual legal assistance work, which includes investment and interest in building institution, officials and state management for this matters, although the progress has been made, but it still did not meet the requirements.

b. In activity of negotiating, signing, joining and implementing international treaties

- The review and evaluation on the implementation of judicial assistance treaties signed with other countries (especially the former socialist countries) from which to draw the difficulties and obstacles in the implementation process and threads solutions have not been concentrated.

- The ministries have not appropriately invested in participating multilateral mechanisms for mutual legal assistance (except in the field of mutual legal assistance on criminal matters, participation in multilateral treaties has significant steps). Especially, in mutual legal assistance in civil matters, Vietnam has not joined any certain multilateral conventions on mutual legal assistance in the system of the Hague Convention on private international law, although recently, there are some initial studies about joining a number of multilateral institutions. It is very inadequate in the context of the countries with which Vietnam is interested in cooperation has joined the Hague multilateral institutions and not willing to sign bilateral treaties.

- It has not constructed staff of professional negotiators with in-depth legal qualification, having negotiating skills, foreign language at par with the job requirements. Especially, the negotiation of the treaty on mutual legal assistance is often related to complex international legal issues in the legal systems of different countries.

- Responsibility for coordination between ministries in the negotiation, conclusion and implementation of mutual legal assistance treaties are still issues that need to be strengthened and enhanced.

c. In performance of legal mandate

- The duration of performing legal mandate in all four areas of civil, criminal, extradition and transfer of sentenced persons (many cases last in years) does not meet the requirements of trial time in the country, affecting the proceedings.

- The limited results of legal mandate in civil matters have led to the negative impact on economics and society. Because legal mandate abroad which is slow or has no results in the procedural time limits prescribed by the civil procedure law in the country has made difficulties for the short process of settling the civil case in court. Many cases which do not get results of legal mandate prolong the trial; if the case was tried, it shall not be transferred when being appealed or protested. There are cases people pressing for a delay in the trial, the loss of rights when adjudicating. This damage is not offset, affecting physical and spiritual life of the involved parties. The state agencies are costly in human and financial resources.

It can be seen that the effectiveness of the judicial mandate is limited by shortcomings in the implementation of the judicial mandate of the agency itself in Vietnam, namely: insufficient dossier of legal mandate: dossier of requesting legal mandate abroad performed by competent bodies of Vietnam does not comply with Law on Mutual Legal Assistance in both content and form; the process of performing legal mandate is improper; Dossiers and procedures for implementing legal mandate is not in accordance with the laws of the country receiving the request, including the fee for these dossier which should be sent to the correct competent authority of the country outside but also not be done; statistical work, tracking and management of legal mandate is done manually in a period prior to the application of information technology to cater for this work.

The limitations and shortcomings mentioned above are derived from objective and subjective reasons, those are:

- Current legislation in the country on mutual legal assistance still has gaps and unsynchronized which makes concerned agencies, organizations and individuals confused in the process of implementing mutual legal assistance. Domestic legal proceedings (such as Civil Procedure Code, Criminal Procedure Code) does not include all of the specific elements of the incidents involving foreign elements need legal mandate; therefore, at present, the process and procedural time limits still apply as in the case without foreign elements while in the request for legal assistance proceedings, the times often last longer. Besides, the specialized legal documents is generally invoked to apply the provisions of the law on mutual legal assistance and in the meantime, the Law on Mutual Legal Assistance has no regulations on the specific content for mutual legal assistance activities in this field or current legislation on mutual legal assistance left some gaps compared with the actual requirements should lead to a shortage of legal basis, making it difficult practical application for solving

specific cases. At the same time, the differences in the legal provisions of the country on mutual legal assistance is also one of the causes difficulties for the implementation of legal mandate requested in all 4 areas (such as the current law of Vietnam stipulates the death penalty but in some countries that do not prescribe the death penalty. Therefore, in practice when conducting mutual legal assistance on criminal matters and extradition, the countries require Vietnam to commit not declare death penalty or declare without execution for offenders). Legal proceedings of the countries are also many differences than the laws of Vietnam, led to many difficulties and shortcomings in the coordination process of investigating a number of important cases such as the case of East-West or the polymer money case. This suggests the need for judicial assistance treaties, the legal basis for the coordination, support to conduct proceedings between competent bodies of Vietnam and other countries.

- In the field of civil matters, legal mandate is performed on the basis of international treaties, if there is no international treaty, it will be based on the principle of reciprocity. Until now, Vietnam has just signed treaties on mutual legal assistance in civil matters with 16 countries/regions (including many countries which hardly arises the need of legal mandate with Vietnam). Due to a limited number of bilateral treaties which Vietnam has signed up, the legal mandate's results depend heavily on the cooperation of foreign countries on the basis of the principle of reciprocity. However, this principle does not promote more effectively when countries with which Vietnam has high demand in mutual legal assistance cooperation does not require legal mandate to Vietnam or vice versa with no need for negotiation and conclusion of bilateral agreements with Vietnam as the United States, Canada...(they joined multilateral institutions on judicial assistance in civil matters)

- The level of awareness of officials performing judicial assistance activities which does not meet the requirements is also a cause led to the invalid dossiers of legal mandate in many cases. Besides, a number of cadres have not been yet fully aware of the importance and requirements of mutual legal assistance, other staffs are inexperienced and unskillful in mutual legal assistance activities.

- There is no statutory mechanism for adjusting joint coordination between ministries. The Ministry of Justice has not really promoted the role of the State management agency on mutual legal assistance in urging the ministries to implement activities as planned.

- The ministries in the country is not really proactive in establishing and maintaining relationships with the focal point of the foreign judicial assistance to be able to exchange timely, dealing with problems in the practical implementation of legal mandate between two parties.

- Mutual legal assistance activities demand a funding source for all the agencies from the central to local ones. However, up to date, the budget allocated for this activity coming from regular budget is very limited.

II. Proposals and recommendations

Through the assessment on the implementation of Law on Mutual Legal Assistance, it can be seen that the mutual legal assistance activities from building legal documents, negotiation and conclusion of treaties, performing legal mandate and state management in the field to supervising law enforcement. At the same time, mutual legal assistance work related to various ministries, from the central to the local level, from the state management agency, policy development agencies directly to law enforcement. The effectiveness of judicial assistance activities directly impacts the adjudication, investigation and enforcement of our state agencies and direct impact on the legal rights of related individuals and organizations. In the context of Vietnam's deeper international integration, the legal problems of civil, commercial, criminal elements related to foreign elements will increasingly need to for mutual legal assistance. Therefore, improving the work efficiency of mutual legal assistance is urgent need of development, as set out tasks for the agencies involved. From the practical implementation of the Law on Mutual Legal Assistance, it is shown that in order to enhance the effectiveness of judicial assistance, ministries and relevant agencies at all levels should implement comprehensive and effective solutions to implement Law on Mutual Legal Assistance.

In order to effectively implement Law on Mutual Legal Assistance, overcome existing obstacles in the work of mutual legal assistance, based on practical work for legal assistance last time, the report proposes related agencies to perform the following measures:

1. Improving laws on mutual legal assistance

- Need to study a proposal on amendments and supplements of Law on Mutual Legal Assistance and relevant documents to ensure the uniform and consistent with practice.

- Need to prepare the 5 years review on the implementation of Law on Mutual Legal Assistance.

2. International treaties

- Carry out the comprehensive review and evaluation of the implementation of mutual legal assistance treaties which was in effect to propose solutions to improve the effectiveness and efficiency by strengthening the implementation or amendment or supplement or negotiate new treaties.

- Develop long-term plan of negotiation, signing, joining the bilateral and multilateral treaties on mutual legal assistance;

- Develop a project researching the ability of Vietnam to join the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;

- Gather post and publish the full text of the treaties relating to mutual legal assistance, which Vietnam has signed or acceded to.

3. Performance of legal mandate

- Standardize the process for implementing legal mandate. Develop and promulgate the forms of judicial mandate to support agencies performing legal mandate unified

- Review and evaluate the application of the principle of reciprocity in the implementation of legal mandate with other countries

- Application of information technology for legal mandate activities. Complete and put into application system software database on management of legal mandate.

- Study the possibility of socializing activities for mutual legal assistance.

4. State Management

- The ministries plan to actively perform the duties under the Law on Mutual Legal Assistance and implement uniformly in their respective fields. Improving information, statistics and interdisciplinary collaboration in the work of mutual legal assistance.

- Strengthen information exchange on the work of mutual legal assistance. Develop an inter-ministerial database of mutual legal assistance which provides updated information for the serving of legal assistance; such as a system of international treaties on mutual legal assistance, the related legal documents, information on legal mandate and legal information on mutual legal assistance of other countries.

- Disseminate, publish and regularly update international treaties relating to mutual legal assistance, which Vietnam has signed, participated in as well as the legislation of the countries on mutual legal assistance.

- Strengthen the direction, guidance, inspection and regularly organize training courses in the field of mutual legal assistance.

- Summary and evaluation on mutual legal assistance activities should be more substantive to meet the requirements of serving the legal proceedings domestically,

protecting the legitimate rights and carrying out the policies of the Party and State on international integration.

- Strengthen the conditions of infrastructure and facilities to serve the mutual judicial assistance activities better.

5. Organization and coordinating mechanisms

- Continue to improve the organization and consolidation of staff working on mutual legal assistance in the ministries, branches and localities. It needs a training plan to build experts in this field professional in both international law and foreign languages. Stick work of mutual legal assistance with issues other private international law, including resolving international disputes in order to exploit its scarce staff resources today. Consider the staff working for mutual legal assistance in a number of localities having large number of legal mandates. Research to make a project on the work of organizations and personnel in the field.

- The Ministry of Justice should strengthen its role as an agency helps Government in unified state management on mutual judicial assistance under the current regulations.

- Strengthen inter-agency coordination in the activities of mutual legal assistance in criminal matters, especially the coordination between the focal point and staff directly implementing activities of the ministries to exchange information quickly and timely resolve the request for assistance as well as the cases need the unity of interdisciplinary to ensure conformity with foreign policy of the Party and the State, in accordance with the laws of Vietnam and the law international practices.

- The focal agencies in each area should coordinate building regulations to create favorable conditions for speeding up the implementation of assistance requests.

- Strengthen exchanges with the foreign authorities about problems and shortcomings in implementing legal mandate to Vietnam in order to have appropriate treatment. The focal agencies in the work of mutual legal assistance should focus on establishing and strengthening relationships and direct cooperation in implementing the legal assistance of the State to promote and enhance progress and results of legal mandate of Vietnam abroad;

- Research and develop coordinating mechanisms to define responsibilities and authority of each agency, the measures for handling problems arising in the work of mutual legal assistance./.