

Newsletter

Strengthening Access to Justice and Protection of Rights in Vietnam

Issue No. 9 & 10, January – August 2013

This is the Internal Newsletter on activities of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam”

From the 1st Issue of the Newsletter to date, we have received a number of positive as well as constructive feedbacks on substantive contents and format of the Newsletters for improvement of the Newsletters. The Project would like to sincerely thank to all who are interested in the Newsletter and share with us ideas and comments for a better Newsletter in the future.

News on the Project’s activities from January to August 2013:

On-going researches/activities:

- Comparative study on application of customary law in adjudication – international experiences and Viet Nam’s practice
- Research study on amendment and supplement of regulations on the National Assembly prescribed in the 1992 Constitution
- Research study on main functions and responsibilities of State competent agencies and co-ordination mechanism among those agencies in implementing laws on mutual judicial assistance in order to propose recommendations for improvement in the State management in this area
- Research study on a standard process for consideration and decision on application of other administrative handling measures prescribed in the Law on Handling of Administrative Violations
- Research study on gender assessment of the draft Law on Civil Status and recommendations for improvement of Gender Mainstreaming Tool in law drafting of the Ministry of Justice
- Comparative research on amendment of the Penal Code related to criminalization of corruption offences in order to improve implementation of the UN Convention on Anti-Corruption in Viet Nam
- Research study on improvement of the current criminal sanction system, focusing on reducing the death penalty
- Research study on role of social organizations in monitoring law implementation
- Research study on amendment, supplement of the Penal Proceeding Code to meet requirements of the judicial reform

Up-coming events:

- Workshop on “Judicial power in a rule-of-law state – theory and practice” (**September 2013 in Ha Noi**)
- The first 2013 Legal Policy Dialogue on “Criminal laws of Viet Nam in the context of International Integration” (**29/8/2013, Hotel Melia Hanoi**)
- Donor meeting co-hosted by UNDP and JPP on revision of national policy on legal aid, laws on organization of courts and procuracies (**04/9/2013 at UNDP Office, 29 Phan Boi Chau Street, Hanoi**)

Events up to August 2013:

- **21-22/3/2013 in Ha Noi:** Consultative workshop to comment on Draft Research Report on a standard process for consideration and decision on application of other administrative handling measures prescribed in the Law on Handling of Administrative Violations (*chaired and organized by the Department of Criminal and Administrative Legislation, Ministry of Justice*)
- **1/4/2013 in Da Nang:** Consultative workshop to comment on Draft Survey Report on management of court administration in Viet Nam (*chaired and organized by the Office of Central Steering Committee on Judicial Reform*)
- **5/4/2013 in Quang Ninh:** Consultative workshop to comment on Draft Report on gender assessment of the draft Law on Civil Status and recommendations for improvement of Gender mainstreaming tool (*chaired and organized by the Committee for Women Advancement in Justice Sector, Ministry of Justice*)
- **6/5/2013 in Ha Noi:** Consultative workshop to comment Draft Report on application of customary law in adjudication – international experiences and Viet Nam's practice (*chaired and organized by the Supreme People's Court*)
- **10-11/5/2013 in Vinh:** Consultative workshop to comment on Draft 1992 Constitution (revised) (*chaired and organized by the Department of Criminal and Administrative Legislation, Ministry of Justice*)
- **10/5/2013 in Ha Noi:** Consultative workshop to comment on Draft Report on role of social organizations in monitoring law implementation (*chaired and organized by the Department of General Affairs in Legal Development, Ministry of Justice*)
- **15-16/7/2013 in Da Nang:** Brainstorm workshop on main directions for development of the Law on Promulgation of Administrative Decisions (*chaired and organized by the Department of Criminal and Administrative Legislation, Ministry of Justice*)

Up-coming events:

- The 9th Meeting Session of the Central Steering Committee on Judicial Reform (**24/1/2013**)
- The 10th Meeting Session of the Central Steering Committee on Judicial Reform (**28/3/2013**)
- Working session of the State President Truong Tan Sang with the Party's Civil Affairs Committee of the Ministry of Justice on Review of implementation of Resolution No. 49-NQ/TW of the Politburo on the Judicial Reform Strategy (**31/7/2013**)

Contact:

Project "Strengthening Access to Justice and Protection of Rights in Viet Nam"
60 Tran Phu Street, Ha Noi, Viet Nam
Tel: +84 4 37345284
Email: project58492.vn@undp.org

9th Meeting Session of the Central Steering Committee on Judicial Reform (24/1/2013)

On the morning 24/1, in Hanoi, the Central Steering Committee on Judicial Reform held the 9th meeting session to comment on the Draft Report on Judicial Reform in 2012 and key tasks of judicial reform in 2013. Mr. Truong Tan Sang, the State President, Head of the Central Steering Committee hosted the meeting session.



9th Meeting session of the Central Steering Committee on Judicial Reform

In terms of the Draft Report on Judicial Reform in 2012, the majority of members of the Central Steering Committee (CSC) believe that: in 2012, Judicial Reform's tasks have been implemented with focuses and specific results in the following areas: development and improvement of policies and laws; development and improvement of functions, tasks, power and apparatus of judicial and judicial assistance agencies; enhancement of human resources in judicial agencies, judicial assistance, international cooperation, and ensuring facilities for judicial activities; monitoring judicial activities of agencies elected by the people; ensuring the leadership and renovation of leadership and directing modes of executive committees and Party's organization.

CSC has carried out many important tasks and studies to clarify issues with different viewpoints, and reported the Politburo for review and decision on projects related to key tasks of the Judicial Reform.

However, development and improvement of judicial policies and laws are still slow; equipments, means and working conditions of judicial agencies have not yet been timely supplemented and provided, failing to meet requirements of crime prevention, fight and judicial reform. There is not yet adequate attention paid to coordination in ordinance development among judicial agencies at the central level. There are no achievements in renovation of contents and methodology of education and training to enhance qualifications and capacity of judicial staff; there are many difficulties and challenges in

recruitment of officers for judicial agencies; qualifications and professionals of judicial staff yet fail to meet requirements of judicial reform. Strengthening the Steering Committees to fit with changes in terms of officers in some places is not yet carrying timely...

Based on results gained in 2012, members of the Steering Committee agreed with key tasks of judicial reform in 2013 including: To continue to development and improvement of policy and laws on institutionalizing policy and laws on judicial reform; To develop detailed projects on renovation of organization and operation of judicial agencies; To improve organization and operation of judicial assistance agencies, organizations and other agencies who are assigned judicial tasks; To strengthen solutions to enhance the quality and effectiveness of proceeding activities, restricting the state of unjust or wrongful judgments, missing crimes and defendants; To completely handle pressing, prolonged, unsold cases; To proactively prevent and fight against corruption in judicial activities; To continue renovate contents and methods of education and training for judicial staff in order to improve qualifications and professionals of judicial staff; To continue to lead and direct strengthening and expansion of international cooperation relations on judicial area.

At the closing, the State President Truong Tan Sang stated that: Judicial Reform in 2012 has gained many positive achievements with attentions and leadership of all Party's executive committees in judicial and local agencies. Accordingly, some important projects have been reviewed; justice sector has made important contributions to amendment of the 1992 Constitution. Some laws related to judicial reform have received adequate attentions; competence of functional agencies in justice sector has been improved; development of human resources for justice

sector and infrastructure has received sufficient attentions; international cooperation has been strengthened...

However, according to the State President, there still remain shortcomings and weaknesses to be overcome in the coming time, including: law implementation in general and the fact that judicial reform has not been interpreted in daily life in some aspects. Some policies and directions on judicial reform stated in Resolution No. 49-NQ/TW of the Politburo on Judicial Reform Strategy to the year 2020 have not yet been timely institutionalized; some projects have poor quality, failing to meet requirements, which have to be amended and supplemented many times...

Relating assessment of the operation of the Central Steering Committee on Judicial Reform in 2012, the State President Truong Tan Sang believed that, in general, the Committee has made several efforts to closely stick to the working program adopted at the beginning of the year, gaining certain results. On that basis, it helps the Politburo in making conclusions on some issues related to piloting bailiff, trainings for judicial human resources... However, due to the fact that the Committee's members hold several official positions, its operations have not been frequently carried out, resulting in some delayed projects.

Related to the 2013 judicial reform tasks, the State President Truong Tan Sang proposed to continue working on the Draft amendment, supplement of the 1992 Constitution, in which focusing on contents related to judicial reform; to review Resolution No. 49-NQ/TW of the Politburo; to enhance the quality of special projects; to organize inspection and survey teams in order to review the implementation practice of judicial reform tasks at sectors and localities../.

It is expected that, in 2013, the Central Steering Committee on Judicial Reform will hold 5 working sessions to discuss projects related to operations, organization, infrastructure, human resources of the People's Courts and Procuracies; establishment of the People's Courts and Procuracies at 4 levels and specialized courts within the People's Court system; organization of a system of investigation agencies under the direction of streamlining to focal points; development of

lawyers, united management of judgment enforcement, prevention and fight against corruptions in judicial activities; review of 2013 works, key tasks and working program of the Steering Committee in 2014./.

Focal point: Tran Hong Nguyen, Office of the Central Steering Committee on Judicial Reform, tel: 08044657, email: nguyenth2605@gmail.com

10th 9th Meeting Session of the Central Steering Committee on Judicial Reform (28/3/2013)

On 28/3, the Central Steering Committee on Judicial Reform held its 10th meeting session to comment on its report on the Draft 1992 Constitution (revised) in Hanoi. The State President Truong Tan Sang – Head of the Central Steering Committee on Judicial Reform, hosted the meeting session.



At the meeting session, the standing member of the Central Steering Committee on Judicial

Reform introduced the Draft Report on comments on the 1992 Constitution (revised).

In principles, participants agreed with many contents of the Draft 1992 Constitution (revised) as it inherits contents of the 1992 Constitution and previous Constitutions which are still rational with today's practice.

The Draft has institutionalized main policies and directions of the Party on relevant issues stated in documents of the XI Party Congress and Resolution of the 2nd Central Plenum of the 5th Central Session (XIth Party) on amendment of the 1992 Constitution, in which clarifying the political nature of the State and fundamental requirements of development of the rule-of-law state.

Participants discussed in details of groups of issues prescribed in the Constitution, including: the political regime, human rights, fundamental rights and obligations of citizens; socio-economic, cultural and educational regime; institutions on the National Assembly, State President, Government, et.c

Participants also focused on discussion to clarify theoretical and practical grounds for institutions on people's courts, people's procuracies, Constitutional Council, National Election Council,...

Related to the Constitutional Council, it is confirmed that the Constitution is the fundamental law of the State, but during its implementation, there might be violations, power abuse or implementation refusals, causing damages or affecting legitimate rights and interests of citizens, organizations and society. Therefore, in order to ensure sound execution of the State powers for the people's interests, protection of the Constitution is essential.

It is recommended to establish a Constitutional Council with all essential functions and tasks to control and restrict violations against the Constitution. The Draft revised Constitution only stipulate the right to petition of the Council, which is considered as ineffective. Therefore, it is proposed to grant the Council the right of judgment – to temporary suspend Constitution-violating documents, which is in line with Resoluion of the Xth Party Congress “direction to develop a

judgment mechanism on violations against the Constitution in judicial activities”.

Related to institutions on people's courts and procuracies, participants emphasized on independence of courts during hearings – only compliance with the laws, reflecting requirements of judicial reform. They also proposed to ensure principles of proceedings at court and keep the principle “during hearings, jurors enjoy equivalent power with judges”.

Significantly, the Draft Report proposes to supplement institutions on a National Judicial Council in order to ensure the fundamental requirement of a socialist rule-of-law state – an independent judicial court system as to conduct hearings in a just, fair, objective manner, and to protect justice.

The model of a national Judicial Council shall have functions to ensure operational conditions of people's courts at all levels as well as to make judges feel secured to act independently, other activities shall be under the Council's responsibility.

As this is a new model, there are controversial opinions requesting to clarify in both theoretical and practical terms of functions and relations between the Judicial Council and courts, the Council's natures...

With high liability, participants ebulliently discussed and commented on each article, groups of issues in order to ensure the Draft Report's scientific and practical nature, meeting requirements of development of a new Constitution for the national development in the coming time.

Based on comments of participants on the Draft Report, the State President highly appreciated in-depth analysis and determinations of participants, reflecting close, general and comprehensive study in terms of both theory and practice.

The State President requested members of the Committee to continue coordinate with the Committee and functional agencies in commenting on the Draft Report on amendment of the 1992 Constituion. He also asked the Standing Steering Committee to

listen to comments on a serious and scientific manner and continue to improve the Report to be submitted to the Drafting Committee of amendment of the 1992 Constitution in order

to ensure that the Constitution shall meet desires and expectations of the entire Party and people./.

Focal point: Tran Hong Nguyen, Office of the Central Steering Committee on Judicial Reform, tel: 08044657, email: nguyenth2605@gmail.com

Working session of the State President Truong Tan Sang with the Party Affairs Committee of the Ministry of Justice on Review of implementation of Resolution No. 49-NQ/TW of the Politburo on the Judicial Reform Strategy (31/7/2013)

In the afternoon of 31/7, the State President Truong Tan Sang, Head of the Central Steering Committee on Judicial Reform (CSCJR) led the Mission team and had a working session with the Party Affairs Committee of the Ministry of Justice to review implementation of Resolution No. 49-NQ/TW dated 02/06/2005 of the Politburo on the Judicial Reform Strategy to the year 2020 (Resolution No. 49). Mr. Ha Hung Cuong, Minister of Justice, Secretary of the Party Affairs Committee of the Ministry of Justice, and other Deputy Ministers – members of the Committee, welcomed the Mission team.



Attended the working session were Mrs. Le Thi Thu Ba (Deputy Head of the Central Steering Committee on Judicial Reform), Mr. Nguyen Doan Khanh (Deputy General Director of the Central Internal Affairs Committee), Mr. Nguyen Van Quyen (Deputy

Chief of the Central Secretariat), Mr. Giang Son (Deputy Chairman of the Office of State President), Mr. Kieu Dinh Thu (Deputy Chairman of the Office of the Government), Lt. Gen. Tran Van Do (Deputy Chief Judge of the Supreme People's Court), Mr. Le Huu The

(Deputy Director of the Supreme People's Procuracy), Mr. Nguyen Van Thao (Deputy Standing President of Vietnam Lawyer Association), Assistant of the State President, members of the Central Steering Committee and representatives of Committees of the Office of the Central Steering Committee on Judicial Reform.

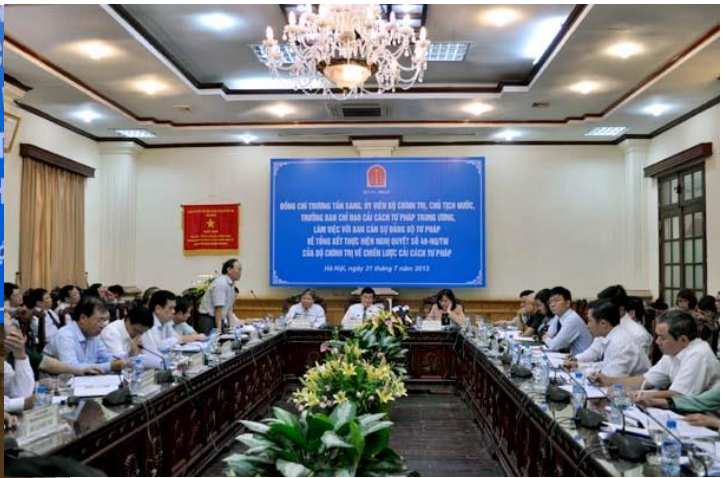
In reviewing the implementation of Resolution No. 49, Deputy Minister Hoang The Lien, Deputy Secretariat of the Party Affairs Committee, emphasized that: during the past 8 years, the Party Affairs Committee of the Ministry of Justice has seriously implemented

and closely directed its agencies, departments and local branches in implementing assigned tasks of judicial reform. It has also taken several positive measures to handle difficulties and challenges arising in the implementation process. Up to the moment, many tasks and projects have gained significant achievements, initially establishing positive changes in many working fields, thus strengthening position of the Justice Sector and Ministry in the national political, socio-economic life.



However, in addition to achievements, the Party Affairs Committee of the Ministry of Justice is aware of certain shortcomings and weaknesses in implementation of Resolution No. 49, including: institutions in judicial field, judicial assistance, civil judgment enforcement. Development of public services, legal services under management of Justice Sector in some areas is slow and fails to meet

practical requirements. There are many shortcomings and constraints in organization and operation of lawyers, notarization, assessment, legal aid. There are lack of consensus in viewpoints and practical coordination among sectors in trainings for legal staff and judicial titles. There are also irrational contents in relevant regulations and policies in construction investments, etc.



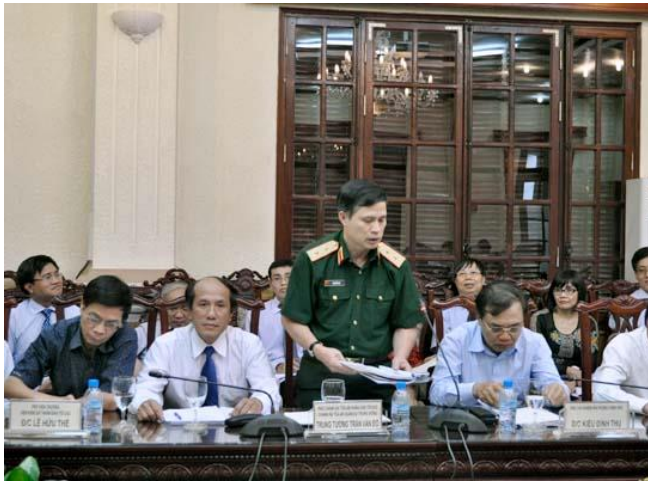
During 8 years of implementation of Resolution No. 49, there are many lessons learnt for the Justice Sector. Firstly, righteous awareness and close leadership of the Party executive committees play the decisive role to the success of judicial reform. Secondly, encouraging and maintenance of proactiveness, dynamics, creativeness of judicial staff and officers, especially the leaderships, make important contributions in achieving the reform's objectives. Thirdly, there should be

focuses in implementation of Resolution No. 49 with concentrated, timely, conclusive and definite directions and close coordination among ministries and branches. Fourthly, it is essential to well prepare human resources, identify rational reform roadmap, timely review practical implementation, withdraw lessons learnt for the coming reform steps, playing a crucial role in successful implementation of reform directions.



With consensus with the report of the Party Affairs Committee of the Ministry of Justice on implementation results of Resolution No. 49, members of the Mission team of the Central Steering Committee on Judicial Reform highly appraised high efforts, patience and determination of the Ministry of Justice in

implementing judicial reform tasks, thus recognizing the Ministry's successes during the recent time. Moreover, they also pointed out shortcomings which the Ministry of Justice should focus to handle and other issues to be clarified and supplemented in its Report.



Highly appreciating comments and opinions for a better report, Minister Ha Hung Cuong stated that: in principles, judicial reform directions noted in Resolution No. 49 are sound and lucid. Despite some reform policies have been specified, there remain many difficulties to be overcome and some issues related to implementation of judicial reform policy to be handled. Therefore, it is essential to conduct the review in order to assess and propose recommendations for each policy, direction and task. The Ministry of Justice and other relevant ministries, branches have been

actively conduct the review in order to provide advices for the Central Steering Committee on Judicial Reform, and on that basis, proposing the Politburo to continue the implementation or amend, supplement sound directions and policies; or propose to stop implementing policies and directions which are no longer appropriate. With high spirit of responsibility and determination, the Ministry of Justice promises to make further efforts in implementing assigned tasks for the country's judicial reform cause.



At closing the working session, the State President Truong Tan Sang, Head of the Central Steering Committee on Judicial Reform noted that: during the recent time, the Ministry of Justice is the “leading” agency with several positive contributions to implementation of Resolution No. 49 in particular and the Party’s and State’s judicial reform in general. However, there is no resolution which can cover all aspects of daily life. Therefore, it is essential to conduct review

with focuses on the practice, pointing out achievements and failures, proposing solutions and directions to meet requirements of daily life. He believed that, with coordination with other ministries and branches, together with efforts and determination, the Party Affairs Committee of the Ministry of Justice and staff, officers in Justice Sector shall resolve remaining shortcomings of the judicial reform, contributing to development of a

strong judiciary of Viet Nam – an integral part of the rule-of-law state./.



Focal point: Nguyen Minh Phuong, Deputy General Director, Department of International Relations, Ministry of Justice, tel: 04.62739532, email: phuongnm@moj.gov.vn

On-going research:
Comparative study on application of customary law in adjudication
– Viet Nam’s practice and recommendations for improvement of
application of customary law in the courts of Viet Nam

In the current period of accelerating the judicial reforms process aiming at building a Vietnam’s Socialist law-based State, the issue of development and improvement of the legal system is identified as one of the key tasks. Directions for the process of improvement of the Vietnamese legal system is defined in Resolution No. 48-NQ/TW of the Political Bureau dated 24/05/2005 on the strategy to development and improvement of the legal system in Vietnam to 2010 and orientations for the period up to 2020 determined that "roots from practice of Vietnam, and selectively acquire international experience on drafting and organizing the implementation of laws; harmonize cultural identity and good tradition of the nation and the modern of the legal system." In this regard, relating to recognition and implementation of customary laws in Vietnam, Resolution 48-NQ/TW specified requirements as to "to improve law of contract in the direction of respecting for the parties' agreement, is not contrary to morals, does not violate public order, in accordance with customs, and practices of international trade".

Currently, customary laws are widely recognized worldwide as a form of law and the State ensures the implementation in practice. In fact, the use of customary law has a positive meaning when it is likely to replace the adjustment of the law in a certain ranges, in a number of social relations; simultaneously, customary laws can supplement to the law in certain circumstances. In Vietnam, a number of customary laws have been recognized by the State, mainly in civil area. When customs are recognized by the State, it shall become the customary law and being implemented through a number of specific provisions of law. Customary laws do not only have positive meanings in dealing with civil or commercial disputes, in remote, mountainous

areas with difficult socio-economic conditions, but also enhance access to justice and protect the rights of the people.

In Vietnam, the application of customary laws has been established and developed for a long historical period of time. Under the feudal dynasties, there are many customs such as village conventions, traditions and customs of the communities which have played an important role for the replacement of laws, and they have partly contributed to the social stability. In recent years, the application of customary law in the civil procedures has proved to be more and more effective, especially in the personal records or interpretation of civil transactions (including civil contracts); tontine transaction; and property leasing.

However, in Vietnam, because of legal matters and practical situations, the recognition and application of customary law still have some limitations. For example, the current legislation does not include definitions for 'customary law' or not yet fully defined conditions for its application in practice; until now there has been no "List of customs". These matters have been the reasons making the Court appear to be not actively in applying customs and the Courts have inconsistent views on recognition and application of customs. In many cases, this Court said that certain rules of conduct as customs, but the other courts said that those rules of conduct that are not customs

Moreover, although the customary law is not a new matter in Vietnam, the current research about customary law has not been significant and comprehensive. It is mentioned in some textbooks of law institutions in Vietnam as well as in a number of doctoral dissertations or master's thesis on customary law such as the dissertation of Mr. Phan Nhat Thanh

“Recognizing Customary law in Vietnam: Legal pluralism and human rights – Wollongong University, Australia, 2011”. Moreover, there are many topics research on traditions and customs, for example subject “The relationship between customs and laws” written by the Institute for Legal Scientific Research, the Ministry of Justice, 1999. Besides, there are many articles published such as: Tran The Linh “The form of laws in some Vietnamese feudal dynasties” - The People’s Delegates, 1998; Ngo Duc Thinh “The values of customary law in Highland” - Culture, 2008; Nguyen Chi Dung “Customary law with the law enforcement” – The Journal of legislative studies, 2005; Nguyen Thi Tuyet Mai “Customary law and the application of customary law” – The Journal of legislative studies, 2009; Phan Trung Hien “Religious law of some countries and the concept on the form of laws in Vietnam” – The Journal of legislative studies, 2011. Nonetheless, these current studies just approach and exploit customs, customary law in a narrow aspects or mention generally without comprehensively doing research, evaluation on the recognition and application of customary law in Vietnam through review of the law and judicial practice, and bases on that grounds to make recommendations to improve the effectiveness of the application of customary law in Vietnam. It can be said that the current study has not propose viable system to address the constraints of the legislation on customary laws and practical difficulties in the recognition and application of customary laws in Vietnam.

Thus, the study of customary laws in Vietnam and presenting some recommendations to improve the effectiveness of customary law in Vietnam has its theoretical and practical values.

The purpose of this research is to study the real situation of recognition and application of customary on Vietnam through the analysis and evaluation of the legal provisions and a number of specific civil cases. On that basis, the report presents a number of recommendations to improve the effectiveness of the application of customary laws in Vietnam.

On the basis of reviewing the settlement practice of some civil cases, the Report has made some following assessment of the custom applied in judicial practice of Vietnamese courts:

Firstly, the customs applied in the settlement of civil cases in the courts (first instance, appeal and cassation) and in many different locations throughout the country;

Secondly, customary laws being applied to solve a variety of civil disputes, such as disputes over, contract, ownership, or the priority to exploit fishing locations;

Thirdly, the application of customs appears to be an effective ways to solving civil disputes, especially in the absence of legal provisions and the agreement of the parties;

Fourthly, the court has been inconsistent in the recognition and application of customs. Courts system have not uniformly applied customs of the superior courts (especially the Supreme People's Court) toward the lower Court or the matter of similar customs application by the Courts at the same level. In addition, the modification of customs applied in the judicial activities of the Court because of changing circumstances has not been taken into account. These are real difficulti so that the recognition and application of customs within adjudicative system of people's courts at all levels are not high efficiency;

Fifthly, most courts still face obstacles in the process of applying customs, particularly relating to two issues: (i) identifying customs that recognize and apply, (ii) conditions to apply customs. A number of different conditions have been used to deny the use in Court’s actual practice. In addition, the recognition and application of customs in judicial activities also have problems is that which subject is obliged to prove the applicability of customary laws; how to resolve in the case that different subject prove differently on the capabilities to apply customs. These are very important issues to be addressed in order to properly recognize and apply customs in the judicial activities of the Court in a very effective way.

Based on assessment of the practice of recognition and application of customary law in Viet Nam, the Report has made some recommendations to improve effectiveness of application of customary law in Viet Nam, including some key recommendations as follows:

(1) Recommendations to improve legislations on customary laws: (i) identify form of legal documents on customary law and the content of each document; (ii) it is necessary to define 'custom' and 'customary law' in the legislation; (iii) compilation and collection of custom or the list of customs; (iv) it should regulate criteria/conditions for the custom to become customary law; (v) regarding form of customary law recognition; (vi) regarding the scope of application of customary law; (vii) regarding conditions to apply customary laws; (viii) clearly defining priority order to apply customs in respecting the agreement of the parties, then apply customs and then apply other grounds, finally; and (ix) to resolve conflicts between customary law.

(2) Recommendations on reasonable investment for socio-economic development in rural, mountainous, and remote areas.

(3) Other Recommendations: (i) promoting the propagation, dissemination and legal education to increase educational level, improve legal awareness for rural people and ethnic minorities; (ii) enhancing training and fostering legal level for staffs in rural, mountainous and remote areas; (iii) promoting the role of key individuals and organizations in the recognition and application of customary.

Therefore, in Vietnam, the customary law is not an entirely new one, but it still is a complex

issue. The experience of other countries and the reality practice in Vietnam show that the value of customary laws in adjusting social relations in the field of civil protection, and to protect the legitimate rights and interests of the subject. However, the laws on customary law has formed very long ago, but so far there are not less shortcoming, and at the same time, adjudicative activities also exposes problems in the recognition and application of customary laws. To improve the efficiency of application of customary law, it should be made more comprehensive solutions, not only improve the legal framework, but also implement comprehensive solutions for the recognition and application of customary law. Furthermore, to achieve this goal, there should have more efforts of other entities, not just the judiciary. In particular, clear policy and guidance of the Party and State on this issue and the closed coordination between relevant sector should play very important role./.

Focal point: Tran Van Thu, Deputy General Director, Department of International Relations, Supreme People's Court, tel: 0912441790, email: vanthutran345@gmail.com

On-going research: **Research study on amendment and supplement of regulations on the National Assembly in the 1992 Constitution**

In our country's apparatus, the National Assembly plays a crucial role. The National Assembly is the highest representative agency of the people, the most powerful State agency of the Socialist Republic of Viet Nam. It represents the will and desires of the entire people, thus organization and operation of the National Assembly have significant impacts on the interests of the country, society and

individuals. Therefore, improvement of its organization, renovation of its operational modes and effectiveness is the Party's main direction in order to develop and improve the rule-of-law and socialist state of the people, by the people and for the people. In the 1992 Constitution, there are certain renovation in regulations on organization and operation of the 1992 Constitution, making important

contributions to enhance the effectiveness and efficiency of the State apparatus's operation, meeting requirements of the socialist and rule-of-law state. However, over the past 20 years of implementing regulations on the NA, certain limitations and insufficiencies have existed as follows:

Firstly, with respect to the constituent and legislative function, the power of creating and amending the constitution has been acknowledged and practically exercised, however, the implementation process of this power of the NA has not been inadequately concretized that causes a number of limitations and insufficiencies in the implementation process. In legislative activities, there still have been several fields of the social life without adjustment law; a number of newly promulgated laws and ordinances of low quality, infeasibility and slow application to the life. The process of promulgation of some laws and ordinances have not virtually satisfied social needs that cause the amendment and supplement in several times and the impact on the stability of the legal system. The guarantee of the constitutionality and the unification of the legal system to some law and ordinance projects and the interpretation of constitution, laws and ordinances have been restrictively performed.

Secondly, the present supreme supervision power of the NA over all activities of the state is so large that the scope and subjects of supervision of the NA, The NA Standing Committee, The Ethnic Council and NA's committees are too broad and outspread. The supervision of the NA have included formalistic and ineffective activities, and limited sanctions that have not adequately satisfied practical requirements. There have been ineffective and confused activities that lack of close cooperation between NA's organs and the inspection and examination of concerned organizations in the supervision of important issues with respect to the management and utilization of national budget, the administrative reform, the promulgation of normative legal documents and the resolution of complaint and denunciation applications of citizens.

Thirdly, The 1992 Constitution stipulates that the NA has the right to decide a number of

important issues of our country. Nevertheless, among those issues, some matters in resolutions promulgated by the NA have only had operating characteristics such as "the decision of national socio-economic development schemes", "the decision of national financial and monetary policies" that have not ensured the flexible administration of the Government in the market economy. The decision of several important issues of the country have not exactly reflected the requirements of the life; the quality and the enforcement effect of some decisions has not been really high; the forecast of some long-term decisions have been insufficient.

Fourthly, in terms of the apparatus of the NA, NA's organs have been more and more strengthened, however, the number of NA's committees has not been proportionate to the volume of assumed work in comparison with the scope and the nature of the NA's assigned tasks. The fact that nearly most of members of the Ethnic Committee and NA's Committees concurrently work in different positions have caused certain difficulties to the Ethnic and NA's committees in remaining the regime of collective working and decision by majority.

The second Conference's Resolution of the Central Committee of Vietnamese Communist Party (Term XI) on the deployment of effectuating policies on research, amendment and supplement of the 1992 Constitution has obviously assigned "*the authority, responsibility, mechanism of coordination and power control between state bodies in the implementation of legislative, administrative, judicial powers and this principle is consistently expressed in the Constitution*"; clearly defined "*the authority of the NA in deciding socio-economic development scheme, national financial and monetary policy*"; "*researching the mechanism to protect the Constitution, building and gradually improving the mechanism to examine and supervise the constitutionality and legality in activities of legislative, administrative and judicial bodies which are in accordance with the political institution and reality of Vietnam*".

Therefore, the research on amending and supplementing regulations on the NA in the 1992 Constitution is an important and

imperative task that aims at reducing the above-mentioned limitations and insufficiency and institutionalizing The second Conference's Resolution of the Central Committee of Vietnamese Communist Party (Term XI) in order to ensure that the operation of the NA, NA's organs and members of the NA will be improved in terms of quality and quantity.

With supports of Project "Strengthening Access to Justice and Protection of Rights in Viet Nam" (funded by UNDP), the Legal Committee of the NA conducted a research study to synthesize, review, analyze and study regulations on the NA in the 1992 Constitution and relevant legal documents.

The study's objectives include the following: (1) ensuring the target of continuing to promote democracy in accordance with the orientation defined in the Resolution of the 11th National Congress of the Communist Party of Vietnam which stated that provisions of the Constitution on the NA will be amended and supplemented in the way that demonstrates the people's mastership; the right of people to make the Constitution; the mechanism for people to supervise NA's activities; (2) strengthening the attachment between the NA, NA's organs, NA's deputies and the people in order to institutionalize the objective of building "the mechanism for NA's deputies to be inextricably attached and responsible for the people" which was referred to in the Political Report of the Central Executive Committee of Vietnamese Communist Party term X in the 11th National Congress of the Party; (3) clarifying the mechanism of power allocation, cooperation and supervision between the NA with other state bodies in the implementation of legislative, administrative and judicial power. In particular, the amendment of regulations on the NA in the constitution will focus on clarifying mutual supervision mechanism between the NA and the Government, the NA and judicial organisations, and the relationship between the

NA and local state authorities; and (4) renewing the organisation and operation of the NA to the target of modernization and professionalization among which there have been some objectives specified in the 11th Party's National Congress "Improving, enhancing the operation of the Ethnic Committee and NA's Committees. Renewing, enhancing the quality of NA's sessions".

Based on the study's results on regulations on the NA in the Constitution and current laws, the research report proposes recommendations for amendment of some provisions in the Constitution on organization and operation of the NA, including the following: (i) Position, role, functions, tasks, power and operational principles of the NA; (ii) Position, role, structure, organization, tasks and specific power of the Standing Committee of the NA; (iii) The system of Committees of the NA; (iv) Members of the NA; and (v) Mechanism of assignment, coordination, control of power between the NA and executive and judicial agencies as required in the 1992 Policy Program (amendment, supplement in 2011).

The Report shall be used as reference for amendment, supplement of the 1992 Constitution and laws including Law on Organization of the NA, Law on monitoring the NA, Law on Promulgation of Legal Normative Documents and other laws on organization of state apparatus; as well as a valuable reference material in legal studies and lectures at universities./.

Focal point: Nguyen Phuong Thuy, Deputy General Director, Legal Department of the NA Office cum Director of the Sub-component, tel: 0988095463, email: thuynp@qh.gov.vn

On-going research:
Research study on main functions and responsibilities of State competent agencies and co-ordination mechanism among those agencies in implementing laws on mutual judicial assistance

Since Law on mutual judicial assistances and Decree No 92/2008/ND-CP dated 22nd August 2008 of the Government on Guidance for Implementation of a number of Articles of the Law on mutual legal assistances came into force, it has been seen a significant improvement in mutual judicial assistances.

One of important impacts of the Law is the fact that the awareness of state's agencies, officials and citizens has been improved in terms of role of mutual judicial assistances, functions and tasks of each state agency relating to mutual judicial assistances. The specific responsibilities of each state agency relating to mutual judicial assistances are regulated clearly by Law on mutual judicial assistances and Decree No 92. Organization of state agencies relating to mutual judicial assistances at central level has been restructured. The qualification of staffs working in this area have also been enhanced. The central authority such as Supreme People's Court, Supreme People's Procuracy, Ministry of Justice, Ministry of Foreign Affairs established a division in charge of mutual judicial assistance within their authority. The staffs of those divisions are qualified and have legal background.

Since promulgation of Law on mutual judicial assistances, negotiation and conclusion of treaties on mutual judicial assistances has been improved in respect of quality and quantity. During past 4 years, there have been 20 bilateral treaties in civil matters/criminal matters or extradition and transfer of sentenced person concluded.¹ Besides, central authority

¹ According to a report on assessment of 3 years implementation of law on mutual judicial assistances, during past 3 years, Ministry of Justice takes lead and

participated actively in multilateral forum relating to justice and mutual judicial assistance, for example the forum under the UN, ASEAN, Hague Conference on International Private Law.

The requests for mutual judicial assistances dramatically increased year by year in terms of number of the requests as well as their sophistication². However, due to specific regulations on functions and task of responsible authority and clear procedure for the requests for mutual judicial assistance, it enables responsible authorities to address the requests for mutual judicial assistance timely and effectively.

Coordinations among agencies implementing law on mutual judicial assistances, between Ministry of Justice, Ministry of Foreign Affairs, Supreme People's Court, Ministry of Public Security and Supreme People's Procuracy have been established in development of guideline legislative documents on the Law's implementation, negotiation and conclusion of

cooperate with other Ministries and agencies to negotiate and conclude 6 treaties in civil matters, 02 treaties in criminal matters, 04 treaties in extradition, 05 treaties in transfer of sentenced person were initiated by Ministry of Public Security. Supreme People's Court takes lead to negotiate 3 treaties in criminals.

² According to a report on assessment of 3 years implementation of law on mutual judicial assistances, from 1st July 2008 to 30th June 2011, Ministry of Justice received 7.917 requests for mutual judicial assistance in civil matter by Vietnam competent authority and 826 requests for mutual judicial assistance in civil matter by foreign competent authority; Supreme People's Procuracy received 164 requests for mutual judicial assistances in criminals from 28 countries and 33 requests sent by Vietnam competent authority; Ministry of Public Security received and addressed 100 requests in criminal matters via Interpol and 74 requests in criminal sent by Supreme People's Procuracy.

mutual judicial assistance treaties on civil area, and handling of requests on mutual judicial assistance. At the moment, a network among those agencies and its officials at the central level has gradually established and enhanced in coordinations and information sharing in implementing their assigned tasks. Promulgation and education of laws on mutual judicial assistance has initially carried out.

However, besides the above mentioned encouraging initial results, the mutual legal assistance activities still remain shortcomings and limitations. Specifically: (1) Overall comprehensive long-term plan on conclusion, accession and implementation of international treaties concerning mutual judicial assistance, which provides directions and guidance for Ministries to initiate negotiation of treaties has still not been developed. In addition, although some Agreements on mutual legal assistance in civil matters were signed, but the completion of the internal procedures to make these treaties entry into force is still delayed; (2) It takes a long time to perfect institutions on mutual judicial assistance. Guiding documents for implementing Law on Mutual Judicial Assistance have not been issued yet. Lacking of legal basis causes the difficulties for ministries and agencies in carrying out mutual legal assistance activities; (3) The state management of mutual legal assistance activities has proved to be ineffective. The activities of the mutual legal assistance activities have not paid proper due from concerned agencies which causes a delay in handling the practical problems. The Ministry of Justice has not played a good and effective role in assisting the Government in uniformly carrying out the state management of mutual legal assistance activities. For the agencies at local level directly involved in mutual legal assistance activities, such as the provincial people's courts or the provincial civil judgments enforcement agencies, the Procuracies, etc., the investment and attention to carrying out legal assistance work depend on each local and have not been professional in general; (4) Several activities relating to state management provided by Law on Mutual Judicial Assistance and Decree No 92/2008/NĐ-CP have not strictly been implemented in practice such as examination of implementing the request for mutual judicial

assistance, organization of inter-ministry to exchange information, discussion concerning mutual judicial assistance to propose the solutions for dealing with obstacles and difficulties faced by implementing the activities of mutual judicial assistances. This shortcomings leads to difficulties in understanding the situation and making timely proposals to deal with obstacles in judicial assistance activities, adversely affecting the effectiveness of the state management over the activities of mutual judicial assistance; and (5) The propaganda and dissemination of domestic legislation and international law on mutual legal assistance, training activities and professional guidance on mutual legal assistance activities for the implementing agencies have not been properly concerned.

The mutual judicial assistance include many activities such as making legal documents; negotiation and conclusion of international agreements; handling request of mutual judicial assistance; state management and monitoring of law enforcement in this area. In addition, there are various ministries and agencies from central to local levels involving in judicial assistance work. The effectiveness of judicial assistance activities directly impact the work of adjudication, investigation and enforcement of judgments of competence agencies and directly impact to the legal rights of individuals and organizations involved. Therefore, there is an urgent need to improve the efficiency of mutual legal assistance in order to protect the legitimate rights of organization and individuals.

Within the above context and the framework of Project "Strengthening Access to Justice and Protection of Rights in Viet Nam", sub-component Department of International Relations, Ministry of Justice conducts a "Research on main functions and responsibilities of State's competent agencies and cooperative mechanism among those agencies in implementing law on mutual judicial assistances".

The overall objective of the research is to assist Ministry of Justice to produce a study to assess comprehensive functions and tasks of state's competent authorities as well as mechanism of cooperation between these authorities in terms

of implementation of law on mutual judicial assistance. Based on the findings, the Study provides proposals and recommendation to enhance the effectiveness of implementation of law on mutual judicial assistance.

Based on assessment of the practice of mutual judicial assistance, the Report proposes some recommendations in order to improve the implementing effectiveness of laws on mutual judicial assistance, including: (i) Recommendations on development and improvement of laws on mutual judicial assistance; (ii) Recommendations related to

international treaties; (iii) Recommendations on requests for mutual judicial assistance; (iv) Recommendations on State management of mutual judicial assistance; and (v) Recommendations on coordination mechanism./.

Focal point: Bui Huong Que, Division on Mutual Judicial Assistance, Department of International Law, Ministry of Justice, tel: 62739532, email: quebh@moj.gov.vn

On-going research:
Research study on a standard process for consideration and decision of application of other administrative handling measures in the Law on Handling of Administrative Violations

Law on Handling of Administrative Violations was adopted by the National Assembly on 20/6/2012, in which administrative handling measures are one of main and important contents. These measures restrict the freedom rights of citizens and are applicable to individuals who commit acts in violation of security, social order and safety but not to the extent of being examined for criminal liability. These include the following measures: education at communes, wards and district towns; placement in juvenile reformatories; placement in education facilities; and placement in forced detoxication treatment facilities. Chairman of communal People's Committee is responsible for making decision on application of the measure of education at communes, wards and district towns as prescribed in the 2002 Ordinance on Handling of Administrative Violations³. Application of other measures of placement in forced education

facilities and forced detoxication treatment facilities will be decided by people's courts⁴.

Moreover, assignment of consideration and decision on application of administrative handling measures to judicial agencies is a brand new issue, which is seen as a breakthrough in Viet Nam's laws. The change of competence results in big changes in application procedures. For the measure of education at communes, wards and district towns, even there is no change in competency, but there are changes in procedures in order to ensure transparency, publicity and democracy. It is to ensure that applicable persons and their legitimate representatives have opportunities to explain, defense and protect their legitimate rights and interests.

Provisions prescribed in the Law on handling of administrative violations are only general. They should be specified in the Government's documents on documentation process at

³ This part in the Law comes into force since 01/07/2013.

⁴ Application of these three measures shall come into force since 01/01/2014.

administrative agencies (before transferring it to courts) and application mechanism of administrative handling measures; on documents of the Standing Committee of the National Assembly on consideration and application process by people's courts. How should the application process of other administrative handling measures, especially the consideration and decision process at courts, be stipulated is a great challenge in development of the Law's guideline legislative documents.

With supports of Project "Strengthening Access to Justice and Protection of Rights in Viet Nam" funded by UNDP, the Department of Criminal and Administrative Legislation, Ministry of Justice, conducts a research on standard process for consideration and application of other administrative handling measures in the Law on Handling of Administrative Violations.

The objective of the research study is to support the MOJ in conducting a research and proposing a standard process for consideration and decision of application of other administrative handling measures from document preparations, consideration and decision by people's courts and implementation of courts' decisions on application of administrative handling measures.

The research report will be used as reference materials for the following: (1) Drafting resolutions on details of the Law on handling of administrative violations; (2) Drafting decrees on details of order and procedures of request documents at administrative agencies; (3)

Drafting documents on order and procedures for consideration and decision of application of other administrative handling measures at people's courts; and (4) Drafting decrees on details of application of administrative handling measures.

Based on the research results, the Report proposes the following recommendations: (i) Recommendations on the process of consideration and application of administrative handling measures decided by the people's courts; (ii) Recommendations related to considering and deciding competence of application of administrative handling measures; (iii) Temporary recognition of the viewpoint that these are administrative measures and not under court's adjudicial scope, thus recommending a process for judges to review, decide and take responsibility for their decision; (iv) Considering and deciding process of application of administrative handling measures should simulate the criminal proceeding process; and (v) Ordinances should comprehensively stipulate the mentioned above principles and processes./.

Focal point: Dao Thi Thu An, Division of Administrative Legislation, Department of Criminal and Administrative Legislation, Ministry of Justice, tel: 62739410, email: andtt@moj.gov.vn

On-going research:

Research study on gender assessment on gender assessment of the draft Law on Civil Status and recommendations for improvement of Gender Mainstreaming Tool in law drafting

Civil registration is when competent State agencies confirm and record civil status of individuals into the civil status records in order to

confirm the personal status of individuals. Civil registration consists of main events as follows: birth, marriage, divorce, death, adoption, guardianship, correction of civil status, redefining

ethnic group, redefining sex, etc. Civil status registration and management have significant role for the State to exercise its management function of population, socio-economic fields, national defence and security. It also establishes legal grounds for protection of non-property rights and personal rights associated with personal properties.

In Viet Nam's legal system, Law on civil status – a procedural law, has close relations with civil law and law on marriage and family – substantive laws. These two laws are basis for development of procedures of civil status registration, and vice versa, law on civil status is a mechanism to ensure implementation of some civil and personal rights prescribed in the Civil Law and Law on Marriage and Family. Regulations on procedures of marriage registration, birth registration, guardianship, adoption, correction of civil records, etc. in the draft Law play an important role in ensuring gender equality (equality in rights of marriage, selection of nationality, selection of residence place, birth registration, identification of ethnic group, nationality, name, protection of privacy, etc.).

With diversity of customs and habits, so far, marriage and family life in Viet Nam is still affected by the system of customary law and customs, especially for ethnic minorities. Thus, traditional thoughts and customs of “male-contempt” still exist, which underestimate the female's role and status; and vice versa, there are irrational views of the role and status of fathers, husbands in relations with children. Therefore, integration of gender equality issues into law on civil status is crucial in restricting and eliminating negative impacts of outdated concepts and perceptions.

The Law's social impacts and applicable subjects are wide (in terms of formality, law on civil status has impacts to all subjects in the society). Therefore, procedures prescribed in the draft

Law should be developed on the basis of no gender distinction, should be common standards for both men and women. However, due to gender features and different living conditions and circumstances, law impacts and outcomes on each gender are different. Therefore, law development with no gender discrimination still face potential challenges of gender inequality between men and women.

Based on the abover perceptions, during the development of the draft Law on civil status, gender equality is considered as a guiding principle. Identification and settlement of gender issues by legislative methods are strictly implemented, which results in significant and feasible reform of the current mechanism prescribed in Decree No. 158/2005/ND-CP dated 27/12/2005 of the Government on registration and management of civil status.

With supports of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam” (funded by UNDP), the Committee for Women Advancement in Justice Sector, Ministry of Justice, conducts a research on gender assessment of the draft law on civil status. The research's objectives are to analyze gender dimensions of the draft law and to ensure that gender equality principles are mainstreamed and guaranteed in the draft law to safeguard human rights and women's rights in particular in line with CEDAW and relevant international conventions on human rights that Viet Nam has entered; and to test and improve the MOJ's Gender mainstreaming tool for law making, taking the lessons learnt from the process of gender assessment of the draft law on Civil Status./.

Focal point: Tran Thi Huong, Committee for Women Advancement of Justice Sector, Ministry of Justice, tel: 62739366, email: huongtt@moj.gov.vn

On-going research:
Comparative research on amendment of the Penal Code related to criminalization of corruption offences in order to improve implementation of the UN Convention on Anti-Corruption in Viet Nam

Corruption is a traditional and serious offence and has recently become popular in many countries, especially developing and economically transitional countries. This offence's danger lies upon its serious harm to the national interests, enjoyment of rights and interests of the poor, and erosion of the people's trust toward the State. This is one of the main reasons directly resulting in the increasing injustice in the society.

In international relations, the increase of corruption offences is the reflection of deprivation of the power, decrease of the partners' trust and restrictions to attraction of project's investments. It has been increasingly serious, especially in the context of globalization where corruption offences have gradually become trans-national and organizational crimes. Therefore, the legal system of each country should prescribe strict and strong measures to prevent and punish corruption offences.

Taking into account of the high risk of such offences, the Penal Code has a separate part (Part A) in Chapter XXI "Crimes relating to position" with 7 articles on corruption offences. However, the most disadvantage of the current Penal Code is that it only regulates corruption offences in the public sector of the State of Vietnam, but not in the private sector with the following acts: bribery of foreign officials, officials of international organizations and non-governmental organizations, etc. These acts should be criminalized in line with requirements of the UN Convention on Anti-corruption (hereinafter referred to as the Anti-corruption Convention) that Vietnam signed on 10/12/2003 and ratified in 2009.

In order to implement this Convention, on 07/04/2010, the Prime Minister adopted Decision No. 445/QĐ-TTg on approval of Implementation Plan of the Anti-corruption Convention. The Plan consists of the following contents: integration of criminal provisions prescribed in the Convention into domestic laws through studies and recommendations of using criminal measures to handle bribery acts of money, property or other material interests relating to foreign officials, officials of international and non-governmental organizations for their own benefits; studies and regulations on corruption acts in the private sector (offering bribes, accepting bribes and embezzling property); studies on possibilities of supplementing provisions on legal entity of corruption acts, illegal enrichment of officials if their assets increase significantly in comparison with their legal incomes.

In addition, the current Penal Code is being reviewed for further improvement with one of the main directions is to harmonize its provisions with international conventions that Vietnam is a member, including the Anti-corruption Convention, enhancing international cooperation in prevention and fight against corruptions.

Therefore, it is high time to conduct a comparative study and assessment on the current Penal Code's provisions and its compatibility with the Anti-corruption Convention and some countries' laws, then proposing recommendations to improve relevant Penal Code's provisions on corruption offences. The study's results will be an important material for amendment and supplement of the Penal Code on corruption offences in order to ensure compliance with the Convention's responsibilities of state members.

With supports of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam” (funded by UNDP), the Department of Criminal and Administrative Legislation, Ministry of Justice, conducts a comparative research on an amendment of the Penal Code related to criminalization of corruption offences in order to improve implementation of the UN Convention on Anti-Corruption in Viet Nam.

The research’s objectives are: (i) To review and assess the compatibility of the Penal Code’s provisions on corruption offences and requirements of the Anti-corruption Convention, and compare with some countries’ laws, thus pointing out compatible and disadvantage points of Vietnam’s laws; and (ii) To propose

recommendations to improve the Penal Code’s provisions on corruption offences in order to enhance its implementation effectiveness and compatibility with requirements of the Anti-corruption Convention that Vietnam is a member./.

Focal point: Le Thi Hoa, Department of Criminal and Administrative Legislation, Ministry of Justice, tel: 62739407, email: hoalt@moj.gov.vn

On-going research:
Research study on improvement of the current criminal sanction system, focusing on reducing the death penalty

Penalty is the most serious coercive measure of the State to deprive of or restrict rights and interests of the offenders. Penalty’s purposes are not only to punish the offenders, but also educate them in order to become useful person to the society with enhanced awareness of compliance of the law and rules of the socialist life, preventing them from committing new crimes. Penalty also aims to educate other people to respect the law and take part in prevention and fight against crimes.

According to Article 28 of the current Penal Code of Vietnam, the penalty system applicable to the offenders consists of 07 main penalties (including warning, fine, non-custodial reform, expulsion, termed imprisonment, life imprisonment, and death penalty), in which the death penalty is applicable in some cases of especially serious crimes prescribed in specific provisions. In addition to the main penalties, the Penal Code also stipulates 07 additional

penalties which the courts may sentence beside the main penalties (including ban from holding certain posts, practicing certain occupations or doing certain jobs; ban on residence; probation; deprivation of some civil rights; confiscation of property; fine and expulsion, when it is not applied as a principal penalty). Through such penalty system, the Penal Code has contributed to protect the national security, social order and safety, legitimate rights and interests of organizations and individuals.

However, through the practice of prevention and fight against crimes, there are many shortcomings in the penalty system prescribed in the current Penal Code. For instance, the applicable scope of termed imprisonment is too broad; the applicable scope of non-custodial penalties remains restricted; death penalty is still applicable to too many crimes, including death penalty for rape against children prescribed in Article 112 clause 3 and 4, etc.). Moreover, in the recent years, there are increasingly widespread

and better awareness of the society of the thoughts about human rights, democracy and socialist rule-of-law state which focusing on promoting human rights and citizens' fundamental rights in order to ensure a safe, peaceful and healthy living environment for the people. Elimination of death penalty from the penalty system is a relatively popular tendency in many countries worldwide. In such context, it is practical and rational to maintain a criminal sanctioning system for the purposes of education, prevention and guarantee of rehabilitation of offenders.

Therefore, it is essential to review and assess the penalty system with focuses on main penalties in order to find out shortcomings and weaknesses, thus timely proposing recommendations on amendment, supplement of the Penal Code. It is to ensure the conformity with the society's development, enhancement of effectiveness of education and reform of the offenders, prevention of relapsing into crimes as well as the conformity with the world common trends. In particular, in the context of studying the Penal Code's amendment under the direction of modern amendment which conform with the common development tendency of the world, enhancing protection of human rights and fundamental rights of citizens as well as humanitarization, it is urgent and rational to conduct a research on reducing applicable possibility of imprisonment penalty and expanding applicable scope of non-custodial penalties in the current conditions. This is in line with the spirit of Resolution No. 49-NQ/TW of the Politburo dated 02/06/2005 on the Judicial Reform Strategy, in which identifies one of judicial reform's tasks is: *"Reduce imprisonment penalty; expand application of monetary and non-custodial penalties for some crimes. Restrict death penalty under the direction that it is only applied for a few especially serious crimes.*

Reduce the maximum penalty bracket for some crimes".

With supports of Project "Strengthening Access to Justice and Protection of Rights in Viet Nam" (funded by UNDP), the Department of Criminal and Administrative Legislation, Ministry of Justice, conducts a Research study on improvement of the current criminal sanction system, focusing on reducing the death penalty.

The overall objective of the research is to assess the criminal penalty system of Viet Nam in relations and comparison with international standards and laws of some selected countries, thus pointing out shortcomings and weaknesses of the current Penal Code; to study the criminal penalty system of some countries, thus proposing recommendations for improvement of the criminal penalty system and its effectiveness and efficiency, meeting requirements of today's common trends.

The research aims at the following specific objectives: *Firstly*, to assess the compatibility of the Penal Code's provisions on criminal penalties with requirements of international convention on application of criminal penalties for offenders which Vietnam is a member; to analyze shortcomings and weaknesses of the current Penal Code; *Secondly*, to analyze and introduce the overview of the criminal penalty system of some countries; and *thirdly*, to propose recommendations for improvement of the current criminal penalty system, especially reducing the death penalty./.

Focal point: Le Thi Hoa, Department of Criminal and Administrative Legislation, Ministry of Justice, tel: 62739407, email: hoalt@moj.gov.vn

On-going research: Research study on role of social organizations in monitoring law implementation

The Resolution of the VI Nationwide representatives Congress of the Vietnam Communist Party on December 18, 1986 stated, "To bring into play the collective owner's right of workers, to strengthen management effectiveness of the socialist State. Under leading of the Party, to consolidate and bring into play the role of the Front and public unions, especially Trade Union, Ho chi minh Communist Youth Unions, the Vietnam Woman Associations, the Vietnam Farmer Associations... To renew activities' contents and methods of public unions, to turn to the grassroots, to attract a lot of public people to evolutionary movements. To build staffs of working classes, collective farmers classes and socialist intellectual circles, to consolidate alliance of workers and peasants and to take care of educating young generation, to strengthen a block of the whole people, of ethnic groups and religions. To apply the socialist democracy, to respect and protect citizen rights; against bureaucratic and administrative habits in leading and management apparatus at all levels. To carry out respectably a slogan "the people know, the people do and the people check; all for the people and by the people". To encourage the people to take part in activities of economic and social management and of economic reform. By emulation movements of economic - social developments, to educate and train new people, to build new labour community, to discover and cultivate talented person".

The slogan "the people know, the people do and the people check" seems to become the performing principle of agencies, organizations of the Party, State agencies from the central to the local during a long time and to last the intact value until now. The principle is often emphasized and also confirmed in resolutions, political reports of the Party in Congresses VII,

VIII, IX, X and XI. The principle not only promotes the democracy of the people in society but also contribute to improve an effectiveness of the State management in aspects of economic and social life, especially in the context of booming economic and social development which challenges noticeably State management.

For the State management of law implementation, on August 22, 2008 the Government issued Decree No.93/2008/ND-CP providing functions, tasks, powers and apparatuses of the Ministry of Justice and the Ministry of Justice is vested with the State management function of law implementation with two specific tasks, generally monitoring law implementation nationwide; guiding, supervising and speeding up ministries, agencies equal to ministries, agencies under the Government, the People's Councils, the People's Committees, provinces, cities directly under the central in monitoring law implementation.

The task of monitoring law implementation will be onerous and it is assigned to not only the Ministry of Justice but also all Ministries, agencies and local governments the whole country. Even though like this, it seems to be infeasible for this task without participations of social organizations and individuals because monitoring law implementation covers all areas of economic, social life happening at all levels.

The participation, which ensures the effectiveness of the State management and law implementation is the right of organizations and individuals affirmed by the Party and the State with the above mentioned "People know, the people do and the people check" principle. On page 212 Volume 12 of the complete Ho chi minh, in the Taking of the training course for district leaders on January 18, 1967, "Comrades in Quang Binh province are right: It is impossible for doing even though easier 10 times work

without public people; it is feasible for do doing even though more difficult 100 times work ", said Uncle Ho.

In practice, researches on the role of organizations and individuals in the State management in general and in monitoring law implementation in particular have been conducted by some agencies, organizations. Specifically, the United Nations Development Program (UNDP) supports consultants to build the Research Report on Development of the task of generally monitoring law implementation of the Ministry of Justice within the framework of Project VIE/02/015. Through results of the report, the Ministry of Justice drafts and submits to the Prime Minister for signing Decision No. 1987/QD-TTg approving the Project on "Developing the task of monitoring law implementation". In addition, on March 03, 2010, Minister of Justice issues Circular No.03/2010/TT-BTP guiding the performance of monitoring law implementation. These documents are legal bases for doing the task of monitoring law implementation.

Besides, on July 2012 the Government issues Decree No. 59/2012/ND-CP stipulating monitoring law implementation. Decree No. 59/2012/ND-CP consists of five chapters, 20 articles, which specifically provides contents, methods of monitoring law implementation and responsibilities of State agencies for the task. Under the Decree, a principle of "To mobilize participations of political organizations, political - social organizations, social - professional organizations and the people" is one of five core principles in monitoring law implementation. It is continuously specialized in articles of the Decree, such as Article 6 on "Participation of organizations and individuals in law implementation monitoring activities", Article 11 on "Collecting information on law implementation".

With supports of Project "Strengthening Access to Justice and Protection of Rights in Viet Nam" (funded by UNDP), the Department of General Affairs of Legal Development, Ministry of Justice, conducts a research study on role of social organizations of monitoring law implementation, thus proposing recommendations to specify

participation mechanism of organizations and individuals in monitoring law implementation.

The expert team has developed an assessment report with good quality, focusing on the main contents as follows:

1. Role of social organizations and individuals in monitoring law implementation in Vietnam:

Under the Vietnamese current laws, classifications of organizations are still vague (analyzed later), particularly regulations on responsibilities of organizations in participation of State management in general and in ensuring law implementation in particular. Therefore, within the conditions of the Project, it is impossible to review all kinds of organizations mentioned in Part I of the Report, some organizations, which indeed are chosen and analyzed are special and noticeable in participating in State management under law provisions, namely the Vietnam Fatherland Front and Vietnam Chamber of Commerce and Industry. From that, the Report presents and analyses the role of these organizations in State management and monitoring law implementation. As for individuals, there is no regulation on individuals being as general individuals, but some regulations on certain kinds of individuals like the deputies to National Assembly, voters...etc. Therefore, the Report will analyze individuals under these legal statuses.

2. Experience of foreign countries on the role of social organizations and individuals in monitoring law implementation:

The content will be prepared in a separate report by international consultants. Countries chosen in this report are the Philippines, China and the United Kingdom. Indeed, the Philippines representatives for developing countries, China for countries of transitional economy and the United Kingdom for developed countries and the common legal system. The specific research contents of each country will be: (i) The role of social organizations in monitoring law implementation under current laws and rules/charters of these organizations; (ii)

The role of individuals in monitoring law implementation under current laws; and (iii) Forms of participation, contribution of social organizations and individuals in State management, monitoring law implementation and other activities of the State, focusing on activities ensuring law implementation, improving effectiveness of law implementation and developing legal system.

3. General recommendations: From the separate contents of two reports, recommendations will be distinct between current provisions and situation of Vietnam with experience and lessons of certain countries. Suggestions could be combined to form general suggestions from the situation of Viet Nam and some countries. Recommendations would conclude: (1) Ability to apply experience of foreign countries on the role of social organizations and individuals in ensuring law

implementation to the context of Vietnam; (2) Effective mechanism between State agencies and organizations and individuals in State management and monitoring law implementation; and (3) Improvement of legal bases for participation of organizations and individuals in State management generally and monitoring law implementation particularly.

The Research Report shall hopefully be an useful information, contributing to enhancement and improvement of monitoring mechanism of law implementation in Viet Nam./.

Focal point: Nguyen Hong Tuyen, Director General of Department of General Affairs of Legal Development, Ministry of Justice, tel: 62739383, email: tuyennh@moj.gov.vn

On-going research: **Research study on amendment, supplement of the Penal Proceeding Code to meet requirements of the judicial reform**

Viet Nam has actively implemented the Judicial Reform Strategy (Resolution 49-NQ/TW). One of the priorities of the judicial reform in Vietnam is “to attach much importance to modification of the criminal policies and the judicial proceeding procedures” in order to have a synchronous, democratic, open, clear, human rights respect and protection policies, procedures.

In addition to achieved results, implementation of the 2003 Penal Proceeding Code reveals certain shortcomings and weaknesses including: clear assignment of main functions of criminal proceedings (i.e. accusing, defending and adjudicial functions); provisions on role, power, coordination and control among agencies and levels who take part in

the proceedings; provisions on guarantees of a public, transparent and democratic proceedings, etc. Moreover, some main directions of judicial reform (including improvement of proceeding quality at courts, enhancement of prosecution in investigation, etc.) have not yet been fully studied or reflected in the Penal Proceeding Code. At present, the Supreme People’s Procuracy is hosting, in coordination with relevant agencies, development of the Penal Proceeding Code (revised). During the recent time, many agencies, institutions and organizations have conducted many studies on assessment of the practice of implementation of the 2003 Penal Proceeding Code and recommendations for amendments and supplements of the Code to meet

requirements of judicial reform. It is time to systemize, analyze and assess recommendations of options for amendment, supplement of the Penal Proceeding Code.

With supports of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam” (funded by UNDP), the Central Internal Affairs Committee conducts an in-depth research study amendment of the Penal Proceeding Code to meet requirements of the Judicial Reform Strategy to the year 2020.

The research’s objective is to study recommendations for amendment, supplement of the current Penal Proceeding Code to meet requirements of judicial reform for agencies who are assigned to carry out this task. The Report shall be used as reference for the Central Internal Affairs

Committee during its review and assessment of the Penal Proceeding Code (revised) to be submitted to competent agencies for review and approval. It is to ensure meeting requirements of judicial reform stated in the Party’s resolutions, contributing to development of the rule-of-law socialist state and international integration; as well as to specify key contents of Resolution No. 49-NQ/TW of the Politburo on the Judicial Reform Strategy to the year 2020./.

Focal point: Nguyen Thi Hoai Bac,
Central Internal Affairs Committee, tel:
0989921579, **email:**
hoaibac1@gmail.com

**Consultative workshop to comment on Draft Research Report
on a standard process for consideration and decision on
application of other administrative handling measures
prescribed in the Law on Handling of Administrative Violations
(21-22/3/2013)**

*(chaired and organized by the Department of Criminal and Administrative Legislation,
Ministry of Justice)*

On 21-22/3/2013, with supports of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam” (funded by UNDP), the Department of Criminal and Administrative Legislation, Ministry of Justice, held a consultative workshop on the research study on a standard process for consideration and decision on application of administrative handling measures in Ha Noi. Presented at the workshop were representatives from the Drafting Committee, Editorial Board of Ordinances on the application process of administrative handling measures, Office of the Government, Ministry of Labor, Invalids

and Social Affairs, Supreme People’s Court, Supreme People’s Procuracy, Legal Committee and Judiciary Committee of the National Assembly, Legal Department of the Office of National Assembly and local representatives of local agencies who directly engage in the application process of administrative handling measures at localities.

Administrative handling measures are one of main and important contents of the Law on handling of administrative violations. These measures restrict the freedom rights of citizens and are applicable to individuals who commit acts in violation of security, social

order and safety but not to the extent of being examined for criminal liability. According to the current Ordinance on handling of administrative violations, the head of local administrative agencies are entitled to decide the application of these measures (i.e. Chairman of the People's Committees at all levels) according to a consideration process. However, this process fails to ensure publicity and participations of subjects to be applied these measures as well as their representatives, and lawyers who protect their legitimate rights and interests.

In the context of directions of the Communist Party and State of Vietnam on development and improvement of the legal system in the recent years, especially development and improvement of the legal system to preserve human rights, freedom and democracy of citizens; and requirements of implementation of international treaties that Vietnam is a member, power to decide application of these measures is expected to be shifted to judicial agencies. During the drafting process, this issue failed to get consensus from relevant agencies. Due to this reason, the Government consults the National Assembly on shifting power to decision application of these measures from administrative to judicial agencies. At the 2nd meeting session, the majority of the XIIIth National Assembly delegates agreed to assign the power to decide application of administrative handling measures to the people's courts. Consideration and decision order and procedures on application of such measures at courts are only prescribed as shorten procedures and assigned to the Standing Committee of the National Assembly to promulgate its details.

Consideration and decision on application of administrative handling measures by judicial agencies are a brand new issue and a breakthrough reform in Vietnam's laws. How should the application process be regulated is a great challenge to the drafting process of documents to detail the Law's contents as well as conditions to ensure the implementation.

Provisions prescribed in the Law on handling of administrative violations are only general. They should be specified in the Government's documents on documentation process at administrative agencies (before transferring it to courts) and application mechanism of administrative handling measures.

In 2012, the Department of Criminal and Administrative Legislation, Ministry of Justice, recruited national and international experts to conduct a research study on a standard process for consideration and decision of application of administrative handling measures in the Law on Handling of Administrative Violations.

The workshop's objective are to collect comments on the Draft Reports for national and international experts to finalize them; and share information on development of detailed normative documents related to the research's results./.

Focal point: Dao Thi Thu An,
Department of Criminal and
Administrative Legislation, Ministry of
Justice, tel: 627395410, email:
andtt@moj.gov.vn

Consultative workshop to comment on Draft Survey Report on management of court administration in Viet Nam (1/4/2013)

(chaired and organized by the Office of Central Steering Committee on Judicial Reform)

On 01/04.2013, with supports of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam” (funded by UNDP), the Office of the Central Steering Committee on Judicial Reform held a consultative workshop on survey report on management of court administration in Viet Nam in Da Nang.

In order to enhance the effectiveness and efficiency of the court system in Viet Nam, Resolution No. 49-NQ/TW dated 02/06/2005 of the Politburo on the Judicial Reform Strategy to the year 2020 proposed the policy to renovate organization and operation of the people’s court system. Accordingly, “the courts shall play a key role, adjudication is the key activity”; “during hearings, judges and jurors are independent and only comply with the laws”. In order to carry out this policy, within the framework of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the Office of the Central Steering Committee on Judicial Reform conducted a

research study on management of court administration – international experience and Viet Nam’s practice in 2011 and 2012.

Based on the survey’s results on the practice of management of court administration in Viet Nam, the Office of the Central Steering Committee on Judicial Reform organized a workshop to collect comments from representatives of relevant agencies and organizations at the central and local level, judges, experts and scientists in order to finalize the Draft Report on the survey’s results on management of court administration in Viet Nam./.

Focal point: Tran Hong Nguyen, Office of Central Steering Committee on Judicial Reform, tel: 08044657, email: nguyenth2605@gmail.com

Consultative workshop to comment on Draft Report on gender assessment of the draft Law on Civil Status and recommendations for improvement of Gender Mainstreaming Tool (05/04/2013)

(chaired and organized by the Committee for Women Advancement in Justice Sector, Ministry of Justice)

On 05/04/2013, with supports of Project “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the Committee for Women Advancement in Justice Sector (JCFAW), Ministry of Justice,

held a consultative workshop to improve the Gender Mainstreaming Tool and Report on gender assessment of the draft Law on Civil Status.

The Ministry of Justice plays an important role in promoting gender equality and women advancement in Viet Nam in general. At present, JCFAW is efforting to complete all tasks assigned in Decree No. 70/2008/ND-CP dated 04/06/2008 on details for implementation of some provisions in the Law on Gender Equality, Decree No. 48/2009/ND-CP on measures for promotion of gender equality - i.e. promotion of gender equality and gender mainstreaming in activities under the Ministry's management. Moreover, JCFAW is the one who firstly conduct assessment of gender mainstreaming in law development and implementation in Viet Nam.

Within the Project's framework, JCFAW developed the Gender Mainstreaming Tool in drafting legal normative documents in 2011 and a research study on gender assessment on the draft Law on Civil Status in 2012. Based on the 2013 work plan of the Project, JCFAW held a consultative workshop to collect comments and experience from law drafters, gender specialists, departments and individuals within Justice Sector and relevant organizations and agencies to improve the

Gender Mainstreaming Tool in drafting legal normative documents and Report on gender assessment of the draft Law on Civil Status, focusing on comments and piloting practice to improve the Gender Mainstreaming Tool in drafting legal normative documents.

The workshop introduced and discussed the Gender Mainstreaming Tool in drafting legal normative documents and the Draft Report on gender assessment of the draft Law on Civil Status; discussed implementation of the Tool and directions for development of Circular on guidelines of integrating gender into development of legal normative documents on the basis of the Tool./.

Focal point: Tran Thi Huong,
Committee for Women Advancement in
Justice Sector, Ministry of Justice, tel:
62739366, email: huongtt@moj.gov.vn

Consultative workshop to comment Draft Report on application of customary law in adjudication – international experiences and Viet Nam's practice (06/05/2013)

(chaired and organized by the Supreme People's Court)

On 06/05/2013, with supports of Project 58492 "Strengthening Access to Justice and Protection of Rights in Viet Nam", the Supreme People's Court held a consultative workshop on application of customary law in adjudication – international experience and Viet Nam's practice.

In our country, habits and customs are recognized in Article 5 of the 1992 Constitution and Resolution No. 48-NQ/TW

dated 24/5/2005 of the Politburo as well as directions for legal norms on customary law. At the same time, there are regulations in legal documents on application of customary law in civil relations, marriage and family, commercial relations, etc.



Despite not being one of the key sources of the legal system, customary law plays an important role in regulating relations of various fields of daily life in Viet Nam. With 4000-year history of development and diversity of cultures and ethnic groups, customs in Viet Nam have been established and developed quite early with diversities. At different development stages, there are specific features of customary law in Viet Nam, reflecting particular lifestyle, habits and code of conducts of the people.

However, in our country, there are many shortcomings related to the legal ground for recognition and application of customary law. Moreover, application of customary law in adjudication faces numerous difficulties in practice. It is due to the fact that principles, organization and operation of Viet Nam's judicial system are not really rational, restricting widespread application of customary law. Viet Nam's courts have not yet enjoy constitutional power to recognize

customs as customary law or the current socialist legislative principle is absolutely complied with, challenging recognition and application of customary law in practice. Despite the fact that customary law is not a new issue in Viet Nam, current studies on customary law are not yet adequate and comprehensive. Customary law is only touched upon in some textbooks of legal training campuses; and only some LLM and PhD theses discuss about customary laws. However, the above studies only approach and exploit customs and customary law in a narrow scope or too general. There are lack of researches with comprehensive assessment of the practice of recognition and application of customary law in adjudication and adjudical practice through reviewing adjudicial laws and practices, thus proposing recommendations to enhance the effectiveness of application of customary law in Viet Nam.

At the workshop, experience on application of customary law in resolving civil, family and marriage, commercial and business disputes, especially in remoted, mountaineous areas or areas with difficult socio-economic conditions, in order to enhance approaches to justice and protection of the people's rights./.

Focal point: Tran Van Thu, Deputy General Director of Department of International Relations, Supreme People's Court, tel: 0912441790, email: vanthutran345@gmail.com

Consultative workshop to comment on Draft 1992 Constitution (revised) (10-11/5/2013)

(chaired and organized by the Department of Criminal and Administrative Legislation, Ministry of Justice)

On 10-11/05/2013, with supports of Project 58492 “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the Department of Criminal and Administrative Legislation, Ministry of Justice, held a consultative workshop on the Draft 1992 Constitution (revised) to collect comments from experts, scientists of universities, research institutes and managers of some ministries, branches and localities in order to improve the Draft 1992 Constitution (which is amended according to comments of the people and will be submitted to the National Assembly for review and discussion at the meeting session in 5/2013).



Presented at the workshop were Mr. Nguyen Dinh Loc, former Minister of Justice, representatives of the leadership of the People’s Council and People’s Committee of Nghe An province, Department of Justice, Department of Home Affairs, Department of Resources and Environment, Department of Labor, Invalids and Social Affairs, etc. of 07 provinces and cities in the Middle of Viet Nam (including Nghe An, Thanh Hoa, Ha Tinh, Quang Binh, Quang Tri, Thua Thien Hue and Da Nang) and some experts, scientists of universities, research institutes, etc.

Hosted the workshop was Mr. Hoang The Lien, Deputy Minister of Justice, member of the Government’s Steering Committee on reviewing implementation of the 1992

Constitution, and Head of Supporting Team of the Government’s Steering Committee on reviewing implementation of the 1992 Constitution. The Deputy Minister shared information on results of organization of public consultation on the Draft 1992 Constitution (revised) of the Government and some key issues of amendment of the Constitution.

According to Deputy Minister Hoang The Lien’s presentation, amendment and supplement of the 1992 Constitution is an important political – legal event, attaching interests of the entire society, including scientists, universities, research institutes, managers, enterprises, etc., which establishes a widespread and in-depth political activity throughout the country. The workshop focuses on the following issues:

Firstly, principles of organization of State powers: A State is a rule-of-law state when it is organized and operated in accordance with some fundamental principles such as: the principle of power allocation and control; the highest legal validity of the Constitution; consistency of the legal system; protection mechanism of the Constitution; courts’ independence, etc.;

Secondly, institutions of the Government: This time’s amendment of the Constitution should meet requirements of continuing renovation of organization and operation of the Government under the spirit stated in the XIth Party Congress’ documents – i.e. “development of a consistent, united, clean, strong, effective and efficient administration; streamlined and rational organization; enhancement of democracy and jurisdiction in operation of the Government; enhancement of predictability, adaptability and timely handling of arising issues...; enhancement of capability and quality of development and implementation of mechanism and policies...”.

Thirdly, institutions of local authorities: The Constitution prescribes similar tasks and powers of the People’s Councils and Committees at three levels without clear distinctions between urban and rural

authorities, causing difficulties in defining tasks of each level. There are no provisions on arrangement between the central and local level, resulting in overlappings of functions and tasks and blaming responsibilities among authorities at different levels.

Forthly, institutions on human rights, fundamental rights and obligations of the people: In a rule-of-law state, respect and protection of human rights, citizen rights are responsibility of all subjects who are assigned to exercise the State powers and should be recognized, ensured and protected by effective mechanisms.

Fifthly, institutions on Constitutional protection mechanism: In a rule-of-law state, protection of the Constitution means protection of democracy, human rights and citizen rights. Protection of the Constitution is also one of the key principles of the rule-of-law state.

At the workshop, experts focused on making presentations on some main issues in the Draft 1992 Constitution (revised) related to the role, function, tasks, powers and organizational structure of the Government; organization of local authorities; human rights, fundamental rights and obligations of the people; and especially new regulations on the

Constitutional Council. The above contents received many comments from experts, scientists and local participants.

At the closing session, Deputy Minister Hoang The Lien highly evaluated the participation and contributions of managers, experts, scientists and especially local participants and their enthusiasm, confidential and quality. Comments at the workshop shall be fully recapitulated and are valuable materials for the Ministry of Justice to continue their studies and making proposals, recommendations on amendment, supplement of the 1992 Constitution in line with viewpoints, policies and directions of the Party, National Assembly. On this basis, the Ministry of Justice will improve amendment, supplement options with specific regulations in the 1992 Constitution (revised), focusing on regulations on the Government and local authorities./.

Focal point: Tran Hong Nguyen, Office of the Central Steering Committee on Judicial Reform, tel: 08044657, email: nguyenth2605@gmail.com

Consultative workshop to comment on Draft Report on role of social organizations in monitoring law implementation (10/5/2013)
(chaired and organized by the Department of General Affairs in Legal Development, Ministry of Justice)

On 10/05/2013, with supports of Project 54892 “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the Department of General Affairs of Legal Development, Ministry of Justice, held a consultative workshop on a research report on role of social organizations and individuals in monitoring law implementation.

Presented at the workshop were representatives of the State Audit, Department of Social Issues of the Central Propaganda Department; representatives of some departments of the Ministry of Justice, the Central Committee of the Vietnam Fatherland Front, Vietnam Bar Association, Bar Association, Vietnam Women Union of some

provinces and centrally-run cities, Vietnam Central Youth Union, Vietnam Association of Small and Medium Industrial Enterprises, Hanoi Transportation Association, Hanoi Association of Standards and Customer Protection, Vietnam Association of Vocational Education and Social works, Vietnam Association of Child Protection and relevant organizations.

The workshop aims to briefly introduce the Draft Report on role of social organizations and individuals in monitoring law

implementation, thus collecting comment for improvement of the Draft Report./.

Focal point: Nguyen Hong Tuyen, General Director of Department of General Affairs of Legal Development, Ministry of Justice, tel: 62739383, email: tuyennh@moj.gov.vn

Brainstorm workshop on main directions for development of the Law on Promulgation of Administrative Decisions (15-16/7/2013) *(chaired and organized by the Department of Criminal and Administrative Legislation, Ministry of Justice)*

On 15-16/07/2013, with supports of Project 58492 “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the Department of Criminal and Administrative Legislation, Ministry of Justice, held a brainstorm workshop on main directions for development of the Law on Promulgation of Administrative Decisions in Da Nang city.



Presented at the workshop were experienced experts at the central (including those from the Government’s Office, Ministry of Resources and Environment, Ministry of Finance, Hanoi Law University, Ministry of Justice, etc.) and representatives from local departments, units (including representatives from Da Nang city, Quang Ngai, Quang Nam, Binh Dinh, Thua Thien Hue...provinces).

Deputy Minister of Justice, Mr. Hoang The Lien, hosted the workshop. The workshop focused on discussing shortcomings and weaknesses in promulgation of administrative decisions and proposals, recommendations on main directions, policies and contents of the Law on Promulgation of Administrative Decisions, which will be used as the basis for drafting the Law.

In terms of shortcomings and weaknesses in promulgating administrative decisions, the majority of participants believe that the current laws are lack of fundamental principles for adoption of administrative decisions, thus lacking of strict legal grounds for protection of citizen rights. For instance, it is unclear when an administrative decision is legitimate? When it comes into force or become invalid? In which cases an administrative decision is dismissed, withdrawn and its legal consequences? Order and procedures of promulgation of administrative decisions are unclear and not strict, failing to ensure the publicity, transparency and protection of legitimate rights of relevant parties... During the recent time, many administrative decisions are irrational and infeasible, resulting in numerous public opinions.

Presented at the workshop, many participants also made proposals and recommendations on main directions, policies and contents of the Law, including the Law's objectives, governing scope, publicity and transparency in promulgating administrative decisions, order and procedures of promulgation of administrative decisions; relations between the Law on Promulgation of Administrative Decisions and other specialized laws./.

Focal point: Nguyen Quynh Lien,
Department of Criminal and
Administrative Legislation, Ministry of
Justice, tel: 62739412, email:
liennq@moj.gov.vn