

CIVIL SOCIETY ACTION TOWARDS  
THE LAW OF ASSOCIATION





SOCIAL POLICY ECOLOGY RESEARCH INSTITUTE (SPERI)

# **CIVIL SOCIETY ACTION TOWARDS THE LAW OF ASSOCIATION**

Civil Society Participation  
on Law Making Initiative (2005-2006)

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## FOREWORD

The legal venue for Associations was firstly addressed by the government of Vietnam at Decree No.102/1957/SL-L in 1957. After nearly 40 years until 1993, the Law of Association was revived for further discussion.

In 2005, the third draft 'Law of Association' was released by the Ministry of Internal Affairs with the aim of obtaining comments from the Vietnam Union of Science and Technology Associations (VUSTA). Since then, VUSTA with active participation has invited a wide variety of actors to provide inputs; and so, in light of Decision 22/2002/QĐ-TTg dated 30/1/2002 of Prime Minister Phan Van Khai, until December 2006, the fourth to thirteenth draft of the Law has been continuously released to seek more comments from the public.

This is seen as a great opportunity for civil society organizations to be open-minded and responsive in expressing their views and contributing analysis and recommendations through meetings, workshops, conferences and round-table discussions. Inputs and writings were gathered and summarized for submission to the drafting Committee on Law of Association and also representatives of National Assembly XI at various meeting sessions from 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> from May 5<sup>th</sup>, 2005 to November 29<sup>th</sup>, 2006.

In response to the active and dedicated contributions from many actors in society, the Committee on Law-making of the Office of the Government in collaboration with Ministry of Internal Affairs decided to hold a conference on December 13, 2005 with a concluding suggestion that associations under VUSTA should be invited to draft the Law of Association.

To implement this, on December 23, 2005, a workshop on the draft Law of Association was held and a written submission by an Expert group under VUSTA was presenting to the drafting Committee and representatives of National Assembly. The workshop was chaired by VUSTA: *“It is for the first time in the history of Vietnam that the target groups whom are directly subjected under this law adjustments submitted a different draft written by themselves to propose regulations to regulate themselves!”*

The outcome of this process was a decision to temporarily pause the 13th draft and not yet submit it to the last session of the National Assembly XI at meeting session 10<sup>th</sup>, 2006 for comments as earlier expected.

The not-yet issuance of Law of Association at that time (and up to now, in the year 2014, it is being asked again for it to be brought out for further consideration) have somewhat indicated certain limitations of our legislative ability. Nevertheless, it still illustrates that if efforts continuously push for a law-making process that encourages wider public comments then this could potentially improve the Law itself as well as changing the policy awareness of the whole society.

This book is compiled and written by the Research and Communication Team of the Social Policy Ecology Research Institute (SPERI) who have been very fortunate to be able to closely follow the entire process and learn through the evolution of activities and inputs in pursuit of the Law of Association until the current draft. The book gathers contributions, dedicated inputs and excellent comments from researchers, journalists, lawyers and many other professions over nearly 10 years and we would like to share this with the readers.

Finally, we would like to acknowledge the support of ICCO (Inter-Church for Cooperation and Development) and the Netherland Embassy during the whole process of considering the Law of Association from 2005 to 2006.

**TEW-CHESH-CIRD/SPERI's founder: Tran Thi Lanh**

*Civil Society Action: Towards the 5<sup>th</sup> Draft*

**THE LAW MUST ALSO TOUCH THE HEARTS OF  
THE PEOPLE**

PLATFORM IN HANOI



## INTRODUCTION

*Proceeded to be designed starting from 1993, with 12 years having now passed, over two of which saw an intensive focus, the Law of Association has gone through to its 8<sup>th</sup> Draft. It can be said that although this is one of the Drafts that take a relatively long time for preparation, at the last moment it still contains many conflicting opinions. On 13<sup>th</sup> December of last year, the Law Design Committee of the Government Office organized a conference in collaboration with the Interior Ministry in order to canvass opinions on the proposal for this law, and they reached the following conclusion: "...Right until the proposal can be commented upon by the Government, it is certain that the National Assembly Committee, the National Assembly Standing Committee and various National Assembly offices still have to examine it in terms of evaluation, and certainly to return it for acceptance, comments on the direction to proceed..." Of special interest is the remark that a number of Association-type organizations, who will be the subjects of application of this law following its issue, would possibly set up a group of independent experts to work with the Drafting Committee, even possibly draft a new bill for study. This comment has been emphasized by the Vietnam Lawyers Association in the concluding remarks at the conference. This fact indicates that even those responsible for the final planning, evaluation, and amending of the draft prior to presenting it to the Government to be ratified for passing, are still plagued by irresolution to a considerable degree...*

*To effectively put forward this proposal, on 23<sup>rd</sup> December, 2005 - last year, there was a conference at the Vietnam Union of Science and Technology Associations headquarters to introduce the Draft for the Law of Association*

*(an unofficial Draft) by a group of specialists who, in 10 days, expeditiously put together a text for the representatives to consult, based on the fundamental principles raised in previous conferences, with an additional number of rectifications from comments at the conferences on the Law of Association organised by many agencies in the recent past. This fact demonstrates that the Law of Association is drawing actual and widespread attention.*

*Once issued, the Law of Association will have enormous implications for the economic and social development of our country, especially for the process of integration into the international economy which has been and still is taking place as a necessary manifestation of our Revolutionary legacy.*

*For many years now, the Van Nghe [Literature and Arts] Weekly's Forum column for scientists has attracted the interest of the scientific fraternity as well as the nation-wide readership. For this very reason, taking the opportunity to address this issue, Van Nghe Weekly has collaborated with a number of professional agencies to organise small discussions within this specialists' column, around issues related to the Law of Association in order to respond to the wish and aspiration of many readers as well as contributing to an early but well prepared and democratic issuing of the Law of Association. This almanac is a compilation of the proceedings of the above mentioned conferences.*

VAN NGHE WEEKLY



## **SOME FUNDAMENTAL THOUGHTS ON THE DESIGN OF A LAW OF ASSOCIATION**

*Dr. HOANG NGOC GIAO*

*Barrister, Law Faculty, National University of Hanoi*

One of the fundamental characteristics of Associations and mass organizations is the members' solidarity, operating on a voluntary basis. On this issue, the policy encouraging the development of the civil society have been officially acknowledged in a Resolution of the 9<sup>th</sup> Congress of the Vietnam Communist Party, which advocates the *"broadening and diversification of all forms of public participation in people's mass organizations, social groups, professional, cultural, friendship, welfare-humanity groups."* It may be seen from this that the legal relationships arising from the formation and activities of an Association - being the subjects of governing by the Law of Association - are relationships which are private in character, and mainly dependent on the will, aspiration and capacity of the individuals (or organizations) as its members. For that very reason the role of the government must be limited and not imposing, nor deeply interventionist, whereas the Law of Association *should only determine the main legal frameworks, in order to establish a clear legal environment, to create favourable conditions for the Association's activities, at the same time to ensure that the Association is not working against society's common interests.*

The 1992 Constitution of the Socialist Republic of Vietnam stipulates in Article 69 as follows: *"Citizens possess the right to exercise freedom of speech,*

*press freedom, the right to be informed, to assemble, to form associations, to hold public demonstration within the limits of the law.”* Thus activities carried out by Associations and public organizations are within Constitutional Rights. All legal regulations that are written and noted in law acts and codes or in any other legal documents must not contradict in spirit and letters with the Articles of the Constitution. The task of those who draft laws therefore is to render these rights real with concrete stipulations in the direction of creating the most favourable legal environment for Associations’ activities. *All legal provisions with contents that restrict, or narrow down the capacity to exercise the Right to form associations (unless for reasons of national security, of infringement on others’ pursuit of their rights and freedom, or of breaching other legal regulations), can be considered as anti-constitutional rules (breaching the Constitution), and rendered invalid.* In the Vietnamese circumstance of having no Constitutional Court as yet in existence, the National Assembly Advisory Committee, being an agency with the power to interpret laws, is capable of assessing whether a legal document is constitutional.

The freedom of forming Associations is one of the fundamental Human Rights, solemnly recognised by almost all nations of the world in the 1948 International Declaration on Human Rights. The Vietnamese Government has also officially joined the International Convention on political and civil rights in 1966. This means *the drafting and issuing of the Law of Association is precisely part of the Vietnamese Government’s fulfilment of its international legal obligations in so far as respect and protection of Human Rights are concerned.*

The citizens’ basic rights have been set down by the Constitution, including the right to form associations. It means that whether the Law exist or not, forms of Associations such as Clubs, Centres, or a number of associations such as same-village-of-origin associations, senior citizens associations, scholarship promotion associations, etc. are tacitly recognised by the State without any concern about their *‘juridical*

*status of a corporate entity*'. This is because the activity contents of these associations are based entirely on voluntary agreement. However, an association with the juridical status of a corporate entity, i.e. being officially recognised by the Government, possesses an important legal condition for its ability to take part in public administrative, civil, economic etc. relations. The Law of Association needs to have practical and clear stipulations, setting out conditions, criteria for an Association's juridical corporate entity status. *Corporate entity status is merely necessary for an Association in so far as it is an official recognition on the part of the State, and a legal condition solely for entering into civil, economic, public administrative relations...*

The present reality of Vietnam's civil society is that it displays extremely high diversity in form. There exist socio-political organizations; there are also social organizations, professional societies, community organizations, developmental organizations, science and industry organizations... Among these, the socio-political organizations hold a special political position. Being large organizations, with their scale of activities ranging through all the levels of territorial administration, their expenditure for activities is subsidised from the government budget, and they often have a prestigious history of activities. However, considered under the basic criteria for qualification as civil society, these organizations resemble in form the people's mass organizations and other non-government organizations. These are also organizations residing outside the State machinery, but fulfilling 'Association' criteria such as: operating on voluntary basis by members, not with profit-oriented objectives, but in the interest of members and of the public. Therefore, *relegating these socio-political associations to the precinct governed by the Law of Association will also create juridical equitability among organizations in the civil society*. With regards to foreign subjects, the recognition that foreign individuals or organizations as being within the governing scope of the Law of Association can be understood as

follows: foreigners, foreign organizations living and working legally in Vietnam also have the same right as Vietnamese individuals and corporate entities to form, to join associations. *This is also a universal principle adopted by other nations at present, and applied to foreigners in the general trend of globalisation and international integration.*

The relationship between Associations, public organizations and the State must be an egalitarian one. The Law of Association must clearly lay down mechanisms for resolving disputes between associations and government officials, and agencies with a State authority (according to the Law of Appeal, through the court system). The question of specific management of Association activities by the State should be determined in a practical manner: Are they to be managed through licenses for specialised activities? Are they to be administered through a parent body? Are they to be administered according to laws?... The State carries out functions including keeping watch on Associations' compliance with the law, supervising Association activities, ensuring that these organizations' activities are responsible and transparent to the community, society and to the members of the Association or NGO themselves. However, it should be noted that the restrictions according to the stipulations of Article 22, Item 2 of the 1966 Convention on Political and Civil Activities must be implemented in a concrete, clear, and explicit manner, reducing as much as possible all arbitrariness in interpretation and application of articles of law.

The realistic conditions of many nations, Vietnam among them, have shown a diversity in organizational and operational forms of social organizations, who have promoted the deployment of their social resources to the utmost capacity and continue to do so. The participation by social organizations in the tasks and areas currently undertaken by the State can be considered as a sharing out of the heavy burden of responsibility from the State over to the civil society. Being aware of the importance of social organizations and their ability

to make contributions, the Vietnamese Government, as a policy, has encouraged and created favourable conditions for the civil society to participate in State business. Government Decree 86/2003/ND-CP of 5/11/2002 and Prime Ministerial Resolution No. 22/2002/QĐ-TTg of 30/12/2002, concerning *the activities of consultancy, critical appraisal and scrutiny of society* of the Vietnamese Union of Science and Technology Associations, have addressed this issue rather concretely. This shows that Vietnamese government has a clear policy to promote participation of Associations in the State and society management activities. In making the Law of Association, it is imperative to grasp thoroughly and implement clearly the Policy towards Associations through concrete provisions of the Law.

## **THE LAW SHOULD BE AN EXPRESSION OF RELATIONSHIP IN MULTIPLE FORMS**

*Mme. TRAN THI LANH*

*Towards Ethnic Women (TEW)*

A law-governed State manifests the will to rule all society through law, that is to say it carries out the socio-political function of the state. At the same time a law-governed state must also resolve all the problems in the life of civil society related to the law, that is to carry out its civil societal function of the State. The law-governed State is a model of state organization that enables the merging of the socio-political function with the civil societal one in a most effective way, at the same time it has the greatest potential to strengthen the relationship between state and society by means of law and through the law.

The socialist state of the people, by the people, and for the people contains in its nature the potential to unify the performances of socio-political function with civil societal one. Politics and civility mutually require increasing unification as time goes on, through the socialist jurisdiction.

The Law of Association is of prime necessity, stemming from both political and civil needs. It is an embodiment of the gathering together of diverse multilateral relations between the socialist state and life in the civil society. That is why the Law of Association only has real meaning when it can embody the current thinking of the period. Even so, the Law of Association must be one step ahead to cater for complex changes

of the time. The aim would be to achieve the effect of government and at the same time serve in guiding and encouraging activities in civil society, working towards objectives of stable development.

Addressing the issue as outlined above, we would like to contribute a number of comments, mainly critical, regarding the aspects still found wanting in the Draft Law of Association. It is hoped that they will be received and studied by the Drafting Committee in perfecting the draft.

### **1. The strategic aim in the Draft is not yet consistent with the Party and State Ideological position as expressed in the Policies and Guidelines for socio-economic development.**

First, we must say frankly that the content of ideas in the Draft Law of Association this time, does not differ fundamentally from that expressed by the Decree issued in Ruling No. 102 SL/L-004 on 20/5/1957, which stipulates the right to form Associations, although there has been nearly 50 years elapsed between the two laws.

We are living in an historical time with characteristics that have never existed before - THE GLOBALISATION ERA. The 9<sup>th</sup> Party Congress has acknowledged that: *Globalisation is an objective trend*. The Congress also asserted the policy: *"To heighten the promotion of domestic resources, at the same time to make use of foreign resources and take initiatives in integrating into the International economy for a rapid, effective and stable development."* On that basis, the Politbureau has issued the Resolution No. 07 NQ/TW on 27/11/2001 regarding the integration into the international economy. Resolution 07 has asserted that integrating into the international economy is a principal factor for development. The Resolution has laid down an *ACTION PLAN FOR THE REALIZATION OF INTEGRATION INTO THE INTERNATIONAL ECONOMY*, in which the tasks of designing, altering and amending the law are highlighted.

Having studied the Resolution 07 of the Politbureau, then, we are not able to find its spirit and philosophy of the Resolution in the

draft of the Law of Association. The Draft Law of Association has only propounded the rule of conduct and administrative procedures for Associations to adopt, whilst essentially the role, status, function and responsibility of the Association - of the civil society organization type - to date, have not been expressed at all. The Law of Association must be amended, to make it consistent with the Party and State ideological position as expressed in the policy for Socio-economic development, especially the policy for integration into the international economy, in the globalisation trend of all nations.

## **2. Incongruence between the Draft Law of Association and current Law**

When a new law is issued replacing an outmoded law in the same domain of governing, naturally it must negate all stipulations that are no longer appropriate. However, it cannot cancel out the provisions of other Laws that are still effective. If it can negate other Laws then a situation where different Laws cancel each other would arise, the Law will bring chaos onto itself and become ineffective in regulating.

Article 3 in the Draft Law of Association stipulates that: In the case of differences arising between the provisions of the Law of Association and those of other Laws on Organization and activity of Associations, then the Law of Association applies.

Two questions can be raised intuitively:

Firstly: *“Why are stipulations not made consistent to each other instead of having to negate other laws’ provisions?”*

Secondly: *“Can the Law of Association be placed above other Laws?!”*

One only needs to answer these two questions to discover that there is some unsettling issue in the stipulation of Article 3 of the Draft.

To clarify this issue, we will cite an instance as follows:



Point 4, Article 44 stipulates: *“The corporate entity pertaining to the Association must operate according to the Corporate Regulations as approved by the Association, without infringing on the Association’s Rule and the current Law..”*

Point C, Article 7 of the Draft: *“Stipulates on prohibited activities: using the Association’s Corporate Status to pursue those economic activities to acquire profits, which are to be divided among members and the Managing Committee of the Association.”*

Meanwhile Point 3, Article 15 of the Science and Industry Law provides that: *“Science and industry organizations have the right to collaborate, form Joint Ventures, receive funding subsidies from organizations, individuals, accumulate capital in cash, real estate, Intellectual property copyrights to carry out Scientific and Industrial activities and productive, business enterprise activities according to the Provisions of the Law”.*

In reality there are so many corporate entities pertaining to Associations, they are the science and industry organizations – forbidden by the Law of Association, but allowed by the Law of Science and Industry.

This single example is perhaps sufficient to ascertain the necessity to change the provisions of the Law of Association, bringing them into line with the provisions of other Laws.

### **3. The question of deployment and management of assets of the Association**

As to the question of management and deployment of the Association’s assets as well as disposing, settling finances and assets of the Association in cases of splitting up, merging, dissolving, or ceasing activities, we find Provisions in Articles 45, 55, 58, 60, 77, 78 in the Draft to be unclear and inconsistent. We propose that, with respect to managing finances, the financial dealing in the cases of the Association

being split up, merged with others, dissolved or having activities terminated are matters of fine details, of routine and of complexity. They require accurate usage of specialised language for finance and accountancy. The Provisions must conform to Accountancy Law, Audit Law and State Budgetary Law. That is why stipulations must not be made if they lack consistency with these Laws; the task should be given to the Government who can then assign the Ministry of Finance to issue a guiding Circular.

## **THE LAW IS NOT THE MANAGEMENT OF ASSOCIATIONS BY THE STATE**

*Dr. PHAM HUU NGHI*

*Editor-in-chief, Journal of State and Law*

In the context of integration into world economy, the role of Associations is growing day by day as a necessity, and it is a growth impossible to staunch. In question is the need to create favourable conditions for Associations in the common interests of the nation, of the Associations themselves as well as of the community. The governing of the organization and activities of Associations therefore does not lie in the law but in the more important role of the Association's rules and regulations. This Draft Law, interfering rather deeply into the rules and regulations of Associations, proves that the situation is still not yet rational. That is why a number of unaccomplished points of this Draft for the Law of Association can be raised as follows:

1. The Draft Law has not created favourable conditions for the citizens and organizations to exercise their right to form Associations. Many articles cannot even compare to the laws of 1957, with Chapter I showing no clear stipulations as yet of the right to form Associations, thus it is inferior to the existing Enterprise Law (Chapter I of Enterprise Law determines affirmatively the right to freely engage in a business and prohibits any hindrance to the freedom to do business). Why don't we have the daring to stipulate such rights in the Law of Association? In my opinion, it is necessary to express clearly the substantial contents

of the citizens' right to form Associations such as: Everybody has the right to form Associations, except those who have lost citizen's rights and those who are being prosecuted by the law; everybody has the right to join a legally formed Association, and the right to freely withdraw from an Association; no-one can encroach upon another person's right to form, join and withdraw from an Association... Practicality and clarity should always be part of the fundamental characteristics specific to laws.

2. The reason not to place the Vietnam Fatherland Front, Vietnam General Federation of Labour Unions, Ho Chi Minh Communist Youth Association, Vietnam Farmers Association, Vietnam War Veterans Association, Vietnam Women's Union and religious organizations within the governing scope of the Law of Association has yet to be convincing. *Aren't these organizations considered as government agencies or as special organizations without attributes of an Association? If this question is not addressed then the Article 3 of Item 3 should not be included.*

3. The fact that this Draft Law has not yet expressed the role of Associations in carrying out inspection, supervision, consultation, critical appraisal of society with regards to management by the State, especially in professional activities as one of the functions already determined as specific to Associations since long ago – proves it is not yet rational. This problem must be seriously and scientifically recognised from a juridical perspective.

From the above-mentioned reasons, it is more accurate to say that perhaps this Draft is inclined towards State management of Associations. As State management of Associations is deemed so important, the rights of Associations to take initiatives, to operate independently or to make decisions will be made negligible. I concur with the idea that the law should only stipulate the areas of prohibition (for instance jeopardizing national security...). Outside those areas it is only rational to leave people to their own initiatives.

## **SPECIFIC PROVISIONS ARE REQUIRED FOR SPECIAL CASES**

*Mr. PHAM QUANG LE*

*Research Office of the Prime Minister*

Perhaps everyone is clear about the necessity to replace the Law “stipulating the right to form Associations” issued since 1957 with a Law of Association. The reason is that the old legal framework, although progressive in its spirit, has not been able since many years to cope with the enormous and profound changes taking place in our country. Not until the 9<sup>th</sup> Congress could the making of the Law of Association be addressed in a Resolution. However, the developmental process of drafting (from 2001) has encountered many obstacles with diverging opinions right from the areas of scope, governing subjects, down to conditions, procedures... and management by the State. Under such circumstances, the Prime Minister decided to have a decree (ND88/2003) issued immediately, so as to obtain clarification for it later with the passing of a period of application. And in 2004, the drafting of the Law of Association was continued after a preliminary wrap-up report of the situation of implementing the Decree ND88, and the Prime Minister has laid down the directive guidelines for this drafting task.

Through the various drafts of the Law of Association, many limiting points in ND88 have been examined for rectifications. However, the most important problem has not been resolved, it is *the scope, and the governing objectives of the Law*. Thus the Law has not been able to achieve

a breakthrough to affect qualitative changes in which the expression of equality before the law can be manifested. It left a gap in the legal framework while we need to perfect the making of a State governed by the rule of law.

With that limitation, apparently up to the present moment the designing of the Law of Association (perfecting and surpassing ND88) *has not yet reached a truly mature stage* capable of giving us a law as everyone has been expecting. It has been suggested that if ND88 could not be legislatively surpassed, then it would be better *to continue implementing ND88 with a few of its feasible governing points*, while investing in more research to resolve the above mentioned persistent problem, which hopefully will be ultimately addressed at the coming 10<sup>th</sup> Party Congress. To contribute a very small part to the additional drafting process, may I present here a few thoughts on the above-mentioned persistent problem. After careful consideration for terminology, the consensus on nomenclature is that:

*Law of Association:* This means that the governing subjects of this Law are the Associations. The term 'Association' here is not an ordinary term (with various meanings), but a concept with a precisely determined set of semantic attributes, perhaps should be written with its precedent letter in capital, "Association", to distinguish it from others. While Associations have different forms (as in Federation, Union...) in essence they all belong to the Association type.

ND88 has stipulated the meaning of the Association (as the governing subject of this Law) in a fairly concrete fashion. However, to obtain a more comprehensive and coherent set of meanings in the Law, more research study is needed. According to documentary material on NGO's from the World Bank, *Associations are required to have members* (to distinguish them from Funds and Welfare Organizations that do not have members and managing committees, but only founders and operators). An Association *must be a corporate entity* (but is not situated within the domain of the State). Associations do not include Party

organizations, religious groups (churches), workers' Union, business enterprises (who comply with specific Laws).

From the conceptual conventions, a highly sensitive issue arises concerning *the organizations outside the scope of governing*. Decree ND88 stipulates that those socio-political organizations (or popular/mass groups) shall include: the Fatherland Front, Vietnam General Confederation of Labour, the Ho Chi Minh Communist Youth Union, the Women's Union, the Farmers Association, the War Veterans Association, and religious organizations... Besides these again a number of other "socio-political" associations are stipulated to remain outside the Law of Association (and to receive regular funding from the government). With regard to the Law of Association, there are two differing streams of opinions: *The Law must govern all these organizations* (except the religious ones). It is because they satisfy all the criteria laid down for Associations, and therefore must be equal before the law. The other stream of opinions maintains that *these organizations are not to be governed by the same Law of Association*, as they have "special attributes" (belonging in the political system).

It would be fitting here to raise a submission for a proposed selection of the terms designating the criteria of qualification for Associations. The present classification for organizations is as follows: the Party is a political organization; there are beside it a number of socio-political organizations, and others being professional socio-political organizations. I think the word "political" here is being abused in the sense of "serving in a political assignment," for instance: The Lawyers Association is in its real essence a professional Association for lawyers (similar to other occupational associations). However, it is maintained that the juridical domain is closely connected to political power, it must therefore be political in real essence. There is also an explanation based on the reason of interest, in that an organization is political... when it is funded by the Government.

A final issue concerns those organizations that encompass many Associations, called Federation of Associations (literature and arts, science and technology...), who do not wish to be governed by the Law of Association. This is also a “special case” in Vietnam, as well as a sensitive issue. To resolve all of the above “special cases” in a fundamental way, it would be imperative to acquire a new vision of our political system. Like the above mentioned socio-political organizations, I think it is possible to deal with the issues immediately by having a separate chapter in the Law of Association that refers specifically to this type of special organizations.



## **LAWS OF ASSOCIATION IN OTHER COUNTRIES TO BE CONSULTED BUT NOT COPIED**

*Dr. PHAM SY LIEM*

*Vice-president, Federation of Building-Construction Associations*

The issuing of the Law of Association is necessary, but drafting it must spring from viewpoints fundamental to the Renovation process [*doi moi*]. The reason is that organization of the Associations in a market-oriented economy differs greatly in character, function and form of activity from that of Associations in a centrally planned economy. Besides, the Party's work on public relations must be renovated, with experience and lessons to be urgently learnt from the events in the Soviet Union and Eastern European countries not long ago.

The role of civil society should also be studied and correctly evaluated. Recently there have been many studies by sociologists on civil society, in which the Association is a civil society's organization operating outside the State machinery and the sphere of economic enterprises.

The Law of Association pertains to each country's political regime, therefore it is necessary to consult the Laws of Association of other countries, but it is not possible to copy them, as we are being in the process of reform. It is necessary to examine the current situation of Associations. However, we must be extremely cautious, as we cannot immediately overturn the currently existing order, even though trail must be blazed for the coming reform. Especially the trend towards

integration into international economy must be taken into account, as Associations could not avoid exchange relationship with those in other countries and preclude their joining international organizations. If our Associations do not resemble any others then it would be difficult to have a common language. That will be a great obstacle to the development of our country.

As deduced from the above considerations, the Law should only establish a legal corridor for the Associations to operate, which would include aims and objectives of formation, regulations, office premises, registration with the authorities, regular activities, submission of annual reports to the authorities, financial independence, rights and obligations, and prohibited activities...

The Law should not intrude into the details of regulations and activity formats of Associations as there are many types of Association. Whatever subject matters that exist in other Laws need not be brought into this Law, such as the publication of periodicals, establishing businesses...

That is why the Articles and Items regarding Association activities such as Article 12 (main subject matters of Association regulations) and Article 15 (essential contents of the General Meeting for founding an Association) should be deleted, as such details need not be entered into. Chapter III on membership and Chapter IV on organization of activities should not be brought into the Law either. Instead they should be substituted by a number of Articles concerning the rights and responsibilities of the Association, the non-profit nature, the publicly open nature, transparency, and the regularity of activities.

There should not be any differentiation between the six social organizations and others as written in Item 3 Article 2 because this will create obstacles later for these organizations themselves in the eventual integration process. For the Vietnam Fatherland Front and Vietnam

General Confederation of Labour, there are Article 9 and Article 10 in the Constitution.

As for Item 2 Article 5, it should be clearly stipulated that a number of Association should be recognised by the Government as being of public interest and benefit. Welfare Associations could be assigned by the Government to render a number of appropriate public services and could receive Government funding.

A matter greatly deserving attention also is the poor vocabulary of the drafters of the bill: In a barely 20-page long law text, it is unacceptable that there should be about 20 times in which the phrase *"In accordance with stipulations by law."* is used. It is absurd for a draft law to rely on stipulations of the law. For every sector, there exists a law to govern it (such as the Investment Law for instance). To write that way betrays a lack of confidence on the part of the drafters, who must rely on other existing laws... Then, does it not mean that ultimately, it will be sufficient just to bring out the Criminal Code?

## **STILL NOT AS GOOD AS THE OLD DECREES**

*Mr. BUI TUONG ANH*

*Deputy General Secretary, Vietnam Economic Science Association*

Nearly half a century now since the Decree 102/SL/LOC4 was issued on 20<sup>th</sup> May 1957 regarding “Stipulations for the right to form Associations” (signed by President Ho and Prime Minister Pham Van Dong), the State has initiated the Draft Law of Association. 48 years already have passed, and, in my opinion, the draft “Law of Association,” however, has failed to respond fully to the demands for renovation and integration, failing even to be as progressive as the older decrees.

The opening lines of the old Decree (Article 1) consist in an affirmation: “The people’s right to form Associations is respected and guaranteed. Associations must be formed with legitimate interests, appropriate to the people’s democratic regime of our country”, and “Everybody has the right to form Association, except those who are deprived of civil rights or being prosecuted by the law. Everybody has the right to freely join a legitimately formed Association and the right to freely withdraw from an Association. No one is allowed to encroach on another person’s freedom to form an Association, and the freedom to join, to withdraw from an Association” (Article 2). How concise, how comprehensive and confident it is, how respectful of the people, how fair and straight forward it sounds! As for the present draft, there appears to be an apprehension, but about what, no one cares to state readily. There is only a desire to intrude excessively into people’s rights, an intervention that has become downright unlawful and irrational. I will cite for instances a few cases:

1. In Article 1 it is stated that: “This Law stipulates the right to form an Association, to organize activities and to manage an Association.” This is redundant, because without it, people still would not understand in any other way. Article 2 refers to “Vietnamese citizens and organizations, except those stipulated in Item 3 of this Article”. The drafter forgets that this Law governs the act of forming Associations, therefore it is only for those citizens and organizations who form Associations to comply with, it does not govern all citizens, all organizations in general... We therefore propose we should basically return to the two introductory articles of the old decrees, only with the following alteration to Article 1: “The right of citizens and citizens’ organizations to form Associations is respected and guaranteed...”.

2. In practice it is not possible to achieve uniform State management of Associations. The State’s functions, duties of management are stipulated in the document on establishing agencies or while the functions and duties of the agency concerned are being regulated, but it is never the situation where every new law must sprout new functions and duties. Such stipulations could not guarantee uniformity, and therefore State agencies could neither “provide technical, professional guidance, and technical training” in the service of the Associations nor “manage international collaborative activities of the Associations”. For that reason the Chapter on “the subject of State management of Associations” is unnecessary.

3. If the draft reaches back to the introductory articles similar to those of the old decrees, then Article 7 (“Proscribed activities”) is utterly redundant. To have written articles as such unintentionally reveals that the author only focuses on prohibiting “Impediments to the right of forming Associations, acts of coercing people in joining or forming an Association.” However, “forcing members to leave an Association” is not forbidden. This is clearly not a fair and straightforward situation. This Article 7 is therefore also utterly too unnecessary to be included in

the Law. Moreover, the Criminal Code lists all types of crime designated to impute all criminal acts. To mention some here would not only be insufficient, but also complicate the document much further. The same goes for commending and dealing with violation (Article 57, Article 58). While the phrasing goes “commending and dealing with violation,” in actual fact if violation occurs, both Criminal Law and administrative law will be capable of imputing the crime more than adequately. It is not necessary to mention it in this Law. By the way, there is a chapter in the Draft called Chapter VI governing “Associations by foreign individuals and organizations in Vietnam,” which we propose to leave out of this Draft altogether, in order to submit a separate draft or Ordinance or Decree instead. As there are only 2 articles in this draft where it is left to the government to stipulate concretely (and it is correct that it should be so, for in reality the Constitution does not lay down foreigners’ right to form Associations). Thus including them in here only complicates matters further.

With persisting remnant issues as shown above, if this draft is used as foundation for a draft to be passed, then we really are on the verge of making a legislative backward step. That is why we submit that the Interior Ministry redraft methodically, in a more scientific and rational procedure in order to create a law responsive to civilized progressive needs, truly renovation-oriented and consistent with the integrative trend. I propose that the Vietnam Union of Science and Technology and the Union of Literature and Arts Vietnam organize a group of independent experts to contribute ideas to the Drafting Committee. This process of adding a little and removing a few errors each time is mired in circularity and is extremely flawed.

## **THE LAW MUST ALSO TOUCH THE HEARTS OF PEOPLE**

*Prof.Dr. NGUYEN VUONG*

*Deputy Secretary-General, Vietnam Union of Medicine and Pharmacy*

The Union includes over 40 specialised associations with more than 100,000 members counted among the total number of 265,000,000 staff ever employed in the medical profession, with an absolutely clear and brilliant history. For more than sixty years we have been absolutely loyal to our fatherland. A third of nationally famous persons who are nominated by the Politbureau belong to the medical profession. They are leaders of our Federation. As seasoned lecturers at Universities, as doctors totally dedicated to patients, we watch this law with extreme disappointment as it is presently drafted.

An Association is an organization that operates according to regulations. However, the Interior Ministry reviews the regulations for approval (as stipulated in the Draft Law of Association), thus the Ministry breaches the law. Not only that, the Draft Law contains many articles which in practice will tie our hands and legs, will abort the Association's capacity to operate independently. The immediate past conference of 14 provinces has clearly affirmed that this is a step backward in this enterprise. It is impossible to accept the situation in that the organization of Association is a child of the authorities.

Such is the situation for the general law. In particular, for the medical profession, there is at present a directive from the Ministry

requiring Associations to report their activities to the Ministry, while in reality Associations since a long time have no longer reported to the Federation, but have been doing so regularly and directly to the Ministry. It is clear there is this phenomenon of the Associations being “terrified” of the Ministry... If the law does not stipulate clearly on this issue then it would create gaps for negativities to spring up.

Also according to the Draft for this Law, in the functions of consultancy, critical appraisal and scrutiny of society, Associations have had their tails chopped off (been made ineffectual). Without social scrutiny, how could any professional activity be carried out by the Associations? Furthermore, language usage in the law must be precise and concrete. To work towards integration into world economy, the primary issue of ensuring and sharing a common language must be addressed. However, so many terms used in the articles are unacceptable. That is why it has been known that Westerners laugh at our Law.

If we say Science and Industry belong to our leading national strategy, there must be behaviour and response pattern consistent with this strategy. A law is introduced but it does not respect the activities of these organizations, who would want to join them if one had to do much fawning and crawling to authorities. The Party’s regulations and policies have been made standards as they are, but if we could breath life into the resolutions, they themselves must have practicability. The law must also touch the hearts of the people and ensure fairness and democracy. To state plainly in concrete terms, the Draft Law of Association this time still causes more repression than opening up more space.



## THE LAW AND THE DYNAMIC REALITY OF LIFE

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### 1. COMMON ISSUES, VARIOUS VIEWPOINTS, PERCEPTIONS

The primary aim of making a law is to govern social relations such that society will develop in the direction set out by the ruling class. This has been done since the codes issued by the very first governments such as the Hamurabi Code that appeared in the ancient State of Babylon 4,000 years ago (1792 – 1750 BC). With 282 Articles, Hamurabi Law was fairly detailed, allowing palace slaves to have family, own property, houses... However, the greatest limitation of this law was that it aimed to protect only the interests of a small minority, the ruling group. This is to show its fundamental difference from State Laws of the present era in general, and those of the Socialist Republic State of Vietnam in particular which have been and will be issued (among them the Law of Association), being designed to protect the rights and interests of the majority of people and not those interests of a group or an organization with special rights and privileges.

Reality has shown that in parallel with the existence of law-governed State is the development of civil society, the march of human progress, civilisation with three “active” mechanisms that govern the behaviour of a person in particular and the whole society in general. They are the *market mechanism* with its own rules, the law-governed State’s Legal codes and alongside them the *community ties* (community

organizations which have existed since time immemorial, and today are called the civil society). Classical scholars have referred to this civil society as an indispensable entity beside the State: “The political State cannot survive without the natural institution, which is the family, and the artificial one which is the civil society. They are the sine qua non condition of a State.” In this context, the dialectical relationship between the three institutions is of utmost importance.

Recognizing this, the Vietnamese Communist Party has affirmed as from the 9<sup>th</sup> Congress that the State would entrust a number of public services to the social organizations’ undertaking so as to “enable the State to concentrate on more important tasks.”

## II. A FEW IDEAS ON THE DRAFT LAW OF ASSOCIATION

1. When the 4<sup>th</sup> and 5<sup>th</sup> drafts are compared, more than 30 details of subject matters in chapter sections are found corrected and amended. The question worth discussing here is about the federation of Associations in Chapter V, Article 39 (page 11) with the subtitle Federations of Associations, Unions (henceforth referred to as federation of associations). This is an Article which contains 4 subject matters in items 1, 2, 3, 4. The contents of these items are very unspecific and in reality possess little feasibility. For example: Section 1 states that “Associations operating in the same field can combine to form a federation of associations.” The notion of *field* is very abstract, with no characteristics to determine the limits and scope. More concretely, take for example the field of Internal Medicine, there is the Internal Medicine Association, beside whom there exist others with Internal Medicine characteristics such as the Endocrinal Medicine Association, the Cardio-Vascular Medicine Association, the Digestive System Medicine Association, the Urinary System Medicine Association. However because these Associations are so numerous they can not give rise to a Federation of Internal Medicine Association, etc.

Section 4 in this Article 3 stipulates that: "The formation of Federations of Associations is provided in the articles of Chapter II of this law." When examined, Chapter II is found to contain many articles and items that are not realistic for many reasons. For instance many Federations and Unions are presently formed by a decree from high level authorities and not through lodging applications as laid down by Item 1 Article 11, or they came to exist through the issuing of an Order to form an association from a very high office such as the Government or the Party Secretariat and not the Interior Ministry as stipulated in Item 1 Article 17. Therefore it can be said that Article 39 of Chapter V in this Draft is completely inappropriate. It can even be said that it is so vague that it is impossible to ascertain what type of federation it refers to.

2. With a broad and systematic perspective on the drafting of the "Law of Association", a number of points may be brought up from observation:

*Strong points:* The "Law of Association" has been arranged to be drafted and edited in a painstaking scientific manner, with opinions from many sources sought and canvassed, with the Party and State position on the task of managing the nation well understood and maintained, especially with the country as a whole being in the process of vigorous development. The world is beset with many turmoils: Vietnam as a country has gone through many changing periods, from being bureaucratically subsidized to a market-oriented economy that underpins a renovated Socialism. Although many difficulties still remain to be faced, after 20 years our country has escaped a severe socio-economic crisis (in the context of the collapse of Eastern European socialist countries and the Soviet Union), and opinions about this proposition are still divided.

The Draft Law of Association has raised the standard of discussion on psychological aspects as well as responding partly to the practical

demands. From the summary of Decree 88/2003/ND-CP to the evaluation of Association activities, the task of managing Associations on a nationwide basis... This Draft has gone through 5 editorial reworkings. A greatest common denominator of these changes is that some sticky problems snagged in the previous drafts have been surmounted, such as registration procedures being easier, freer (no need for permits), aspects of individuals and foreign organizations having been addressed (in the 5<sup>th</sup> draft)... However, in the last 3 drafts, Chapter V on Federated Associations is a patchwork of different subject matters rendering the Law's feasibility "problematic"! This has been raised above. Some other strong points can be mentioned such as the focussed and expeditious working of the Drafting Committee, with many sessions as observers and receivers of opinions from many directions, seeking references from international experiences... But these are not core points. The main thing is it has enabled the airing of intricacies needing to be unravelled, amended, proposed to be brought to attention in the drafting.

Many ideas for discussing Article 2 Item 3: There exist 6 socio-political organizations mentioned as exempt from this Law, but why are other socio-political organizations not included in this category? Where is the exercise of "equality"? Especially the majority of these associations are organizations of intellectuals whose role at present as well as in the past has a history of being patriotic and loyal to the Party, being in the bloc of allied Workers, Peasants, and Intellectuals... According to the Interior Ministry's preliminary statistics, as from March 2005, there are more than 330 associations of intellectuals, literati, artists and business people. This is too massive a force to be "glossed over", taken lightly. It is no coincidence that Party and State documents mention the important role of this group in the past and more importantly for the future as this is the real source, the training ground for talents and valuable capital of the nation.

We take this opportunity to mention on equal basis the four important functions of literature and arts for progress in general,

and for sustained development in particular. They are: The Reflective function, the Educating function, the Aesthetic function and the Predictive function. With such important functions, the Vietnamese intelligentsia in the cultural “front” is really a force with a special role in national development. Their achievements are exemplary reflections of all dynamic aspects of life.

### **III. PLANNED SOLUTIONS PROPOSED DURING THE PROCESS OF DRAFTING THE LAW OF ASSOCIATION**

Being cognizant of the sensitivity of this Law in the face of the urgent need for total socio-economic development, the drafting committee has gathered many ideas contributed over the past five editions, and will do so perhaps for several more editions to come. This is a law asserting human freedom, not responding purely to the material need of earning a livelihood like with a number of economic laws, but responding to psychological and moral needs imbued with humanity and culture. (To say so does not mean economic laws are less important). The particular nature of this law has forced the drafters and the very office responsible for drafting to lodge a report requesting guiding ideas not only from the Prime Minister but also from even higher authorities, to ensure the feasibility of this law. A sticking point is found right in the first Chapter, Article 2 and there have been several proposed solutions put forward as follows:

1. If the subjects to which this law does not apply are the six socio-political organizations (as referred to in the 5<sup>th</sup> draft above), then other socio-political organizations should be included also in this category, because other socio-political organizations such as the Union of Science and Technology, Friendship Associations... represent the intelligentsia with a special role as mentioned above.

2. It has been suggested that if this law does not apply to those socio-political organizations, then other socio-political organizations

should be considered to be on the same footing as well. It will then be sufficient to cover these organizations altogether in one single clause that “[this Law] does not apply to socio-political organizations.” Organizations already under particular laws and decrees would be governed by those specific laws and decrees.

3. Other design plans of a separate chapter for federations of Associations is a transitional solution before specific laws for intellectuals can be established. However, if there is a separate chapter, it must be phrased differently, the important content of which must refer to the important functions such as consultancy, critical assessment, supervision... as raised by the documents from the Party Secretariat and the Politbureau.

The above planned solutions should be analysed to enable selection and proposals to be put to higher authorities, who can then give directions for proceeding towards a law that ensures high feasibility, one that is equitable, democratic, and scientific, appropriate to new historical developments. Especially, the process of the past 20 years of renovation has given us many valuable lessons, among which is the very important lesson of renovating our thinking, reviewing a host of issues of the government-subsidy era with its voluntarism that ignored objective laws. We had to pay the price. (That was the severe socio-economic crisis from the late 1970s until the late 80s before we could emerge from it). Here it should be mentioned that the cause of all causes leading to that crisis and slowdown was “the task of organizing cadres and ideological thinking” still contained many irrelevances and weaknesses. At present this cause still remains as a challenge that hampers the development of our nation.

In the process of ascending towards socialism we also cannot forget that a host of so-called problems peculiar to capitalism such as “market economy”, “unemployment”, “labour as commodity”, etc. that are not strange to socialism. Recently, pluralist economic development,

respect for private economic enterprise have been acknowledged in a whole Party Resolution (at the protest still of some Party members). Recognising that it is an unavoidable process, only by going from direct perception of life to abstract philosophy, then back to the “practical reality”, can our approach lead gradually to objective truths (in the tenor of Lenin’s expressions). The Law of Association must be no different, as it must come back to the dynamic reality of life in order to renovate the thinking in the process of drafting and issuing it.





*Civil Society Action Towards: The 8<sup>th</sup> Draft*

**STILL SEARCHING FOR A COMMON LANGUAGE**

PLATFORM IN HANOI



## **A FOREST OF TREES OR SOME CRAWNY BRANCHES?**

*Dr. NGUYEN CHI DUNG*

*National Assembly Office*

This Law expresses concretely the Article 69 of the Constitution, which stipulates on the citizens' right to form associations. The Constitution states that "*Citizens have the right to form Associations... according to the provisions of the law*". The usage of the words "*according to the provisions of the law*" in the Constitution is thoroughly permissible, as they differ from the law itself. Once it is law, such style of expression cannot be accepted, as its provisions must be practical and concrete. In laws, the phrase "*according to the provisions of the law*" is very general, valuable as a safeguard for the drafters but it causes great difficulty for the implementers.

If we contrast the content of the Law of Association with the Constitution's Article 69, there would be several ideas that require to be discussed: Citizens possess freedom of volition. Therefore does the individual or the organization have the right to form associations? The sacrosanct thing is the voluntary alliance of individuals and not of the organizations as the 8<sup>th</sup> draft proposes. This fact reminds me of associations within associations. It means when management is squeezed in size, Associations have to grow like branches off a tree trunk (in the manner of Federation of Associations). If they were free, they would have no reason to grow like branches but associations will

shoot up like a forest. Thus do we wish to have a forest of trees or a few trees with scrawny branches? This is related to the understanding of citizens' freedom of volition, without which Associations are only a way of bunching together for ease of administration.

Also in relation to Article 69 of the Constitution, this Law is being created to protect the right of individuals to form associations. For this reason, upon forming, do the associations need to apply for permission or to simply register? This matter should be clarified. Although the law stipulates that only registration would be required, no need for applications, there are concrete examples of complications of the following type: A law decree stipulates that organizations must register to be legitimate, but there have been cases when trying to register, they were not given permission. Self-initiated gathering, even in private homes, still runs into the problem of freedom to assemble... If this Law is not carefully drafted, the requirement will amount to applying for permission to form Associations and would be effectively identical to that Decree.

The 8<sup>th</sup> draft stipulates the duty to register: To form an Association, an application must be lodged at an authority and the applicant must wait for the official consideration and subsequent approval. This is one way of understanding. Another way of understanding: The Association is founded strictly according to regulations, with a set of rules etc. then proceeds to be registered immediately after announcing its formation. A registration number will be issued to it for future inspection. In actual essence this is what describes a procedure of applying for permission. This does not fit the concept of free will. You cannot use a registration paper to deny that an Association has been formed.

As for the socio-political organizations, there are some viewpoints:

The first is the Law needs to determine which type of association that are not within the governing purview of this Law, and there

need be separate laws, such as Fatherland Front Law for example, to govern these organizations, in which these organizations are clearly recorded as those with the special privilege of having a State budget for their operation. And therefore their financial transparency has to be mandatory. The Budget Law must also state this clearly.

The second viewpoint is based still on Article 69 of the Constitution. Not being Associations formed by citizens, the above mentioned socio-political organizations have their own history, own stipulations, special regulations and must be transparent about this in order to distinguish themselves from voluntarily formed Associations.

The third viewpoint is about having a Ministry-managed. The fact is previously many Associations wanted to be in a Ministry-managed system in order to have protection and priority in getting jobs done. However until now, almost all income earning activities have been relegated by the Ministries to their service-providing departments. It is an unhealthy development. A public service unit with an income accruing capacity is a half-measure that creates a vague model, an extreme difficulty for the Associations' activities.

Finally the limit of the registration agency's power must be clearly delineated in this Law. Apparently so far we have only seen the power to approve formation, whereas a host of matters in relation to the authority and jurisdiction of registration agencies, such as settling disputes between Associations and agencies, public disputes... are yet to be at all mentioned. Not only that, the Law intervenes even in the contents of general meetings, Association regulations, in truth it will really create a multitude of dangers.

## **MANAGING ASSOCIATIONS AS STATE -ADMINISTERED BODIES IS UNSATISFACTORY**

*Mme. TRAN THI LANH  
Towards Ethnic Women (TEW)*

In the general trend to integrate into world economy, according to the Politbureau's Resolution NQ 07 - stating clearly that we must go over closely every sentence, every word and article of international contracts. Any laws, articles, whatever is inconsistent with the integration process must be rectified. That is why this law of ours is still a draft, and we should change whatever is inappropriate.

As a concrete example, according to the stipulations of the current Draft, there are altogether 6 organizations (placed outside the governing scope of by the Law) that are not permitted to become associations. This is very dangerous, as our Government completely controls these organizations. However, these organizations do not come under the law, which means they cannot form associations. This is an absurd situation. Workers, peasants and intellectuals are those very three legs, and we cannot exist as a vessel with two legs.

We are a science and industry organization operating for 15 years in the field of utilising, promoting and developing local knowledges of the ethnic minority communities who live in protective forested areas in the upper reaches of streams, to discharge our duties of eradicating hunger and reducing poverty through autonomous, self-reliant methods and strategies, strictly adhering to the Party's and State's frameworks. I have noted that the regime of concentrating the State's power in the

management of natural resources in protective upland forests still contains many shortcomings. For example, there are only just over one hundred cadres, agricultural forestry workers and forest rangers who manage and have the right to exploit and utilize over 10 million hectares of natural land, forests and of protective forests, the whole nation's common resources, while about 15 million poor and ethnic minorities are only allowed to manage and utilise less than 1 million hectares of forested land. This figures speak of the shortcoming caused by the centralisation of power, which not only exhausts the diverse natural biological resources of the nation, but also causes conflicts in social relations, conflict between the forest dwelling communities and government cadres at these state-run agricultural and forest collective farms. The result is a daily growing loss of trust of the communities towards government policies. And now both forest and land are exhausted. I imagine if we introduce State management of Associations into Chapter VII without serious scrutiny then we are no different from the Ministry of Agriculture and Rural Development issuing laws of development of forestry resources without achieving it. This would lead to a situation of conflict in society more dangerous than the outcome from the above example.

Moreover, if we refer to basic characteristics then associations are completely independent, differing from the State in three aspects:

- First, the basic character of associations is different from that of the State.

- Second, the culture of associations is different from that of the State.

- Three, more importantly, the organization, management and operating structures of Associations are completely different from that of the State.

The reason is that associations have three very important elements: voluntary, autonomous, responsible to themselves, to their members and to the law of the State. That is why if we manage associations in the same way as the State, it will be unsatisfactory.

## **DESIGNING LAWS IN THE CONTEXT OF MARKET ECONOMY AND CIVIL SOCIETY**

*Dr. PHAM HUU NGHI*

*Editor-in-chief, Journal of State and Law*

I maintain that we should attach much importance to the following viewpoints while designing a Law of Association:

Firstly, the individual's and organizations' free will must be assured in the formation of Associations. The 8<sup>th</sup> draft has not yet embodied this principle. In the capacity of a public authority, the State must create a clear legal environment, most conducive to the formation and activities of association organizations, at the same time it must possess a mechanism for supervising associations. It must be said that the State-Association relationship is not that of a higher to a lower echelon, or command administration, but a democratic, egalitarian, mutually supportive relationship, creating conditions for mutual inspection and scrutiny. For the Associations themselves must inspect and scrutinize the State. These are two sides of the same issue. State management as outlined by this 8<sup>th</sup> Draft is not desirable.

Next is that the drafting a Law of Association must be located to the context of the on-going establishment of a law-governed State and the civil society, amidst the transformative changes in market economy. The role of social organizations by now has changed many times, no longer like during the period of centrally planned and subsidising regime. This point should be stressed, as the state of subsidy thinking,



the requesting, granting of free assistance in setting up and operating social organizations in our country are still persistent. This issue is fairly clearly conspicuous in the temper of the 8<sup>th</sup> Draft.

Regarding the number of subject matters in Draft Law, a crucial question is how to determine the main target of the law. I concur with the suggestion that facing the above question, the drafters are to make a choice among alternative solutions:

*The first alternative solution* is perhaps to bring all socio-political organizations into the governing precinct of the Law of Association. In this case, socio-political organizations are considered as a true part of the civil society, on an equal footing with other public organizations and associations. Consequently, the socio-political organizations will operate and develop in a more autonomous direction, and will be closer to the public. To put it another way, operating within the Law of Association, the socio-political organizations will acquire the conditions to develop in the direction of "socialisation"<sup>1</sup>. This will resolve the situation where social organizations become "governmentalised."

*The second alternative solution* is to devote a separate chapter in the Law of Association stipulating the activities of socio-political organizations. In principle, it must be affirmed that these organizations are NGO's, and a part of the civil society governed by the Law of Association like other NGO's. At the same time the Law of Association can have a number of provisions reflecting in a concrete manner the particular characteristics of a number of socio-political organizations, and a number of socio-politico-professional organizations.

*In the third alternative solution*, the Law of Association will not govern the activities of socio-political organizations. Thus the socio-political organizations will have a separate, special playground where they are subsidised and supported by the State.

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<sup>1</sup> Socialisation = practically being partly State-funded (translator's note).

My view is that we should adopt the second alternative solution, because we should not continue to “governmentalize” socio-political organizations in the context of the country changing over to market economy and integration into international market. However, we also need to take transitional steps, and having a separate chapter for socio-political organizations would amount to embodying this transitional characteristics in a number of stipulations.

The recognition of individual foreigner and foreign organizations having also the right to form, participate in associations just like Vietnamese individuals and corporate entities would be consistent with the reality of many countries and with the globalisation trend. Therefore, I think if the concrete right to form associations of foreign individuals and organizations is stipulated in the Law of Association, it should not be stipulated as written in the Draft, where the provision is to be stipulated by the Government.

In addition, there are two issues that should be included in the Law:

Firstly, provisions for settling disputes between associations and State departments and agencies and the determination that the authority to settle them should be the court (settling by judicial means and not through administrative avenues). In the process of formation and operation of association, disputes between associations and state agencies are unavoidable. Therefore the establishment of a judicial mechanism to settle this kind of dispute is extremely necessary.

Secondly, provisions for ensuring the associations’ right to appeal against State administrative offices, appeals in courts against impediments to the right to form associations, encroachment on the legitimate and legal rights and interests of associations.

Finally, careful considerations must be given to the provision that the Ministries with their specific managing capacity have the right

(meaning also the responsibility and duty) to manage associations. The present period is the transitional period of development for civil society in the climate of market economy. Associations are institutions of the civil society. In that condition, the relative independence of associations with respect to the Ministries should be recognised. If specialised Ministries have the right to manage associations then the Association would find it difficult to perform its functions of scrutiny and social critique of the relevant Ministry's management activities.

## **I DO NOT UNDERSTAND WHY IT HAS COME TO THIS**

*Dr. TRAN HUU HUYNH*

*Head, Legislation Committee, Vietnam Chamber of  
Commerce and Industry*

With regard to the Law of Association, allow me first to give a concrete example that took place recently, it was the investment law. In that situation where there are so many business people, federated associations and scientists who do not reach a consensus, the bill was still submitted. Even before the National Assembly voted, there was a number of people who asserted that the bill will surely be passed... This is a Draft Law that has received contributions towards its pretty thorough construction, with many meetings to canvass ideas from associations, business enterprises, to compile into books, to invite National Assembly representatives from Hanoi, Ho Chi Minh City for hearings and for contributing ideas. However, the Drafting Committee's compilation work was tantamount to almost nothing. Only until 3 Foreign Chambers of Commerce co-signed a submission could anything be made official...

I do not understand why it has come to such a situation. Now for the Law of Association, if care is not taken, it would be easy to find the same situation repeated. A joke has been going around that the purpose of conferences like this is to raise consciousness, to ease the passage of the law into real life with less hiccups... The reality is that there has been several conferences, and it appears that most ideas have not been consensual. The Draft, however, has not been revised. If submitted to

the National Assembly an passed in this state, our sweat and tears will have amounted to nothing significant.

Nevertheless, I have seen encouraging signs this time, that is a new Draft for this Law for us to consult. Firstly, it is a positive expression of the civic attitude towards society, and after perusal, I find this Draft to be more positive, having solved many sticky problems, it is more acceptable.

Regarding the content of the 8<sup>th</sup> Draft, I would suggest:

This is a Law about regulations, as rights are readily understood. There has been communities from the early primeval societies, this is a natural right of people since antiquity, and it has history of enduring existence. Therefore it must be respected. It has higher priority as it is constitutionally recognised. In this spirit, nothing should be allowed to hinder this right. However, the content of the Law works under a different spirit. The formation of associations is conditional on their general meeting being approved. Where is then the constitutional right? Associations must also reach a quorum: Why?...Not strictly the Drafting Committee, but the collective consciousness in general in designing laws is still stuck in the planned-economy system, and this is not correct.

The essence of the Government is that it is of the people, by the people. A community growing big and strong, in happiness, with people becoming prosperous, civilised, democratic, are the objectives of our Government. Why should the size of membership and registration be limited? The stipulations that there must be an inspecting committee, a campaign to form the Association, to me are unnecessary. To be green and lush, the tree of life must be diverse. The simpler and clearer the stipulations are, the better it will be.

The trend to link the word *Political* to associations is fairly widespread today. I think in principle, all associations have a political

character. Is it not contributing to the building of a civilised society a political act? Ideally the State must not be entangled with practical necessities of livelihood and money but should be an arbiter, this should enhance its role of administering society. And the law only has to deal with the relationship between Associations and the State as with other partnerships. The internal relations of each Association need not be addressed by the Law at all. The same with splitting up, dissolving an Association, and these are already governed by the Civil Law.

Similarly, regarding the formation, management of Associations, the issues that need addressing are only formation procedure and supervision to ensure the Association perform its functions properly, there is no need to manage Associations. If this can be achieved, Associations and the State will both be strengthened, and the tree of life will grow more green and lush.

## **IDEAS IN PARTICIPATING IN THE DRAFTING OF THE LAW OF ASSOCIATION**

*NGUYEN DINH ANH*

*Dept of International Finance, Ministry of Finance Member  
of Drafting Committee*

Here has been many seminars surrounding the drafting of the “Law of Association,” many discussions organised by different agencies on different scales and in different areas. Of special interest are the seminars organised by the Interior Ministry itself (the presiding agency for drafting the Law) to gain a broad contribution of ideas to the draft Law of Association, notably the ideas from the Associations (the subjects of application of this Law of Association). I think the birth of the Law of Association at this point in history is truly necessary and appropriate. As a member of Drafting Committee, I have a number of opinions as follows:

1. On the concept of “Association” mentioned in Article 4 by the Drafting Committee, “Association” is understood as a voluntary organization, having a juridical status of a corporate entity, operating regularly, being not profit-oriented, with the aim to protect the rights and legitimate interests of the Association and its members, to contribute to the socio-economic development of the country. I would like to add two following details to the concept of “Association”:

- Firstly, to differentiate “Association” from Government agencies. An Association is an organization outside the government, does not belong to the Government. It is important to state clearly here that this is also an attribute of the Association requiring to be elaborated in the concept of “Association”.

- Secondly, the role of Associations. An Association must have a certain role, being even over and above the aim "...to protect the legitimate rights, interests of the Association and its members". Before protecting legitimate rights, interests of the Association and members, an Association must have a guiding principle, a separate operational objective directed towards the interests of the community and society. The role and significance of the Association must be expressed in the concept of an Association. As this is the Law of Association, it needs to have perfected the concept of Association, which reflects exactly its essence and encompasses all the characteristics of an Association. I think the conceptual framework should be designed with two component blocs. The first bloc reflects the essence of an Association: An Association is a corporate organization that is not State-dependent, with its guiding principle and aims congruous with the interests of the community, and for the sake of social progress, works towards upholding the values of truth, beauty and goodness.

The second bloc reflects the Association's characteristics including:

- Voluntary nature
- Independence
- Professional nature
- Responsibility
- Non-profit nature.

When the concept of an Association is perfected, it can be brought into Article 1 of the Law. The definition of an Association is to be made before other stipulations such as the right to form an Association, the governing scope, applicable subjects, the organization principle... That would be more reasonable.

2. Point 2, Article 4 of the Draft Law explains "not for profit purposes" as not to procure profit in order to divide it among members



but to invest it in Association's activities in accordance with regulations. This explanation to my mind is still flawed in the following aspects:

- Firstly, the above explanation allows an interpretation that Associations are entitled to seek maximum profits, so long as the profits are not divided among members and are invested in rule-abiding activities of the Associations. However, if Associations are allowed to seek maximum profits, this would negate the Association's characteristics of "not for profit purposes".

- Secondly, Article 37 of the Draft Law stipulates that as corporate entities Associations must operate in accordance with the Association regulations, which must adhere to the principle of not seeking profits. This means the corporate entities pertaining to the Associations must also adhere to the principle of non-profit purposes, not seeking profit to distribute among members. This is a very unsettling problem as it contains many contradictions. I will cite an example as follows. At present many organizations with corporate status in the category of Associations are the science and industry organizations who are given permission to practice their professions by the Ministry of Science and Industry, allowed to "collaborate, establish joint ventures, receive funding from organizations and individuals, accumulate capital in monetary or real estate forms, in copyrights of intellectual property in order to carry out scientific industrial and productive, enterprising activities according to provisions of the law" (Point 3, Article 15, Law on Science and Technology). This provision of the Science and Technology Law permits scientific and industrial organizations to form joint ventures, merging capitals in order to carry out, as provided by the law, productive enterprises, which naturally would include the distribution of profits. In fact hundreds of scientific and industrial organizations are organizations with corporate status who in the process of operation, have to accumulate capital for productive enterprises according to the science and industry law, and after paying all their tax duties, according to this Draft for Associations,

they are not permitted to distribute their profits to members, clearly contradicting the Science and Technology Law.

3. On the subjects of the application of stipulations in Article 3 of the Draft Law, [they include] “Vietnamese citizens and organizations, except: the Vietnam Fatherland Front, the Vietnam General Confederation of Labour, the Ho Chi Minh Communist Youth Union, the Vietnam Peasants’ Association, the Vietnam War Veterans’ Association, the Vietnam Women’s Union and the religious organizations.”

Regarding this issue, someone in the Drafting Committee has questioned why the six political organizations should be excluded from being subjected to the law. And there has been an explanation given, that is because in essence these six political organizations are not real Associations. With such an explanation, a counter argument is raised in this opinion:

- If they are not Associations in real essence, there would be no need to stipulate that they be excluded from the governing scope of the Law of Association, as naturally they do not belong to the category subjected to the Law of Association. Just like Ministries, we do not stipulate the exclusion of Ministries from being subjected to the Law of Association because Ministries are not Associations. But if those organizations are not Associations, why are they not called Ministries or something other than Association, instead of insisting on the nomination of ‘Association’ (Peasants’ Association, Women’s Association...). That is clearly because they are Associations and thus it cannot be said that they are not.

The Drafting Committee has discussed the second alternative solution regarding the provision for the subjects of application as “Vietnamese citizens and organizations, except those organizations stipulated to be governed by separate laws.”

I personally think this solution No. 2 is reasonable because it solves 3 problems:

- Firstly, it satisfies the need to exclude from being governed by the Law of Association those political organizations such as the Vietnam

Fatherland Front, the Vietnam General Confederation of Labour... as these organizations already have their own laws.

- Secondly, this way of excluding is very subtle and very flexible. Subtle because it realises the wish to be excluded, at the same time it shows a straightforward fairness, transparency of the law towards all subjects (including international organizations). Flexible because it does not impose a rigid frame on the six political organizations. In my humble opinion, the determination of an organization as political depends on its political role in each of the developmental stages of the revolution. For example, there comes a time when the Vietnam Union of Science and Technology Associations, due to the developmental needs, becomes a political organization of the present status. What can be more absurd on that occasion than having to add this organization to the number of those not within to the governing purview of the law?

- Thirdly, the rigid provision to exclude the six political organizations not within to the governing purview of the Law of Association make other Associations feel they are given unequal treatment, therefore they will fight for an equal footing with those political organizations. In reality this has been and is still taking place, causing no few complications.

4. Regarding the issue of Federations to revise the stipulation of Article 40 of the Draft Law, the guiding thought in drafting is that Federations should not be a higher-level agency directing their constitutive Associations, therefore it has been stipulated that the function of the Federation is only "to co-ordinate the common activities of the constitutive Associations...", there is no managing function. It is because in reality, the member Associations do not wish to be managed by a higher level organization and also in reality federations do not possess the capacity nor a mechanism to manage member Associations. I cannot deny this reality but do not agree with the Draft Law either. I would suggest the following issues need to be further considered:

- First of all I regard the “co-ordinating” function of Federations as without content, because only a managing function can have a concrete content.

- If the management by their Federations, being unacceptable to member Associations, is a problem to be dreaded, then it has been solved by the stipulation of Item 2 of Article 40, where “the joining or withdrawing from Federations of member Associations are done on voluntary basis and is decided by a General Meeting of the Associations concerned”.

- I propose that the Federations’ function with concrete contents about managing member Associations to be brought into the Law, because each Federation (including those in the local areas) at present has hundreds of member Associations and they will increase to thousands of member Associations in future. In that case, if there is no managing hub and no Federation, it will be disorderly like a routing army, impossible to assemble into a force, and professional work will not be achievable (such as in evaluating, appraising aid projects, or in evaluating, appraising, auditing annual combined accounting statements, or in combined report on financial data...). That is why it is very necessary to stipulate as law the function of Federations to manage member Associations.

5. Regarding State management of Associations, many ideas from representatives of Associations show a strong reaction against having a Ministry in charge of Associations. In the Draft Law of Association, I did not see any article referring to the Ministry being in charge of Associations. Item 2, Article 7 of the Draft stipulates that: “Ministry, or equivalent department has the responsibility to carry out State management of Associations’ activities within the scope which the Ministry manages on a nation wide basis...”. I do not see in this stipulation any point that is incorrect. It is natural that the Ministry must manage in a functional capacity consistent with the Ministry’s domain as related to Association activities. This does not mean that the Ministry becomes a parent body for Associations.

## **I DO NOT AGREE WITH THE VIEW THAT THERE MUST BE A MINISTRY IN CHARGE**

*Prof.Dr. DINH NGOC MAU*

*Deputy Director, National Institute of Administration*

*Firstly*, what is the basis for drafting this Law: The most important thing is civil liberty. If civil liberty is not recognised, we should not draft this Law. There are a few types of freedom in society which have been subsequently inscribed in the Constitution: First is the freedom of speech. Second is the freedom to assemble and to form associations. Third is religious freedom. And fourth is the freedom to earn a living, and with the market economy we have the freedom to engage in business. There are many more types of freedom but I just mention those four above for the present purpose.

From conscious awareness, we take action. The awareness of Associations represents freedom, and the Associations' activities are also free acts. Only with such conceptualisation can we discuss about the Law of Association.

*Secondly*, the principle of law making. We already possess this principle: To separate government administration from civic activities. All associations' activities must be separated from public administration. The more they can be separated, the more society can exercise freedom and develop. Associations are not bodies with departments and organised structure laid down by the government. If this principle is not recognised, it will be difficult to draft a law.

*Thirdly*, concerning the scope; the scope of this Law is to govern legitimate associations. Article 9 of this Law stipulates that: a quota number of members must be reached for an association to be set up. Therefore if an association is formed with a number of members lower than the quota, what can this be called? Why wouldn't the State consider it as a body with a legitimate life when it does not breach any law? And therefore what is the legal scope within which it would be covered? This is why the concept of association in this Law is far from clear. I propose that this problem is to be researched and studied.

*Fourthly*, concerning the method of management. In fact if it has been called a law, there can only be three methods of management. The first is by prohibition. State prohibition is most important in market economy, but there is too little prohibition in this Law. It is imperative to write down what are to be prohibited in the draft. Whether any prohibition is correct or not can be then left to subsequent discussion. The second method is by coercion. In my opinion, the only compulsory requirement for associations is registration. If they fulfil all legal criteria, they must be allowed to operate. Meanwhile the biggest principle for the State is to operate within the law. Anyone who broaches any limit under someone's authority, that person is then deemed legally responsible. After being forbidden, coerced, who would want to assemble together in associations? The condition that Associations can self-manage according to recognised regulations for registration is a lawful one. The State therefore must take the responsibility to ensure that the Associations' charters are legal. I do not agree with the view that there must be a Ministry in charge to manage the activities of the Associations.

## **OBSOLETE THINKING IN THE STYLE OF STATE-SUBSIDISED SYSTEM**

*Prof.Dr. TO NGOC THANH*

*President of Vietnam Popular Arts Association*

I have been able to participate 3 times in this drafting, this time is not different from previous ones, and if there was any difference, it would still not reflect the reality faithfully.

Firstly, we are of the Federation of Literature and Art Associations, established by the Party from the Cultural Association for the Fatherland Salvation since 1943, during the struggle of fighting the French and evicting the Japanese. From 1943 until now the professional branches have grown larger to become professional Associations, unlike what they were formerly - Performative Arts Associations. We did not take the initiative to form the Associations ourselves, therefore we do not come under the purview of voluntary self-governing subjects with regular activities. We were established together with the Youth Union for the Fatherland Salvation, but now we are not included in the so-called socio-political organizations bloc. According to the Party Resolution 08, we are called a professional socio-political organization. May I ask you comrades: During the national struggle, the Party stated that there are Workers, Peasants and Intellectuals together. Today when the Resistance has succeeded, how come all of us intellectuals cannot join workers and peasants? I regard this is an error in ideological principle. The two brother intellectual Federations are the Vietnam

Union of Science and Technology Associations and the Federation of Literature and Arts Associations. They should be on the same level with the Women's Union, Youth Union, as they form the fundamental elements of the Vietnamese Socialist Revolution. This drafting work is done in the name of civil society, I submit it must be remembered that it is a civil society led by the Party. I regard this is the compass point and the foundation stone for you comrades to work on. It does not consist of this and that concrete article. That is, may I say frankly, the ideological principle.

Secondly, it has been suggested that the word 'in-charge' does not exist anywhere in the Draft Law, but I would maintain that the spirit of being State-managed appears abundantly clear. Associations are established for carrying out activities, but if they were to be totally managed by the State, then what would there be left for them to do? At most we belong to a branch of the Ministry of Culture. The Ministry of Culture has had respectable achievements, but they are not in our field, so can not manage us? That is why we all agree that the Ministry only manages by law, and suggest that Items 2 and 3, Article 7 in this Draft should be completely deleted. They represent an extremely outdated way of thinking in the style of State-subsidised system, if this is not a sort of stripping of Party leadership power from us.



## **THE ASSOCIATION SHOULD NOT BE REGARDED AS AN ECONOMIC ORGANIZATION**

*Dr. HAN MANH TIEN*

*Institute of Research and Training for Management*

...A point that I think mistaken, is the way Associations are perceived here as economic organizations. This is a fundamental error.

It is expressed in two points:

The *first one* is the registration to form an association requires the registration of assets. This is incredible! I have 300 members, after the general meeting takes place, if laws are breached, then the application can be rejected. That is the correct procedure. If an Association is formed in breach of the provisions then clearly it must be liable for prosecution by the law, this is normal. To require registration of assets at the start of forming an Association reeks the thinking reserved for business enterprises.

*Secondly*, it concerns the provision for dissolution. In a business enterprise, if the General Manager, the President of the managing committee made a mistake, it would not mean the enterprise has to be dissolved. Even if the Executive Committee made a mistake, it would still not mean dissolution of the enterprise. In the case of dissolution of an Association, the procedure for dissolution should be a matter of concern, but in this Draft Law, the matter that attracts most attention in dissolving an Association is finance. Meanwhile the social implications, members' rights and interests are as good as ignored. Such a way of

perceiving, approaching the issue, from registration to dissolution, is copied completely from the management of business enterprises.

From the above logic, I would suggest:

There has been already 8 rounds of drafting, if you think it is sufficient to change only a few words and phrases, then you should go ahead and submit the Draft. It is my opinion, however, speaking also on behalf of other brothers and sisters, I strongly urge you to delay the submission, so that a consensus can be reached first for the concepts that express principles, then rectifications of technical issues can be made next. As such, if the drafting were to be halted or slowed down, and it would be all the better.

## **I CONCUR WITH THE PROPOSED REMOVAL OF ITEM 3 ARTICLE 7**

*Mme. PHAM CHI LAN*

*Research Office of the Prime Minister*

I concur with the proposed removal of Article 3, Article 7 from the Draft Law. The ministries can go on managing their own areas of specialty as stipulated by law, where anyone of them operating within their specialised area would have the right to inspect and to examine. They could blow the whistle if there was infringement, otherwise people should be left alone in their normal operation and there would be no need for stipulation of management here.

In addition I propose the Item 3 Article 11 should also be deleted, as it requires that if the Association locates its headquarters in any district or precinct then it should register with the People's Committee of that district or precinct. It would not be possible for districts or precincts to fathom the nature of Associations, even with the fairly well-known large ones with a nation-wide scale of activities. Without adequate information, the districts or precincts cannot be given the role of managing Associations, without feeling they are unduly burdened and are risking harm to the people charged with the management. To be practical, it would be quite sufficient for the Association to report to the registration office on the location of its headquarters, wherever it is. Such stipulations are not made even for business enterprises.

The district level management and the parent body status of the

Ministry should be abolished. Only a quick and brief registration procedure with a registered address is needed. For the Central and Inter-regional areas, the Interior Ministry can be in charge. At local level, registration can be left with the provincial authority. This would be most convenient.

There must be a number of rights and duties designed in the Law, in the sense that the State recognises certain basic rights and obligations of the Associations. As far as the details of these rights and duties are concerned, they must be dealt with by the association's regulations. The reason is that in their rules and regulations, the Associations always have to define perfectly clearly all the rights and duties of the Association and its members, in order to attract sizeable membership...

## **THE NEED FOR A CLEAR TYPOLOGY OF ORGANIZATION FOR ASSOCIATIONS**

*Mr. TRAN KHANH CHUONG*

*Vice-President of Vietnam Federation of Literature and Arts Associations*

The National Assembly will no doubt discuss extensively about the Law of Association, but as a National Assembly representative I am deeply concerned, as the number of representatives who work in Associations is very low. Therefore once the Draft Law is submitted, it will be too readily voted on. That is why if we do not discuss thoroughly at the Associations, when the Draft is presented to the Assembly, only 5 or 7 of us who are in the associations can not argue against anything.

Can the Law of Association be named differently for the sake of clarity, for instance Law of NGO, or Law of Social organised groups? I find it extremely irrational that the Women Associations are not included in the Law of Association. And deos this mean our Fine Art Associations, Literature and Arts Associations are even inferior to these? The Vietnamese term association indicates they are all the same, therefore if these associations are left out, a very large number must be excluded. The Vietnam Union of Science and Technology Associations, the Federation of Literature and Arts Associations, Journalists Associations... each Association is equally important as another: How can industrialisation and modernisation do without science and technology? If culture is to be the foundation, how can Literature and Arts be missing? Thus I find that to speak about a Law of Association

with some Associations remaining outside of it is unsatisfactory. I propose therefore one chapter in the Law of Association, a clear classification for the types of association must be made.

In brief, I fervently hope that the comrades will continue to make rectifications and amendments, but I also would like to propose as follows: As the comrades who are active in associations have a deeper understanding, you should correct the details of this document. You would be able to deliberate on accurate phraseology and terminology, as past experience shows that generalised statements such as those made recently are inadequate. Once you point out which phrase and what term must be modified, naturally the Drafting Committee will select a term suitable for both us and for the management proper.

## **THE FEDERATED ASSOCIATIONS MUST HAVE A UNIFIED VOICE**

*Mr. LE CONG LUONG*

*Vice-President, General Secretary of Ha Tinh Union of Science and  
Technology Associations*

Up to now, I have participated in 4 seminars altogether on the drafting of the Law of Association. For this a reason I can say that it has been a first step in democratization of the issuing of Government's law.

Apart from a number of concrete ideas contributed to the drafting of the Law of Association, I think there is finally the issue which we must accept as only true, that is perfecting this law would be difficult. This is because in our country, on nation-wide basis alone, there are more than 300 NGO's. As for federated associations and associations, they must count in the hundreds. To give all of them a hearing is indeed extremely difficult for the Drafting Committee. That is why I propose that before this Draft Law is submitted to the National Assembly, for the sake of high effectiveness as well as real consolidation of ideas, the Vietnam Union of Science and Technology Associations and the Federation of Literature and Arts Associations are to be assigned with collecting the ideas ranging from members to official texts of these two federations which will eventually be sent to the Drafting Committee to present to the Government. In our opinion, a common unified voice of these two Federations is essential. It will serve as one of the bases for the Drafting Committee to examine and consult.

## **MATTERS OF PRINCIPLE MUST BE GUARANTEED**

*Mr. VU DUY THAI*

*President of Hanoi Federation of Industry and Trade Associations*

Our Federation has a difficulty, that is to organise a general meeting, we must obtain approval from the local government agency. As a result, we must keep on waiting while the appointed due date has passed. We have already lodged reports, rules, anticipated personnel, but personnel is the only problem which has remained unsolved. And the planned General Meeting has been postponed for 9 years now. Therefore I propose that this Law must include this subject matter: in the case where individuals, associations encounter deliberate refusal from functionary agencies or deliberate delay in issuing approval when the time for General Meeting is due, the way these agencies are to be dealt with and the manner of settlement should be stipulated. Only by such a measure can the protection of rights and interests of Associations be ensured.

Associations are basically self-sustained, independent financially, except for some associations with special characteristics such as the Blind Association who need subsidies, whereas other associations should be considered on individual basis. Therefore I think all organizations governed by other laws must not be included in the purview of this law. This part must be phrased flexibly, made easier to understand, more convenient for usage, rather than having to specify this or that association is not within the area governed by the law, this is unsatisfactory.



We also agree that what can be understandable for the Drafting Committee with some points, but when it comes to matters of principle such as the Association is a democratic institution, as a partner of the State, it must have relative independence and cannot be a public instrument... these must be enshrined. Only when that is done can Associations be brought up-to-date and able to attract more members. However if Associations are merely an extended arm of the Government, then achieving an conglomeration like our business enterprise bloc will be difficult.

As an insider, I believe that insiders' opinions are more practical. I hope they are given due attention.

## **EVEN IDEAS FROM THE EDITORIAL PANEL ARE NOT ACKNOWLEDGED**

*Mr. NGUYEN DINH KHUYEN*

*Deputy Head, Office of the Lawyers Association of Vietnam Member,  
Editorial Board*

As a member of the editorial panel of this Draft Law, I could say that ever since the 5<sup>th</sup> Draft we have discovered that this Draft has many issues. We reported to the President of the Lawyers Association to send a circular requesting permission to organise a gathering of ideas from a limited source domain. We have canvassed opinions starting from the 6<sup>th</sup> Draft, including those from members of the Lawyers Association, the Interior Ministry... and at each sitting, the members of the Editorial Board and the Drafting Committee have been present to listen, but the results are extremely slow in coming.

Regarding the subject of governing of the Law, the 6<sup>th</sup> and 7<sup>th</sup> Drafts propose 2 solutions: The first is to exclude the 6 social organizations from the domain governed by the Law; and the second is to provide a different document for their regulation. Our Editorial Board was unanimous in choosing the second solution, and explained why the first solution was not adopted here. However, at the 8<sup>th</sup> Draft, this proposal was overturned. The Editorial Board's suggestion itself therefore was not even noted, and the reasons arguing for such change were not given.

The Editorial Board has also proposed that Item 2 Article 7, which stipulates on the Ministry being in charge, be deleted, because

Associations operate according to rules and regulations by law, rendering such stipulation unnecessary. The State, in the role of tight managing of Associations, will hamper the vitality of the latter. This suggestion was made in almost all Drafts. Furthermore, in Item 2 Article 39 of this Draft, there are concrete provisions for Association activities which have not been revised. Not only that, if we follow the changes from the previous drafts, it will be easy to recognize that there are points in this 8<sup>th</sup> Draft that are inferior to those of the 7<sup>th</sup> Draft.

## **TO BE CONCRETE DOES NOT MEAN TO SET THE LAW IN GREAT DETAILS**

*Mr. PHAM CONG LAC*

*Dean, Faculty of Civil Law, Law University of Hanoi*

Exactly one week ago we also had a seminar on this Draft. Although our report is not yet ready, I have noted that there are 80 - 90% of ideas from our seminar that coincide with what has been put in the articles of the Draft just presented for study here.

Starting also from the scope of governing: According to the stipulation of Article 3 of this 8<sup>th</sup> Draft, it is sufficient to exclude only the 6 existing social organizations. In fact all associations formed on voluntary basis ought to be included in the this governing scope. If there are stipulations for a number of special organizations to be put outside the scope of this Law, there must be special governing provisions for these. In addition, there are many associations without corporate status, therefore have no need to register. This Law must be able to encompass those also. Otherwise, if the situation is left like it is at present, the scope of governing can not be secured.

The second issue is management by the State. Until now the State keeps insisting that it must have a grip on everything. This is not necessary. If the Law stipulates that the State manages the Associations' activities like at present, then it is not only excessive, but it also precludes the existence of a legal corridor for the Associations' activities.

Third is legislative technique. According an evaluation of our

specialist agency called the team for technical design of documents, this Draft Law displays such a low professional standard of legislative technique that it requires to be redesigned starting from scratch. An instance can be mentioned in the fact that there are contents of articles that are shorter than the title of the article itself, which sounds extremely nebulous and incomprehensible.

We have many types of Associations. If the Law is to encompass them all, it needs clarity, orderliness and concreteness. However, this does not mean it must put in details all the article of law. The articles that already exist in other law codes need not be introduced to complicate things. Especially with the proposal that this Law must be applicable to all Associations, or only those Associations formed after its issue, this matter should also be clarified...

## **TO REQUIRE THE MINISTRY TO BE IN CHARGE IS AN OBSOLETE, STATE-SUBSIDY SYSTEM THINKING**

*Dr. PHAM TUAN KHAI*

*Deputy Head, Law Design Committee, Government Office*

The policy to allow associations to participate in a number of activities hitherto belonging to the governing province of the State is one of the enlightened thoughts of our Party. In a recent meeting, the Prime Minister affirmed that: the birth of the Law of Association is complex, but we must strive so that all Associations reach unanimity and solidarity with the State to achieve great things. It is imperative to master that spirit in designing the law. It must be said frankly that the guiding thought of this law is not yet clear at present. There are 2 opposing currents: The first is the State wants to control the whole lot; and the second is that Associations want to slip out of State control.

... When we consider the association as a principal subject in the activities of a progressive society: a democratic society, a civil society of today, it is a management issue for the State with respect to the associations. This is an important issue. State management of associations naturally exists, but the question is what is being managed, how to manage in order to enable the associations to develop. I am very dissatisfied with a number of law plans and with the way in which some agencies implement the law at present, in that: We State-manage a number of different spheres, but when we do not manage, it is either a laissez-faire, or a tightening or prohibitive situation. For example, it has been suggested that nowadays various types of karaoke

have become rampant disorderly, full of negativities, so they must be prohibited. Thus I think that is an encroachment on the people's freedom to engage in business. We are not supposed to encroach on that freedom, but on the contrary we proscribe it even when such freedoms are demanded by society, on the part of the people. Another example is the recent stipulation that each person can register only one motor-bike or motor-bikes are prohibited, etc... As you have seen on the media, Circular 02 of the Police Ministry has been amended.

Another point related to the particulars of State management is the State management agency for associations. In the Draft Law, many agencies are mentioned, including the Government being the main one, next are the Ministry, the Department on Ministry level, then the Interior Ministry. Thus a question is raised as to when the Interior Ministry acts as the agency, and in which case the Ministry-level Department is the agency. It has been suggested that, even if the Associations are to be managed by Ministries like at present, it is still an issue that deserves to be reviewed. There are many approaches to State management, but in our opinion, to speak of State management is to refer to agency and not a body subjected to the action of many managing agencies...

Our historical condition differs from that of many other countries, being a Party - led socialist country, therefore all of a sudden Associations can not be entirely divested of management by the State altogether. The associations' position and role must be determined during this intervening period. What could be the influence of the State over the formation and supervision of associations like, what could be the effect of association on the State like, including supervision of the State?...All must stem from the thoughts in Article 69. This is exactly why this Law perhaps only stipulates around the citizens' right to form associations, being the way it implements the Constitution, setting up norms with regulatory characteristics in order to manifest the citizens' rights in practical reality.

Stemming from these thoughts as such, the Law only revolves around the rights and duties of citizens in forming associations: what consists of legal validity, how are regulations to be set up, what is the role of the State regarding associations...? I agree with the suggestion that distinction must be sharply made between types of associations, so that eventually the mechanism for financial management could be clearly established. Clear differentiation of association types would also clarify the legal and obligatory position of association members. This should be an issue to be addressed throughout the process of drafting.

Seminars like this in my opinion is very useful for the process of designing the law. They are not just for raising awareness. No law can reflect all aspects of reality. One of the reason for the existence of lawyers is to find loopholes in the law to defend his/her client. Therefore however well crafted the Law of Association itself can be, it still will not be able to satisfy everyone. For that very reason we must only limit the content of the law to the guiding thoughts as affirmed above. Regarding the issue of State management of Associations, I still maintain that thinking a Ministry or a Department of the same level as Ministry is needed to manage Associations represents obsolete thinking of the State-subsidy system era. The reduction of bureaucratisation of affairs, among them are Association activities, requires that this problem be solved. The clue to its solution is the Interior Ministry, who assists the government to approve registration. As for the Associations, if their activity breaches the law or State provisions then there is no way they avoid being held liable for prosecution by the law. This must be said openly, as in fact at present there are many Association that have lost their solidarity, being in torridly unpleasant conflict. They are not able even to organize a general meeting. What then is the role of the Interior Ministry?



## **THE MINDSET ABOUT STATE MANAGEMENT BY LAW MUST BE RENOVATED**

*Mr. NGUYEN VI KHAI*

*Research Office of the Prime Minister*

The first thing to affirm is that the dialectical relationship, in a stable “tripod” framework, between a Government by rule of law, the Civil Society and the Market Economy stems from a new perception of the law of progress. It is a relationship between structure and function. Our Government has evolved from a governing function to a service function, whereas the role of Civil Society consists in the self-managing characteristics, effectively taking control of social life. Only in this context can we have a real Government of the people, by the people and for the people. The market economy, on the other hand, will have the role of categorizing, evaluating and rejecting. Thus, each of those subjects has its own organised mechanism and structure. For the Government it is the administrative machinery with its mechanism of assigning and posting. For the civil society, we have autonomous self-managed organizations (those social organizations) with their mechanism of public election. And for the market, there are productive and business enterprises with its mechanism of healthy (anti-monopoly) competition. From here there is a gradual divergence to a great degree of distinctiveness in the methods of sustaining existence and developing. The Government has its original law (the constitution) and the codes, its decrees and circulars. The Civil Society has its conventions, pre-conditions (Associations), or charters

(villages), even sometimes simply a trust convention. And the market has its laws (of supply and demand, of pricing), its value yardstick, and use value of products. The relationship in the tripod stance therefore requires a harmony, agreeability between the constitutive elements. Consequently the law must be free and spacious such that the civil society can have a democratic and equitable basis for development. For the same reason, the law has to be much clearer, more coherent to avoid the phenomenon of covert markets aiming to evade and slip through it.

However, there are still viewpoints that tend to duck and weave around the notion of civil society, creating much delay in the drafting of this law. The vastly different role of the market (compared to the era of State-subsidised system) is not being recognized by the Law. This remains precisely the limitation of the Law.

## **THE LAW HAS NOT CLARIFIED THE FUNDAMENTAL DIFFERENCE BETWEEN ASSOCIATIONS AND STATE AGENCIES**

*Dr. NGUYEN QUANG TUYEN*

*Law University of Hanoi*

It is not difficult to recognise that the guiding view in designing the Law of Association is not yet clear. This is revealed in stipulations which still give prominence to the managing role of the State for Associations' activities, while Associations have the tendency to minimize State intervention in their activities. What should then be the guiding viewpoint when designing a Law of Association?

We agree with the view that the Draft Law of Association constitutes a concrete manifestation by Law of the freedom to form Associations as stipulated by Article 69 of the Constitution: *Citizens possess the right to freedom of speech, freedom of the press; they have the right to be informed, the right to assemble, to form associations, to hold public demonstrations in accordance with the stipulations of the Law.* Therefore, should not the Draft Law of Association concentrate more on dealing with proceedings, procedures to ensure that the citizens' freedom to form associations is facilitated in an expedient, simple, clear way, and to avoid stipulations that create obstacles or cast influence over this right? It is regrettable that a number of provisions in the Draft Law of Association have not achieved that.

Regarding the contents of the Draft Law of Association, we would like to offer a few suggestions as follows:

*Firstly*, with respect to the governing scope, it is sufficient to

stipulates that: "This Law makes provisions for organization and activities of Associations." The issue of managing Associations should not be addressed; because the association is a social organization formed on a voluntary, self-managed basis and operates within Association rules and the law. The Association differs from State agencies, there should not be an administrative regime of managing Association activities. In view of such an approach, we think the Item 3 Article 7 in the Draft Law of Association, regarding the so-called issue of the Ministry being in charge of association activities, should be deleted. The application of parent body's control by the Ministry will render Associations rigid, restrictive and will "Governmentalize" all Association activities, going against the policy to build civil society.

*Secondly*, about the concept that Associations as referred to in Item 1 Article 4, the Draft Law of Association has not yet specified the position, role of associations in relation to society, nor has it brought into relief the fundamental difference between Associations and State agencies. The explanation of the concept "not with the aim to procure profits" in Item 2 Article 4 of the Draft Law of Association is not yet precise and needs to be revised.

*Thirdly*, in our opinion, a number of Articles and Items of Chapter II stipulating conditions and procedure for forming associations should be deleted. Article 35 on Rights and Duties of members also, as this question should have been addressed by the Association's Regulations in concrete details. All the contents of these stipulations in the Draft Law of Association are unnecessary.

*Fourthly*, the rights to appeal, complain against administrative action from those measures considered obstructive or impeding the freedom to form associations should be added in the Draft Law of Association, at the same time stipulations on the settlement of disputes, conflicts of interests between Associations and State agencies should also be added. The mechanism of judicial proceedings should be applied to the settlement of these disputes in resolving conflicts.

## **TO AMEND OR TO REWRITE THE LAW IS EQUALLY A GOOD IDEA**

*Mr. PHAM QUOC ANH*

*President, Vietnam Lawyers Association*

On the whole we can see there are many issues remaining in the Draft Law. They are very difficult, despite the great effort of the comrades from the Interior Ministry. The law first began to be drafted in 1993, but under the time constraint applied by the National Assembly, it has been two years since you comrades have really had to set to work like this. I happen to know the comrades are working under extremely difficult conditions. The completion of this 8<sup>th</sup> Draft is the result of a monumental effort, this is undeniable. However, because they are associations and there are so many of them, there are necessarily many different ideas.

I shall now conclude with the following ideas as proposals: Firstly a team should be formed to work on revising words and sentences and on the basis of amendment, write up a proposed text to submit to the Government. The second proposed resolution is to design a new draft, completing it in 10 days on the basis of what we have already discussed here. With 10 days of rewriting and with acceptance from you comrades, both these solutions would be unsurpassed.

## **A UNIFIED VOICE WILL FIND MORE AGREEMENT**

*Poet HUU THINH*

*President, Vietnam Writers' Association,*

*Editor-in-chief of Van Nghe Periodical*

Perhaps representatives at the National Assembly should have the complete information prior to receiving the Draft Law in their hands so that the passing of this draft at the National Assembly forum will be more assured of success, and in that way the conferences organised around the contents of this Draft Law will in fact serve the objective of providing society with an extra channel of legal information.

We could draw our experience from laws such as the Law of Heritage. It is a Law of Heritage, where language is not considered as Cultural Heritage. Thus we are using an invaluable heritage but we put it outside the scope of the Law, and such things have been known to happen.

I do not know if you have read the Law of Association of China, it is so different from ours, although they have a Party system similar to ours. The Writers' Association [of China] is one with a [State provided] budget, a Party group, whereas for the rest of the associations, both sides are on the same level (Honorary Minister title for the President of Writers Association). A writer who goes on field work in a local area would hold a position at least of the level equivalent to a Deputy District Head. Only then could information be assuredly and reliably obtained. This is the issue of high degree of governmentalization in China.

A contradiction persists in our Law of Association: The Associations need the State to fund their expenses, to provide employment, but do not like being managed by the State. That is a conflict of interests between State and Associations. This is a sensitive matter, a difficulty for law makers. The tree of life grows lush and green but the coat spread by this law cannot cover the whole foliage. For this very reason one ought not to go into specific details of the law. The concept of Association is basically diversified, with some Associations being essentially alliances, and loose alliances at that. For this very reason the more specific the Law is, the more inadequate it will be. The solution is to design it in such a way that it will be able to gain acceptance.

It is also worth paying notice to the relationship between this law and other laws. The more it is made concrete, the more special provisions it will have, and as a result it is easier to clash with others. We should therefore pay attention also to feasibility and effectiveness as well. After its being passed by the Government, the Law of Association will still have to go through more stages: Presentation at the National Assembly, also seeking approval from the Politbureau. If we are united in our opinion, there will surely be resonance, as many people are waiting to hear from us. If the thinking of the representatives at the National Assembly is in agreement with ours, then surely our contribution of ideas for the Law of Association will bring results.





*Appendix*

**ISSUES SURROUNDING  
THE DRAFT FOR THE LAW OF ASSOCIATION**

(Compendium of discussions organized by the Vietnam Union of Science and Technology Associations, the Vietnam Central Federation of Culture and Arts Associations and the Vietnam Lawyers Association)



## **DESIGNING A LAW OF ASSOCIATION IN AN ENVIRONMENT OF FREE FORMATION AND SELF -MANAGEMENT FOR ASSOCIATIONS**

*Prof.Dr. DINH VAN MAU*

*National Institute of Administration*

The idea of issuing a law of Association has surfaced for a while now, since about the early 1990s. At present, this enterprise has been pushed forward by a fundamental step, that is the acquirement of a Draft forming a base on which the specialists in this field and all those taking an interest in it can discuss and contribute.

1. As one who has done some research on this issue, I would like if I may to present a few things for consideration. First of all, from the early half of the 1990s until now, traditional Associations have been reinforced, developed and many new types of Associations have appeared on a national level and even down to local scale. According to statistics from the Interior Ministry (March 2005) there are for the whole country 301 Associations with a national scale of activity. Among these there are big Federations such as the Vietnam Union of Science and Technology which covers 53 member Associations and the Federation of Literative and Art Associations covering 10 Specialised Associations and 61/64 Alliances of provincial Literature and Art Associations. At the provincial level, there are 2.155 Associations approved for formation by the Provincial People's Committees, together with a number of Associations at district level. Why is this so? There are many causes,

among them the recognition of the market economy lifting the role of “interest/benefit” factors to prominence. Many groups with common interests have appeared and need to be insured, protected by means of an organization with the characteristics of an association.

Secondly, social organizations need to be official (recognized by the State) and unofficial (recognized by the group). Social organization exists in levels of administration of communities of inhabitants (for instance villages) and in organizations, including State departments/agencies. Thus, approval by the State needs to follow the multi-level principle: from Central to provincial, then district.

Thirdly, social organization is very diverse. Perhaps once the benefit of diversity is recognized, the appearance of different associations is compatible with the development of society. Diversity is unpredictable, therefore approval for formation of associations must follow the principle that such freedom can only be restrained by laws with clearly defined scopes.

Fourthly, social organizations are born from collective will and its own strength. To form an association in its proper sense is to have the right to assemble its own members, to seek its own funding for expenses on activities, to set up its own mechanism for self-management, and to operate independently according to a mechanism that is beneficial to members. Thus the founders need to think about trajectory. To form an association and to set to work on its realistic survival depends on the will of the interest group; understanding (knowledge) about associations, mobilisation, resources for establishment, maintaining the association and its efficiency, organising operation are what constitute the strength of the interest group.

Fifthly, the Association manages its own affairs and is partly governed by public authorities. To build up and run a law-governed State is to place the individuals and organizations within the framework

of the law and law-based management by the State, and to bring the law into effect. At the same time, it needs to be stressed that together with a law-governed State, there must be a truly civil society. The issue is to create a socially effective interaction between State and society in the direction of developmental objectives.

2. Discussions on Associations under the current condition beg the questions as to what is an Association, what is the existing situation with Associations in our country and what is the direction of their development? More important is the need of institutionalisation of Associations.

First of all, it must be affirmed that the basic principle is: The freedom to form, join and withdraw from Associations belongs to all individuals and legitimate organizations in Vietnam. This affirmation stems from the concept of the citizens as different from the subjects (feudal) in that they are free agents (including the case when they sell their labour, where it is done by their free will under contract). Freedom is their intrinsic possession, not god-given or bestowed by someone which they restore in real practice in the political system of democracy. At the same time, citizens (also subjects) possess legal powers called civil rights. Naturally the scope, limitation of the rights depend on the essential character of the political system and the socio-economic conditions. That is the potential capacity for doing anything and for being recognised as legitimate without having to carry out any act. Together with the rights, citizens also have material and non-material interests recognised as legitimate. From this affirmation, it is proposed that *the Law of Association be designed on the basis that citizens are free to form, join and leave Associations, and if the citizens need official status for their Association, they can register it with a State agency whose authority is set down is by law.*

Secondly, in a law-governed State founded on civil society, Associations by all organizations and individuals must be established and operated in a legal framework and aimed to implement the law,

that is to recognize the law as the supreme legal standard. And a legal framework compatible with developmental rule is necessary to ensure and protect freedom. The scope and subject of the Law of Association therefore should be defined to the effect that *this law recognises the Association is a free institution and it governs the relationship between the State and the Association.*

The above concept of Association stems from the assertion that an Association (official or unofficial) is a necessary institution of the people in civic life. Consequently, the State must recognize that the Association is a reality born of the people's free will. Associations exist in law-governed State therefore they must be legal; that is they must be within the framework of the law and aimed to implement the law. Thus the State has the authority to issue laws to govern the relationship between the State and Associations. Associations and the State are institutions that necessarily exist, and ought to exist in an orderly relationship. The State has the authority to manage and Associations are subjected to its management actions. However, how to manage in a way consistent with democratic politics in the system of market economy is an issue to be given attention through concrete stipulations. Whatever the stipulation can be, it may not neglect the principle of upholding the interest of the subject as central, managing is to bring benefit to society, managing does not mean to do things on behalf of Associations and to intervene into internal affairs of the free corporate body. State management in that sense is really to carry out supervision through regulations of registration, to approve of Regulations, to evaluate budgeting activities, to prevent abuse of the Association to procure profits, or do harm to members economically, to examine the participation in policy of groups, unions with unfair economic influences, to harmonise public interests.

From the above considerations, the Draft Law of Association is seen to contain stipulations that require further discussion.

Firstly, the State manages Associations by: issuing policies, mechanisms; organising implementation of policies, mechanisms and inspecting, supervising. State agencies have the right to implement those matters, not purely as responsibilities (as noted in Article 6) but as real obligations fulfilled through their material contents.

Secondly, State agencies have the right to take management measures as laid down by the law. Ministry branches and departments do not have the right to manage Associations in a “Ministry in charge” manner. Associations are responsible to the law, not to the ministry as a parent body. This has been affirmed by many Party resolutions, State legislation along principles that those who are concerned with management by branches and departments may well know. That is the difference between administrative management and business management, the separation of public administration from operation of affair units. If Associations are neither business enterprises nor affair organizations, then this principle of separation and differentiation must be applied more strictly.

Thirdly, what legal status as type of organization do the six socio-political organizations (the Fatherland Front, Federation of Unions, the Youth Union, the Women’s Union, The Farmers’ Association, the Veterans’ Association) hold in society, it still is subject to review from different opinions based on the concepts of politics and non-government status.

According to the Constitution and the Law on Fatherland Front, Federation of Unions, etc. these six organizations belong to the category of socio-political organizations, which means they are directly involved in politics but not in the party-led manner and not as State authorities. The socio-political organizations together with the Party and the Government form the political system. They carry out the function related to the interest of the nation, of groups and of communities. In that function, the Government is the centre of political power, the central pillar of the political system.

The socio-political organizations possess distinctive marks compared to Associations. The Associations do not directly implement political power like the Party, the Government and the socio-political organizations. Associations have voluntary members, whereas most socio-political organizations do not have (individual) voluntary members. The socio-political organizations are organised in levels like with public administration, directly linked to the organization of political power, whereas Associations are not entirely and not necessarily so. Although the socio-political organizations participate in exercising political power as stipulated, they do not manage public service, therefore there must be none whatsoever among the socio-political organizations allowed to attract Associations into the network of socio-political organizations. This is to avoid politicising the existing and future Associations.

Fourthly, the Association is ordered by regulations, unlike the Government being originally a legal order. The organization and operation of the Government is fixed by Law and regulatory documents. If the governments issue documents with the name Regulations to determine the organization or activities of a certain structure, such documents are bona fide provisions, or in the law researchers' terminology, they are "legally vested." From there, the content of the Law of Association chiefly creates a legal framework (model) for the organization and activities of Associations, not intervening deeply into their internal affairs. The legal framework for Associations can be imagined to resemble a "play ground", in which the State by its power of governing by law, only introduces prohibited items, lay down formulae for compulsory requirements (with restraining characteristics) for Associations to implement State management in order to create an administrative link between those government agencies having relevant authority and the Associations as civil corporate bodies.

From the affirmation of the concept of withdrawing public



authority finance from civil corporate bodies, of which the Association is a type of structure, we need to re-examine carefully the Chapters III (Members), IV (Organization and Activities of Associations), V (Federation, splitting up and dissolution). In my opinion, their content depicts “deep intervention” into internal affairs of the Association, which means the Law takes the place of many purports of Regulations and “rigidifies” the organization and activities of Associations, who differ widely from each other in organization and in activities. As they are not public authority institutions, the Associations need not resemble each other in organization and activities, so long as substantially their organization and activities are legitimate, that is being legitimate in the wide sense of the law and not with respect to the Law of Association alone.

The Association is a very old institution, but always a new problem, as it is highly dynamic and multi-faceted. Associations belong in civil life to achieve civil objectives in the political, economical, cultural and social domains. Our country is building a law-governed State and such a State can only be governed by rule of law when it exists in a civil society. In that State, all organizations must operate within a legal framework. For that reason, a Law of Association is badly needed but this law does not have to and cannot have a structure resembling that of the law on organization of government agencies which determines a number of definite obligations, powers, and demands that the agency concerned implements them adequately, or it will be accused of dereliction if they are not fulfilled to the limit, and abuse of power if the agency oversteps that limit. The Law of Association must differ in that Associations are institutions of civil society, entitled to do everything allowed by law and in accordance with their regulations characterised by the requisite freedom to form Associations and their self-management capacity.

## **CONFERENCE AT THE VIETNAM UNION OF SCIENCE AND TECHNOLOGY ASSOCIATIONS (VUSTA)**

HEADQUARTERS, 53 NGUYEN DU STREET, HANOI ON 8/9/2005

REPORT ON CONFERENCE TO CANVASS IDEAS FOR THE  
DRAFT LAW OF ASSOCIATION

*(Summary)*

### **PARTICIPANTS**

- Prof. Academican Vu Tuyen Hoang and Prof.Dr. Nguyen Huu Tang (Chairperson).
- Mr. Nguyen Ngoc Lam, Director, Managing Bureau of NGO's – Interior Ministry.
- Representatives of government authorities.
- Science and Industry organizations members of the Union and individual scientists.

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**Prof. Vu Tuyen Hoang**

*Chairman of the Vietnam Union of Science and Technology Associations*

The issue to be addressed here is why Federations and Unions are placed within the governing scope of this Law, while other socio-political organizations are not? Like the Decree 88, this Law does not

place our Union in its proper position when referring to the alliance of workers, peasants and intellectuals.

Proposed solution 2: As long as this Law is applied to Federations but leaving the 6 socio-political organizations outside its scope, then discrimination exists, and therefore Vietnamese intellectuals are discriminated against. What can be the reason for an alliance of workers, peasants and intellectuals with intellectuals being left out? In the next stage of building the economy, I wonder how we intellectuals can keep consenting to this situation for ever. The Union has sent submission to the Central Politbureau to rectify the current way the issue is addressed. We do not demand funding, nor do we demand to be put on the same footing as the socio-political organizations but our proposal is based on the common interest in building up the nation. If we say the above alliance is the foundation, why then intellectuals are left behind? It is too late to change this. In the socialisation process of education, science and industry to motivate development and competition, intellectuals have been put at the front, like in the Constitution, but in this law, they are put at the rear, and this is not acceptable. This is wrong both in logic and in practice.

**Mr. Pham Sy Liem**

*Vice-President, Vietnam Federation of Construction Associations*

First of all, it should be asked what is the legislative aim here? Secondly, how to formulate this law. The exercise of civil rights has been stipulated by the Constitution. In forming associations, there are so many different objectives. France has laid down a law of association, but this law also governs companies, unlike in our country. We must resolve our own issues, as each country has a different set of circumstances. Social institutions also differ with each country, it is not possible to generalise. Our law is behind the French law by more than

one hundred years, a reason we should now design a truly modern law. More research study is needed in logical reasoning, in consultation for critical assessment of what is in relation to our own situation.

Recently I have found out more about the civil society. Sociologists all over the world study this issue very thoroughly. The post World War 2 thinking has developed through 3 stages, and at present the attention is on modern society. The civil society is considered as one of the three components of a nation: the State, the business bloc, and civil society. Today people do not think that an elected government is a democratic one. There must be information channels to keep watch on the government, like Associations who need to have supervisory committees to act as information channels. Peaceful evolution employs fully the logic of civil society. According to a recent seminar, the civil society puts its hope in the middle class. If society progresses towards communism, all would certainly become middle class. They want to use the middle class to control or keep the wealthy class above it in check.

To mention the workers-peasants solidarity is to use a pre-Renovation concept. I do not admire at all the position of workers when I see in reality workers have to toil for foreign enterprises, and get beaten up as well. Peasants in fairly large numbers have to work for wages in Taiwan. Why is it that in modern society, the role of the middle class and intellectuals does not feature? I will leave this for the researchers to reason it out. It would be very difficult if we use old concepts to discuss law.

The Law of Association should only create a legal framework for associations to operate. Why are people required to line up and march in steps? What kind of provisions that would enable the State to operate the Associations in their stead? Bureaucratisation manifests so clearly in this thinking.

Law of the State means the State entrusts the responsibility to our organizations, whereas Associations can just abide by the Law, but the

State could not stipulate that they obey this or that official. I agree with State management, but it is only right to stipulate that Associations need merely obey the Law.

The Association and the business organization directly subordinated to it are two different entities. We have the right to found a business organization, but such an organization must adhere to provisions of the business law. Non-profit Associations, on the other hand, should be tax-free. Income from the business organization to the Association must be tax-free.

Concerning State-trained professional skills, we have no need for them. The Government should stick to training their officials. There is also a need: that the Government can commission the Associations to perform some of its tasks, provide some services to the public.

In a number of countries, architects, lawyers who work individually on their own, like associations are assigned to self-managed. If they do not join professional charters, they can not sign documents, architect's drawings for instances, without being registered. Only registered doctors can put their seals, signatures in prescriptions. When these things are achieved, they save the State from a cumbersome machinery and also allow Associations to develop self-manageability.

**Mr. La Trong Long**

*President, Federation of Science and Technology of Hai Phong*

Local Federations can not implement this law as it is set up by Municipal Executive Committees. When you submit your curriculum vitae, it does not have to go through the Interior Ministry. The treatment of the Federations by State and Party from the Central Region to the local areas is the same as with the Fatherland Front. The Municipal Council of Ho Chi Minh City has given the Federation dozens of billion

piasters to its City Branch to establish a Headquarters. Unless the Federation of Science and Technology is put under the same provisions as the other Socio-Political organizations, the situation cannot be said to reflect reality. Article 8 says they should not be the same in name, I would add that their areas of specialty should also be separated. This should also limit the situation where foreign Associations can register in the same areas as domestic Associations.

Should Public Relations Committees report, or only need to acknowledge, the time elapsed since formation has been approved? Does the State pay the expenses for an emergency general meeting if it requires to call one? If less than half the number of members turn up, what would happen? In my opinion, this article should be removed.

Regarding representation by the head of association: The Ordinance 108 does not stipulate like that. The question is whether the President of the Association has adequate power, as total responsibility entails the power to call general meetings and to dissolve the Association if necessary. Otherwise it's a "straw-weight power and hefty-stone responsibility" situation.

Do Associations have the right to free speech, to publish news periodicals? Unless they do, it is pointless to form associations. In my opinion these association rights must be inscribed in the law.

Dissolution an Association: should be announced on the news media.

**Mr. Le Xuan Thao**

*President, VIFOTECH Foundation*

This Law concentrates mostly on administrative management rather than on promoting the role of the Associations. It is not yet able to express the spirit of the Directive 45 and Decree 06. I have the impression that this Law is like an extended set of Association

Regulations. It lacks renovation character and appears bureaucratized. As businesses only abide by the law, so also should associations, the stipulation on State agency management should be deleted. The Central level of the Interior Ministry, the Interior Departments can adequately be the control points for recognition of associations.

Regarding procedure, there are too many places required to be registration offices: The Interior Ministry, the Ministry and Branch in charge, district and precinct where the headquarters is... It means the number of registration control points for the formation of Associations must be increased.

Associations have the right to consult and make critical assessment of many other matters, not just those within the Association scope. For instance the unpalatable issues of water in the West Lake, if Associations can be consultants, the Government could have saved millions of dollars on this.

It is not that the Government confers any rights to Associations, it is about giving the Associations responsibility in public works, from which Associations can carry out functions with State funding. I am of the firm opinion that if the Article 2 Item 3 leaves out other Associations, it must also add Federations, Literature and Arts Associations among those.

**Mr. Nguyen Van That**

*President of Thanh Hoa Federation of Science and Economics Associations*

I am most concerned about the Item 3 of Article 2. The Law provides a guideline which is not purely the work of management by State agencies. Directive 35 of 1988, Directive 45 also affirm the socio-political character of Federations, which cannot be considered as professional social organizations to be excluded. Especially in the

context of promoting the role of science and industry in the condition of a knowledge-based economy. The perception of the issue must be put in an historical, and at the same time modern, perspective under the national condition of industrialisation.

If the law is only focussed on the management mechanism of the agency in charge, Associations will have difficulty in developing.

**Mr. Nguyen An Luong**

*President of Labour Safety Association*

Surrounding Vu Tuyền Hoang's idea is a great question, it is a precondition of existence of this Law. It is linked to the thinking concerning the intelligentsia in Vietnam. Without an antecedent decree, it is not possible to bring viewpoints into this bill.

In reality laws for Labour's Union, Youth Union, Women's Union have been in existence, but as a law for Federation of Associations has not yet come about, the latter is a victim of exclusion. Being a professional social association, we need to be governed by law. If Federations or Unions, the Writers Association, the Journalists Association are put in Article 2 Item 3, why are professional associations put outside the governing scope?

I propose an intermediary solution: to set aside a chapter for Federations. As socio-political organizations, they are to be governed like other organizations.

On the view that state management must improve: by opening legal corridors, promoting the role of operating in the corridor, and penalty for infringement. With this view, the idea that the State's function is to register, to raise professional skills, is not advisable. The State should only manage the processing the registration.



Article 37: The rights of Associations are not yet correct. We are carrying out socialisation, the role of Associations must involve much more participation. The participation in developing economy and society, managing society has not been addressed, as reference is only made strictly on association affairs. Participation through consultancy, critique, appraisal tasks have not been clarified, and it stays vague because the word 'appraisal' is being avoided. Meanwhile, the role of Associations in fighting corruption must be clearly recognised as paramount.

This law is unique in placing the Supervising Committee on the same level as the managing or executive committee. Is this mechanism set up in the fear that Associations will tend to operate wrongfully, so that such mechanism is deemed necessary as counter measure? I would propose that the supervisory committee should be appointed by the executive committee and not elected at the general meeting.

Article 27: Proceedings of the general meeting... are written like a set of Association regulations. The Law must serve as a set of guidelines only, why should there be the need for such stipulations?

I propose that we must report to the Politbureau. If the Federations have not yet grown to their appropriate size, then there is no rush to have a separate law. They should not be equated with their member Associations. The role of the intelligentsia must be effectively manifested.

**Mr. Duong Trung Quoc**

*General Secretary of Vietnam History Science Association*

In the past 60 years we have not neglected the traditional factor. Every seven years the law is amended, its life is not long. It reflects our standard of drafting laws. If the commonly used concept is Association, what then is an Association? According to this draft, the meaning is superficial and has many flaws.

We also avoid an historical fact: the complexity related to politics. The former nature of our Party was the Association. Due to its political aims, it was illegal at that time.

The true nature of Labour's Union is political. Whether our Federations are political or not, this needs to be clearly determined. I think if everything is directed towards the good of the country, then no Association is political. If there are exceptions, it would be difficult to integrate into the world.

We have to accept whether the issue is traditional or in transition. If the state of transition is not recognised, Law cannot be practical in real life, and furthermore will cause harmful damage. It is necessary to create appropriate corridors, and accept that amendments will continue to be made in the next 5-10 years. International integration is imperative, but it must be gradual.

If we go back to the principle of 60 years ago, it is necessary to clarify: this Law is about the right to form Associations. Unless we can do this, we will not avoid feeling we are stepping backward in history, even in comparison to our friends. There must be security in the formation of Associations. The Ordinance of 1956, 1957 have mentioned the right to form Associations, which must heighten our efforts, our awareness of citizens' democracy.

The Associations are allowed to have member Associations by stipulations, but the Federation is not a subject for governing. The draft document is thought to be water tight, in fact it is very loose. It has the characteristics of being the corridor for forming many branch associations, and liable to lead to an almost ungoverned situation.

The basic principle must be assured: continuity, transitional process, ensuring integration.

**Prof. Nguyen Huu Tang**

*Deputy Chairman of the Vietnam Union of Science and Technology Associations*

All of you comrades have expressed your views passionately, responsibly since this morning. The Party Group in Federations will have official views later.

The Law of Association brings about a progressive step. If it is spacious, open, it will be able to mobilize all the people's strength. To foreign countries, they would see how open our society is, and whether it is capable of integration into. Therefore we should not be hasty in issuing a law when preparation is not yet thorough. This law will affect the whole of society, and many people. That is why it is imperative to ensure maintaining democratic freedom and creativity for development to be possible.

The Law is on a large scale, it is impossible to write it at a micro-level. Existing in our society...are tightly organized socio-political groups, but they are hardly more tightly organized than the Unions or Federations of Associations. The social professional groups, and a group larger than these is society itself. It is imperative therefore to determine clearly which group is which in order to govern, and not get confused. Lack of equality should not allowed to manifest.

Foreign countries will find it difficult to interact with mass-organizations. As it is the Law is not correct in carrying out Sesolution 45 of the Politbureau. Should we design a law with orientation-guiding characteristics or one with tight bureaucratic management nature? If it is on a large scale, it should be pure law and not the details covering the social organizations.

I concur with mister Duong Trung Quoc's view: the Law is about the right to form Association. It must determine the responsibility of the State towards Associations.

For publicising, we only need to have a frame law. The question of ideas, opinions, and petitions required to be submitted, these must be written in decree. We could design just a brief law, as a frame law. If we could participate in the Drafting Committee, we will be able to directly contribute our views.

There is a confusion between social professional organizations and public authorities. Why does the Government have to do all affairs and activities, and not promote the strengths of professional associations such as in management, supervision? If this confusion continues, it will be very difficult to work.

I propose: If the Draft is to be introduced at the end of the year, more careful research, clear stipulations of functions and responsibilities of Unions/Federations of Associations are needed. I am thoroughly undecided about the content of the present draft.

## **CENTRAL OFFICE OF THE VIETNAM FEDERATION OF CULTURE AND ART ASSOCIATIONS**

51, TRAN HUNG DAO, HANOI, 28<sup>TH</sup> OCTOBER 2005

REPORT ON THE CANVASSED IDEAS PRESENTED AT THE  
CONFERENCE ON THE “LAW OF ASSOCIATION”

### **PARTICIPANTS**

Presidents, Vice-presidents, Editors-in-Chief of Literature and Art Associations which include: the Vietnam Fine Art Association, the Vietnam Musicians Association, the Vietnam Cinematography Association, the Vietnam Popular Performative Arts Association, the Vietnam Art Photographers Association, the Vietnam Actors Association, the Vietnam Architects Association, the Vietnam Literature and Art Association for Ethnic Minorities, Local Literature and Art Associations of Phu Tho, Ha Tay, Hoa Binh, Hai Duong, Thai Binh, Ninh Binh provinces.

Representatives from Central Agencies: Mister Do Kim Cuong, Head of Performative Arts Department, Central Committee for Cultural Ideology; Mister Nguyen Van Sim, Deputy Head of NGO Department, Interior Ministry; Mister Pham Van Tan, Deputy Secretary General, Vietnam Union of Economics Science and Technology Associations.

### **CONTENT PROCEEDINGS**

Mister LE PHUC, Permanent Vice-President of the Vietnam Union of Literature and Art Associations, declares the reason for organising

the conference, introduces participating representatives, and lists the required objectives of the conference.

**Prof.Dr. To Ngoc Thanh**

*President, Vietnam Popular Performative Arts Association*

The Association of Culture for Fatherland Salvation came to existence in 1943, since then has always operated under Party leadership and marched in step with the nation's development. According to you comrade, the Law of Association document cannot equate all Associations in its content, contains many issues, many articles, items and chapters that are irrational (who leads? who manages? It is not made clear. In the process of operation, with whom reports are lodged and from whom permissions are requested? Does not the Ministry of Culture and Information have adequate capacity to manage the creative activities in literature and arts..?). We propose that the Interior Ministry exercises caution and wisdom in the drafting and issuing of documents.

**Mr. Chu Chi Thanh**

*President, Vietnam Art Photographers Association*

A number of articles in the document are not yet clear, not quite sensible, especially the chapters, articles and items on the economic and financial issues of Associations, how to distribute profits to ensure legality and compliance with economic principles.

Specific activity and import of each Association differ, it is not possible to equate Literature and Arts Associations with Bee Keeping or Gardening Associations...

**Mr. Binh Nguyen**

*President, Literature and Arts Association of Ninh Binh*

The document contains many shortcomings, forced levelling of statuses, organizational regimes, scale of activity, specificity of operation for socio-political organizations and socio-political professional organizations needing clear definitions.

It is imperative to clarify and cogently affirm the leadership role of the Party, the management tasks of the State and administrative role of the Government in Association-type organizations. The text of the law must embody all viewpoints, policies, guidelines, ideological stances, especially the basic spirit of the Resolutions of the Party, being the major directive orientation for activities of Associations. The Interior Ministry needs to have concrete and uniform written documents on such issues as permanent staff organization, regulations for organization of activities...

**Prof. Tran Luan Kim**

*President, Vietnam Cinematography Association*

We concur with the above views, however, what is our opinion on the content of this document? In my view, this is a big and regrettable mistake in perception on the part of the Interior Ministry the Finance Ministry . Such a homogenizing evaluation is very disappointing.

The issuing of the Law is necessary, et the contents in each chapter, section, article appear to be extremely contradictory, going against the spirit of the Central Resolution 5.

**Musician Do Hong Quan**

*President, Vietnam Musicians Association*

According to you comrade, this is not a law, being an extremely passive document with an unconvincing content, totally unacceptable. I would like to remind you and stress that after the great success of the General Meeting of the Central Literature and Art Professional Associations, when the Literature and Arts world is feeling enthused and excited in a healthy atmosphere to continue with creating valuable cultural and art works in the service of the Fatherland, of the people, the above document appears as a “thunderbolt” announcing a “cold hard rain.”

**Writer Do Kim Cuong**

*Head, Department of Performative Arts, Central Ideology-Culture Committee*

The view of the Central Ideology-Cultural Committee is that it always supports the formation and standardising the institutional organization of activities such that they can embody the Party policy, viewpoint and ideology on the issue of Literature and Art. Regrettably, the document contains too many irrational issues still. Without recognising and evaluating the great efforts of those in the field of Literature and Art, a number of articles put under constraint, impede the creative development of Literature and Art. Many purports contradict each other, even go against the spirit of National Assembly Resolution. Perhaps expert advisors are required to participate in designing and finalising the above document.



**Poet Pham Tien Duat**

*Editor-in-Chief, Vietnamese Performing Arts Forum Magazine*

The design and introduction of the Draft Law of Association to the National Assembly is necessary, but it may require reconsideration right from naming. I think it should be called the “Law on NGO’s in Vietnam” and Liberature and Arts Associations should not be included in its scope.

**Musician Nguyen Thanh Vien**

*President, Liberature and Arts Association of Hoa Binh*

The document on the Law of Association does not express fully the spirit of the Central Government Resolution 5 (8<sup>th</sup> Congress); Directive 18 of Party Secretariat, Central Government Resolution 10 (9<sup>th</sup> Congress). The issues of religion, causing unrest among ethnic minorities in the western highland provinces, have deep impact on general development, of which culture is a part. Legal provisions and practical measures are necessary but attention must also be paid to rational quality and timeliness.

**Mr. Le Chuc**

*President, Vietnam Theatre Actors Association*

We need to consolidate our viewpoints in order to build our law. It must have a high degree of representation for those in the Liberature and Arts field. This text creates a chain reaction of intense disagreement.

**Artist Tran Khanh Chuong**

*President, Vietnam Fine Arts Association*

In the struggle to build a law-governed State, there must be law and activities must ensure their legality. However, the law is developed and implemented, it must be done in the care and thorough understanding of the Party's line, viewpoint on literature and arts, following closely the nation-wide developmental situation, the political and unsurpassed nature of socialism. The content of this text is not yet rational, being contradictory in its subject matters, revealing a confused position. This document must be re-studied in greater depth to ensure full rights and sustained development of culture and arts along the Party's direction.

**Mr. Pham Van Tan**

*Deputy Secretary General, Vietnam Union of Science and Technology Associations*

I am in full sympathy as we have compatible perceptions and share basic attitude towards this document. The Vietnam Union of Science and Technology Associations has many Associations with diverse, multilateral functions, beyond the managing reach of the Interior Ministry, Provincial People's Committees. Therefore, this document does not satisfactorily meet the common expectation.

**Representative of Vietnam Architects Association**

We agree with the views, that the content of the document has not yet stipulated concretely on the organised system for Associations, from Federations to Central professional Associations. We propose that the Interior Ministry stipulates more clearly by a tighter document, but it should be more dynamic and flexible in order to respond to the demands of the creative development of Literature and Arts.

**Prof. Artist Vu Giang Huong**

*President, Vietnam Union of Literature and Arts Associations*

The issue of designing the draft Law of Association is one of necessity. I think that the Law of Association must guarantee the rights of those working in the scientific, literature and arts fields... It must embody democracy and human rights. It must unite the various strata of people, enforce solidarity between the intelligentsia in culture and arts and in science with peasants, workers and other strata.

The Law of Association not applicable to the 6 Associations and religious organizations, are these Associations outside the law or are they the Party's organizations(?). Therefore, it is proposed that references to the 6 Associations and religious organizations must be clearly made in the Law of Association, possibly set aside completely in a separate chapter.

In Article 4, Chapter I, to the clause "*contributing to the socio-economic development of the nation...*" the word ***cultural*** must be added.

In Article 5, *how are activities of the Associations involving the work of the Government to be funded by the Government?*

Article 19 must be re-examined.

As we have known, the former identity of the Vietnam Union and Art Associations is the Association of Culture for Fatherland Salvation, officially formed in 1948 under the direct leadership of the Party Central Executive Committee, and the Culture and Arts Associations have successfully carried out the tasks of developing culture and arts since then. When the Central Committee's Resolution 5 was made (8<sup>th</sup> Congress), the Literative and Art Associations were defined as professional socio-political Associations. The conclusion of the Central Committee Resolution No. 10 on continuing to implement Resolution 5 has provided us with directive guidelines for the Literative and Art

Associations, affirming their great contribution in building the moral intellectual foundation for society.

As mentioned above, the presence of the Law of Association is necessary, but this Law of Association as drafted by the Interior Ministry (in its 6<sup>th</sup> version) has yet to be appropriate to the Literative and Art Associations and Vietnam Union of Science and Technology Associations. It can be said this is an unacceptable document, as the relationship between the Interior Ministry and the Literative and Art and Science and Technology Associations is one of co-ordination. The Interior Ministry should only manage the Associations on the State administrative basis, but should not manage their professional activities.

## **PETITION**

1. The Literative and Art Associations from Central to local areas with a membership of 30,000 artists and writers is a big Federation, with the prestige of being founded nearly 60 years ago by the Party. Therefore, to guarantee democratic rights, justice, to encourage creative activities by artists and writers in the construction of a progressive example of culture and arts for the nation, the Interior Ministry needs to draft a separate law or a separate chapter stipulating the activities of the Literative and Art Associations from Central to local areas, the operational foundation for which is to resemble that of the 6 socio-political Associations (as expressed in the 10<sup>th</sup> Central Committee Meeting).

2. The drafting of the Law of Association must take departure from the spirit of the Resolutions, Central Party Directives and needs to have participation from professional experts to directly contribute constructive ideas.

## **SUMMING UP OF CONFERENCE**

**Mr. Le Phuc**

*Permanent Vice-President, the Vietnam Union of Literative and Art Associations*

Though the conference today, we have been united in our viewpoints and have expressed our disagreeing attitude towards this document. The Vietnam Union of Literative and Art Associations will combine the views and prepare a petition to the National Assembly before the draft is to be adopted.

## **CONFERENCE AT THE VIETNAM UNION OF SCIENCE AND TECHNOLOGY ASSOCIATIONS (VUSTA)**

53 NGUYEN DU ST, HANOI, 23<sup>rd</sup> DECEMBER 2005

### **SCIENTISTS PROPOSE A NEW DRAFT**

- In one week, the experts of the Vietnam Union of Science and Technology Associations completed a draft with 6 chapters, 58 articles.

- The governed subjects introducing a new draft is a rare thing in the history of legislation!

In the afternoon 23<sup>rd</sup> December 2005, the Vietnam Union of Science and Technology Associations (VUSTA) called a meeting to announce a main text of collected proposed views amending the Interior Ministry's draft Law of Association. Of highly special interest was that they also introduced a new Draft designed by the scientists themselves... after one week's working on it. The Representatives of Research Committee of the Prime Minister and of the Government Office were surprised and delighted with this eventuality.

**THERE HAS NEVER BEEN A DRAFT WITH SUCH A  
COMPREHENSIVE PROPOSAL CONTRIBUTED TO IT!**

**Mr. Tran Quoc Thuan**

*Deputy Director, National Assembly Office*

The fact that scientists, having declared the Draft Law of Association as not meeting its demands, took upon themselves to write a new

one, is a highly laudable effort. This should be valued as a positive contribution. If the draft they produce is agreeably received by many people, there is a great possibility it will become law.

The National Assembly is a parliament activity. And the principle of parliament is the making of decisions by majority vote. If you can persuade the National Assembly, your draft will become law, and your viewpoint meets the demands. The introduction of a new draft is a contribution of ideas and not aimed as replacement, ignoring the Drafting Committee. In other words, "I work pro bono for you and I have the right to introduce a work competitive to yours." This is form of total contribution of ideas, should be applauded by public opinion, as it expresses democracy. Until now, I have not personally seen a draft receiving contributing ideas in so total a manner as to have a completely new document introduced like that.

## **ONLY GOVERN THE RELATIONSHIP AS ARISING**

After more than ten years, the 8<sup>th</sup> draft Law of Association produced by the Interior Ministry has as many as nine chapters, 61 articles. However, as the *Ho Chi Minh City Law Magazine* has informed, at the meeting for gathering opinions on 13<sup>th</sup> December before its introduction to the Government, the draft has encountered strong reactions from the professional and scientists groups. As a result, in barely one week the scientists of VUSTA have proposed a new draft with six chapters, 58 articles. The fundamental difference with the VUSTA draft regards this law *only as governing the relationship between the State and Associations as it arises during the formation, organization and operation of Associations*. On the other hand, the Interior Ministry's Draft regards this law as *an instrument to manage Associations*, as well as to stipulate the procedures for formation and activities of Associations. Nevertheless, VUSTA is also "diplomatic" in introducing solution number two: the principal text based on the amending of the Interior Ministry's Draft.

Dr. (of Law) Hoang Ngoc Giao, representing the VUSTA group of authors, stated that their amendments are based on the principle that the Government acknowledges that the citizens' right to form associations is already enshrined in the Constitution. Therefore the provisions for organizing and operating Associations reduce the danger of bureaucratization, enabling Associations to be more active, promoting more creative ideas for the community. Analysing the danger of "unofficial" associations such as Aged Care Association, Same-Origin Friendship Association... being vulnerable to be (bureaucratically) "tormented", Mr. Giao said: "The Interior Ministry's Draft is not yet thorough, that's is why VUSTA proposes that both the registered and the non-registered Associations must be recognized. However, un-registered Associations cannot open bank accounts under the Association's name, cannot have a seal, cannot conduct businesses as a corporate entity."

On the procedure of forming an Association, Mr. Giao says the amendments made are based on the principle of registering without the need of applying for permission. The Interior Ministry also says registration, however procedure-wise, it is "really complicated by its four stages, and further it is not clear," thus it is practically an application process. Therefore, we have designed that after a certain number of days informing the State authority, the founding committee has the right to call a general meeting without an approval document. Mr. Giao affirms that "registration is only aimed at ensuring that the State authorities have reliable information on the Associations" and making clear that the mechanism of settling disputes is the administrative tribunal when public servants abuse their power over Associations.

## **EXCEPT FOR PROHIBITIONS, ASSOCIATIONS CAN DO EVERYTHING**

Dr. Giao stress especially the management role of the State with respect to Association activities imperatively as "being law abiding. It



is like the provisions of activities related to health, the environment... must adhere to the stipulations by those relevant Ministries. On the other hand, it is necessary to design such that everyone working at the Associations are liable to be subjected to supervision and inspection by the special State agencies". The group of authors also suggest that a registry of Associations needs to be set up and this registry must be regularly announced publicly and listed on the Internet. "The funding bodies therefore can access the addresses they need; government officials can also get hold of the number of Associations operating in their domains of governance", says Mr. Giao.

Dr. Giao states that instead of general prohibitions, such as "this illegal activity harms the interest...", the VUSTA authors design practically that there are 7 acts to be prohibited. "More can be added if necessary but once listed, it means apart from these prohibited items, Associations can do any other things. It is different from the fact that public servants are only allowed to do the things stipulated by law."

Of special interest is the elaboration the VUSTA authors made about listing in the law those services the State can devolve pavers to Associations to realize, which "must compliance with competitive but principle. Otherwise, this could easily lead to negative consequences, as in many cases even where only a simple transfer is involved, for instance in the hunger abolition and poverty reduction area...".

The VUSTA Vice-President, Prof.Dr. Ho Uy Liem, adds if the stipulation is not clear, arbitrary intervention from State authorities will take place. "The Federation of Medicine and Pharmacy Associations is under our management, but at our General Meeting, the Ministry of Health sends a Vice-Minister over to stand as candidate without consulting us." The President of the Federation of Literature and Art Associations, artist Giang Huong, also agrees: "A perusal reveals the draft law written by you comrades as containing many reasonable items. We have worked well so far together with the Ministry of

Culture and Information, signing a set of regulations every two years. Only when we have to adhere to the law, such as sending paintings overseas for exhibitions, permission from the Ministry is requested. Even in elections, only the number of votes counts, whereas someone introduced by the executives is not trusted. The Law of Association must help them to develop, not to leave it to the Ministry to dictate over Associations.”

### **DRAFT LAW MUST INCORPORATE IDEAS FROM THE SUBJECTS IT IS MEANT TO GOVERN**

Mr. Pham Tuan Khai, Deputy Head of Government Office’s Contruction Law Committee, says: “I think your work today is excellent. If this can be done with all laws, it would be superb. The Government Decree 101 recently issued has stressed that it is necessary to gather the views of subjects over whom the law is meant to govern, to see how it will affect them. I must say on reading what you comrades have written, they are things of deep concern. Scientifically speaking, these proposed views are appropriate and worth discussing”. Mr. Khai completely agrees with the innovative idea of forming and setting up public registry for Associations. “I also applaud the fact that you comrades have listed the acts to be prohibited, the more concrete they are, the better. Our view is that this law only stipulates the right of citizens to form associations, practical matters should be left to Association regulations.”

Madame Pham Chi Lan from the Prime Ministre’s Research Committee, declares: “I personally prefers the draft proposed by the VUSTA experts to the 8<sup>th</sup> draft of the Interior Ministry, because it states more clearly about the types of Associations and it is more encompassing, more rational, especially the recognition of non-registered types of Association as it is the legitimate right of citizens”. Mme. Lan repeats her past view in that the stipulation for State management by a Ministry

in charge and People's Committees "is unnecessary". She says: "I work at the Chamber of Commerce for so many years now without having to report to the Hoan Kiem District, and they in no way can understand our nationwide activities. My most general idea is to respect absolutely the right to form associations, to create conditions for Associations to operate but not to check up on them".

Dr. Nguyen Vi Khai of the Prime Minister's Research Committee exclaims: "The work of today's session is extremely useful!", as he has recognised that a price will have to be paid for having a law drafted in the isolation of four walls, that is when it is thrust into real life later. To Mr. Khai, the progress towards an egalitarian civil society is necessary, and history will turn a new leaf. He promises that after Government members contribute their views, if the Prime Minister, before signing for introducing it to the National Assembly Standing Committee, proposes that the Research Committee to be the "goal keeper", they will present the views as have been exchanged here.

In summing up, Prof.Dr. Ho Uy Liem says there has been a high number of agreed points, and a few points of disagreement still as there are differences in thinking. He hopes that before introducing it to the National Assembly, there will be many occasions yet for exchange of views with the drafting agency.

*Pham Loi*

(Ho Chi Minh City Law Magazine, 26<sup>th</sup> December 2005)

## **CONFERENCES ORGANIZED BY VIETNAM LAWYERS ASSOCIATION AND VIETNAM UNION OF SCIENCE AND TECHNOLOGY ASSOCIATIONS**

*To carry out the duty of participating in drafting laws and critically appraising policies, the reach agreement with the Interior Ministry in the spirit of Circular 1674/BNV-TCPCP dated 7/7/2005, the Vietnam Lawyers Association, the Vietnam Union of Science and Technology Associations and the Interior Ministry's Department of NGO have collaborated in organising 3 scientific seminars contributing ideas for the Draft Law of Association at three zones:*

- Northern zone: on 21/10/2005 organised at Chi Linh, Hai Duong province.*
- Central zone: on 18/11/2005, organised at the City of Da Nang.*
- Southern zone: on 20/12/2005, organised at Bien Hoa, Dong Nai province.*

*Representatives attending the seminars were members of the Drafting Committee, the Editorial Board for the Law of Association, Home Affairs Branch of Central Party Committee, Foreign Affairs Branch of Central Party Committee, Ministry of Finance, Central Committee of the Vietnam Fatherland Front, leaders of Associations with nationwide operation, scholars, legal experts with knowledge of association activities.*

*Below are excerpts of a number of texts presented at the above seminars.*

## **VIETNAM UNION OF FRIENDSHIP ORGANIZATIONS**

### *IDEAS CONTRIBUTED TO THE 6<sup>TH</sup> DRAFT LAW OF ASSOCIATION*

#### *I. Constraints and shortcomings in the Draft Law*

The Draft has a number of very basic constraints as follows:

1. The Draft has not created a legal basis to ensure the unification of Vietnamese mass movements to serve the objective of achieving national unity.

The “stratification”, splitting 6 socio-political groups and those “Associations without members” off from the ranks of subjects for whom this Law applies did not allow a wholistic approach to the system of grassroots organizations of Vietnam, in order to determine the relationships between grassroots organizations, to promote the central role of the socio-political organizations in Vietnamese mass movements. This is also the result of a “levelling scarifying” approach towards all the organizations being subjected to the application of stipulations in the Draft, without distinguishing the role and position of the socio-political organizations, the wide ranging organizations of mass alliances with a Party leadership mechanism, from those of other organizations.

The determination of procedure for forming an Association as referred to in the Draft also *create a danger for pluralising mass movements in Vietnam*. With these stipulations, any group of individuals can form an entirely new youth organization independent of the Ho Chi Minh Communist Youth Union, or a new friendship organization independent of the Vietnam Union of Friendship Organizations, the organizations of intellectuals, journalists, writers, lawyers, etc. completely independent of the socio-political organizations who currently exist and operate under Party leadership.

The provisions for Associations as raised in the Draft have not

catered for the fact that we have many mass organizations with an ordered system going from Central to local regions, their establishment, and therefore the conditions and procedures of formation do not resemble those of independent Associations.

2. Many provisions of the Draft do not sit well with the reality and trend of diversification in assembly forms of current mass movements.

The Draft only offers one model for organising Associations with stipulations that are too concrete, pertaining to the internal affairs of Associations (for instances Article 14, main purports of Association regulations; Article 16, principal content of the general meeting to form an Association; Chapter III on Members, Article 20, Membership of the Association; Article 21, Official members; article 22, Associate members; Article 23, Honorary members; Article 27, Organization structure of the Association; Article 27, Skeletal contents of general meetings for term elections; Article 30, Principle of voting; Article 32, Responsibility and power of the executives, etc.)

The rigid application of a model for organization is not compatible with the diversification trend of organising forms for today's mass organizations.

3. The determination of relationship between the State and Associations is not yet adequate and contains inappropriate subject matters.

The Draft has not produced a legal basis enabling the Government to classify the mass organizations, establish levels of different relations with respect to different types of organization; such as the type of organization with regular partnership relations, or the type of organization with partnership relation depending on programs and projects, etc. The above establishment of the legal basis is very necessary in reinforcing the political system, create the bond between the Government and the core socio-political organizations, promoting

the role of the organizations in various facets of the political, economic and social life. This is a method that even Western nations apply to maintain and reinforce their own political systems.

The Draft has not produced a legal basis enabling the Government to transfer a number of function to mass organizations in order to implement and to meet the requirements of a socialisation policy from the Party and the State.

The stipulation on the Government distributing the task of "State management of organization" of the Associations among the Ministries in reality is establishing a subjective mechanism, which is incompatible with the policy to promote the role of partnership, of critical appraisal of society by mass organizations, and is at odd with the reality that many associations operate in many areas, towards many objectives, with the policy to cut down on staff level in the administrative machinery.

4. The Draft lacks many stipulations, measures of sanction so basic and necessary for ensuring social stability and security, national benefit and safety.

The Draft does not stipulate which types of association are not allowed to be formed. This is extremely necessary to found a legal base for State functional agencies and processing levels, as there will be certainly many complex situations springing up in practice.

The Draft has not paid sufficient attention to the issue of State management of Association finances. This is a vital issue that is given great attention by all Western countries, considered as the most effective means to supervise and manage the activities of Associations.

The Draft does not yet have concrete stipulations about external relations of the Associations. Who can receive funding from overseas? In what conditions can it be received? What purposes is it used for? What purposes can it not be used for? According to what principle do Associations join international organizations? Which international

organizations they are not allowed to join? Which Associations have the right to represent a rank of Vietnamese citizens in a certain international multilateral mechanism, organization or forum?

The text content on formation of foreigners associations and foreign organizations in Vietnam is still too sketchy, not able to establish a legal basis on which our Government can stipulate concrete provisions for formation procedure, scope and area of activities.

## *II. Some suggestions and proposals*

The issuing of the Law of Association ought to respond to some needs of the nature of principle as follows:

- To create conditions conducive to formation and operation of Vietnamese mass organizations in meeting the demands of the Vietnamese public.

- To ensure the unity of Vietnamese mass movements under Party leadership; to diversify in form but not to pluralize; to guarantee national autonomy and security, not to let foreign organizations and individuals interfere in our internal affairs.

- To create conditions for establishing partnership relations between mass organizations and the State, to intensify socialisation through the promotion of the role of mass organizations in the political, economic, and social life of the nation.

From such standpoint, we would like to put forward a few proposals as follows:

1. Regarding the subjects of application: they should be all Vietnamese citizens and citizens' organizations (except perhaps the religious organizations, but the large socio-political organizations and Vietnamese NGO's should not be excluded). The foreign individuals and organizations should not yet be included in the subjects of this Law.



2. The concept of “Association” should only be based on 4 main marks, as being a voluntary organization, having corporate entity status, having regular activities, being non-profit oriented. (The issue of members’ interests should not be rigidly stipulated as there are Associations not oriented towards serving or protecting members’ interests).

There should be principle-based stipulations: *An Association is an organization with corporate entity status, voluntarily established by Vietnamese citizens from the legitimate needs or interests of Vietnamese citizens, to hold regular non-profit oriented activities within the frame of the Socialist Republic of Vietnam’s Constitution and law.*

3. There should be a chapter on “*the relationship between the Government and Associations*” where apart from the points raised in Article 6, there should be stipulations such as:

- The Government recognizes that Associations involve large scale gatherings and exert great influence among the ranks of the mass public, possess capability and effectiveness in the protection, intensification or embodiment of, response to the aspirations, interests of the mass public; [the Associations] are organizations representing the ranks and strata of the mass public in their relationship with the Government.

- The Government consults the opinions of organizations representing the ranks and strata of the mass public before issuing the decisions and policies that affect, exert influence on the public interests represented by those organizations.

- The Government may transfer a number of functions to organizations representing the ranks and strata of the mass public with appropriate capacity.

- The Government to subsidize funding and assist with other necessary conditions to organizations recognised as representing

the ranks and strata of the mass public, in order to develop activities towards the protection, intensification or embodiment of, response to the aspirations, interests of the ranks and strata of the mass public.

- The Government to create conditions for associations to participate in appropriate State programs, objectives, projects, to subsidize funding for associations with activities meeting the objectives and obligations of the Government.

- Regarding management responsibility of Ministries, stipulations need only be made for registration, management of activities according to law. The issue of distributing the responsibility of managing associations to various Ministries should not be considered.

4. Regarding registration procedure on formation, there should be stipulations on the Government's consultation with organizations representing the ranks and strata of the mass public about the formation of Associations operating in related fields or domains. There should be stipulations on organizations that are not permitted to be established.

5. The stipulations on Associations should concentrate on matters concerning the relationship between Associations and the Government, the law, the community, society. There should not be stipulations on purely internal issues of Associations. The following articles need to be added:

- The Government to encourage Associations who operate with the mass public as subjects or in certain areas to collaborate closely with those organizations representing the ranks and strata of the mass public operating with the same subjects and in the same areas, in order to increase effectiveness in operation, in serving the interests, meeting the needs and aspirations of the ranks and strata of the mass public.

- Associations can campaign to raise funds from individuals and organizations to enable them to carry out their work according

to the Association's tenets and aims, and have the responsibility to report on their finance, assets to the State agency in charge of finance administration as stipulated by law.

- Regarding international relations and activities, there should be stipulations on the conditions under which foreign aid, the use of overseas funding, stipulations on joining international organizations and international activities. There should be stipulations on the exclusive capacity given to organizations representing the ranks and strata of the Vietnamese people to represent the Vietnamese people in international relations with mass organizations of other countries in related fields and domains.

## **LOGICAL AND PRACTICAL BASES FOR DETERMINING THE SUBJECTS OF APPLICATION OF THE ASSOCIATION LAW**

*Prof.Dr. LE VAN HOE*

*National Institute of Administration Ho Chi Minh*

The right to form Associations is a fundamental right of citizens recognised by almost all democratic countries and recorded in the Constitution. As a result of the exercise of this right, Associations develop more and more to become an indispensable institution in the organised structure of society. They have an important position, play a great role in the construction and growth of democracy, and provide an impetus to social development in all areas. Because of that important role, all Governments attach special attention to Associations, carry out the practical implementation of:

- Stipulations under the form of the Law of Association based on the freedom of citizens to form associations, to acknowledge the Associations' autonomy in management, at the same time the State reserves the right to dissolve Associations should they infringe on Constitutional order and national unity. All Laws of Associations in various countries set forth their concepts of an Association. The German Republic Law of Federations (in 1964) defines: *"The Association is a voluntary gathering of individuals and corporate entities for a relative length of time to achieve a common aim and follow a set of regulations in fulfilling the collective will which is organized under any legal form"*. With this concept,

the subject of application of the Law is vast, covering even companies with capital, co-operatives, mutual insurance alliances are also subjects of application (Article 17).

- Together with social progress and the democratic process, the internationalising of Associations develops not only nationwide, but also worldwide. Domestic Associations operate more and more with an international temper, as if this is a sine qua non trend. Nevertheless, the formation of Associations is always on a voluntary basis, and follows professional interests, common tastes, concerns or common development objectives (environment protection, scholarly interest promotion...).

In Vietnam, following the success of the August Revolution in 1945, the Vietnam Democratic Socialist government was established, the citizens' freedom and democratic rights - civil rights, were recognised, including the right to form Associations. On 22 April 1946, President Ho Chi Minh issued the Ordonance No. 52/SL stipulating the procedure of application for Vietnamese citizens wishing to form Associations (or mass-organizations, Groups). On 9 November 1946, the first National Assembly of the Democratic Republic of Vietnam ratified the Constitution, in which the Article 10 has stipulations on Vietnamese citizens rights to:

- Freedom of speech
- Freedom to publish books
- Freedom to organize and form associations
- Religious freedom
- Freedom of residence, to travel within and outside the country.

On 31/12/1959, the National Assembly passed a new Constitution (the 1959 Constitution), fundamentally changing the 1946 Constitution. In Article 25 of Chapter III on the basic rights and obligations of citizens, it stipulates that: Citizens of the Democratic Republic of Vietnam have the rights to freedom of speech, of the press, of assembly, of forming

associations and of public demonstration. The Government guarantees the necessary material conditions for citizens to enjoy these rights. To make concrete the Constitution, the National Assembly issued the Law of Association. Following this, the Constitutions of 1980, 1992 stipulate the basic rights of citizens to form Associations (Article 67 of the Constitution of 1980, Article 69 of the Constitution of 1992). It is precisely on the basis of the Constitution and other legal documents stipulating on Associations that the Associations in our country have been formed, actively operated in the construction and defence of our Nation and Socialism.

Entering into the era of socio-economic renovation, along side the socialist-oriented development of market economy, the Associations and Federations in our country have developed vigorously. Many Associations and Federations have activities reaching beyond the national territory; many associations are veterans with over half a century of operation history; many are newly formed, although young of age but definitive in their role and position. While the citizens aspiration to form new associations continues to grow, Association aims and forms of activities have become more and more diversified and complex, giving rise to no few problems related to forming an Association, to State management action over Associations, to the issues of settling disputes and dealing with infringements in Association activities... In this context, the need for a Law of Association to replace the Government's Decrees has become more and more demanding and urgent. Right from the 8<sup>th</sup> Congress (in 1966), our Party has affirmed that: "The Government needs to issue a Law on forming associations and create necessary conditions for the activities of mass-organised groups." Then, at the 9<sup>th</sup> Congress (in 2001) the Party continued to affirm and press for: "Widening and diversification of forms of public gathering for participation in mass groups, social organizations, professional, cultural, friendship, welfare, humanitarian associations... [by] expediting the issue of the Law of Association."

Although the Party's policy of issuing the Law of Association has been in existence for nearly 10 years, while the reality of organising and operating Associations, Federations has become more and more complex, the National Assembly has not yet adopted a Draft for the Law of Association. There are several reasons for this, among them the issue of awareness leading to unconcensual views on the contents of the stipulations of the Law, especially the subjects of application (or the governed subjects of the Law). In our opinion, this is related to the following issues:

*Firstly:* Regarding terminology, besides the term "socio-political organization" being used to designate the Vietnam Fatherland Front, the Vietnam Federation of Labours Union, the Vietnam Women's Union, the Ho Chi Minh Communist Youth Union, the Vietnam Farmers' Association, the Vietnam War Veterans Association, there is the term "other organizations." In Article 10 of the Constitution of 1992, the term "other organizations" is understood in a very wide sense, encompassing socio-political organizations and organizations that are not political ones, the economic units. Even among the socio-political organizations, there are three with the word "Association" used in nomenclature. In place of the term "social organization", there is also the term "people's group," "mass organization". These terms are often used in Party documents. In the 8<sup>th</sup> Congress Document, however, the term "socio-political organization" is used (not counting the Fatherland Front), while in the 9<sup>th</sup> Congress Document, except for six, other organizations are designated as "mass organizations", "social organizations", "professional, cultural, welfare-humanitarian associations...". Right in the legal documents issued after the Constitution of 1992 was amended and appended by the National Assembly, the above highly varied terms were used, causing extreme difficulty in discerning them. For example, the Law of State organization of 2002 with Article 7 employing the term "people's organization", while in Article 8, Item 2, organizations are listed as including socio-political organizations,

social organizations, economic organizations. The Resolutions from the Standing Committee of the National Assembly on “the Assembly Representatives receiving citizens, receiving and relaying applications, expediting, following up processes of resolving appeals, prosecutions and petitions by citizens”, includes Resolution 3, Point 1, Item c employing the terms socio-political organizations, social professional organizations, economic organizations... Thus from the Constitution, the law, derivative legal documents and Party documents, widely different terms are used to refer to organizations currently existing in our country; and the important fact is that such terminology usage is not unified, with political organizations implicitly recognised but not officially explained as being the Party’s organizations. The above usage of terminology clearly indicates, with the concept of Association being elucidated, a state of disarray. And this is also a cause leading to different viewpoints in the determination of the subjects of application of the Law of Association. For that reason, to determine precisely the subjects of application of this Law, the concept of Association must be determined first, the particular characteristics of this organization should be clearly defined. In our opinion, they are:

- The Association is an organization without public power, i.e. not a State agency, a public authority.

- The Association is not a political organization, i.e. not an organization whose formation based on the solidarity of individuals with a common worldview who operate with the aim of asserting that worldview through political means, that is to say through participating in the exercise of power and contesting for social power. In our country, the social organization tacitly recognised by all is the Vietnam Communist Party. The Party is the leader of the political system: this system is understood as the mechanism through which the people exercise their power.



+ Economic organizations; these organizations are formed with the aim to engage in an enterprise, to procure profits, being opposite to the non-profit nature of Associations.

+ The voluntary nature in the solidarity of citizens and organizations for forming Associations.

+ Associations work in a regular, stable manner for the common aims of members on the basis of professional interests, preferences and developmental aspiration of members.

+ [Associations are] Oriented towards the common objectives of social development in Vietnam, these objectives being: "A wealthy people, a strong country, a just, democratic and civilized society."

+ Associations participate in the mechanism of critical appraisal of society with regards to the activities of the political Party and the Government, ensuring the legitimate rights and interests of members.

+ Associations are governed by law and has juridical status of a legal entity.

With the above characteristics in mind, the authors of the 6<sup>th</sup> Draft Law of Association put forward a definition in Article 4: "An Association is a voluntary organization with juridical status of a legal entity, operates regularly, for non-profit purposes, with the aim of protecting legitimate rights and interests of its members, contributing to the national socio-economic development." This is not yet sufficient, nor precise. The Association is not a voluntary organization but a voluntary gathering (alliance) of citizens, nor is it a gathering of individuals, but is also an alliance of an Association with some other Associations to become a Federation. The important factor in that alliance is the voluntary nature, the stability of the basis of common interests, preferences, the compliance with the collective orientation in social development, via means of implementing and maintaining the members' common wish.

The concept of an Association in our opinion must be able to express all the above specific attributes.

*Secondly:* All organizations with the above attributes are subjects of application of the Law of Association. However, because of the particular characteristics of each country, especially of the particular political system that each has, the concepts of an Association for all countries do not completely resemble each other. For Vietnam with the political system as a mechanism to express the people's power, under the leadership of the Vietnam Communist Party, the Government is defined as the supporting pillar of the system, with socio-political organizations allowed to participate in the exercise of social power, at the same time to be the inspector, the social critic with regards to the issuing, implementation of guidelines, policies, laws by the Party and the Government, directly in the organising of the ranks and strata of society into members of organizations to exercise State power. In this aspect, the socio-political organizations are political by nature. However, socio-political organizations are also social. Representing their members being the ranks and strata of society, they work towards looking after and protect the legitimate interests of those ranks and strata, at the same time they pursue together with other organizations the objective of creating social harmony, for the sake of a prosperous nation, a fair, democratic and civilized society.

The political attribute and the social attribute of socio-political organizations, whose typical instance is the Vietnam Fatherland Front, are tightly interlinked, exhibit resilience through many stages of history, a factor constituting the specific characteristics and particularly important role of those organizations. Those attributes therefore cannot be watered down or separated in any way. Thus, in our opinion, Article 3 of the 6<sup>th</sup> Draft Law of Association, the Vietnam Federation of Labours Union, the Ho Chi Minh Communist Youth Union, the Vietnam Farmers' Association, the Vietnam Veterans Association, the Vietnam

Women's Union and other religious organizations, is reasonable. This does not mean, however, that these organizations operate outside the legal framework. At present, our Government has the Law of the Vietnam Fatherland Front, on the basis of implementing Article 9 of the Constitution, on the notion that the Fatherland Front is a voluntary political alliance of individuals and organizations, being the political base for people's political power, it operates with the purpose of promoting the tradition of mass solidarity, heightening popular consensus on political and moral issues of the people, contributing to the construction and reinforcing of the people's political power, together with the Government, taking care and protecting legitimate interests of the people, mobilizing the people in exercising their control, solemnly implementing the Constitution and the law, supervising activities of State agencies, elected representatives and cadres, officials of the government. The member organizations of the Front, among them the five socio-political organizations as mentioned above, possess a position and a character like those of the Front, at the same time having a position and socio-political character compatible with the attributes of the ranks and strata of society whom they represent. Meanwhile, the Law of the Vietnam Fatherland Front mainly stipulates generally about the Front. Therefore if this Law is not applicable to socio-political organizations then it is necessary to add to the Law of the Fatherland Front those stipulations about socio-political organizations, or to issue a Law of Socio-political Organization replacing the current Law of the Vietnam Fatherland Front.

*Thirdly:* Vietnam is on the course of renovation, construction and development of a socialist-oriented market economy, at the same time implementing the policy of integration into the world economy. Under the impact of market mechanism and globalisation/internationalisation trend, at the same time the powerful impact of achievements from the scientific and industrial revolution leading to great shaking-up in the

class structure of society, structure and mechanism to serve interests, in social psychological state, in lifestyle... All those aspects constitute the whole of the mechanism of governing by law, which includes the implementation of the law. For that reason, the renovation of legislative activities to adapt to the above changing situation is objective, in that it is necessary to enhance the predictability and orientation of all laws. The important thing in dealing with these issues related to democratic institutions, among them the Association, is to adhere to the principle of Government by rule of law: individuals, organizations are allowed to do all the things not prohibited by law.

## **A CONTRIBUTION OF IDEAS TO THE DRAFT LAW OF ASSOCIATION**

*Dr. PHAM VAN TAN*

*Vietnam Union of Science and Technology Associations*

The Draft Law of Association is a carefully researched work of the collective of the drafting group. The 7<sup>th</sup> Draft has already had a number of amendments made on legal basis through several seminars run by the Interior Ministry, Federations and agencies to do with other than organizations or opinions expressed on the mass media. The attitude of seeking visibility, promoting democracy in the preparation of the documents on legal provisions, listening to opinions from the subjects-to-be covered by the governing scope of the legal document, have been necessary and to be valued and respected.

Nevertheless, we would like to express a number of our ideas surrounding some contents of the Law of Association related to the existence and development of socio-political organizations as follows:

### ***1. The content of the Law of Association is essentially that of Decree 88CP***

Decree 88/2003/ND-CP issued on 30/7/2003 has revealed restrictive aspects of the law over Federated Association activities as well as over the socio-political organizations, which have been established and guided in their activities by the Party.

*Firstly:* Decree 88 has created a differential way of dealing with

socio-political organizations. In official Party documents, the Federated Associations have been defined as socio-political organizations of the scientific and industrial intelligentsia, but Decree 88 has homogenised Federated Associations, the Party's socio-political organizations with a function of assembling, uniting the Party-following section of the intelligentsia by means of social professional and occupational organizations.

*Secondly:* When the State management function of the Ministries and Departments was stipulated, it was understood that such provisions put agencies in charge of professional associations, mixing it into the set functions assigned to these agencies, leading to a tendency to bureaucratize those government services in need of being transferred to NGO's, professional associations, who are waiting for the Government to gradually transfer public services to professional associations in order to create favourable conditions for association professional activities in the sense of being self-funded, self-responsible and in compliance to the rule of law.

## ***2. The Party's guiding viewpoints on socio-political organizations must be closely followed to in designing the Law of Association***

In contributing ideas on the Draft Law of Association, many researchers, leading cadres of Party and Government agencies have suggested that members of the drafting team have not studied carefully the official Party documents in reference to socio-political organizations such as the Vietnam Union of Science and Technology Associations, the Vietnam Federation of Literative and Art Associations who have been established and guided in activities by the Party. As a result, in the Draft, the Party leadership of the intelligentsia - being one of the three forces constituting the Workers - Peasants - Intellectuals alliance under Party leadership - was removed. It is therefore necessary to study the Party and Government documents in order to grasp complete penetration of the Party's viewpoints on socio-political organizations, among them

the Federated Associations or Unions of Associations. And we will see clearly the Party's process of taking cognisance of the position and role of the Federated Association as an organization representing our nation's intelligentsia.

In practice, the Federated Associations' activities are guided by the Politbureau, the Central Party Secretariat, and directly by the Central Science and Education Committee. Organizing General Meetings, selecting the Heads of Federated Associations agencies and General Meeting staff are done by the Politbureau, the Party Secretariat who give guiding inputs, on the basis of nominations to the Central Committee Organizing as proposed leaders for Federated Associations. The Federations' regulations are to be approved by the Government. Summing-up Report and Draft Regulations for the Federated Associations presented at the General Meeting have already been lodged with the Party Secretariat for [approval of] the contents of the Report as well as the Draft Regulations. Thus the stature of the Federated Association has surpassed the legal provisions for an ordinary professional Association in tenets, aims of activities, formation criteria, and in managing Federation of Associations. Representatives of the Central Ideology and Culture Committee, of Central Science and Education Committee and Ministry of Science and Technology (Circular 932/BKHCHN-KHCNN sent to the Government Office) maintain that the Draft Law is not suitable for the socio-political organizations, the professional socio-political organizations, and is at variance with the Party's viewpoints.

***3. The concept of an Association should clearly determined, and classification of Association types should be stipulated in the Law of Association***

The Association is not an organization in the system of public authorities, i.e. it is not a State administrative agency. The Association is characterised by its voluntary nature, regular activities, and durability

on the basis of professional interests, preferences and aspirations of members, oriented in the general aim of social development. Associations have the right to participate in mechanisms of critique and appraisal of society with respect to the Party's and Government's activities, ensuring their members' legitimate rights and interests. The Association is not a political organization, in that it is not established on the basis of fostering solidarity of individuals of the same worldview who operate with the aim of asserting that worldview through a political trajectory, that is to say through participating in the exercise of power and contesting for social power. In our country, the social organization tacitly recognised by all is the Vietnam Communist Party. The economic organizations are not Associations either, as these organizations are founded with the aim of establishing enterprises and procuring profit, opposite to the non-profit nature of Associations. Therefore the Draft Law of Association has put forward a definition of an Association that is not yet sufficient, not precise. The Association is a voluntary gathering of citizens, not only of individuals but also an agglomeration of Associations to become Federations/Unions of Associations on the basis of being voluntary, having same interests, preferences, in the general collective orientation towards the development of society.

The above-mentioned special organizations are all subjects of application of the Law of Association. However, in our country, the political system operating as a mechanism executes the people's power under Party leadership whereby: the Government manages, the socio-political organizations participate in the exercise of political power, at the same time these are supervisory organizations, offering critical appraisal of society with respect to the issuing and implementation of guidelines, policies and laws by the Party and the Government, directly organising the ranks and strata of society being members of the organizations to exercise State power. The political attribute and the social attribute of the socio-political organizations differ sharply



from those of social organizations and professional organizations. The differences should be objectively recognized in putting forward the stipulations governing those organizations in the Law of Association. There should be therefore a classification of Associations according to the Party's viewpoints and compatible with the general rules for all types of Associations. For the socio-political organizations, which have been established or recognized by the Party, there should be common stipulations on Association. Special Laws have been issued for governing each socio-political organization separately (for instances the Law of Fatherland Front, the Law of Youth Union, the Law of Labour Union) will be amended to govern in congruence with the Law of Association. For the case of the Law of Association not being applicable to the socio-political organizations, amendments should be made to the stipulations on socio-political organizations in the Law of Vietnam Fatherland Front, or a new Law of Socio-political Organization issued to replace the Law of Vietnam Fatherland Front. The Law of Association may be changed in name into: the **Law of Non-government Organizations**.

Another point to be noted is that in our country there are many official Associations, namely those with status of corporate entity (being registered, having a rubber stamp / seal) and also numerous unofficial Associations. Both forms exist and are active, therefore the Law of Association must take this reality into account, cannot neglect to have concrete articles and items governing the activities of unofficial Associations.

#### *4. Concerning State management of Associations*

Apart from the Interior Ministry and provincial People's Committees being responsible for the State management of the Associations, the Draft Law also reserves the right to manage them for various Ministries and Departments. This may be understood as the Associations being State-managed twice, by the Interior Ministry and by a Ministry in charge. In the Draft Law, there is a big confusion between management

by the State and the administrative management of Associations. Stipulating the State's management function for Ministries and Departments with respect to Associations will be understood as setting agencies up as parent bodies of professional associations, thus mixing this task of controlling the latter in with the functions of State management by government administrative agencies, leading to a tendency to bureaucratize Association activities. Duplicating or replicating management function not only will reduce the initiative and self-confidence of the Associations, it will also undermine the function of supervision and critical appraisal of society by Associations, and turn democracy into an empty formality. Furthermore, it will produce overlapping in management. This shortcoming has appeared in implementing the Decree 88/2003/ND-CP, created great difficulty to Associations' activities in the intervening time.

The Law of Association is mainly a legal framework for the organization and activities of Associations, without the need to intervene deeply into the internal affairs of Associations. The Government needs only to stipulate the prohibited items, and determine the mandatory rules for the Associations to follow in abiding by the State administrative management. The Articles stipulating on Membership, Organization, Association activities, Federated Association, joining, splitting up, and dissolution of an Association may already intervene much too deeply in Associations affairs, making rigid the organization for and activities of Associations, which in the first place differ widely among themselves in organization and activity. The Associations being so diverse, as long as organization and activities comply with the law, there would be no need to narrow their compliance down to that of the Law of Association alone. It is therefore necessary to have a Law of Association, but the content of the Law must be compatible with, objective, correct on the viewpoint and guidelines of the Party, and it cannot replace the Associations' capacity to self-manage.

## **SOME IDEAS TO CONTRIBUTE TO THE DRAFT LAW OF ASSOCIATION**

*Lawyer TRAN CONG DANG*

*President, Lawyers Association of Da Nang City*

From a study of the 7<sup>th</sup> Draft Law of Association, I would like to contribute a few concrete propositions as follows:

Article 3: Subject of application - the solution 2 should be adopted. It is concise and at the same time convenient for future application.

Article 4: Point 1 - I would suggest adding the word “stabilization” to the phrase “contribute towards”... contribute towards the stabilization, development of society and economy of our country.

Article 7 (Item 3) and Article 39 (Item 1) - State management by the Ministry - departmental involvement is not necessary, as it will make for multiple levels and tiers. And in fact there are many Associations which the Department is not capable of managing, or which may not be put directly under any ministry or department, such as the Lawyers Association.

Article 9 (Item 5): The requirement to have independent assets and to discharge responsibility by means of those assets is not feasible, because only after forming the Association can one’s own assets be accumulated, either through Association fees or activities. Moreover, if assets are not specified as to consist of what items, having what value, then how can they be realistically accounted for? It is possible that a few pieces of furniture, a few computers are amply counted as assets.

Article 9 (Item 3); Article 12 (Item 5): The concrete necessary number of members required to form a Association should be stipulated immediately, one should not wait for a Government document to specify this.

Article 11 (Item 1 Point a): I propose to add at the end of item a [Point a?].... “able to express the particular characteristics of the Association”. Usually the name of an Association is related to its particular characteristics, the nature of the activities of that Association.

Article 12 (Item 7) - the word “have” should be deleted because it is redundant. The sentence will be changed to: The asset inventory document serves as security for Association activities.

Article 33 (Item 1), point a: to be changed to - Being Vietnamese citizen, aged fully 18 years or more (the word “fully” added). One more criterion to be added: must be a member of the Association.

Article 40 (Item 2): Joining, withdrawing from being member Association of the federation... Delete the word “being”.

Articles 43 and 44 - Subdividing, splitting up of the Association - should be merged into one article for the sake of conciseness, as essentially, subdividing and splitting are the same thing.

Article 32 (Items 4 and 5) - Settlement of assets when the Association is split up: I propose merging these items into one.

*Civil Society Action Towards: The 9<sup>th</sup> Draft*

**ASSOCIATIONS SHOULD BE EQUAL**

**IN FRONT OF THE LAW**

**PLATFORM IN IN HÀ TĨNH, CENTRAL VIETNAM**

*We should not jeopardise solidarity for the sake of a law*

*Not to think of the future is to invite retrogression*

*Conciliate in order to preserve the heritage of positive factors*



## PRESENTATION

Immediately after the conference for contributing ideas towards the Draft for the Law of Association (the 9th Draft prepared by the Interior Ministry) organised by the Vietnam Union of Science and Technology Associations concluded in Hanoi for 7<sup>th</sup> and 9<sup>th</sup> March, there was also a conference taking place in Hà Tĩnh with the same content. Among those attending this conference, besides the central Union Science and Economic Associations and Hà Tĩnh Federation being the two agencies, representatives of Literative and Art Federations and Associations of Hải Dương, Bắc Giang, Thanh Hóa, Nghệ An, Quảng Trị, Thừa Thiên - Huế, as well as representatives of departments, offices and branches of the above provinces also participated. In particular the conference was attended by a number of comrades - some of them member delegates of the National Assembly from the Parliamentary Delegation of Hà Tĩnh province and Association leaders. This shows issues surrounding the Draft Law of Association not only attract the attention of Associations, being the subjects within the governing scope of that Law, but also of those with legislative responsibilities who have begun to take real notice of these issues.

At the opening of the conference, after a preliminary introduction to the social and economic development in this land of the Hồng Mountain and the Lam River, Dr. Tran Dinh Dan, Secretary-General of the Provincial People's Committee, Head of the Parliamentary Delegation from Hà Tĩnh, voiced some of his opinions on the Association. According to him, building a law-governed state is an important task for today's

time. To achieve that aim, there must be a uniform and comprehensive system of Laws. Dr. Dan also said: *“Activities of the people’s organizations play an important role in assessing and critiquing of society. The formation of associations and organizations enabling citizens to participate in activities to develop the economy and to settle society is an extremely important task”*.

As parliamentary delegate, he promised as his duty to listen to ideas and hoped for a breakthrough in the process of development of society through the association law: *“The Draft Law of Association embodies the role of associations in the inspecting, supervising, consulting and critiquing of society. Once the law is fully worked out, associations will be a powerful force linking the people to business. This is also a good opportunities for the intellectuals, scientists, and association organizations to contribute their ideas to the development of associations in the socialist-oriented market economy.”*

In place of introductory statements, Prof.Dr. Ho Uy Liem, Vice-President, Secretary-General of the Associations, presented on behalf of the executive officers of federated associations his appraisals of the current situation of association organizations as follows: *‘At present in our country as well as in others, it is often said that there are international organizations who interfere in the internal affairs of developing countries to create green, red, and orange “revolutions”... We must remain cool-headed in the face of this reality. However, it is also necessary to recognize clearly that our people, our associations differ from those of other countries. We have a long revolutionary past. The Party’s prestige is absolute, the people unite in following the Party’s leadership... **and it is certain that:** There have been ideas contributed towards the law of association, but the leadership role of the Party has never been rejected, only suggestions to strengthen the Party further. That is why we should not worry that the many rights conferred to the associations will restrict the leadership role of the Party, so that foreign countries can interfere too deeply into our country’s internal affairs. Conversely, the Party needs to attend to improving the development of associations in the right direction, then there is nothing to worry about’*.



Evaluating the Law of Association, he remarked: *'It is our wish that the characteristics of a law-governed State be strongly expressed in the Law of Association. In the past 13 years, the Interior Ministry with their Law Drafting Committee comprising many branches and departments: Science and Education Committee, Fatherland Front, Foreign Affairs Department, Central Organization Committee, Lawyers Association... have proceeded with the drafting of the Law of Association. This Law is predicated on Government Decree 88. In one way it creates the condition for the formation of associations, but it leans heavily on administrative management, with contents interfering deeply into association activities'*.

Dr. Liem also informed the representatives that: *"There have been many conferences with ideas contributed to rectify the rules and laws for many associations and organizations. The Drafting Committee has listened, modified, added and amended until now it is already the 9<sup>th</sup> draft. Basically however, it has not yet responded adequately to the wishes and aspiration of the great majority of association organizations and is not yet appropriate to the development trend of the country. The VUSTA also took positive measures such as establishing an independent group of experts, designed on their own initiative a relatively complete and workable draft of the Law of Association for the Drafting Committee to use as basis for consultation. To date, this draft has also been revised, amended to its 7<sup>th</sup> version, and most recently, on 7/3/2006, the VUSTA has organised a conference to contribute towards the Interior Ministry's 9<sup>th</sup> Draft of the Law of Association, with the participation and chairmanship of Comrades Le Quang Binh, Nguyen Van Thuan, Le Van Rieu, being among the members of People's Aspirations, Law, and Social Issues Committees of the National Assembly. It is hoped that these efforts, among them the opinions put forward at this conference, will be properly considered and evaluated by the National Assembly in the coming meetings"*.

## **THE MATTER OF PRINCIPLE IS TO DETERMINE CLEARLY THE COMMON VIEWPOINTS AND PRINCIPLES FOR THE DRAFT LAW OF ASSOCIATION**

*Mr. NGUYEN XUAN THIEU  
Propaganda and Training Section  
Ha Tinh Province People's Committee*

The Draft Law of Association has so far gone through nine adjustments and amendments after the contribution of ideas from scientists, cadres from various departments, fields and many people concerned with the organization of an Association. Compared to the first draft, the 9<sup>th</sup> draft is more complete and encompassing, overcoming many more irrational aspects. However, the draft this time around still contains many diverging opinions, thus no consensus. We rejoice in having a conference attended by many concerned people. Listening, receiving selectively in order to rectify what is still unreasonable is extremely necessary for the Drafting Committee, but an important issue of principle resides in the clear determination of common viewpoints, principles for the Draft.

1. Entering into the era of open international integration and cooperation, together with the development of the market economy, Associations and Unions in our country have formed and developed in a diverse fashion. Many Associations and Unions operate on a nation-wide scale, while others reach beyond our national territory, other Associations just established, are still immature, while others, older, have operated for nearly half a century... The citizens' need for forming associations continues

to increase, as the forms of their activities become more and more diverse. There has been not a few problems related to the formation of associations, to the resolution of conflict and dealing with infringements in Association activities, as well as the management of Association by the State. Such a situation renders the issue of a Law of Association all the more urgent.

2. The first issue which we wish to address is the concept of an Association. We are discussing the Law of Association, therefore must explain fully and clearly what the concept of an Association is. What is an Association, and what organizations can be called 'Associations'? What are the types of Association? Once determined, an Association must comply to the stipulations of the Law. The reason for any Association that is not subject to stipulations of the Law must be explained clearly so that the clarity of the Law is assured for all subjects, and other Associations would not understand wrongly that they are being discriminated against. Only when Associations are clearly categorised could financial management mechanism be clearly set up, with the legal position and duties of Association members elucidated.

3. The Constitution of 1992 of the Socialist Republic of Vietnam stipulates in Article 69 that: *Citizens have the right to freedom of speech, of the press; the right to be informed, to assemble, to form Associations, to demonstrate as stipulated by law.* The Law of Association must first comply with the Constitution, must give concrete expression of these rights in the form of concrete stipulations in the direction of creating a favourable legal environment for Associations to operate. The Law of Association cannot have stipulations going against already issued laws that are being applied in social life. In order to really create a favourable legal environment for Associations to operate, the Law of Association should mainly set up a legal framework for the organization and activities of Associations. It should not go into details of Rules and operational procedure, as there are so many types of Associations. The concept of an Association is basically diverse, and there are Associations that by nature consist of loose forms of

allegiance. To enable an Association to have a legal corporate status, that is being recognised by the government, is an important legal condition for an Association to enter into administrative, civil and economic relations.

4. One of the many aspects of the content, sprouting numerous different opinions, concerns the governing scope and applicable subjects. One opinion maintains that all association organizations, including the six socio-political organizations (the Fatherland Front, the Farmers Union, the Women's Union...) should still lie within the governing scope of the Law, in order to be fair and not give discriminative treatment to Associations. Another opinion advocates against bringing these six organizations within the governing scope of the Law, as these six organizations after all are the Party's political organizations, whose activities are more political than social and civil in character, and they also have their own rules, laws and concrete regulations laid down by the Party and State. This is a sensitive issue that needs to be examined with care. In our opinion, the Draft should propose two solutions for the National Assembly to examine and decide, as the ultimate power resides with the National Assembly. Otherwise to continue on debating will hardly bring general agreement.

5. The issue of State management of Associations still brings up differing opinions. For us, any social organization recognised by the law must be put under the supervision and management of the State. The supervision and management by the State do not mean creating obstructions and difficulties for the operation of Associations, but in that management, there is recognition and creation of favourable conditions in all facets for the effective operation of Associations, the correct compliance to the law, the timely prevention and dealing with the abuse of Associations by individuals and organizations in carrying out unlawful business, going against the interests of the people and the nation. Like it or not, the Associations must put themselves under state management, for they cannot expect the State to create favourable

conditions without being managed by it. I concur with the opinion of Mr. Huu Thinh, President of the Vietnam Writers' Association, that: *"Associations need the Government in funding their expenditures, but do dislike the State when it comes to management. That is the conflict of interests between the State and the Associations"*. State supervision and management are different from the State management of enterprises. To manage Associations to such a degree, scope and form that the dynamic and creative function of Association organizations can be fostered in the life of society, is what the State should do, as the State does not need to nor should it interfere deeply into Association activities, so that they can be independent, autonomous and self-managed, able to organise any form of activities not prohibited by law. The ideas of not wanting State supervision and management are difficult to accept. The ideas that give prominence to the role of State management of Association, strict supervision of all Association activities during the Renovation era, promoting democracy, respecting all citizens' rights and freedoms, are considered not so necessary either, and no longer appropriate in the current context of international integration.

Through 9 modifications and canvassing of opinions for the Draft Law of Association, numerous ideas have been contributed. There were opinions with only general viewpoints made. There were opinions suggesting correction to the actual content, phrases and words. There were no few opinions that do not agree with each other on a number of issues, and some even contradict one another.. All indicate the extreme richness of real life. As the tree of life is basically green and lush, it does not matter how much we try to correct and modify, the Law will not be able to embrace all issues. The important and decisive factor in defining the quality of the Draft, so that the National Assembly can reach a high degree of consensus when they discuss it, lies in the capacity of the drafters to listen to and receive ideas comprehensively, to be selective in correcting, amending and perfecting the content based on viewpoints and principles that are fundamental and far-reaching in legislative decisions.

## **SOME IDEAS ON THE DECREE 88 AND THE DRAFT FOR THE LAW OF ASSOCIATION**

*Dr. NGUYEN VAN QUE*

*Union of Thua Thien - Hue Science and Technology Associations*

### **1. On the Decree 88**

The Government has issued the Decree No. 88/23/ND-CP (hereafter ND88) on 30 July 2003 stipulating on the organization, operation and management of Associations. Following this, the Interior Ministry issued Circular No. 01-2004/TT-BNV on 15 January 2004 as guide to implementing a number of articles in the ND88. After a period of application, these two documents have displayed a number of definite advantages and drawbacks.

**Firstly**, through ND88, the Government has shown the resolution to step up State management of Associations. ND88 has an array of very detailed stipulations on conditions and procedures of forming an Association. To form an Association, permission must be sought from a Government agency authorised for this (Article 15 ND88). The Association will be organised and operated in accordance with Association Rules and Regulations as approved by the authorised Government agency. The area to which the Association activities belong indicates that they must submit to the State management of the State agency in charge of that branch or area of activities. Prior to organising a General Meeting, association Executive Committee must have a document reporting to the State agency and the Government

Department-in-charge. Wherever the Association Representatives' office is to be set up, it must apply for permission to do so from the provincial People's Committee of that locality. The Association must report annually its organisational and operational situation to the State agency in charge of the activity field and area in which the Association operates... (Article 23, ND88). Accordingly, there are so many things the Association must apply for and must report on. Furthermore, the Association must submit to the management, supervision, and inspection by the State agency-in-charge, and by the field-specific managing agency (Article 32).

Clearly, the ND88 has proved in reality to be one of the important legal bases purported to manage Associations.

**Secondly**, ND88 and Circular No. 01 also have the effect of being guidelines for Associations. For instance, ND88 shows what the Mobilising Committee for formation of Association should do, what are included in the Association rules and regulations, what are to be done in the General Inaugural Meeting, regular General Meetings, and Irregular General Meetings... I think this is necessary, as to my knowledge, almost all Association cadres have not gone through their professional training and further education courses on operating Associations. They deal with Associations with their enthusiasm and their own personal experience. Their grasp of issues such as reporting, procedure and principles of formation, organization and operation, legal regulations for Associations must necessarily be limited. I take this opportunity to propose that the Vietnam Union of Science and Technology Associations open professional training and further education courses for the cadres in their organisational network. The Vietnam Labours Union has a Trade Union University, many Ministries have set up their training and further education schools for cadres, why can't we think about doing this?

The above points show that ND88 does have a definite effect. Due

to ND88, many Associations and organizations can be set up, operate and contribute considerably to society.

However, the history of implementation of Decree ND88 and other related documents on organising, operating and managing Associations, social organizations, still shows there still exist many shortcomings, discrepancies, and inadequate responses to the demands of the task of Renovation and integration into the international economy. I will cite a few instances of the difficulty and irrelevance in implementing ND88. ND88 has put too much attention in the activities of Associations, and this will lead to two kinds of disadvantages.

*The first* disadvantage, is the State agency in charge has to do an extra number of things that are very difficult to achieve. In reality, once approval of formation is granted, it appears that the State agency in charge can hardly manage anything related to Associations.

*Secondly*, many provincial level Associations so far operate according to regulations for higher levels. Now, based on ND88, State agencies would call them up to demand that they establish their own regulations, causing considerable difficulty. The formation of district and canton level Associations also is fraught with even greater difficulty. Before ND88, approval to form district and canton level Associations have been given by district and canton People's Committees. Now provincial and city People's Committees, directly under the Central Government, issue permits of formation, therefore causing difficulty and complication to district, canton and even provincial and city level Associations. It is known that Enterprise Law regulations are more liberal. Cantons are delegated to approve formation and registration of business for production organizations, enterprises (family household, small set-up). According to ND88, many administrative procedures as well as the issue of State management of Association activities are still cumbersome and complicated, with formation procedure not being sufficiently simple and in need of further simplification.



## **2. On the 9<sup>th</sup> Draft Law of Association**

Contrasting the 9<sup>th</sup> Draft Law of Association with ND88 and previous drafts, I notice that they do not differ greatly and still contain many flaws. There is a very high degree of similarity between ND88 and the 9<sup>th</sup> Draft. Both documents (ND88 and the 9<sup>th</sup> Draft) exude a fundamental attitude of tightening State management of Association operation, with many cumbersome, complex, multi-levelled regulations, causing difficulty for Associations and the agencies in charge as well. The Draft does not yet deserve its stature as Law. I think the Draft Law of Association needs to be more liberal and wide-ranging, more appropriate to its reach. Especially:

1. The Draft must keep to the Party's guideline of the Vietnamese Communist Party on the right to form Association. Since the day the Vietnamese Communist Party was established, during the two wars of resistance as well as in the period of renovation, our Party has always asserted that revolution is the people's legacy, the reason why the Party always pays attention to the mobilising and developing mass organizations, social organizations. Our Party also affirms that the worker – peasant – intellectual alliance is the foundation for the great body of national solidarity. That is why it is imperative that we must ensure a complete expression of this viewpoint in the Draft Law of Association.

2. The Draft must comply with Vietnamese Law on the Right to form Associations. Our Constitution, as our law since the August Revolution (the Constitution of 1946, 1959, 1980 and 1992) always stipulates the right of citizens to form Associations, the State ensuring the necessary material conditions for citizens to exercise their right to form Associations. ND88 has stipulated the state's responsibility towards those Associations called socio-political organizations, socio-political-professional organizations. Associations with activities linked to the State's undertakings are financially supported in expenditure by

the Government's budget. This stipulation has not been noted in the current drafting of the Law of Association.

3. The Draft Law of Association must ensure a strict implementation of the international convention on civil and political rights to which the government is signatory in guaranteeing respect and in assuring the exercise of basic human rights and freedoms, among these is the right to form Associations.

*In brief*, the constructing and perfecting of the Law of Association are necessary for the active life of the civil society, for the State management of Associations, social organizations, as well as the demands from the trend towards international integration. The Law of Association must aim to give concrete expression to the Party's guideline, the Constitution, our government's laws on the people's right to form Association, to promote the role of civil society. On the other hand, it must ensure the effectiveness of State management of Associations, social organizations, progress towards a law-governed State. That is also the legal obligation of the Vietnamese government in the international relations context.

Going into the details of the content, I notice that there are still many irrational parts. For instance, the draft puts the State management of Associations and State agencies in charge of Associations in Chapter I: *General Stipulations*, this is not reasonable. These stipulations should be put into separate chapters towards the end (as the ND88 is structured) with their content varied appropriately and really respectful of contributed opinions from Associations. I notice a strong emphasis by the Drafting Committee's part on State management of Association rather than a receptivity of proffered ideas from the Associations. About the agency in charge of Associations, it should be compact and light, effective, oriented towards 'one office door' model. For Central Government, the Interior Ministry, and for local regions, the provincial

People's Committees should be sufficient to manage the Associations. With a robust machinery, modern computerised management tools, I believe that these agencies will co-ordinate well with branches and departments in Association management. Stipulations such as the drafted Item 3 of Article 7 can easily lead to the situation where an agency takes full charge of Associations, and each Association has to report to several agencies. Item 3 Article 7 should be deleted in the 9<sup>th</sup> draft.

I propose that Item 4 Article 39 of the 9<sup>th</sup> Draft should be changed. Where the Association sets up a representatives' office, it is sufficient either to register with or report only to the grass-roots level authority. As for reporting to higher level authorities or any empowered agency, this should be left to grass-roots level authorities.

I have read the Draft Law of Association prepared by the Vietnam Union of Science and Technology Associations. I wholeheartedly agree with this draft. For it has responded satisfactorily to the demands of those viewpoints and legal grounds mentioned above.

# **THE LAW SHOULD DETERMINE THE STRATEGIC POSITION OF ASSOCIATION ORGANIZATIONS IN THE NEW ERA**

*Mr. KHUONG BA TUAN*

*Thanh Hoa Union of Science and Technology Associations*

## **1. No strategic view on Association as yet**

The history of the Association is an old one, from the period before the Revolution in August 1945 and during the years of anti-colonial war against the French invaders, a number of social organizations with occupational character were born, such as: the Kite flyers Association, the Hunters' Association, the Anglers' Association and other occupational associations, formed by enthusiasts with common interests, common objectives. Among them were also patriotic intellectual personages. They voluntarily formed Associations, with activities in the nature of professions and skills as a cover for their revolutionary involvement. In fact they made many contributions to the nation's victories, typical among them was the August 1945 Revolution and the resistance war against the French colonial invaders.

Following the Geneva Accord of 1954 on re-establishment of peace in Indochina and the conclusion of the war of invasion by the French colonial forces, Northern Vietnam entered into the period of building socialism, while Southern Vietnam continued the struggle to regain national independence and unification for the Fatherland. On 2

May 1957, President Ho Chi Minh signed the Ordinance 102/SL-L004 which issued the Law stipulating the right to form Associations. Thus, legally speaking, Association organizations with professional, social and voluntary characteristics were officially born with legal corporate status as from the day the National Chairman's Ordinance 102 came into existence: on 25 May 1957. Since then, on the national scale, many social organizations have been born and operated in many different socio-political spheres in the common development process of the country. Formed into a unified organization were the Vietnam Union of Science and Technology Associations, whose association activities have made many important contributions to the building and development of society. Several key national projects, thanks to the responsible and effective activities by the ranks of techno-scientific and managerial cadres in member Associations of the Vietnam Union of Science and Technology Associations, and through organising consultation and critical assessment activities, the feasibility of a number of programs was ascertained, key national projects' efficiency ensured with the saving of billions of Vietnam Dong in investment such as the Cement Factory project in Bim Sơn (Thanh Hoa), Ho Chi Minh Highway (the section through Cuc Phuong National Park in Ninh Binh province), the Sơn La Hydro-electric project and a number of others.

In the past years, the Party and the Government have had many policies to reinforce the leadership and directorship of executive level committees and authorities in government departments and branches, to foster the role of the Vietnam Union of Science and Technology Associations and member Associations in the era of industrialisation and modernisation, contributing towards the legacy of socio-economic construction and development of the country.

In 1988, the Party Central Secretariat (4<sup>th</sup> Congress) issued the Directive No. 35-CT/TW on reinforcing the leadership of Associations. After ten years of implementing the Central Secretariat's Directive

No. 35-CT/TW, on 11/011/1998 the Politbureau (8<sup>th</sup> Congress) issued as continuation the Directive No. 45-CT/TW aimed at stepping up the activities of Vietnam Union of Science and Technology Associations. In implementing Directive No. 45-CT/TW, Vietnam Union of Science and Technology Associations have actively united scientists and technologists of the nation, Association organization has progressed rapidly, the activities by members of the Union system have contributed to the Party's and Government's great achievements. Following the Politbureau's Directive 45-CT/TW, the Prime Minister issued the Directive 14/2000/CT-TTg on 1 August 2000 on developing the means to step up and improve the efficacy of activities by Vietnam Union of Science and Technology Associations. It also affirms that since its establishment, the Vietnam Union of Science and Technology Associations has incessantly expanded in organization and effective operation, contributed positively to the implementation of the policy and direction of the Party and Government. It has emphasised at the same time further promotion of the political and social role and intellectual resources of the State science and industry intellectuals in the era of modernisation and industrialisation (M&I) of the country.

While the organization of Associations was being developed strongly from the Central to the local level, and Association activities was making numerous contributions in the M&I era, the Party Secretariat issued a communiqué on 9/8/2004 summarising the continued push for the implementation of Directive 45-CT/TW regarding Vietnam Union of Science and Technology Associations from then until 2010, again affirmed their function throughout the five-year implementation of the Politbureau's decree. Although there is still limitations to the mobilisation of a great number of science and industry intellectuals to the key roles of organising mass movements to advance towards science and technology, the local operations of Associations still do not run smoothly. However, the Associations have taken new steps

in organisation, and their politico-social activities, critical consultation and evaluative assessment of society become more clearly recognisable every day. The role, status and prestige of the Federation in society are being raised to greater and greater heights.

Our country is struggling to become an industrialised nation by the year 2020, further demanding the promotion of the role of Associations in the era of M&I, the design and issue of a Law of Association appropriate to the new developmental needs of the country is an objective necessity and an expression of the Party's and the Government's concern with the organization and operation of Associations. However, the designers of this Law have not placed the Association organization precisely in a strategic position, whether in the short term, long term or the prospective international integration trend. Neither have they determined the key role of Association organizations and the strong contingent of scientific and industrial cadres in the M&I era, with the sense of a scientific and technological revolution as its central significance. That is why, the Draft Law of Association has gone through 8 stages of modifications and amendments but has not improved much compared to the Ordinance 102 of 1957. We wish that the Law drafters determine more clearly the strategic position of Association organizations in the new era, and not discriminating some Associations from some others.

## **2. There still are many irksome administrative formalities in setting up an Association**

Since many years, our Party and Government have introduced many positive policies and methods to bring about a revolution in reforming administration, firstly to the public authority offices. The government has introduced action plans and itineraries for implementing administrative reform by the year 2010 with the aim to achieve the 'one office door' mechanism, administrative procedure

simplification, to overcome vexations and difficulties in administrative formalities, to improve in technique and efficiency in issuing legal documents and deeds.

The Draft Law of Association this time (the 8<sup>th</sup> Draft) also contains changes after a number of ideas were contributed by the Associations and scientists, such as the idea of Ministries put in charge of Associations apparently being eliminated. Instead, an Association would only be subject to management by the State agency concerned with the field or area of activity that the Association engages in. This means the Association is only answerable to the Law and not to the Ministry. However, each Association still has two State agencies managing it. They are the Interior Ministry and a Ministry for State management of the specific domain of activity of the Association, thus liable to present impediments and constraints still. The text content of the Draft has many contradictions and is dominated by bureaucratization of Association management, replete in phrases and words but lacks in concrete substance. I will cite some actual examples:

- The whole of Chapter II on criteria and formalities for establishing an Association still contains complicated and unnecessary formalities that need to be simplified. The condition for forming an Association that requires an office venue, possession of assets independent from individuals and organization is pretty illogical, for the Association has not yet been established, without rules, cannot yet operate, therefore cannot have an office and independent assets. This stipulation causes difficulty and obstructs the formation of Associations.

- Article 12: Stipulations on documentation for registration upon forming an Association, Item 2 requires declaration of assets and finance. This stipulation contravenes the law, as the Association is not yet established, how can it possess assets and finance? I cannot understand what the drafters based their thought on when they wrote this stipulation.



- Article 14: Receiving documents and issuing certificates of registration for formation of an Association, I suggest that the previous stipulation should be kept, that is, documents to be lodged with the agency who has authority to approve the establishment of the Association, so that the corporate status of the Association could be seen to be more valued and appropriately dealt with, instead of the issuing of a certificate of registration. There needs to be a paring down of formalities in this matter also.

- Article 16, for the item regarding publication of the certificate of registration for setting up an Association, I suggest changing it to: publication of the approval granted for setting up the Association, as mentioned above.

- Article 34, stipulating on the power of inspection committee, Item 1, supervising inspection of the activities of the Association's executive committee and the head of Association, is an item lacking in feasibility, and difficult to realise. The reason is that the inspecting committee operates under the directions of the head of Association and the (collective) leadership of its executive committee. If the head of Association and the executive committee have no policy, or do not organize an inspection committee, then no inspection can be done. Thus, inspection work is necessary, but it must be carried out by an authority empowered to do it or from a level higher than the organization concerned. If left as it is, this draft will be ineffectual, incapable of operating in the real world where the Association is a voluntary, self-managed, and financially independent organization.

- Article 37, on the legal corporate status of the Association, I suggest that Item 1 needs to elaborate clearly what the Association's corporate status really entails (for instance the Association can establish various centres and organizations with their own corporate status, seals, budgets but directly under the Association's jurisdiction and regulated by the Association rules).

- Articles 40 and 41 repeat each other and are unnecessary, as the conditions for establishing an Association already discussed in Chapter II have not included the content of Articles 40 and 41, meaning an Association with the same name and same operation does not exist. Items 42, 43 and 44 are also redundant. If there was to be a dividing up of provinces or of districts, it would be dealt by separate directions and stipulations already in existence.

- Article 47 on the State's financial policy towards Association: This is the big issue of the State creating favourable conditions for Associations to operate. In the past few years, the government has policies on the funding mechanism for Associations, but implementation remains problematic. The difficulty arises from lack of recognition for the role and position of Associations, firstly on the part of various levels of authorities, and then of the finance departments and the agencies concerned with State management of Associations' areas of operation. The government Decisions No. 21 and 22 have clear stipulations, yet they are only implemented in a very limited extent at the Central and provincial Federation levels. As for member associations, there does not appear to be any coming into the governing scope of the law as yet. The reason is no one feels the need for making critical, evaluative assessment of society, or for sharing the load of the government in the congruent areas of activities in order to receive funding support from the State.

### **3. The Draft Law still interferes deeply into internal affairs of Associations**

The Law is a principal tool for managing society. It governs almost all social relations and subjects of a law-governed State. The Association is a civil organization in the life of society. As a part and an object of governing of the law, it must be treated equally before the law and fairly in society. All organizations in society must operate within the framework of the law. Associations must be able to do anything

not forbidden by law, must be free to form and foster autonomy in Association management. The issuing of the Law is necessary, but the Law of Association must stop at the legal framework for Association activities that lie within legal bounds, and not interfering too deeply into Association activities. The legal framework should only list the prohibitions and compulsory rules as stipulated by law. In the Draft Law of Association, we have found that Chapters III, IV and V contain interferences into the internal affairs of Associations, and even unnecessary matters found their way into the Draft.

The Association is a civil society organization that exists on three fundamental rights which are: Voluntariness, self-management and financial independence. However, the Law has not yet elucidated on the freedom of forming Associations and the prohibition of any activities obstructing the formation of Associations.

Civil society organizations differ from socio-political organizations such as the Labours Union, the Youth, Women, Farmers, War Veterans Association, and others in characteristics, organization, and active duties. The socio-political organizations are not constituted by voluntary members and organised in the public administration model, with activities determined by assigned political tasks and functions. Associations (social civil, social professional organizations), however, comprise of voluntary members, operate on mechanisms of self-management and financial independence. As the organization is different, the scope of governing by law must also differ. It is therefore suggested that socio-political organizations must not be subjected to the Law of Association. Nevertheless, how to separate them rationally is an issue that needs revised study.

As scientists and active members of Associations, we are concerned with Association organizations and passionate about the Draft Law of Association. We hereby wish to contribute our thoughts and opinions above, in all sincerity and impartial spirit.

## **STATE MANAGEMENT OF ASSOCIATIONS SHOULD BE BASED ON LAW- GOVERNED MANAGEMENT PRINCIPLES**

*Mr. LUONG DUC TRU*

*President of the Hai Duong Union of Science and Technology Associations*

The Law of Association is a legal document to institutionalise the people's right to form Associations, and has been recognized by the Constitution of the Socialist Republic of Vietnam. I wish to discuss the following issues:

*Scope of governing:* That this Law stipulates on the organization, operation and management of Associations is appropriate. If the scope of this Law is only limited to the relationship between the State and the Association in its formation, organization and operation, then only the "management" aspect is highlighted, while the contents and terms on organization and operation are insufficient.

*Object of application:* In Vietnam, the working mechanism of the social system consists in the Party leading, the State managing and the People taking charge.

The Constitution has stipulated the right of the people to assemble and to form Associations, therefore an 'Association' in its full sense has three subject matters: The first, Associations which the citizens have already voluntarily formed, who assemble without a legal corporate status, such as the Same-Village-of-Origin Association, the Same-Army-

Unit Association, or the Association for Fostering Scholarly Study. Secondly, those voluntary Associations with corporate status, rules, headquarters who are granted permission to operate. These are social Associations. Thirdly, it concerns socio-political organizations. This is a special historical characteristics of Vietnam. These organizations were established by the Vietnamese Communist Party, closely led by it in the political and organisational senses, aimed at mobilising all social strata to realize the objectives of defending the fatherland, carrying out socio-economic development and the Party's leadership mandate, moving together with the Party. They are the organizations that include the Fatherland Front, the Labor Union, the Farmers Union, and the War Veterans. Recently, the Party has further established new socio-political organizations such as the Youth Union and the Federation of Friendship Societies. In the revolutionary history of Vietnam, there have been also two organizations: the Literature and Arts Association (formerly the Cultural Association for National Salvation), and the Journalists' Association. Although they are professional socio-political Associations, they are also the creations of the Party. All these Associations were not formed out of voluntary action but from the will, the leadership and direct organization of the Party involving the self-awareness of the masses. And it can be affirmed that over the past periods, the workers' class, the peasants' class and the contingent of intellectuals formed the core of the Vietnamese revolution. This has been proven in reality and reiterated many times in Party documents.

Consequently the application of the Law of Association could not be appropriate to the Vietnam Fatherland Front, the Federation of Labour Unions, the Ho Chi Minh Communist Youth Union, the Vietnam Women's Union, the Vietnam Farmers Union, the War Veterans Association, the Vietnam Union of Science and Technology Associations, the Literature and Art Association, the Journalists Association and religious organizations. It can be generalised thus: This

Law is not applicable to socio-political, professional socio-political and religious organizations. In terms of expression, we think it is necessary to put down concretely as such, and not “this Law does not apply to organizations for which the law has separate stipulations,” which easily lends to different interpretations and therefore its application will not be uniform.

*State management of the Associations:* This should be practised according to the law-governed management principle. There are Associations operating on a nation-wide scale - covering all province, district, canton, village levels. If the Government (Interior Ministry) together with city or provincial People’s Committees are responsible for supporting and managing them, then why should management at district, canton and village levels not carry any such responsibilities? Ultimately, besides the mutual assistance that members provide themselves within their Association, all Association activities serve the socio-economic development of the actual locality. All problems also spring from the grassroots. That is why the Government and public authorities at all levels are responsible for supporting and managing Associations. Registration should be simple and convenient, and confined to three levels, being the Interior Ministry (for Central Associations), city and provincial People’s Committees (for Associations in cities and provinces), district and canton People’s Committees (for Associations in districts, cantons, and villages).

In summary, I find the (7<sup>th</sup>) Draft Law of Association prepared by the VUSTA organizations basically fulfils the criteria set out by the Drafting Committee. All it needs are rectifications to the major issues as pointed out above.

## **THE AIM IS TO REKINDLE AND FOSTER EVERYONE'S INTELLECTUAL CAPACITY**

*Engineer PHAM HONG THUC*

*Ha Tinh Union of Science and Technology Associations*

As an active Association member, I am in favour of the Vietnam Union of Science and Technology Associations' decision to organise conferences providing a condition for active local Associations' members to study and contribute ideas to the Draft Law of Association. Our ideas, originating from practical activities, garnered in consultation with ideas from previous conferences, are aimed to contribute to the content of the Drafting Committee's 9<sup>th</sup> Draft Law of Association. As for structure and concrete corrections to the text, I will defer opinion to the law specialists.

*First point*, in Article 3 - *Object of Application*: To ensure the scope and time of governing of the law in social life, I concur with the idea of altering Item 2 in Article 3. "This Law does not apply to the Vietnam Fatherland Front and religious organizations" should read "This Law applies to those Associations registered at authorised State agencies," which will address existing and long-term future needs. Organizations such as the Vietnam Fatherland Front, the Vietnam Labour Union, etc. are operating under existing laws and ordinances. Any related issues, however can be dealt with by the Law of Association. Currently, Associations operate under other laws such as the Science and Technology Law, the Enterprise Law, etc. therefore the Law of Association can govern the above organizations. On the other hand, when the law-governed

socialist democracy is completely established, the above mentioned organizations may have to comply with legal registration regulations in order to operate. To achieve this, in my opinion the Law of Association needs to be more far reaching in its scope, requiring the Drafting Committee to consult organizations with the characteristics of Association (including the Women's and Farmers' Associations) as most activities of popular associations are political in character, for the people, serving the people, and for the fatherland.

*Second point.* In Article 4 - *Explanations of terms*: I concur with the view that the explanation of "Not for profit purposes" is not quite logical. The reason is, according to the information available to me, 'non-government organizations' the world over have utilised 15% of the social labour resources to produce 10% of total national income of the countries. In our country, corporate entities of Associations (Centres, Companies with limited liability) in various regions have done well in technical consulting, critical social assessment and supervision consulting, consulting work in technical design, scientific and industrial services, eradication of hunger and reduction of poverty with great effectiveness, drawing income for improvements in the members' lives and accumulating funds of their Association activities. I think Associations that are not set up for profit, which is the fruit of the members' labour to be returned and divided among themselves, only exist in the imagination. The payment for the members' labour for the services they provide is natural. To separate service payments from profits is problematic. I think the amendment "An Association is a non-government legal entity" should be made, and the "non-profit purposes" principle be expunged. If Associations are to be distinguished from other organizations, the "non-profit purposes" principle should be replaced by "not aimed to operate with profit motive." 'Profit motive' means seeking to serve exclusively one's self-interest (*Vietnamese Dictionary*, Institute of Language, 2001).



**Third point.** In Article 6 - *Terms of State management of Associations*. These are issues in the operational area of the State in implementing the law, and next to it are the Governments' Decrees. The terms should therefore be definite and general. To Item 3 should be added: *Supervision, inspection, enforcement of the Law of Association when there are signs of infringement*.

**Fourth point.** In article 7 - *The agency for State management of Associations*. In my opinion, the Association is a legal entity that does not belong to the Government, it operates according to the Constitution and the law. Therefore the Law only needs to stipulate that *State agencies are responsible for issuing permits of practice to Associations*. For Article 7, I agree that Item 3: "*Ministries, or agencies of the same authority as Ministries in areas of duties and powers, are responsible for managing activities which they are specifically tasked to administer*" should be deleted. The reason is that in reality there are Associations whose activities span many domains or branches (such as Federation of Local Associations, Association for Sustainable Living...). Such a stipulation thus will build a State-subsidised character into Association activities, the independence in the role of consulting critical assessment and supervision of society will be lost, and the role of Associations in social life therefore will not be promoted.

**Fifth point.** In Article 8 - *Prohibitions*. In this article I think the drafters could raise possible scenarios when the Law of Association has been issued and actually taken effect. I cite here one instance: *Should the Head of a State agency that manages the Association be allowed to join it and to hold an executive position in the Association?* This issue deserves attention because of the possible consequence of losing socialisation quality of Association activities, and it may also lead to loss of equality, to parochialism, and negativities in consulting, service provision, and tendering processes etc.

**Sixth point.** In Article 9 - *Conditions of formation*. In my pinion, only Item 1 is needed. Items 3, 4, and 5 can be changed to "Having a contact

address." I agree Item 2 needs not be included. *Having appropriate organisational structure* is mentioned in Item 6. *Having independent assets* is required when the Association is about ready to form.

**Seventh point.** In Article 12, *Proposed plan of activities* should be deleted, as this is elaborated in the Association Rules, and possibly the *Declaration of Association Finance* is unnecessary also.

**Eighth point.** In Article 13 - *Content of Association Rules*. This issue deserves attention as this content is related to the management of Associations. The scope of the Law of Association is very wide as we mentioned above. The Drafting Committee therefore need to cover all contents. This does not mean an inventory of all issues concerning each and every Association.

**Ninth point.** In Article 14 - the waiting period for the official reply to an application for registration of Associations should be shortened, to "*within 30 days of issuing the receipt of application, the State agency authorised will issue certificates of approval for registration of Associations being set up... reasons*". This is consistent with the Government administration reform policy, for businesses currently completing formalities of registration of business enterprise at the provincial Investment Planning Offices only have to wait 3 to 7 days before receiving their certificates.

**Tenth point.** Article 17 - topic should be changed to *Recognition of Association Rules*. The content of this article may be amended as follows:

1. *Within thirty days from the concluding date of General Association Inaugural meeting, the Association executives must lodge the following documents to the agency authorising the registration for Association formation.*

a. *Content of Association Rules adopted*

b. *Lists of executive committee and inspection committee members, curriculum vitae of the Head of the Association.*

2. *Within 30 days from the date of receipt of the document proposing*

*recognition for the Association Rules, the State agency authorised to approve registration will recognize the Association Rules; if no reply is received in the time exceeding this period, there must be response document stating the reasons for the case of non recognition.*

*3. Only an Association with permit and recognised Rules can operate legally as a corporate entity.*

I think it is necessary to report the content as passed by the meeting and the core of this content must be ensured to follow faithfully the draft rules when the permit is issued. The agency issuing permits is one that appraises the rules, and if the core content does not follow faithfully the draft rules, or containing parts that contravene the law, the authorising agency can withdraw the permit.

*Eleventh point.* In Article 38 - *Rights of Associations* and Article 39 - *Obligations of Associations*, in my opinion are the articles with a most important function of promoting the role of Associations. These are important premises deserving the attention of Associations in attempting to bring them into their rules as a basis for the Association to practise well within the law.

The item *Associations can possess the following rights* can be changed to:

- 1. To organise and operate within Association rules*
- 2. To publicize about the Association*
- 3. To protect the legitimate rights and interests of the Association and of members*
- 4. To make social consultation, critical assessment and supervision of policies, topics, projects for Party and State agencies, organizations and individuals with relevant needs*
- 5. To provide services to the public as assigned by the State*
- 6. To participate in the process of socialisation of scientific and industrial activities to contribute effectively to scientific, industrial, environmental activities and social and economic development programs, projects*

7. *To carry out activities for raising funds and human resources in order to service the economic, social, environmental activities etc... not with a profit motive*

8. *To be eligible for funding from government agencies, organizations and individuals from within and outside the country*

9. *To maintain and develop collaborative relations with individuals, organizations inside and outside the country as laid down by law.*

**Twelfth point.** Article 39 - *Obligations of Associations*, the content of Item 1 can be replaced with the following: *The Association and its members operate within the limits of its Rules and of the law.* In order to eliminate the State-subsidy mode that pre-conditions the Associations initiatives in their activities, *Associations should not be submitted to State management by the State agencies in charge of the relevant areas of activity.* Regarding this issue in the process of managing business enterprises in the past, the State did not apply the model of State agency-in-charge vis-a-vis business enterprises.

**Thirteenth point.** In Article 40 - *Federation of Associations*: to Item 3 should be added 'The member Associations have responsibilities and obligations in activities that serve the common interests of the Federation.' In my opinion, the "managing" role of the Federation towards member Associations should be reinforced, as the function of coordinating, regulating and organising common activities alone is a general function, not lending itself readily to an evaluative norm for its extent. The Law of Association needs to reinforce the Federation's role in helping the Government in "managing" Associations, co-ordinate and regulate activities in compliance with the law, in a political system unified under the Party leadership.

The above ideas comprise my own contribution, stressing some issues of concern in the Draft Law of Association, in the hope that they may be consulted by the Drafting Committee.

**HOW SHOULD ASSOCIATIONS BE STATE-MANAGED  
SUCH THAT THE RIGHT TO FORM ASSOCIATIONS  
AND THEIR LEGALLY-PURSUED ACTIVITIES  
ARE NOT RESTRICTED**

*Mr. TRAN HUY LIEU*

*Ha Tinh Interior Affairs Office*

Many conferences have contributed ideas to the Draft Law of Association, and the Drafting Committee has reached the 9<sup>th</sup> version of the Draft. I would like now to contribute a few ideas directly to the content of the Draft.

*Firstly*, about the object of governing: This is a matter about which there are many controversial ideas. To my thinking, the determination that the six socio-political organizations are outside the governing scope is consistent with the policy of our Party and Government with respect to these organizations. However, stipulations should not be so specific as written in the Draft. Rather the phrase *Except the organizations separately stipulated by law* should be used, as suggested by many expressed opinions in various canvassing of ideas for the Draft done by the Interior Ministry.

*Secondly*, the substance of State management of Associations: From the ideas discussed at the conferences, there are many opinions maintaining that to bring State management into Associations is to restrict and limit the formation and operation of Associations, to cancel

the Associations' function of critically assessing society. I think that argument is not quite satisfactory. The real nature of the need for issuing the Law of Association itself has determined the necessity for State management of Associations, because the State manages Associations mainly by law. The issue is to find out how the State management will not restrict their legitimate right to set up and operate. The change from stipulating that permission to operate and approval of rules must be sought from State agencies to registration of formation and recognition of Association rules has been clearly a real demonstration of a renewed attitude towards State management of Associations. The Draft (in Article 6), in stipulating 7 measures in State management of Associations, aims to assure that Associations will operate strictly in compliance with the law, and to ensure their development. At present, there are Associations actually with disunited ranks, unable to hold general meetings at the end of a term, and unable to solve this problem internally. For these, State intervention is necessary. Specifically however, in Section 3, Article 7 unnecessarily stipulating various Ministries for carrying out State management. I therefore propose this Article should be deleted.

*Thirdly*, the conditions for forming an Association according to the Draft is already fairly flexibly comprehensive. I propose some parts need revising, such as: for Item 1 Article 9 it is only sufficient to state thus "aims to have activities that do not transgress the law." The part "not to coincide in names..." should be deleted as this has been covered in Item 1 Article 11, and would be repetitious if it were to be put there. Item 5 Article 9 stipulates the conditions for forming an Association to include a headquarters office venue. Such a stipulation can be easily interpreted as a requirement to have assets for office venue, causing unnecessary difficulty for the setting up of Associations. It is proposed therefore to change it to: "Having registered the location of headquarters". Item 6 Article 9 stipulates the conditions for forming

an Association include independent assets. To me this is not a correct stipulation, as it tends to regard Associations as economic enterprises, apart from the possible reason that no assets could yet be in possession when the Association is set up. This stipulation if laid down would restrict greatly the formation of Associations. I suggest therefore Item 6 Article 9 and Item 7 Article 12 should be expunged from the Draft.

Regarding the time taken by State authorities to consider approvals for registration granted to Associations applying to set up, and for recognition of their Association rules: the Draft stipulation of 60 days is too long, a shorter period should be stipulated.

*Finally*, the repeated articles should be combined, and articles that are congruent should be joined together. Namely, Article 20 - Association members, should be deleted. So should be Article 45 - Dissolution. Article 43 - Splitting up of Association, with Article 44 - separating off from the Association need to be combined. Article 31 - Association executive committee (*Ban lãn h đạo*), the title should be changed, as the word *Lãn h đạo* (executive) is too general, and could be replaced with 'Association Standing Committee' as a more suitable term for the typology of Associations.

## **PRESSING INTO THE AGENCY-IN-CHARGE MOULD IS TANTAMOUNT TO ABORTING THE CREATIVE INITIATIVES OF ASSOCIATIONS**

*Writer PHAN TRUNG HIEU*

*President, Ha Tinh Union of Literature and Art Associations*

In the process of building a socialist law-governed State, the issuing of a separate Law for Associations is a necessary act, if not tardy. The Draft Law of Association has gone through several amendments and modifications, yet has not ceased to cause frustration and vexations due to irrational elements in a number of articles:

Firstly, the Draft has not yet processed the viewpoints and policies of the Party in affirming the role of the contingent of intellectuals, artists, writers and the creative intellectual workers' sector with an increasingly important status in a society heading towards to the knowledge economy, developing and integrating into international market.

The Party line on the socialist law-governed State consists in being *of the people, for the people, forming an alliance between the workers, peasants and intellectual classes the foundation for building a Communist Party-led society.* Taking the socio-political organizations, professional socio-political organizations with association character out of the governing scope of the Law (of Association) represents an inequality on geographical and legal grounds with respect to the remaining socio-political organizations such as the Union of Science and Technology Associations, the Union



of Literative and Art Associations, of Friendship Associations... These are widespread well organised systems with a reputable tradition, being the constant allies and tools of the Party. If the Fatherland Front is a strategic member of the political system, with a large-scale function of gathering (popular) forces, then other members are independent in organization, equitable in interests, duties and responsibilities. In this period of transition, the Law of Association should devote a chapter stipulating on these types of organizations.

The limitation in the past years has been that we lack a legal framework, policies that allow intellectuals, writers and artists promote their positive role in contributing towards the revolutionary mission. The Law of Association cannot continue to maintain that vacuum for them. The literature and arts field plays an important role in the mental activities of social life. V. I. Lenin maintains that *"The literary heritage must become a part of the total heritage of the proletariat."* President Ho also taught that *"Literature and arts are a front where the artists are soldiers on that front"*. The role and position of writers and artists are affirmed and promoted in important Party documents such as the resolutions from the 7<sup>th</sup> Party Congress, Central Committee Resolution (8<sup>th</sup> Congress), Party document from the 9<sup>th</sup> Congress, Decree 18 by the Secretariat, Conclusion 10 of Central Government (9<sup>th</sup> Congress). The Draft Report of the Politbureau's at the 9<sup>th</sup> Congress to the 10<sup>th</sup> Party National Congress once again affirms and express a special attention given to this domain.

However, a sad fact remains that there still is a gap in recent time between the Party's guideline, policies and the institutionalisation of laws and other government legal documents. The dismantling of the principle of promoting the spirit of the Party's guideline in the design of laws may distort the direction of building the political system, causing a crack in the solidarity of the political bloc struggling to unite in the struggle for the Party legacy, if we do not go so far as saying that it may strip the Party of the control of its own strategic tools.

*Secondly*, the Draft is inclined towards setting up management frameworks rather than concentrating on creating flexibly comprehensive and open conditions to promote initiatives, organizing autonomy of Associations. Many items and articles still reveal imposition and interference more than necessary into Association activities. If the Association as a civil institution is to be placed under the management of specific Ministries-in-charge, how could Association perform their function in consultancy, critical assessment and supervision of society vis-a-vis management activities? Association activities must be removed from public administration even though they have organization structure, operation as stipulated by Association rules, and within legal bounds.

Understanding well this special characteristics, V. I. Lenin has stressed that *'It is undeniable that in this domain, one must absolutely ensure a spacious scope being provided for individual innovation, thought, imagination, for form, and content.'* President Ho also pleaded with the managers: *'Do not restrain people in frames, or you will lose the creative traits.'* Our Party has affirmed that: *'Literative and Art are an important and sensitive component of culture'*, thus highlighting the spirit and essential nature of cultural and artistic activities in our culture, rather than implying the relations in their organisational aspect. It is necessary to ensure the independent existence of Association organizations in the coordination of relations between branches of culture for the sake of a common objective, as it is not a hierarchical relationship in public administration which is mechanical and formalized. I concur with the opinion that Item 3 Article 7 and Item 1 Article 39 are to be deleted outright from the Draft. Pressing Associations into the State agency-in-charge mould is tantamount to aborting the creative initiatives of Associations.

*Thirdly*, the Draft has not elaborated on one function of the Federated Unions being their central management of member Associations. It is essential to determine the vertical and lateral

relations enabling the Federation to develop leadership power and responsibilities in coordinating activities of organizations in the same domains. This is an in-house relationship, but hierarchical structure needs to be determined: between Central, province, canton and same-level organizations. For instance the Vietnam Federation of Literative and Art Associations (FCAA) presently comprises of 10 Central specialist and 64 city and provincial Associations. They all have sitting-in representatives as official members of the Federation Committee in a consultative and democratic spirit. Over time, the Federation of Literative and Art Associations has gradually become an important hub for the writers and artists throughout the country to hold meetings and have a common forum, and to organise concrete activities that have positive effects on the development of member Associations. In the local domain, the provincial and city FCAA established specific branch and specialists committees and auxiliary organizations such as Specific Branch Associations. In many areas, the culture and arts club organizations at canton and branch levels also aspire to become official member Associations of provincial FCAA, although they need local funding. If the Law stipulated more clearly the limits of functions and rights of the Federation, would not this relationship create favourable conditions for boosting their development?

## **THE HEAD OF A MANAGING STATE AGENCY MUST NOT TAKE CONCURRENT CHARGE OF AN ASSOCIATION IN THE SAME DOMAIN**

*Journalist NGUYEN QUOC KHANH*

*President of Ha Tinh Journalists Association*

Studying the 9<sup>th</sup> Draft Law of Association, I basically agree with the content of the Chapters, Items and Items as written. However, I found a number of issues needing discussion, such as:

1. In **Article 3, Item 2**, this stipulation being not applicable to the Vietnam Fatherland Front, Labour Union, Ho Chi Minh Youth Union, Women's Union, Farmers' Association, War Veterans' Association, and religious organizations, is not reasonable. In my opinion, only the Vietnam Fatherland Front and the religious organizations are the two special organizations of our government, therefore requiring separate stipulations, of a higher order, and perhaps requiring different laws. The remainder of these organizations cannot be left outside the stipulations of this Law. The above viewpoint is saturated with 100%-state-subsidy ideology applied to these so-called socio-political organizations. Meanwhile many associations belonging to the intellectual strata such as FCAA, VUSTA, Journalists Associations, etc. with an important role in national renovation, open door, international integration in the knowledge economy era, do not belong to the socio-political organization type. This has cause an adverse reaction from the intellectuals who charge that the government has discriminated against

them as it does not recognize clearly the role of intellectuals. The Law of Association as such cannot mobilise intellectuals, leaving an undesirable stain in the peasants-workers-intellectuals alliance. On the other hand, it would not be reasonable either if one socio-political organization only is subjected to the legal stipulations, as our Government is building a law-governed State, where all must comply to the law. If each organization is issued with a separate law, there will be too many laws, leading to a law chaos. And a law chaos will mean less effective law!

**2. In Article 4, Item 7:** I think the typology of Associations must be clearly set out.

a. Associations with a vertical branch structure according to the State organised system up to a certain level

b. Associations without a vertical branch structure

c. Registered and non-registered Associations.

For registered Associations with vertical branch structure, State managed status should be clearly stipulated, as well as level and professional direction from an immediately higher-level Association. For Associations without a vertical branch structure but registered, they should be managed by the State agency in their operational domain. For activity contents of Associations without a vertical branch structure, they should be put forward by and under the responsibility of the Associations themselves. Non-registered Associations cannot have a legal corporate status. However, all associations must submit to State management, to the law. Some Associations should even be clearly prohibited such as gambling associations, alcoholics' and drug addicts' associations...

**3.** I do not agree with **Article 39, Item 1**, stipulating that an Association's domain of activities will determine the State management by the government agency in charge of that domain. The reason is that it will lead to:

a. Bureaucratization of the role, function and form of operation of the Associations, undermining the flexible democratic nature of Associations.

b. The functions of supervision, assessment, and critical appraisal of Association in each domain will be rendered ineffective.

c. The cohesion of the Associations' vertical structure will be diminished, affecting greatly the exchange of information unique to each Association, and the nationwide exchanges between Associations on the same level. As a result, many Associations will not know what to do for activities, and how to organize them.

d. The managing State agencies themselves have not performed to the limit of their assigned function and duties. They therefore lack adequate understanding of the nature of voluntary, democratic, autonomous activities of Associations. To comply to Article 39 would be like having an agency with two offices doing the same thing. Who will be the manager, who will be the supervisor and critical assessor? For the area-specific agency office, there is an organized personnel, a State-funded budget, while on the Association side, there would be no staff structure, with a partly-funded budget, how could anyone take Associations seriously?

4. Since a long time, the role, function and effects of the Associations have never been taken seriously at all levels of leadership. In another aspect, the fact that peoples committee level and equivalent authorities are still steeped in the State-undertaker or State-subsidised mindset. This would mean when office bearers are selected, a head person is groomed for the executive position of an Association prior to the election at its general meeting. This is democracy practised as a formality only, leading to the situation where almost all heads of Associations are also directors of State agencies in the same domain, thus turning Associations into shadows of agencies by default, at the

same time providing shelter to Associations in several ways, especially the cover for expenses.

Reality has shown that in many areas, State agency deputy-directors are designated to hold concurrent directorship of Associations of the same domain. Every Association activity must be vetted by the State agency director, to get approval for time-table, meeting venue, expenditure, etc. If the Director is attentive, things will proceed, and if he/she is not concerned, no permission would be obtained. Consequently, the voice of the Association carries less weight for members. From then on, few Associations can assume the role of supervision, evaluation, and critical assessment as allowed and required by law!

That is why I propose that the Law of Association should stipulate that: *the head of a managing State agency must not be allowed to assume a concurrent directorship of an Association in the same domain.*

**5. Article 43 and Article 44, Item 3:** The word *temporary* should be added to the phrases 'division of an Association' and 'splitting off of Association'. The division and splitting off should only be temporary, because after that, a general meeting is to be called where the Association can officially discuss, amend or revise the Rules, thus effecting many changes. Particularly when Federations are split off, member associations' functions and rights may become so different from those when they were inside the Federation.

**6.** Nevertheless, to operate, Associations must be allowed to set up affiliate companies to carry out such functions as: skill training, consulting, project designing services, drawing an income as regulated by law. These units should fulfil legal obligations while receiving consideration or privileges to a certain degree, not like those totally business-production companies without any social responsibility towards the community. Without expenses budget, no organization can operate. Therefore to avoid the burden of State subsidy, Associations

must be allowed to pursue economic activities, as they cannot operate on a non-profit basis. The Associations, especially the professional ones, cannot be asked to operate solely for the lawful interests and benefit of the Association, members and the community, contributing to national development as stated in **Item 1 Article 4**. Any Association activity that does not bring material benefit to members will not be able to attract people to join the Association.



## **THE LAW OF ASSOICATION MUST ESTABLISH EQUALITY IN THE PRINCIPLE OF THE WORKER- PEASANT-INTELECTUAL ALLIANCE**

*Prof.Dr. NGUYEN NGOC MINH*

*President, Thua Thien - Hue Union of Science and Technology Associations*

I have read carefully the 9<sup>th</sup> Draft Law of Association prepared under the auspices of the Interior Ministry and the 7<sup>th</sup> Draft by the Federation and member Associations completed in the form of the Law of Association. In general, I think the nub of issues is the Article 3 and on the subject of application in Chapter I: General stipulations. Other parts are not so crucial, as they are governed by that essential Article.

I will go directly to Article 3 exclusively and express frankly my opinion:

It must be factually stated that in the past, difficulties for the activities of the Union of Science and Technology Associations and perhaps also a number of other Federations and Associations are connected to the role, position and the necessity of those organizations in Vietnam's political system. The socio-professional Associations need to be separated from the socio-political ones, the explanation of terms for which is laid down as defined in Article 4: *Associations are voluntary organizations with corporate status, regular activities, not for profit purposes, with the aim to protect the legal rights and interests of Associations, members and the community, contributing to national development* (precisely applicable to socio-professional Associations, professional Associations).

It is clear therefore that Associations of this type are formed with the main objective to protect the legitimate interests and benefit of the Association, its members and the community, and naturally contribute towards national development. That aspect is not imperative, nor a necessary one that is required when applying for permission to establish.

As for an Association with a political or social characteristics, it is determined by the needs of the political institutions, based on the foundational alliance of workers, peasants and intellectuals. Thus, these Associations have attributes of a gathering of popular forces that require a consolidated leadership to carry out mainly political tasks, and then its social component, protecting legitimate interests and benefit of the Association and members.

This type of Association is established by the State, originated from the need to carry out political tasks. That is why there have been Associations for the workers' class (the Labour Union and the Federations of local labour and trades Associations), the Farmers' Union, War Veterans Association, and for the Fatheland Front... Why then can the case not be applied to the role, position and importance of the Association of intellectuals in Vietnam's political system?

It should be added that the Decree ND88 really is the previous incarnation of the Law of Association, causing no small difficulty to the Union of Science and Technology Associations (we do not deny that some local organizations have received attention and assistance from Party leadership, local authorities, State functionary agencies...). In practice they have to mobilise resources, and because of this they may improvise flexibly and differently from each other, not according to any uniform organization model of staffing, expenditure, headquarters, instrumentalities.

It is also strange that there are Associations that are not classed in any special category, but possess a very tight four-level organization, from Central to grassroots, and they have a unified system with offices, personnel organization, equipment, subsidies right down to grassroots

level. I feel that the Red Cross Association deserves such a privilege, and it is very important it should be so.

Therefore, it will only be sufficient to add to Item 2 of Article 3 one line after *Religious Organizations*, with a short paragraph about other political organizations (such political organizations may include the Union of Science and Technology Associations, Union of Literature and Art Associations, Journalists Association, etc.).

From that nub of issues, once clearly resolved, consistency in politics, especially consistency in Party policy will be brought about (the Party Secretariat Decree 45 and Conclusion 145 continue to consider the Union of Science and Technology Associations as a socio-political organization with State-directed management).

If the Federation were placed within the governing scope of the Law of Association as the current Draft indicates, it would contradict the Secretariat Decree 45 and Conclusion 145 by not considering intellectual contingent as bonded to the Worker-Peasant-Intellectual alliance in the basic political system of the country.

The ideas, referred to in many conferences on the Law of Association, have received a high degree of agreement among local and occupational Federations and been incorporated into a petition as contribution to the draft platform of the 10<sup>th</sup> Party Congress. Once removed from the subject of application of the Law of Association, it will require little discussion, and the Law of Association will be totally suitable for social, trade Associations or professional Associations.

And as such, the Federation would not need to draft the Law of Association to the 7<sup>th</sup> time, nor would there be a need for the Interior Ministry to do so to the 9<sup>th</sup> time, and no doubt there would be no need to spend energy and money organising conferences, taking up the time of so many individual organizations and researchers... either, as has been done.

## **THE LAW OF ASSOCIATION SHOULD BE MORE LIBERAL**

*NGUYEN THANH VAN*

*Thanh Hoa Biological Industry Association*

The Law of Association is aimed at: managing Association activities, putting them within the governing framework of the law, creating favourable conditions for Associations to operate more independently, more dynamically, contributing to the task of nation building and integration into the international economy. Based on such viewpoint, and after careful reading, I have found that:

1. As our nation is on the way to international integration, the Association law designers should consult other countries' Laws of Association, including advanced countries, especially those in our region in designing our country's Law of Association, so that our Law is not the odd one out, backward compared to the laws of other countries.

2. Before becoming a member, that member is already a Vietnamese citizen, whose activities must all comply with the Constitution and the law. Foreign individuals and organizations operating in Vietnam must all comply to Vietnamese law. When joining an Association, a member only needs to follow the Law of Association. Therefore the Law of Association only needs to establish a legal framework, with a minimum number of prohibitions in order to set up a clear legal environment, creating a favourable condition for the Associations to operate, such as:

- To follow all legal regulations and stipulations by the State
- Not to commit an offence against national interests and national security

- Not to contravene the interests of other organizations, communities or individuals

The Law should not intervene too deeply into the internal affairs of Associations, to act in the place of Association rules such as determining terms of office, general meeting agendas, voting principle, duties and powers of executives, etc. By intervening in such areas, the State will crush the initiatives, autonomy, vitality and dynamics of the Associations.

The State should only manage Associations according to 'one office door' structure. The government gives approvals to allow Central Federations and Associations to form, provincial Peoples Committees issue approvals of formation for regional local Associations. To assist the State in management, Associations can entrust the Interior Ministry and provincial Interior Offices with the tasks of monitoring, helping and managing Associations. Management measures should be concise and light in touch, requiring the associations to merely report annually to see how their activities are getting on. Is there anything the State can provide help for, or any infringement on the law and the Association rules? The Association should not be submitted to the management of several Ministries. Multiple Ministries-in-charge will confuse State management with public administration.

3. To foster equality and facilitate convenience for Associations' operation, in the chapter on rights and obligations of Associations, some rights must be clearly stipulated:

- The right to participate in planning, making critical assessment of policy, law in the operational sphere related to the Association.

- The right to supervise the activities of State agencies related to the Association (like with a number of civil organizations).

- The right to provide services, do business in accordance with the law to accumulate capital for developing Association activities.

- The right to conduct international relations in accordance with the law.

- The right to receive funding from within or outside the country to support Association activities.

- The right to carry out the duties as laid down by the Association rules.

4. The Union of Science and Technology Associations is a socio-political organization. The Federation mobilizes very large intellectual contingents, including those still in active service and those who have retired in all scientific - industrial activities of the country. Many members Associations are in the Union at central and regional levels, with many auxiliary components, many journals. Our country advocates using the scientific - industrial vehicle as prime mover for development, regarding this as a crucial task. Moreover, we are approaching the knowledge economy step by step. That is why equality and fairness between the Union of Science and Technology Associations and other Associations is necessary. Evaluation should be made of the role, position, importance, scope of activity and concrete, effective contribution of the Union of Science and Technology Associations to the country's development. Favourable condition should be created for intellectuals to operate and utilize the huge potential and intellectual resources towards nation building.

The autonomy of the Federation and member Associations in establishing auxiliary units without seeking State approvals must be granted, and they should only be required to register for each domain of activity.

It is a fervent hope that when the Law of Association is issues, Associations will be glad that: From now on, Association activities will be supported by the State, and favourable conditions will be created for them.

## **THE DRAFT IS HEAVILY INCLINED TOWARDS MANAGING THE SHADY SIDE OF ASSOCIATION**

*Barrister TRAN KHAC THUAN*

*Vice-President, Nghe An Lawyers' Association*

Through the Draft Law of Association, it can be noted that the drafters have not yet appreciated the value of the activities by Association organizations in Vietnam. In reality, there are two trends in designing the Law of Association:

The first trend is that the Law of Association must exploit the potential of Association organizations to join with the Party and the State in the task of building Vietnamese society, a wealthy nation and a strong, democratic, and civilised country.

The second trend of thought and awareness maintains that Associations do not have any such effect, and issuing the Law is to manage the shady aspects which could manifest and cause harm to the nation.

1. The State management agencies, the drafting agencies for the Law of Association need to have an accurate appraisal of the effects of Association activities in the current national renovation task of the Party and Government.

Non-government organizations do the works of government effectively at the lowest costs. This can be demonstrated through the following factors:

The Association is an organization able to carry out the Party and State policies of socialisation in many domains of today's social life with the best results, because it has three potential strengths to ensure socialisation of domains of activities that pertain to the Association organizations:

*The first strong potential* is the personnel who number in hundreds and thousandfold the State personnel who are managing the corresponding special domains. The present contradiction is that there are a plethora of laws but the effort to bring them to grassroots application and into daily life remains very limited. The situation at present is that cadres in the public administration carry out State management as stipulated by law, but without an adequate knowledge of the law. Citizens practise the motto "*Living and working in accordance with the constitution and the law*" but State agencies do not have enough personnel to disseminate information and to educate the people in legal matters. Therefore with those who practise the law, including cadres and citizens, due to lack knowledge and understanding, infringements are still common.

The lawyers Association is a general alliance, centralizing and coordinating the posting of lawyers in all government legal offices in order to carry out socialization of judicial activities, for which individual agencies do not have the power to assign cadres to work outside each agency's own domain.

The Politbureau Circular 56 clearly states that: "To implement the socialization policy for a number of activities in the judicial domain and to promote the role of the lawyers Association in upholding the rule of law, protecting the legitimate rights and interests of members of society, the lawyers' Association needs to focus on providing free legal consultation for the poor and policy subjects, and on trying harder to turn the Association into the core strength for this mission."

*The second strong potential* is the intellectual resources of the members.



Members of Associations are mostly retired government administration cadres. Although they have retired by labour law, the level of their professional knowledge and experience have reached a high peak, even more so compared to that of the Government administration cadres still in service.

*The third strong potential* is the nature of the activities of Association members, being voluntary, self-aware and free of charge.

As most retirees, they would still prefer having something to do, and find enjoyment in being occupied. That is why they see in the collective organising of Associations, creating work for members and continuing their contribution to society a most noble purpose. Moreover, as they already are beneficiaries of State support schemes, they would work enthusiastically for Associations without requiring to be funded for expenditure.

*2. The judicial value and leading philosophy of the Law of Association must not fall short of the actual Party's guideline and State guiding principles for Associations.*

An example: the Party Central Committee's Decree 19 on directing the work of the Lawyers Association states that *"The Vietnam Lawyers Association is a unified organization for those working in the countrywide legal field, as a member of the Vietnam Fatherland Front. The activities of the Association hold an important place in the reinforcement of a Socialist judicial system, the construction of a law-governed State, contributing to the fulfilment of the Party and State's tasks in international relations. The Association has a duty to mobilise lawyers to participate in research and preparation for Drafts, in timely implementation of the national renovation scheme, propagate and disseminate knowledge of the law, build up self-aware attitude in executing the law, supervise the implementation of laws and struggle against acts of law infringements, fight against corruption, smuggling, and other social evils"*.

The Lawyers Association rules have been approved by the Interior Ministry... *to work voluntarily for the construction and protection of the home*

*land, protecting the people's freedom and democracy, contribute to the laying of a scientific legal foundation, the building of a law-governed socialist State of Vietnam in the objective of a wealthy nation, a strong country, a just, democratic and civilised society.*

*Meanwhile there has been no Clause or Article in the Draft Law of Association that epitomises the implementation of Party's guidelines and the Association's work. The 9<sup>th</sup> Draft only embeds this idea in Article 4 as part of the explanation of terms.*

3. There must be classification of Associations so that the State consequently may encourage, create indispensable condition for Association organizations to truly operate in the context of socialisation of a number of areas of social life, beneficial to socio-economic development and safeguarding political security, order and safety for society.

For some Associations such as the Lawyers Association, it is impossible to operate without government funding. The former General Secretary Do Muoi has said that: *"The Lawyers Association is not an economic organization, having no business function, therefore the Government needs to have a funding policy towards it"*.

There is no provisions for this in the Draft Law of Association.

The same applies to a number of other Associations, such as the Association for the Promotion of Scholarly Endeavours, Senior Citizens Association, Gardening Association... There must be a clear determination of the role of these Associations for the sake of general stability and development of society. And this issue also has not been raised in the Draft.

**To sum up:** the Draft is heavily inclined towards managing the shady side of Associations. It has yet to install a mobilizing mechanism for encouraging positive aspects and developing latent capacities. It is lacking in practical implementation and clarification of the Government policy towards each type of Association.

## **A REASONABLE, SCIENTIFIC LAW OF ASSOCIATION WILL CREATE CONDITIONS ENABLING ASSOCIATIONS TO DEVELOP**

*Mr. LE CONG LUONG*

*Vice-President cum General Secretary,  
Ha Tinh Union of Science and Technology Associations*

Since the start of drafting till now, the Draft Law of Association has attracted the attention of many organizations and numerous scientists and lawyers in the country. This is the first time besides the Draft prepared by the Interior Ministry's Drafting Committee that there is a Draft put forward by scientists, lawyers under the auspices of the Vietnam Union of Science and Technology Associations, for consultation and consideration. This fact speaks, on the other hand, for the democratic temper of our society and the far reaching influence of the Draft Law of Association on organizations and individuals within the scope of governing of the Law. In what follows I wish to contribute some ideas on the two drafts.

### **1. The 9<sup>th</sup> Draft Law of Association as prepared by the Interior Ministry**

The draft presented by the Interior Ministry has reached its 9<sup>th</sup> version, with many conferences canvassing opinions from various organizations of scientists, lawyers from grassroots to national levels having been organised. Regrettably, after so many conferences to

gather opinions, *“however, the basic content of the draft is “steadfastly” preserved. It appears that perhaps the Drafting Committee have ignored frank contributions from Federations of Associations, Association organizations from Central to local levels, from lawyers, from those devoted to the Association activities and to social development.”* (Prof. Dr Nguyen Huu Tang, Vice-President, Vietnam Union of Science and Technology Associations). Generally, in the opinion of a number of scientists, the 9<sup>th</sup> Draft still expresses an old way of thinking, which is conservative and heavily inclined towards the imposing of State management, bereft of strategic perspective and of compatibility with the current trend of globalisation and diversification. It does not fit in the trend of the time, nor does it help the Association organizations in their relations of international cooperation. Exploring some of the concrete issues, I wish to present the following ideas:

*- On the subject of application: Article 3, Chapter I*

This is an issue that has attracted attention and given rise to proposals many times by large organizations such as the Union of Science and Technology Association, the Federation of Literative and Art Associations, but the 9<sup>th</sup> Draft has never been revised because of it. This fact represents an inconsistency with Party philosophy (Decree 45 – CT/TU of the Politbureau at the 8<sup>th</sup> Congress has determined that the Union of Science and Technology Associations are socio-political organizations), at the same time it reveals a lack of equality between Associations. Dr. Pham Huu Nghi, editor of the *Journal of the State and the Law* maintains that: *“Not putting the Vietnam Fatherland Front, the Vietnam Labour Union, the Ho Chi Minh Youth Union, the Farmers Union and religious organizations within the scope of governing of the Law of Association has made this Law less convincing. Does it not mean these organizations are considered as Government agencies or special organizations not characterised as Associations? Therefore this should not become an issue. The Item 2 of Article 3 should not exist”*.

For this reason, we insist on proposing that: All socio-political organizations fall within the scope of governing of the Law of Association, or the Associations of the intelligentsia should be taken out of that governing scope like other socio-political Associations. As long as the workers - peasants - intellectuals alliance is still mentioned, there should not be any discriminative practice towards it. As Prof. Academician Vu Tien Hoang says: "*The intellectuals' Association must be on the same footing as those of workers and peasants*".

*- The issue of State management of Associations*

Although some adjustments have been made, the 9<sup>th</sup> Draft is still heavily inclined towards State management of Associations. By putting so much importance in the question of State management of Associations, the initiative, independence and autonomy of Associations are so trivialised that they will become irrelevant. The Law should only stipulate on prohibited matters, outside of which it is only reasonable to leave it to people's initiative. For Article 7 of the Draft, although suggestions have been made, no change whatsoever is evident. Item 3 of Article 7 stipulates that the Ministry, and Ministry-level departments are responsible, in their areas of duties and powers, for the State management of Association activities pertaining to the domain of their concern. This stipulation would create difficulty for Associations, because in reality an Association can often be linked with several Ministries and departments. If all the Ministries and departments require inspection and reporting, things would become extremely complicated. Item 4 of Article 7 reveals the lack of thoroughness on the part of the Drafting Committee, as many local Federations at present possess networks spreading to cantons and villages. If management is not delegated to lower levels authorities, provincial Peoples' Committees would be snowed under with work due to the extremely high number of Associations.

## **2. The Draft Law of Association as prepared by the Vietnam Union of Science and Technology Association (VUSTA)**

This is a major effort by scientists and lawyers. It is actually an unprecedented thing ever done. Those who are object of governing of the Law take the initiative to partake in its drafting. Within a short time, and without government funding support, to be able to achieve that, is a great effort. All in all because their contribution of ideas has not been accepted by the Interior Ministry's Drafting Committee. They must do it for their own sake. More important, however, it is for the sake of a democratic and reasonable fairness in the hope of a Law of Association being compatible with international conventions, contemporary trends, facilitating conditions to benefit Associations' activities, contributing efficiently to the overall national development.

VUSTA's Draft Law of Association has inherited and developed the values advanced in Ordinance 102/SL/L004 dated 20 May 1957, on "Provisions for the right to form Associations" (signed by President Ho) and Article 69 of the Constitution of 1992 of the Socialist Republic of Vietnam: "Citizens are entitled to freedom of speech, of the press; have the right to be informed; to form Associations, to hold public demonstrations in accordance with the law". The activities of Associations and mass organizations are therefore within Constitutional rights. Especially the Association generally encompasses the various types of Associations, from nationwide-scale Associations to local ones, registered Associations (such as specialist Associations of Science and Technology...) and non-registered ones (such as Same-age Associations, Same-class Associations...), their designation of levels of management is clearer, and they are easier to manage. The VUSTA's Draft is especially compatible with the contemporary trend and democratic egalitarianism between Associations.

The above issues were presented as contribution to the 9<sup>th</sup> Draft by the Drafting Committee under the auspices of the Interior Ministry

and to the 7<sup>th</sup> Draft initiated by VUSTA. For me the question is to find a common voice to arrive at a reasonable, scientific, objective Draft acceptable to Associations to be presented to the National Assembly. I compare drafting and promulgation a law to building a home. If the house is logically and scientifically designed and constructed, it will be beautiful and long lasting, needing no repair. On the contrary, if the design were not logical, scientific, not convenient for living activities, it would have to be repaired immediately or it would be unusable. It is hoped that the Interior Ministry's Drafting Committee will exercise renovation in their thinking process, be receptive to the sound opinions by scientists and lawyers in order to perfect the draft before presenting it to the National Assembly, so that the law can reach people's hearts, real life and can have a long lasting vitality in contributing to the creation of conditions favourable to Association activities in our national task of industrialisation and modernisation.

There are two notable ideas from the conference this time. The first is that of Dr. Nguyen Xuan Huong, member of the National Assembly Committee for Social Issues and President of the Vietnam Association of Traditional Medicine. Although not addressing directly the governing subject of the law, he has nevertheless offered some profound thoughts:

*"The promulgation of the Law of Association is necessary so that our Associations can exist within the law. We applaud the arrival of this Law, but we should not lose solidarity because of a law. It is not well to remove altogether the socio-political organizations from the scope of the law..."*

However, speaking of other contents of the law, he is very frank and forthright:

*"I have offered many ideas as contribution to the Drafting committee, but only a few less important ones have been accepted. Right up to this 9<sup>th</sup> Draft, I still find several disagreeable points. Before, it is the issue of being non-profit, now it is about not for profit motive. I beg your pardon saying this, the things*

*discussed are sheer contradictions to customary practice. To be autonomous (in finances) but without making profit is like us selling Chinese medicine without charging any money, how do we expect to survive?"*

Focussing his concern on an extremely concrete issue: the rights and obligations of Associations, Dr. Huong has shown his firm grasp of the basic principles in designing a law. For this very reason, however, he has been extremely disappointed: *"I am most concerned about the Articles 38 and 39 of the 9<sup>th</sup> Draft. These are important articles, but generally speaking, they are still unclear. As for the granting of awards, financial matters, splitting up, merging are nonsensical affairs, not worth spending so much effort and energy on. We tend to split and merge a lot in our country, nobody else in the world do that. Our duties, for instance, are to diagnose illnesses, continue the tradition. Other Associations have their rights and obligations, such as the journalists and writers have the right to write... So long as you do not work against the Party ad Government, it should be acceptable..."*

As for State management and administrative management, according to Dr. Huong, it must be clearly ascertained that these are two distinct areas. He concurs fully with the proposal sent by journalist Nguyen Quoc Khanh to the National Assembly Committees from Mr. Khanh's contribution to the discussion. The reason, for him, is that: *"We applaud writings such as this, as it contains good information which enable us to correct our views"*.

The following conclusion from a member of the National Assembly Committee for Social Issues is worthy of serious consideration by the Drafting Committee, although it may still have issues that they may not be in agreement: *"I am not at all pleased with this draft. From the time I read ND88, and now the draft, then the association rules, I have noticed they share the same format, and there has not been any change whatsoever. If the Drafting Committee has been given direction from above, they had better adhere to that order. It is not acceptable that they would do as they see fit like this..."*

The second notable opinion comes from Dr. Le Quang Uy, member



of the Presidents delegation of the Ha Tinh Union of Associations. With incisive reasoning and highly realistic comparisons, he has reached fairly surprising and bold conclusions:

*“For the 9<sup>th</sup> Draft Law Association issued by the Interior Ministry, I would affirm that this a raft of rules, not a law. Reading merely the Ordinance signed by Uncle Ho, you would find it more complete and encompassing. Containing only 12 articles, but his thoughts in it are all consistent to the establishment of the people’s democratic State. Now that the democratic society has progressed strongly forward to become the engine for social development, we are seen to restrain it. This is unacceptable. Making new laws is for improving democracy, not for binding people up...”*

Dr. Uy also affirms that the Law must express equality. The Vietnam Socialist Republic Government is the successor of the Vietnam Democratic Republic one, for the progress of the people. In the Socialist Republic Government, the people were raised from a passive position to an autonomous role. Only on this basis society can sustain stable development, and can stand firm in the knowledge economy. A law-governed State, a market-centred system, and the people form the base. These three elements constitute the condition for a society to develop. If development is not ensured, society will definitely head for regression.

The link between the State and the people, according to Dr. Uy, is one that integrates economy, politics and security. The State’s interest consists in serving the interests of the people. Causing divisive dispersion of groups also means a weakening of the national primal will, hampering prosperity. This is related to the equality of all organizations before the law. A question is therefore raised that why equality when the law discriminates between organizations within the workers-peasants-intellectuals foundation? And Dr. Uy suggests that: *“The Drafting Committee needs to revise as this draft has not yet complied to the Constitution’s Article 69 which elaborates clearly on this issue. Compared*

*to the Constitution of 1946, this draft counts for little as far as the democratic rights are concerned...". He further affirms that: "If discrimination is maintained purely for the sake of past practice, without due consideration for the future, then the country will lag behind day by day..."*

The issue of State management is also evaluated from an angle which is not so new but nevertheless surprising: *"If there were State management agencies, then there must be agencies to protect and manage the law. Not to place any Association inside a Ministry is reasonable, as all States, ministries carry in themselves bureaucratic and subjective characters. Only the people constitute the objective element. Putting Associations under the charge of Ministries is to fetter objectivity with subjectivity, this is an unreasonable act. Do we not recall in history, King Trần Nhân Tông needed to call the Diên Hồng referendum in order to win the war against the invading Yuan army..?"*

Dr. Uy concludes: *"Governments are getting smaller and smaller, societies grow and develop, such is the democratic development process. To draft laws without timely and rational consultation and amendments, is to inadvertently allow the law to turn the State into a lock to freeze up the wheel of history in motion..."*

With 19 ideas having been hotly and responsibly discussed in one whole day of urgent and effective work, the conference was evaluated by Mr. Le Manh Hung, National Assembly delegate of Ha Tinh province, on behalf of presiding members, as **having achieved the stated objectives** in his concluding address to end the conference. This is tantamount to the fact that the above ideas have been "programmed" into the working plan to continue with amendments to the Law of Association at a more advanced stage. For all those who are concerned with this issue, it is not only a satisfying sign, but also a basis for reinforcing their faith in a fair, democratic and civilised society, precisely in keeping with the aims already chosen by the Party and the people.

*Civil Society Action Towards: The 9<sup>th</sup> Draft*

## **LAW OF ASSOCIATION**

**PLAT FORM IN HO CHI MINH CITY**



## **OPINIONS OF THE GOVERNED SUBJECTS NEED TO BE INCORPORATED**

In order to bring the voice of intellectuals, of those who have made no small contributions to the activities of Association organizations in the history of struggle for national liberation and developmental progress of society under the Party leadership, to the notice of the nation's reading public at large, in the morning of 30 March 2006 in Ho Chi Minh City, the *Van nghe Weekly* magazine in collaboration with the Federation of Science and Industry and Production Services Associations (Vietnam Union of Science and Technology Associations - VUSTA) organized a conference on the Draft Law of Association. This was the third time the *Van nghe Weekly* and members of VUSTA took charge of organizing this forum, in the hope that the voice of public opinion will be a timely and truthful reflection, in the constructive spirit of raising viewpoints, awareness and aspirations of numerous members of Associations, and that the object of the Law of Association will be properly stipulated, so that the Drafting Committee will be helped in obtaining sufficient and necessary information in order to perfect in good time and bring into real-life application a civilized, scientific and feasible Law.



FROM THEORY TO PRACTICE

*Civil Society Action Towards: The 9<sup>th</sup> Draft*

**FROM THEORY TO PRACTICE**

CONFERENCE & PLATFORM IN HANOI





## INTRODUCTION

*To construct a Law of Association is to create a legal foundation for an institution where the role of the people is addressed and expressed in the fullest and most comprehensive manner, thus contributing towards concentrating all resources into developing our society with the objectives of fostering the people's wealth and the nation's strength, building a just and civilised society. It is one of the aims laid down by the Party for the developmental strategy of the country in the new era.*

*This Law is part of one of the constitutive elements of a developed society: a law-governed State, a civil society, and a market-centred economy, all these being gathered under the Party leadership. Since several years past, Association organizations in our country have been growing at a prodigious pace, in quantity as well as quality. To date, there have been 320 associations operating nationally, nearly 2,200 at province and capital city levels, not to mention affiliated member organizations, those entities with extensive contribution to the eradication of hunger and reduction of poverty, lifting the cultural and spiritual standard of the people's life, advancing science and industry, progressing towards the objectives of socio-economic development in a civilised and stable manner. It can be said that the formation and development of Associations have really become a need of the people and the demand of living condition...*

*All these actual situations have shown that we have reached a point where the need for an appropriate and open legal corridor, able to create conditions for Associations to form, operate and develop more effectively, contributing to the revolutionary legacy of the Party, especially in the present time, facing the country's innumerable new challenges and demands. This has been asserted by a resolution at the 9<sup>th</sup> Party Congress: "Forms of people's assembling together in joining mass organizations, professional, cultural, friendship, welfare associations need to be extended and diversified... A Law of Association must be issued soon."*

*The need and the policy are already clear-cut. The task of designing the Law of Association, having been proceeded since 1992, has now reached the ninth draft with many constructive ideas contributed by many agencies and associations belonging to dedicated experts and scientists... Many of the issues related to this question have also been reflected relatively comprehensively and faithfully in the mass media. Regrettably, however, until the day the (9<sup>th</sup> Version of) Draft Law of Association was presented to the National Assembly Standing Committee for discussion (on 4-4-2006), there still existed a huge gap between the content of its text and the reality of social life...*

*There has been numerous efforts made to close this gap, ever since the Draft Law of Association was first handed out to canvass opinions from the public and the subjects within the scope of governing of the law, according to the stipulations of those Laws with documented determinations of infringement. There has been an evaluative comment made around these forums that: "There has never been a Law document with so much attention paid to suggestions for its design like this one". There is even a Draft Law of Association put forward by some associations themselves for discussion. This has drawn the comment: "That the subjects governed by the law put forward a new draft is a rare occurrence indeed in our legislative history..."*

*The concern, the passion and openness; these are easily recognised facts from the forums contributing ideas to a Law of Association. However, from a different angle, those very facts reflect a sluggishness, tardiness in reception affecting changes to the content. For this reason, the gap between the Draft Law of Association of late has not yet reduced the gaps between texts and reality. This is a matter that has been pointed out so plainly.*

*After the almanac entitled **Issues Surrounding the Draft Law of Association** was published in January 2006, Van nghe Weekly has organised and participated in more conference discussions on this text. This almanac is a collection of records of those forums, with the hope to reflect as much as possible issues that have not been resolved around the Draft Law of Association, which is being examined and evaluated by the National Assembly.*

**VAN NGHE WEEKLY**

## **THERE SHOULD BE EFFECTIVE INTERWOVEN AND CONTINUITY-MAINTAINING SOLUTIONS**

*TRAN THI LANH*

*Toward Ethnic Women (TEW)*

Thus far, the Draft Law of Association has existed along two parallel thinking modes, under two attitudes, two ways of viewing and of understanding Associations, the position and function of Associations in the general development trend of the nation. Unfortunately, the two ways of perceiving do not resemble each other in their fundamentals and also in their forms. One way is from the group assigned by the Government to write up the Law of Association, and the other is from voluntary members of various associations. These are not merely members of Associations, but also lawyers, independent expert consultants, who enjoin their thoughts and feelings in their philosophy about Associations. They understand well our cultural environment and value system, and the basic differences between Associations and the State. Although not officially assigned to participate in designing the Draft, public opinion has already maintained that the Draft Law of Association prepared by the lawyers and the independent expert consultants expresses practicality and humanity, compatible with the development trend and congruent with other currently enforced legal documents. In what follows, I would like to contribute ideas on the differences between the two Drafts.

## **On the Draft submitted by the Interior Ministry**

### *1. Expressions of ideas encouraging the development of Association organizations have not been found*

The thoughts on Associations through the 8<sup>th</sup> Draft submitted by the Interior Ministry represent an old-fashioned, conservative and bureaucratic thinking of the era of total state subsidy. As a result, the role and function of the Government are degraded through this Draft, due to the extremely petty and routine-bound interferences it makes. *“Associations are not dependent on the Law but on a more important role which is of the Association Rules. That the Draft Law of Association as submitted by the Interior Ministry interferes too deeply into the Associations’ Rules is still not a rational and reasonable thing”* (Issues surrounding the Draft Law of Association, Writers Association Publishing House). There are aspects that can not even be conceivably attributed to an Article of a Draft.

To consider Associations as a subsidiary class, ignoring the true nature of Associations is to infringe on the citizens’ spontaneous developmental function. By its legal provisions, the Law-governed Socialist Government needs to clearly determine this natural function as a philosophy contributing to our National freedom and independence. *Dr. Nguyen Tri Dung, National Assembly Office, warns that when a Law permits a management agency to interfere into even General Meeting agenda, Association Rules, it will create many dangers* (Tien Phong magazine, 6/2/2006).

The lack of trust in a civil society is the very source for creating a corridor of suspicion, and not a legal corridor. It will also cause damage to the safe development of the Nation. Suspecting that even civil society lacks equality is the object of control by the requisition and grant system. This is unrealistic in a market-centred society and still out of step with the present development trend. *Mr. Vu Duy Thai, President of the Hanoi Federation of Industry and Commerce Associations, laments: “We still have to wait while the time for General Meeting has come to pass, and must be given permission to organize*

*a General Meeting. The Federation has lodged reports, Rules, personnel planning. Unfortunately the personnel approval has not been given by State management agency. And so, nine years have passed and the Federation has not yet been able to hold a General Meeting” (Tien Phong magazine, No. 26, 6/2/2006).*

Interfering deeply into the free will and voluntary values is really showing the State itself betraying its self-doubt. The Rights and Interest of each citizen, and of all society are the socialist Rights and Interests of the State. The Law cannot separate this implicit mutuality. A healthy freedom of civil society can only be obtained when there is a transparent and egalitarian legal corridor. This transparent and egalitarian legal corridor is a basis for creativity. Only with creativity can the mission of development be carried out securely to its true meaning. The matter of *“over-emphasis on the issue of State management of associations, making light of the right to take initiative, of the right to self-determination, and of the right to make decisions of Associations will be an unfortunate shortcoming” (Issues surrounding the Draft Law of Association - Hoi Nha Van 2006).*

The effect does not stop short at the continuation of the Requisition-and-Grant system of the State subsidy era, but it also casts a great influence over the right to be independent, to take responsibility as stipulated in Article 5 (Voluntariness, autonomy-Assuming responsibility before the law) of this Draft itself, and over the developmental function of Associations - a function that can not be obliterated. All that is simply because of a desire to continue having a draft that does not relinquish antiquated and outdated thinking and attitude of the era of the Requisition-and-Grant system persisting amidst the new national trend. It totally contradicts with a Government of the people, by the people and for the people. *“The Prime Minister has affirmed that: Although the promulgation of the Law of Association is complex, we must find a way to reach unanimity, consensus and to link up with the Government, in order to achieve great things” (Issues surrounding the Draft Law of Association, Writers Association Publishing House, 2006).*

Naturally, Vietnamese civil society matures and develops inextricably linked with the role of State management and the Party's political goals, but this does not mean it can do that through undemocratic and unclear legal documents.

A draft that makes its appearance in manifesting the spirit of a "Government wanting to take on everything, while Associations desiring to slip out of the Government's hands" is a draft lacking in feasibility. And this will diminish the effectiveness and credibility of the law.

## ***2. Not yet able to express consistency in the legal system***

It is not difficult to recognize that there are still Items and Articles in this Draft negating the provisions of current documents. For example: *Article 38. Associations' rights. Item 6. Consultation, critical assessment, evaluating issues in the activity domain of an Association.* This Article inadvertently negates the whole Decree 22/2002/QĐ-TTĐ dated 30/1/2002 which stipulates on the function and role of the Prime Minister in consultation, critical assessment and examination of social issues and national development programs. This is a serious shortfall of respect shown to the coherent wholeness of the coordinating function of legal consultant agencies of the Government.

The Items and Articles give an indication of the Requisition - Grant system, obviously causing a loss of prestige for the Government such as: *Article 39 (Obligations of Associations): Item 2 (Whichever domain of activity the Association operates in), it is subject to State management of that domain. If the Law stipulates on State management of Associations' activities like today, not only is it redundant, but it also causes the loss of a legal corridor for Association activities (Issues surrounding the Draft Law of Association, Writers Association Publishing House, 2006).*

Item 3, Article 39. Approval must be sought when a headquarters office is to be set up. Item 4. Approval must be sought for establishing a branch Association. Item 5. Approval must be sought when headquarters

is to be moved to another location. Item 6. Irregular General Meetings when organized must be reported to the Government. The above indices are to be truly understood: that the Association is in fact a Tail of the State. Meanwhile in Article 5. The principle of organizing and operating Associations consists of: Voluntariness, financial independence, sole responsibility before the law, self-management, democratic, open and transparent characteristics. Whereas the whole of 9 chapters and 61 Articles does not respect the principle for organizing and operating associations as stipulated in Article 5 of this draft. By the same token, the illogical implications between the Articles and the chapters end up damaging the credibility of a draft even in its process of being drafted, let alone at the stage of passing into Law.

## **The Draft Law of Association as prepared by VUSTA**

### *1. It has shown to be a realistic set of Law of Association*

The Draft Law of Association as prepared by VUSTA, although not taking a long time in the making, just over 10 days, is really a draft capable of expressing the will, aspiration and self-responsibility of the civil society. It does not simply stop there, but also embodies the process of democratic participation, and the thorough understanding of the law by the Association organizations.

The thinking and outlook on Associations through the Draft prepared by VUSTA express the essence of a law-governed State, where civil society can enjoy equality, autonomy and self-determination in the spirit of voluntary commitment and sole responsibility before the law, through the Association Rules. Association Rules constitute the basic legal document of the Association, with the State managing the implementation of the Rules through provisions of the law. The Requisition-and-Grant system does not make any appearance in the Draft prepared by VUSTA. This is a novel aspect. It affirms the egalitarian position of the Associations as stipulated by the Constitution. At the

same time it shows a respect for humanity value of the Constitution. Only the Associations and those who are in the ranks of Associations can truly understand such value.

*2. Expressing humanity and coherent wholeness with the current body of laws*

The operation and organization of Associations are stipulated in Chapter III. The thinking in this chapter consists in setting its philosophy of action as foundation, then in building up the organizational structure for Associations. Article 33. A number of Associations' rights. Item 5. Consultant work, critical assessment, and supervision of society for the programs, projects, plans, socio-economic activities conducted by State agencies or by any other organization. This is in total agreement with Ordinance 22/2002/QĐ-TTĐ by the Prime Minister stipulating on the function of consultant work, critical assessment and supervision of society by Associations. It expresses equality and healthy civilized competition between economic components in their participation in the programs for general development of the country.

Meanwhile, in Chapter IV: The organization and operation of Associations in the Draft presented by the Interior Ministry (from Article 26 to Article 38) is only concerned with a purely routine administrative structure, neglecting action strategy, priority classification of types and content of activities which Associations can undertake. Without activity, how can structure and organization be derived? This is a demonstration of a mentality that imposes conformity, so lacking in creative and realistic reasoning.

Chapter IV. State management of Associations. Item (e) of the Draft prepared by VUSTA stipulates: The Interior Ministry establishes dialogue channels, forums for Associations in order to foster their participation in the planning, policy evaluation and perfecting of the law for Associations. This point expresses equality, democracy, responsibility and progressiveness of the Draft.



### *3. Expressing precisely the developmental function of Associations in the market mechanism*

Article 34. Rights of Associations. Item 6: Participating in the contribution of ideas to policy planning, designing laws, supervising the implementation of the law and of policies; Item 8: Providing services to the public as assigned by the Government; Item 11: Being allowed to conduct income-earning activities in business services, not for profit, to expand Association activities. The whole of Article 34 expresses equality in rights and responsibilities in the general development trend. This thinking does not circumvent the market, but faces it squarely in order to maintain the values of Associations through not-for-profit service and business enterprise activities. At the same time, Article 34 shows that not only Associations submit to State supervision, on the contrary they also need to assume responsibility in contributing ideas to the construction of policies, and to the implementation of policies and laws of the Government.

To my thinking, based on the foregoing analysis of the real situation, those who play a decisive role in the present Law of Association need to devote some time and attention necessary for considering the discrepancies between the two drafts that exist in public, in order to reach an effective, coherently interwoven and continuity-maintaining solution, thus ensuring feasibility and effectiveness of a draft which has been prepared with great pains for more than a decade, should it be passed by the National Assembly. So long as the process of drafting the Law has not ensured transparency and democracy, leading to the situation where, according to the assessment of Mr. Pham Cong Lac, Dean of Civil Law Faculty, Hanoi Law University: *"We evaluate this draft as exhibiting a low technical standard of legislating, it needs to be redesigned starting from scratch"* (Issues surrounding the Draft Law of Association, Writers Association Publishing House, 2006), then it will be difficult to implement this Law in real life, a life that is no longer like what it was during the State subsidy era, for it is a life of free choice and development in international integration.

**TO COLLECT IDEAS IS NECESSARY, HOWEVER, MORE  
IMPORTANT IS THE NEED TO RECEIVE INCOMING  
IDEAS WITH REALITY-CENTRED MIND AND  
RESPECTFUL HEART**

*Barrister TRAN HUU HUYNH*

*Head of Legislation Committee, Vietnam Chamber of Commerce and Industry*

In a recent conference for contributing ideas to the Draft Law of Association, a delegate made a fairly trenchant remark that the 9<sup>th</sup> Draft just presented by the Interior Ministry (and will be examined by the National Assembly in the next gathering), is really a set of rules and not a law. How accurate this assessment would be, it can not yet be determined. Almost all the opinions raised in discussions, however, not only at this forum but also in all forums opened under the same topic as above, ever since the 5<sup>th</sup> Draft was canvassed for opinions, have maintained that the Draft prepared by the Interior Ministry is not yet able to respond to the real situation and the development trend of society, not is it yet able to create a suitable legal corridor to promote the role and realize fully its function in contributing to nation building. Not only that, it even contains points contradicting the legal documents issued previously... Nevertheless, the surprising thing is, after waves of amendments that followed, most of those ideas, together with many other constructive measures contributed, have not yet been acquiesced and rectified by the Drafting Committee in the succeeding drafts.

To share the concern for this issue, VNT conducted an interview

with Mr. Tran Huu Huynh, Head of Legislation Committee for Vietnam Chamber of Commerce and Industry (VCCI).

*Reporter: To date, the Law of Association exists in two draft documents: the 9<sup>th</sup> Draft prepared by the Interior Ministry, considered the official draft, to be presented to the National Assembly for examination in the near future, and the Draft prepared by VUSTA (7<sup>th</sup> version) is considered an unofficial draft, but has received consensual support by public opinion, especially among association organizations. What is your assessment of this matter?*

**Barrister Tran Huu Huynh (henceforth THH):** I think the draft prepared by VUSTA is a very new and distinct proposition with regard to the common process of drafting law documents at present. Up to now, apart from the Internet Law prepared by a National Assembly Committee (the science and Industry Committee), most drafts are prepared by a State agency-in-charge.

The current reality is that the process of drafting and issuing legal documents form a “closed circle” within State agencies, from the structure of the Drafting Committee to the staged programme of drafting, collecting ideas, critically assessing ideas... It has not been able to diversify into subjects belonging to many different social organizations, allowing them to participate in the drafting or to contribute ideas. At many places, on many occasions, the concept of making absolute the legislating role of State agencies is perpetuated, with the right to make laws considered as a “private property” of these agencies.

Although it is permissible by law, but federated associations, National Assembly delegates as business people do not yet have the condition to foster their active role in putting forward innovative ideas about the law, or in the direct participation in the law making process.

*Reporter: Article 3, the Law on issuing legal documents stipulates that:*

*1) The Vietnam Fatherland Front and its member organizations, other*

*social organizations, economic organizations, State agencies, the People's Army units and citizens have the right to contribute ideas in constructing legal documents.*

*2) In the process of constructing legal documents, based on the characteristics and content of the project, the relevant organising agency creates conditions to allow agencies, individuals mentioned in clause 1 of this Article participate in contributing and receiving ideas to construct the legal document.*

*The Government has also issued Decree 101 clearly stipulating the responsibility of the law drafting agency to consult the objects of application of the Law. In light of this provision, can the absence of participating representatives of Association organizations, being the objects of application, in the Law of Association Drafting Committee organized by the Interior Ministry, be considered a flaw?*

**THH:** I wish to share an experience of mine in the process of drafting and issuing of the Enterprise Law of 1999. The Enterprise Law of 1999 is considered a typical example of widespread participation by businesses throughout the process of drafting and practical development. From the participation in the Drafting Committee by business representatives (as 2 committee members) to the stages of contributing ideas to the draft, business peoples' ideas from all over the country were seriously received, summarised and accepted. After setting up the Working Group for implementing Enterprise Law, the representatives of the business community prove to be highly active members. After one year of implementing, the Enterprise Law is considered by the business community, investors, funding bodies and other countries as a successful breakthrough of Vietnam.

Why is a widespread participation by the objects of application always needed by the Drafting Committee as its members?

Firstly, because the State basically carries the characteristics of "officious bureaucracy," even with a progressive and developed

Government. State agencies are usually limited not only by their sensitivity in practice but also hold a psychological attitude of a “gate keeper,” always wanting to make the safety of society an “absolute issue.” In addition, the law making process is also controlled by the subjective prism of law makers. In a few cases, the danger of parochial calculations, special rights, special favours of a number of public servants cannot be eliminated.

Therefore, the participation of citizens, businesses will contribute towards ensuring the important balance and objectivity in designing laws, that is: if there is argument in favour, critical assessment, raising of issues and refuting of arguments, the role of management and subjection to management, the right to freely do business and public order, individual interests and community security.

I think there exists a causal relationship between the participation in designing a law by citizens, business people and the practical results of the implementation of that legal document. The more any legal document, during its process of drafting, could attract widely and deeply the participation of citizens, businesses, federated associations, the more extensively facilitated and effective its implementation will be in reality.

*Reporter: Since the 5<sup>th</sup> Draft Law of association was put forward for consultation, canvassing of opinions from association organizations and related agencies, many ideas, proposals have been presented to contribute to the design of the Law of Association. However, all these ideas and opinions have not been expressed in the 9<sup>th</sup> Draft. Could this be an infringement of the law based on Section 2, Article 3 of the Law on issuing legal documents as mentioned above?*

**THH:** Professor Stiglitz, the Nobel Prize winner in economics has remarked that: “Change does not follow from orders or external pressure; it must come from within and the most effective way to ensure that changes reach deeply into society is through forms of open and liberal debate”.

I think that organized canvassing of ideas is necessary, but more important is the need to receive incoming ideas with the most highly reality-centred mind and appreciative heart. If you do not agree, you must reason, and explain why you disagree. That is to say the agency receiving ideas need to have an open and liberal exchange and discussion. If this spirit is not upheld properly, contributed ideas would seem to fall into a “ghastly silent void,” making the collection of ideas a pretence, or an “open but not transparent” formality.

# THE BASES FOR CONSTRUCTING A LAW OF ASSOCIATION BY THE ASSOCIATION ORGANIZATIONS

*Barrister, Dr. HOANG NGOC GIAO*

*National University of Hanoi*

## **1. The formation and development of people's collective forms (Associations) in Vietnam**

The Vietnamese have a long historical and cultural tradition. Being a people of the wet rice civilization, at the same time they have gone through many nation building and defending wars, these circumstances constitute the important factors in forming precious human values in Vietnamese society, such as: solidarity, staunch resilience, mutual support, mutual assistance, compassion across social strata, etc. These human values have helped the Vietnamese, although a small group, to never submit to oppressive, expansionist, invading foreign machinations, but to assist each other in overcoming historic difficulties and challenges.

Throughout history, there are many possibly known types of solidarity and alliance among the people: *“During the feudal era, the associations were born and operated under forms varying from simple to more complex. There are types originating from one lineage, or multiple lineages such as cliques, age groups. There are types born of charitable work and grown into foundation funds, others such as filial-piety associations, happy-occasion*

*association, farm land fund, health support fund, with their operative scale often limited to a village community.*

*During this period, besides the associations who converge welfare work along lineages, there was progress from lineages to assemblies according to occupation, such as the cloth guild, hats and woodworks guilds, mutual help associations; assemblies according to age groups, for examples elderly and children etc groups; and assemblies according to religions and popular customary practices. Villages and hamlets created field funds, paddy funds to help widows, orphans or established farm land funds being funds made up of donations from Samaritans to help the poor." (The Role of Associations in National Renovation and Development, National Politic Publishing House, 2002).*

The associations, guilds operating on the basis of field, branch, hobbies etc. are a rich and diverse mixture. Many guild associations have expanded their operation to provincial level. Besides such associations and guilds, under the French colonial rule, there were movements, associations and guilds formed to work towards the political independence and the restoration of national integrity of the Vietnamese people. Associations such as Duy Tan [reformation], Viet Nam Quang Phuc [restoration of the light] set up by the great patriots Phan Boi Chau and Phan Chu Trinh, have left a brilliant historic legacy in the people's memory.

During the 1930-1945 period, mobilizing the struggle for national independence, the Vietnam Communist Party promoted, on the one hand, nationalism, anti-colonialism in the existing traditional associations, and on the other hand, initiated the formation of many associations and mass organizations to assemble a wide cross-section of people for the purpose of national liberation, such as the Women's Union, Farmers' Association, Youth Union, Children's Union, etc. These associations were put under the Party's leadership and have become the core strength of the Party.



Today, in the context of renovation and international integration, of the diversity of organization forms and activities of Associations, social organizations who have been and are promoting social resources and community innovations to the utmost, together with the government they seek to solve many social and developmental problems. The increasing need to form Associations is an objective trend in development. Up to June 2005, there are 320 Associations with a nationwide operation and over 2,150 Associations with local level activities, under a multiplicity of organizational forms such as Union of associations, Allied Associations, Federation of Associations, Centres, Institutes, Clubs and Funds, etc. In general, the contribution by associations, social organizations under various forms to the work of Renovation, stable development, elimination of hunger and alleviation of poverty, integration into the international economy - is growing by the day, and is recognized by society as an indispensable factor in the promotion of internal resources, knowledge among the people, the push for community innovations, and the enhancement of the power of control by the people.

## **2. The contribution by social organization to the cause of national Renovation and development**

2.1. Up to the end of 2004, Vietnam Union of Science and Technology Associations has 53 member associations, of whom 38 are provincial, capital city member Federations of Science and Technology associations. The Union operate widely in its dissemination of scientific and technical knowledge among members and the public at large. The Union's voice is expressed through the journal of *Science and the Fatherland*, the *Science and Life* magazine, various newspapers, magazines and newsletters of member Associations in the main cities. It has published many valuable science books which prove to be popular. The annual number of published titles in various fields is increasing.

With a network of more than 40 clubs, bringing about communication through science exhibitions, the Union also collaborates with Vietnam National TV and the Voice of Vietnam to set up science quiz shows as a community service.

Further education to improve the standard of members and scientific technical cadres, encouraging and assisting young talents are the special concern of the Union. Up to now, three universities and four semi-public schools of all levels have been established with the support from or under management by member associations of the Union. Many active assistance operations have been maintained such as providing scholarships for disadvantaged good students, giving out awards to groups and individuals at international competitions in mathematics and information technology, collaborating with the Education and Training Ministry and the Ho Chi Minh Youth Union to organize and award prizes to outstanding student projects in construction science and architecture; organizing regular "information technology week," and alternating "information industry" exhibitions between Hanoi and Ho Chi Minh City. In addition, the Union and member associations have participated in many scientific and industrial development research projects in many fields. It has set up the Vietnam Foundation for supporting technological innovation (VIFOTEC) to reward outstanding creative achievements in technology.

The Union and members associations have organized research, evaluative assessments, critical appraisals, contributed to many different aspects of plans and key projects of the Party and the Government (Phu My power plant, feasibility study of Sơn La hydro-power plant project, economic and technological data analysis for Pha Lai 2 power plant; planning scheme for Vietnam's sea ports; planning scheme for Lang-Hoa-Lạc industry zone), and have continually pushed for more international cooperation in many fields.

The Vietnam Union of Literature and Arts Associations has 10

specialist associations and 63 literature and arts in provinces and capital cities. Up to now, the specialist associations have grown into large organizations, operating on nationwide scale, becoming the hub for zone and regional arts movement all over the country and have widening international connections. The main activity of the associations is focussed on setting up conditions for creative work, giving practical support to writers and artists to go for field work, penetrating wide and deep into domains of cultural and economic construction work and of protection of the homeland in all regions of the country.

2.2. In its concern and practice of research and criticism works, the Union and member associations have organized seminars, debates in the print media on issues of artistic viewpoints and career establishment, invested in funding a number of key research projects. The member associations have their own mouthpieces, with a number of associations possessing effective publishing facilities. Photography Association, Art Association, etc. have organized many exhibitions nationally and internationally, and have won many gold and silver medals. Literature and art periodicals of the provinces and capital cities are being published in increasing number, with apparent progress in content and form.

The member associations have contributed many ideas to the government agencies on important professional issues: the Writers Association suggested amending text-books on literature and establishing a museum of literature. The Musicians' Association has proposed to the government on the teaching of music from kindergarten to high school. The Architects' Association contributed to State agencies ideas on urban planning and development, issues of law, practice permit and the consultant function of associations in the government's architectural projects.. Almost all member associations have submitted proposals to the Party and the Government to examine the issue of copyright.

Local associations are also growing by the day and paying more attention to encouragement of production and research of national history, of famous national defenders, local cultural personalities. Published memoirs on the revolution and the two resistance wars continue to appear in cities, together with many short stories, novels to give posterity a more detailed and complete picture of the two great resistance wars of the nation.

2.3. There are 60 Friendship Associations in the Capital Centre and 32 Friendship Associations in provinces as member associations operating under the motto “struggle for the objective of peace, for building and developing friendship and for co-operation between Vietnamese and other peoples all over the world”. The Federation of Friendship organizations operate along the Party and Government foreign policy, extending understanding and striving to secure support for all aspects of friendly exchanges, of economic, cultural and social activities.

Aid work by foreign NGO’s has received special attention from the Vietnam Federation of Friendship Associations and member associations. At present, the value of NGO aid has reached an annual figure of about 100 million US dollars, a considerable contribution to the national construction and development.

2.4. The Athletics and Sport Associations, the Red Cross Association, federations of economic organizations... also conduct many activities and have made positive contributions in their respective domains of operation, such as bringing up athletics and sport movement to a widespread public movement, contributing to the lifting of Vietnamese sport records in international contests (for Athletics and Sport Associations). The work on health care and welfare for the public is being well carried out, making an important contribution to the implementation of the social policy of the Party and Government, alleviating suffering and misfortune of millions. Especially it evokes

and fosters the compassionate and fine national traditions, bringing welfare work gradually into the consciousness, sentiments and inclinations of current society with great political and social implication (Vietnam Red Cross). It establishes connections for cooperation, mutual aid in productive business activities between enterprises, fulfils well the function of representing and protecting the legitimate interests of member enterprises, and of the community on national, regional and international forums. Through the latter, it enhances the prestige of enterprises, laying foundation for joint business ventures of enterprises in and outside the country. To provide feedback to the government on issues related to policies, laws, development strategies etc. is to create a consultant information channel for the Party and Government, allowing local bodies to put forward more practical and more useful solutions (Federations of economic organizations). Especially the Vietnam Lawyers Association, during the past renovation years, has had many highly positive contributions to the work of unifying Vietnam's legal system, fostering the power of people's control.

2.5. A number of local associations attract more and more members, gathering people to occupational, hobby, charity activities etc. contributing positively to the economic development and raising the people's living standard.

Besides the organizations officially approved for formation, unregistered operations of many popular voluntary associations, groups, bands, guilds etc. can be seen in many parts of the country. They express the diverse and rich nature of civil society and Vietnam's culture.

Mr. Thang Van Phuc - Deputy Interior Minister, Mr. Nguyen Van Lam - Director of NGO Office of the Interior Ministry, and a number of authors have remarked on the role and contribution of association organizations as follows:

*"In brief, we could see in merely going over the operation of a number of association organizations in Central and local areas, that together with*

*activities of the market economy and the increased effort in State management, association activities in recent years have in no small way contributed to the push for unceasing development of the country. The presence of associations has enhanced the effervescent, democratic atmosphere of society. Withough mentioning all activities, we can nevertheless draw from this the following observation:*

*Firstly, Associations have made important contributions in the push for a total renovation of the country, stepping up social development. By enhancing the advantages of each one, the associations have made practical and fruitful contributions.*

*Secondly, the activities of popular associations over the last few years have provided very active assistance to the construction and renovation of the political system, and have helped reinforcing our country's political system day by day.*

*Thirdly, the activities of associations over the recent period have in no small way contributed to the development of a totally new human being. Association activities serve as a social educational milieu to develop the intellect and cultivate self-awareness, autonomy, creative dynamism and self-sufficiency. It is also where citizens learn to practice democracy. Association activities reflect faithfully the development standard of socialist democracy, the real state of democratisation. The stable and healthy development of associations is also the basis for ensuring social stability and security.*

*Fourthly, international relations activities of associations effectively open the way for people's international relations. Together with friendship associations specialized in the domain of people's international relations, it can be said that almost all other associations have conducted international relations. In international relations activities of associations, the independent, autonomous, egalitarian and mutual benefit viewpoints are always maintained. Collaborative activities in international relations of associations open up pluralism, bilateralism, reinforcing co-operative friendships between our*

*people and peoples in other countries in the world, all for the peaceful and developmental purposes. (mentioned book)*

### **3. The right to form associations, viewpoint and legal basis**

#### *a. The Vietnam Communist Party policy on the right to form Associations*

Since the formation of the Vietnam Communist Party back in the 1930s, many associations, street guilds - the alliances and assemblies of people had responded positively to the direction of a struggle for national liberation as laid down by the Party. Hundreds and thousands of small associations of urban and rural population operated in the fields of social, welfare, charity and hobby, etc. activities. Increasingly aware of the humiliation of the loss of national independence, they supported and assisted in the work of national liberation initiated by the Vietnam Communist Party. The Vietnam Communist Party also assembled a large section of the people through organizing popular socio-political organizations, such as the Indochina Allied Anti-imperialist Front (*Mặt trận Đồng Minh Phản Đế Đông Dương*) in 1930, the Democratic Front (*Mặt trận Dân Chủ*, 1936-1939), the Viet Minh Front (*Mặt trận Việt Minh*, 1942-1946), the Inter-Viet Front (*Mặt trận Liên Việt*, 1946-1954), etc.

Came the successful 8/1945 revolution, peace and national reunification of 1975, then the onset of prosperity of Vietnam as a country in the Renovation years - these are historic turning points that prove the enormous contribution and sacrifice of people from all walks of life to the cause of protecting and building the nation, in which associations and social organizations have played a very important part.

Since its formation, the Vietnam Communist Party has always asserted that Revolution is the people's endeavour, therefore it always pays attention to the mobilizing and developing of mass organizations and social organizations.

Resolution 8B-NQ/HNTW of the Party Central Committee at the 6<sup>th</sup> Congress on 27/3/1996 has clearly stated that: *“ During the Renovation period, we need to form Associations responding to the people’s legitimate needs to operate in the direction of national interests, mutual assistance and human compassion. The popular Association organizations have been formed according to the principles of voluntariness, self-management, financial self-sufficiency in compliance with the law”*.

On the same principles, at the end of a successful Congress, President Ho Chi Minh issued on behalf of the Vietnam Democratic Republic government the Ordinance 52, dated 22/4/1946 stipulating on the formation of Associations.

The Vietnam Democratic Republic Constitution which was passed on 9/11/1946 has stipulated on the citizens’ right to form Associations as follows: *Vietnamese citizens have the right to: freedom of speech; freedom of publishing; freedom of organizing and assembling; religious freedom; freedom of residence; freedom to travel within and outside the country* (Article 10).

On 20/5/1957, the first complete legal document on the Vietnamese People’s right to form Associations was signed by President Ho Chi Minh. Ordinance 102, and issued under the form of a Law: the Law stipulating on the right to form Associations. The 1st Article of this Law stipulates that: *“The people’s right to form associations is respected and guaranteed. Forming an association requires a legitimate purpose, appropriate to the people’s interests, effective in uniting people, in order to contribute to the building of the people’s democracy of our country”*. The principal decree of the Vietnam Communist Party at the 9<sup>th</sup> Congress has clearly indicated: to widen and diversify the forms of people’s assembly in participating in people’s groups, social organizations, professional, cultural, friendship, charity associations (*Vietnam Communist Party Congress Document, National Politic Publishing House, 2001*).



*b. Vietnamese law on the Right to form Associations*

Immediately after the August Revolution, the Democratic Republic of Vietnam government's guarantee on the people's right to form associations was affirmed. At the same time, a number of conditions for exercising the right to form associations were also clearly laid out. They are: a) aims and objectives must be clear, legitimate, appropriate to the people's interests; c) association activities must aimed at building the people's democracy.

Article 2 of the 1957 Law also stipulates on the details of a number of the citizen's rights when exercising the right to form Associations. *Everybody has the right to form associations, except those whose citizenship is forfeited and those being prosecuted by the law. Everybody has the freedom to join a legally formed association, and the freedom to leave it. No-one is allowed to infringe on the right to form associations and the freedom to join or leave an association of another person.*

The constitution of the Democratic Republic of Vietnam, passed on 31/12/1959, stipulates on the citizens' right to form associations as follows: *"Citizens of the Democratic Republic of Vietnam have the rights and freedom of speech, of the press, to assemble, to form associations and to demonstrate. The Government ensures the necessary material conditions for citizens to exercise those rights"* (Article 25).

The constitution of the Democratic Republic of Vietnam, passed on 28/12/1980, stipulates on the citizens' right to form associations as follows: *"Citizens have the rights to freedom of speech, freedom to assemble, freedom to form associations, freedom to demonstrate appropriate to the interests of socialism and of the people. The Government creates necessary material conditions for citizens to exercise those rights. No-one can take advantage of the democratic rights and freedoms to infringe on the interests of the State and the people"* (Article 67).

The constitution of the Democratic Republic of Vietnam, passed

on 15/4/1992, stipulates on the citizens' right to form associations as follows: *"Citizens have the rights to freedom of speech, freedom to be informed, freedom to assemble, to form associations, to demonstrate in accordance with the law"* (Article 69).

In the context of Vietnam's constitutional and legislative history, and in relation to the people's right to form associations, it can be asserted that from the time political independence was wrested from French colonialism, the right to form associations has always been officially recognized by the Vietnamese government as one of the people's important fundamental rights and freedoms.

In its international relations, the Vietnamese Government also has vouched for respect and assurance of practical expression of the basic human rights and freedoms, among them is the right to form associations. Vietnam has participated in many international conventions on Human Rights, among them the most important Convention, which has been undertaken by most nations in the world to adhere to, is the International Convention on civil and political rights, ratified by the U.N. General Assembly on 16/12/1966. Article 22 of this Convention stipulates on the right to form associations as follows:

*"1) Every person has the right to form association with others, including the right to set up and join workers' unions to protect their interests.*

*2) The exercise of this right is not limited, except in the case of legal provisions and where these limits are necessary for a democratic society, for national security, for public safety and order, for the protection of public health or morality, or the rights and freedoms of others..."*

As a participant in the 1966 Convention on civil and political rights, the Vietnamese Government has a legal responsibility in relation to the exercise of the right to form associations on Vietnamese territory. As such, constructing and perfecting Vietnam's laws on the people's right to form associations is not purely the perfecting of the Vietnamese

legal system, in order to make concrete the Constitutional right to form associations as recognized by the Vietnamese Constitution. The design of a law on the right to form associations is also a task that needs to be done, a legal obligation of the Vietnamese Government vis-a-vis its international relations.

#### **4. The Law of Association must be a fully worked-out legal framework**

In the trend to international integration, the Vietnamese Government, in continuing to implement the Renovation policy, has concerned itself with the design of the law on forming associations. In the early 1990s, the Interior Ministry is a State agency that is given the responsibility of drafting the legal documents on Associations. On 30/7/2003, the Government issued the Decree 88/2003/ND-CP stipulating on organization, operation and management of Associations. Following this, on 15/1/2004, the Interior Ministry issued circular number 01/2004/TT-BNV guiding the implementation of a number of articles of Decree 88/2003/ND-CP.

With the issue and implementation of the Government Decree 88/2003/ND-CP on organization, operation and management of Associations, as well as Circular 01/2004/TT-BNV, there have been many Associations, social organizations established, operating and making considerable contributions to society.

However, the process of implementing Decree 88 and other related documents on organizing, operating and managing associations and social organizations has shown there still remain many limitations, inadequacies, and inability to respond to the demands of Renovation and integration to international economy. To cite a few opinions on the difficulties and inadequacies in implementing Decree 88 below:

*Opinion of Hanoi Department of Interior* (quoted from Report

on results of research and studies of the implementation of Decree 88/2003/ND-CP dated 20/7/2003 by the Government stipulating on organizing, operating and managing Associations by State managing agencies, conducted by Vietnam Lawyers Association and the Centre for Information and Community Development (CICD)):

*“In particular reference to the State management in capital cities at present, once the approval for forming the Association is issued, it seems impossible to manage anything”.*

***Opinion of 28 Associations, non-government organizations*** (from Evaluative Report on the effects of Decree 88/2003/ND-CP - Issues and Proposals, prepared by CICD):

*“Nearly all province level Associations hold a common view that the Decree 88 has caused difficulty for the formation of district level Associations, because prior to Decree 88, district level Associations were to be issued with approvals by the district People’s Committee for formation. Now the power to approve is with People’s Committees of capital cities directly under Central authority, causing much difficulty and inconvenience for both district, provincial and city People’s Committees...”.*

For a number of government agencies, when referring to difficulties and inadequacies after 2 years of implementing Decree 88/2003/ND-CP in the Report on results of research and studies of the implementation of Government Decree 88/2003/ND-CP dated 30/7/2003 stipulating on organization, operation and management of associations by State management agencies, almost all of them put forward the need to simplify further a number of administrative procedures as well as the issues of State management of association activities. The author of the Report in particular makes this assessment: *“Reality has shown that the present coordination of government agencies in such approval procedure still has many limitations... Decree 88 can not resolve this issue thoroughly, leading to an approval procedure not really simple nor quick.*

*Another practicality issue is in the process of implementing Decree 88. In the local areas' view of the Decree 88, being either due to imperfect understanding or lack of provisions in the Decree itself, it tends towards too mechanical an application, which causes difficulty for association organizations...".*

Perhaps the causes leading to the above situation reside partly in the process of drafting Decree 88, when the drafting committee did not conduct a canvassing of ideas from Association organizations, who are the objects of its application. The content of Decree 88 therefore is distanced from reality, and from feasibility. That is why the legal framework for the law of Association needs to be amended and fully worked out.

At the same time, the need for civil society to operate, the role of State management of associations, social organizations, as well as the need of perfecting the framework, would create a legal environment that favours the exercise of people's right to form associations as has been recognized and ensured by the Vietnamese Government and in our Constitution. In the relationship between the Government and public organizations, both of their concerns differ in formative basis. The Government is always concerned with ensuring political stability, order and safety for society, national security and therefore is apprehensive about public associations being liable to exceed the control limits of the trend for international integration, with resulting high profile factors in current events. This affirms the necessity for issuing a relatively fully worked out legal frame, under the form of a law such that on the one hand, it expresses completely the people's right to form associations, promotes the role of civil society and, on the other hand, it ensures the efficiency of State management of associations and social organizations, advancing towards a law-governed State. It is in this background that the Interior Ministry has been assigned by the Government to head the project of designing the Law of Association.

## 5. Guiding philosophical premises

The Law of Association is a legal document of our country. The Government therefore is highly concerned with the close management of Associations. In addition, for public organizations and associations, the tendency is always to assert the freedom to form associations as a natural human need and a Constitutional right as well. They do not wish to be tightly controlled, to be dependent. As a result, the guiding philosophy for the drafters of the Law of Association is firstly: to be able to ensure and respond to the concerns as mentioned of the Government and of public organizations. That is, the contents of the Law of Association can not simply be guarantees of the freedom to form and operate Associations. The content of the Law must, at the same time, ensure a rational mechanism by which the State can inspect, manage the public organizations, Association organizations for the sake of public order, social safety, national security, and community health.

*a. Main principles in drafting the Associations' activities in designing the Law of Association, must be based on the assurance and respect of the individual's and the organizations' free will in their formation of alliance. The Law should only lay down principal legal frameworks in order to create a clear legal environment, and favourable conditions for Association activities, and to ensure at the same time that Associations, public organizations do not operate against society's common interests, not restricting the rights and interests of other individuals and organizations in society.*

*Firstly: Guaranteeing the principle of free will on the part of the individual and organization in their forming of alliance and in consolidating.*

One of the basic characteristics of Associations, public organizations is the formation of alliance, operating on a voluntary basis among members. This means the legal relationship stemming

from the formation and operation of the Association is the object of application of the Law of Association characterised by privacy (private among association members). Starting from the privacy quality of the relationship born of the formation.

*Secondly: Drafting a Law of Association is to design the stipulations to give concrete expression to the right to form Associations as affirmed by the Constitution of the Socialist Republic of Vietnam.*

Activities of Associations, public organizations are embodiments of the practical expressions of one of the basic human freedoms. It is the Freedom to form Associations, to assemble. The Law of Association needs to demonstrate a thorough grasp of the idea that: all legal stipulations that are designed and written in laws, acts or any other legal document must not contradict in spirit and letters the Articles set out in the Constitution.

*Thirdly: The right to freely form associations is one of the basic human rights, which the Vietnamese Government undertakes with the international community to respect and ensure their expression.*

The right to freely form associations is one of the basic human rights, solemnly recognized by most countries in the world in the 1948 International Declaration of Human Rights and written in the International Convention on the political and civil rights in 1966. The Law of Association needs to embody the international undertakings stemming from this Convention.

*Fourthly: The right to freely forming associations is not detached from the function of State management.*

The role of State management in giving expression to the right to freely form associations is embodied in some essential functions such as: recognition of the people's right to form Associations, recognition of the corporate status of Associations, monitoring, inspecting Association activities through report, inspection, departmental examination

regimes, through having policy to support, encourage, create condition for Association activities, warning and dealing with violation of the law on the part of Associations and conflict resolution in the formation and operation processes of Associations through administrative means or civil law.

*Fifthly: The freedom to form Associations can be limited by the Government.*

The government can stipulates limits on the right to freely form Associations in the cases where formation and operation of social organizations can lead to violations such as: causing harm to national security interests, causing harm to public order and safety, social order, affecting community health or morality, affecting the exercise or protection of the rights and freedom of others. These are the limits to the right of freely forming association that the 1966 International Convention on civil and political rights allows member nations to incorporate into their national laws in order to ensure national sovereignty (Article 22).

*Sixthly: Association activities must be encouraged for the sake of a pluralist, democratic and steadily developing society.*

Diversity in organizational forms and activities of social organizations has been and is promoting to the utmost all social resources, community innovations, collaboration with the Government in tackling social and developmental issues. The participation of social organizations in the tasks and domains that the Government currently engages in can be regarded as a sharing of the burden of responsibility by transferring some of it to the civil society. Cognisant of the importance and capacity to contribute of social organizations, the Vietnamese Government has a policy that encourages and creates condition for participation of civil society in government work such as in the Decree 86/2003/ND-CP dated 5/11/2002 from the Government,



the Ordinance 22/2002/ND-TTg dated 30/1/2002 of the Prime Minister on *consultant, critical social assessment activities* of the Vietnam Union of Science and Technology Associations. With the existence of a policy by the Vietnamese Government giving special treatment to Association organizations such as mentioned above, the Law of Association needs to grasp that fact thoroughly and express it in its Articles and Clauses.

*b. A number of main contents*

The Draft Law of Association as prepared by Association organizations consists of 5 Chapters and 55 Articles.

Chapter I: General Articles (from Article 1 to Article 7)

Chapter II: Condition and procedure of registration for Association formation (Article 8 - Article 20)

Chapter III: Operation and organization of the Association (Article 21 – Article 45)

Chapter IV: State management of Associations (Article 46 – Article 48)

Chapter V: Association finance (Article 40 – Article 53)

Chapter VI: Implementation (Article 54, Article 55)

There are six issues addressed in the main contents.

**Firstly: Scope and object of application of the Law**

Object of application of the Law is the relationship between the State and the Association in the formation, organization and operation of the Association.

Due to Vietnam's particular socio-political situation, there is a number of organizations who, although having activities of the similar nature to those of public organizations, play a special role in Vietnamese political system. They should not therefore necessarily be included

in the category of object of application of the Law of Association. However, the Draft does not name precisely these organizations (6 of them) for removal from the governing scope of the Law. The reason is that the Draft's capacity to provide for cases in the future needs to be assured, when one or more of these organizations may become a real Association organization, just like other associations.

Religious organizations are not included in the governing scope of the Law of Association. The legal ordinance on religion has already been issued.

The international non-government organizations (INGO) currently working on Vietnamese territory should not yet be included in the governing scope of the Law of Association. At present VUFO, PACOM act as a nub to the State management of INGO's, based on a number of legal documents issued by the Government. In future, possibly like the Law on Investment, there will be a general Law of Association that applies for all the Association organizations in the country and INGO's in Vietnam.

In accordance with the trend towards Renovation and international integration, the Draft recognizes the right to form associations of Vietnamese with foreign citizenships, as well as individuals and organizations from overseas legally living and working in Vietnam.

The criteria for *corporate entity status* of an Association constitute the condition enabling it to enter legally into administrative, civil, economic etc. relations. At the same time it is an important legal condition in the State management of Associations. That is why the Draft Law of Association has elaborated on the stipulations regarding the procedure for registration of Association formation, so that an organization may be recognized as official, *having a corporate status*. However, in the present reality, the right to form associations and to assemble has been exercised by citizens in many parts of the country

without resorting to *corporate entity status*, such as with the Same-origin Association, Longevity Association, Scholastic Endeavour Association etc. being organizations that are set up on voluntary basis. The Law of Association must still recognize the existence of these organizations. Except for the stipulations related to registration for formation with a State agency, most stipulations of the Law of Association still possess an obligatory meaning for the unofficial organizations.

Ancillary organizations belonging to Associations are also within the governing scope of the Law of association to the extent that they are subject to stipulations by the greater Association Rules, membership regulations, and rules for ancillary organizations passed by the Association.

### **Secondly: Procedure for Association formation**

Official associations requiring corporate status must go through the registration procedure with authorised State agency. The stipulations in the Draft Law of Association on registration procedure for forming Associations should ensure that the democratic, transparent and voluntary spirit is correctly maintained. A simple and clear registration procedure will prevent the abuse of individual rights, doing away with agencies who issue certificate papers of approval for registration, completely eliminating the potential to cause difficulty as with the “requisition and grant” system.

### **Thirdly: Association operation and organization**

The operation and organization of Associations are mainly stipulated in the Association Rules, Regulations for Association activities, based on the voluntary commitment of members. Provisions of the Law of Association do not interfere deeply into the organization and operation of Associations.

In the Draft, Associations are recognized as having the right

*to do whatever is not prohibited by the law.* It also stipulates in concrete terms what the Government proscribes as violations on the part of the Associations (A number of specific Stipulations). On the rights and obligations of Associations, the Draft Law of Association basically recognizes the Association Rules as a legal document fundamental to the organization and operation of Associations. However, the Draft Law of Association also provides for a number of Association's rights, the exercise of which is linked with the obligations and powers of State agencies. On Associations' obligations, the Draft Law of Association pays particular attention those obligations by Associations to assist in the government's work so that it will be more easily facilitated and effective.

Dissolution of Associations is a relatively complex issue, giving rise to the connections from Association Executive Committee to members, to authorised State agencies and to related third party individuals and organizations. To deal with the dissolution of Associations, the Draft Law of Association has differentiated the *self-dissolving* mode from the mode of *being forced to dissolve*. The Draft has also put forward the bases for determining as well as having stipulated the grounds for practical dealing with each mode of dissolution of Associations.

#### **Fourthly: State management of Associations**

When referring to State management, it is necessary to give clear and concrete answers to questions such as: Who (which agency) carries out the management work? What are the terms of management (what jobs have to be done?)? Stipulations in the Draft Law of Association embody the principle that *the State manages Associations by executing the law*.

Although the Draft Law of Association has stipulated on the rights and obligations of Ministries and Departments vis-a-vis Associations, it stops only at the recognition of the rights to inspect and examine

Associations by the departments of agencies, like with any other corporate or legal entity, and they can only do so in complete adherence to legal stipulations on procedure.

In accordance with the administrative reform and devolution, the Draft Law of Association has assigned the agencies for managing Associations, being the Interior Ministry, the provincial and district People's Committees. Such an assignation will on the one hand, creates favourable conditions for State agencies in managing and inspecting associations based on the locality of administrative units, lightening the work load. On the other hand, it facilitates conditions for formation, operation, reporting of Association organizations, especially the Association organizations at canton and village levels.

To avoid differential understanding of the concept of State management, which easily leads to abuse of power in execution, the Draft Law of Association also put forward 9 specific stipulations on the content of State management of Associations. Apart from the employment of inspection, supervision instruments, the Draft Law of Association also provides the authorised agency with another tool to carry out supervision and management of Associations. That is the mechanism of regular reporting on Association activities.

The List of registered Associations at all three levels (Interior Ministry, district People's Committee, village People's Committee) is brought into the Draft Law of Association as a means of inspection and management of Association activities. This is a useful State management tool, also a transparency device for Association activities, helping the public and funding bodies to access Associations more easily.

**Fifthly: The issue of conflict resolution**

It must be first asserted that the relationship between the Government and Associations is that between two subjects on equal footing before the law. The law is not only supreme to citizens and

people's organizations, but it is also above the State agencies and individual government functionaries.

The Draft Law of Association stipulates on a number of cases of conflict resolution through a judicial authority. For a conflict arising between an Association and another legal entity about assets and finances, the Draft Law of Association stipulates that it must be resolved through a court of law.

**Sixthly: Government policy on Association activities for community welfare**

With contents effectively linking and inheriting Association rights and obligations, and State agencies' responsibility, the Draft Law of Association is able to implement the Government's policy towards Association organizations through the 5 specific points above. Finance-wise, the Draft also has 3 provisions clearly stipulating on the State's special treatment for individuals and businesses that contribute to and assist in activities by Association organizations working for public welfare. In addition, for the purpose of creating the condition for Associations to be financially independent, fostering intellectual resources and potentials of Associations, the Draft Law of Association also has clear stipulations on the right of Associations to do business and to provide services. For those who work within an Association's structure and organs, the Draft formalizes their rights to earn income, and their lawful working regime.

Compiled by LUONG NGOC AN

## **THE LAW OF ASSOCIATION NEEDS TO REFLECT AND RESPOND TO THE REAL NEEDS AND DEVELOPMENT OF SOCIETY**

*Dr. NGUYEN THI HAU*

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In the genesis and development history of humanity, there are three fundamental principles of the formation of human society, transforming humans from the status of “the most highly evolved animals” to “the biological species with the highest sociability”:

*The consanguinity or common ancestry principle.* This is a natural relationship that appears ever since the first formative days of the human society. From the blood relationship on the maternal side of the stage of matrilineal kinship to the patrifocal tribes, patriarchal kinship of patrilineal relations... that gradually become relations of the nuclear family (grandparents, parents, siblings) - the extended family (father’s relatives, mother’s relatives, paternal grandparents’ relatives, maternal grandparents’ ones ... relatives of husband/wife ...). *This principle extends gradually in time.*

*The co-residence principle,* or “neighbourhood” relationship, “fellow-countryman relationship”: people of the same hamlet, village, canton or province, same quarter, township, nation, continent... *This principle extends gradually in space.*

*The common interest principle:* This is the principle of social

relationship of those in the same class, status, occupation, gender, age group, hobbies, needs, capacity, concern... *This principle extends gradually with the development of society in diversity and complexity.*

In traditional societies, these three principles are tightly connected to each other, often interwoven, overlapping one another. However, in modern societies, the third principle increasingly assumes an important role as the same-interest relationship becomes more and more widespread, where each individual is in one or more relationships. The participation in one or another relationship, or many of them simultaneously...depends entirely on the practical conditions and circumstances. That is why *"In their real nature, humans are harmonious syntheses of social relations"*. The birth and growth of social organizations outside the State are an expression of a necessary and legitimate need of each person for the protection of material and moral interests, at the same time a contribution to social development can be made. The non-State organizations become an important social institution, however, it does not itself remain immutable. Instead it will change in accordance with the development of society as well as with its own evolution. Conversely, the existence and development of "non-government" organizations reflect the reality of "governmentalised" society or "civil society". Naturally, we cannot regard the relationship between "civil society" and the State as an oppositional one, but need to uphold the conception of the Government as the manager of society that lays down direction and creates conditions for development, whereas the motivating source of development is the "civil society" itself – in its widest sense, including institutions and activities in and outside the country. By looking at a nation's legal system, we can recognize how the government of that country conceives of that relationship in each of the real domains of its society.

The issuing of the Law of Association effectively means the implementation of our Constitution on the people's right to form



association according to legal regulations. However, in my opinion, the spirit of this Draft is still lumbered with “governmentalization” thinking in the formation and operation of Associations, and in organizational and managerial style, still conforming to the “State subsidy” model. The main cause resides in the fact that, as our country has gone through a long period under the subsidized command economy, our social institutions seemed to have been “governmentalized” into State agencies and social organizations that exist on State funding for personnel, expenses and even content of activities. Stepping into the renovation era, there appeared over the last few years many new social institutions with fairly diverse forms of “socialization,” bringing about a reality in that the State has gradually allowed society to take responsibility on its own in many socio-economic domains under a State management mainly of the policy and administration aspects. However, if “socialization” process in the economic sphere has gradually freed itself from the “State subsidy” model at a fairly rapid rate, in many other spheres, this process is still going at a rather sedate speed. To change from a “governmentalised” society to a “civil society,” it is important to set up a legal mechanism amenable to the formation and development of organizations outside the State and according to the needs of society. Our country’s Law of Association, born at this point in time, should reflect and respond to the conditions for a healthy development of the “civil society”.

From such conception, based on the draft for the 9th Law of Association, I have a few suggestions as follows:

*Chapter II Article 3:* For the organizations in this article, if there is an actual list, it should be stated clearly that these are organizations subject to stipulations of other laws. Apart from religious organizations, can those in this article be referred to as “socio-political organizations,” to distinguish them from “socio-professional” organizations being the object of governing of the Law of Association?

*Article 4:* The title for this article should be more precisely “Explanation of concepts” (or “explanation of words and terms).

*Article 7 Clause 3:* I understand by this article that a State agency is stipulated to be responsible to the formation and operation of Associations - a social organization. This leads to a number of discrepancies and difficulties in setting up associations such as: Should the State agency neglect, or be unable to carry out management tasks (either due to insufficient resources or because the social domain concerned is too new or too complex, cadres assigned to managing do not understand, or do not have experience appropriate to the association’s collective activities...) it would be difficult to reach consensus, so much so there would be conflicting opinions on approving the formation of an association for reason of the “complex nature” of the activity domain of that association. On the one hand, it is not possible to form an association in a certain area where society has real needs and which the State itself finds it difficult to manage. On the other hand, it fosters dependence of the association on State agencies and therefore renders associations prone to “governmentalization.”

*Chapter II Article 9 Clause 3:* The actual number of participating members should not be stipulated because if the formation conditions are satisfactory but the member number is insufficient then: 1) Extra names will be enrolled to fill the quota (naturally there will be those who have no real need to join the association, and once they become members, will not be able to exercise fully their rights and obligations), or 2) The association cannot be set up, those in need will not have an organization to operate, their activities will suffer disadvantages (material and morale). Both these situations are not beneficial to society. If this stipulation is necessary then besides the provision for actual numbers, articles and items for a number of particular cases must be added (for instance the association of those who have a certain disability...).

*Clause 6:* In reality, many associations have no assets or not yet owned any upon formation or during the process of application for formation.

*Article 11 Clause 3:* The address of the association headquarters is already recorded in the application for registration file at the authorised State agency (provincial or capital city). It is therefore unnecessary to register with the local authorities where the association has its headquarters.

*Article 12 Clause 1:* Title of the first document needs to be changed from “Application” to “Registration for Association Formation copy” in order to highlight the voluntary nature of the subject forming an association as well as respect shown by government authorities for one of the people’s legitimate rights. At the same time it would show the responsibility and power of State agencies in implementing the Constitution. *Clause 7:* about assets and finance, the words “if any” should be added.

*Article 17 Clause 1 Item C:* There is no need to send the “reports on the elections of executive committee, inspection committee.” State agencies can inspect the association file when necessary.

*Article 39 Clause 1:* Should be deleted as the relationship between the Association and the State agency of the same domain is one of cooperative, supportive and professional assistance when this is needed in both directions. The Association is already managed by the authorised State agency through the law and the Association rules. In reality, many associations are currently headed by persons who are or have been directors of agencies in the same domain as the Association and therefore with a capability and resources to support activities of the Association. However, leading an Association and leading a State agency need to be considered two different realms. For this reason, putting this article in the law will lead to bureaucratising the

organization of Associations, which will find it hard to be independent in their activities as well as in exercising their rights.

*Chapter VI:* According to the Draft, the content of Article 55 renders ineffective the preceding articles. This Chapter is therefore unnecessary, instead right in Chapter I Article 3, “Object of Application” it should be stipulated that: “The Government has separate stipulations for foreign countries and overseas organizations operating legally in Vietnam’s territory”.

From the standpoint of the participants in Association activities, and as a member of a number of socio-professional Associations, I hope that the Draft Law of Association will be expanded and amended in order to suit the object of governing better, to respond to the real and developmental needs of society, to contribute to building an ever more democratic society.

## GOVERNMENT ASSOCIATIONS

*TRAN CONG HOANG QUOC TRANG*

*Vice-President, Ho Chi Minh City Union of Plastics Associations*

We have participated many times in the sessions for contributing our ideas to the Draft Law of Association as organized by the Interior Ministry, the VCCI..., however, we have yet to see our ideas as well as those presented by other Associations incorporated in amendments. Now we would like to continue our with contribution.

1. On the central points, we are in agreement and submit that the process of drafting for the Law of Association has not involved from the very beginning the Association organizations, for whom the Law is implemented. As such it leads to a law lacking in democratic character, unrealistic and less compatible with the process of international integration. This shortcoming needs to be remedied by having public consultations, open widely to the community.

2. In comparison to International Law, Associations outside the Party's and State's management as mentioned in Article 3.2 in the Law of Association, that is, those non-government organizations (NGO) must be clearly elaborated in article 3 on object of application. Article 4.1 should therefore be amended that Associations are NGO's to be compatible with International Law and Laws of Associations of other countries. We have met with many State organizations and non-government organizations of other countries. They all show the concern for the Association as a non-government organization. There

is already a Bureau of non-government affairs in the Interior Ministry to manage Associations like ours, then why can the term NGO not be used in the Law of Association to conform with the international relations language? Thus, conditions and procedure for forming Associations in Chapter II as well as State management of Associations in Articles 6 and 7 need to be examined further to ensure compatibility with international conventions.

3. Having consulted the nine chapters of provisions of the Draft Law of Association, we have the impression that the original Ordinance 102 from 1957 has been recopied with a few small additions, because there is no sign of new elements introduced at this threshold of international integration. Experts on Public International Law and Comparative Law should have been invited to help edit the draft to make it compatible with international law.

4. Content-wise, we suggest the following amendments:

The authorisation of management of Associations in Article 7 only applies to governmental administrative mechanism. With Association activities, division of authority does not mean easier management. Associations operate across local, regional and territorial boundaries, across intra-national and also international borders. At the same time activities of Associations are not limited to occupational domains and can not be prohibited. This Association links up with that Association in order to operate. Since they are voluntary organizations, their national or international relations consist also in voluntary getting together and co-operating. The current situation is one where State management of Associations is replete with shortcomings, as shown in the power of any State agency to manage Associations vertically or laterally. Is this situation not like, as one can imagine, carving up the cake for ease of managing it? Thus the relations and linkages of the Association must be clearly delineated.

#### 4.1. Structural relations

The structure of Associations is totally different from that of government administration, as the superior level to Associations is the Law of Association, and only one State agency is sufficient to manage an Association. Devolution into levels of management is government business. Associations cannot be forced to follow this model to make management easier for the government.

#### 4.2. Relations of vertical and lateral systems of Associations

These comprise a voluntary and cooperative relationship, so long as it benefits the community and serves the members' interests. Stipulations cannot force them into a vertical or lateral system, as this will further bind and tie down Associations in their activities.

#### 4.2. Leadership connections

The executive committee, leader of the Association and persons with sufficient ability, prestige and resources to work for the Association, being elected by members in a General meeting, should not direct and check on personnel as has been done previously. It is all the better if the leader of the Association also happens to be a Party member, but if not, the person concerned should not be pressured into that position. The Party organization within the Association, which is itself a non-government organization, should be looked into. Moreover, members have the right to select, to nominate members of the executive team being overseas Vietnamese or foreigners working in Vietnam, as has been done in other countries.

#### 4.3. Procedural connections

Stipulations on procedures in Chapter II should be implemented through the "one office door" administrative reform regime. In current reality, it takes one year to establish an Association, six months to hold term election. This is not to mention delays from small hiccup or

anonymous letters. Although State agencies do not fund Associations' operations, they consider the latter as their babies, and tend to manage them like they are conducting child care work.

5. As for international relations, we wish to contribute in a separate point, because international relations are equally important to Associations prior to and during the process of integration. Both the old Decrees and the new Law do not elaborate clearly how international relations affect Associations, and because in reality the Associations are mired in the Central-local, vertical-lateral structures, and the centralized, devolved structures at the expense of international relations. Thus international cooperative activities of Associations or their capability to receive international funding from NGO's are limited. Article 36 of the Law of Association mentions about representatives' offices, overseas branches of the Association. This is an opening in the new Law, but if business is allowed then naturally the Association of that business must also be allowed. The issue here is to amend Article 36 such that Associations are allowed to conduct international relations and cooperative activities as provided by Vietnamese and international laws.

6. A new Chapter should be added to the Law of Association, stipulating on the international Associations and overseas Associations organizations wishing to operate in Vietnam. In the process of integration, many international Association organizations and overseas Associations wishing to come and operate in Vietnam but find that there is no Law to guide them, while Associations inside the country wishing to join international Associations do not yet benefit from guiding provisions of a Law of Association.

7. The Law of Association should elaborate clearly on the equality between government Associations and non-government organizations, and between NGO's themselves. In social relations, Associations



are those who realize what the government does not do, in order to foster social connections, implement the law, and contribute to nation building. Thus, the Law of Association should state clearly the rights and responsibilities of Associations before the Government, the Government should respect and protect the interests of Associations being the representatives of the community. To overseas countries, the role of Associations is structured by law and Government policy. That is why business, organizations, or citizens in other countries have great trust in their Association organizations, but in Vietnam they are very wary and reluctant because here the organization of Associations is unclear. Participating in the latter only means hindering their own activities.

## **PROPOSING URGENT SEARCH FOR TRUTH BASED ON FACTS**

*Dr. TRUONG VAN DA*

*Standing Committee Member,*

*Ho Chi Minh City Union of Science and Technology*

*Associations President, Ho Chi Minh City Vietnam-Mongolia*

*Friendship Associations Vice-President, Ho Chi Minh City VAC Associations*

There have been many conferences recently to gather opinions and ideas contributed towards the Draft Law of Association, to be presented to the National Assembly in the near future. I have studied opinions expressed by many brothers and sisters. Among them I have taken much notice of the ideas of Dr. Pham Tuan Khai, Deputy Head of the government Legislating Committee, Barrister Dr. Hong Ngoc Giao, and a number of ideas expressed in the conference at the Vietnam Union of Science and Technology Associations.

For the 9<sup>th</sup> Draft, I wish to put forth the following suggestions:

1. Contentwise, there is hardly any difference between the Law of Association and the government Decree 88. With this content expressed in a government decree, it may still be acceptable, although there have been disagreement on this and that point. Someone has even suggested that this decree is “a pair of number-eight handcuffs” which create so many difficulties in setting up Associations and operating them.

I consider the turning wholesale of Decree 88 into the “law of association” reflects the consistency of the policy of broadening

democracy by the Party and the Government. Due to a number of provisions which interfere too far into the formation and activities of Associations, this law takes over the function of the Association founders.

**For instance: Chapter II** as expressed in various articles:

**Article 13:** Main content of the Association Rules.

The Draft Law of Association practically consists of 15 points. Should these be stipulated in such concrete details? As association rules express the aims and aspirations of the collective membership, if it does not transgress State laws then Associations should be able to operate.

**Article 16:** Main content in the General Meeting on the formation of an Association.

**Article 19, Item 3**

The whole of Chapter IV, especially Article 39, Item 6 on implementing the stipulations on accountancy, auditing, statistics.

**Chapter III: Members**

The content of this Chapter has 6 items (20-25) that are unnecessarily detailed on members. How many types of members would depend on the nature and particular characteristics of each Association.

2. The Draft Law of Association shows a lack of equality and a mismatch with reality, creating difficulty for the operation of a number of organizations. Specifically:

**Article 3:** Object of application

- Why are there 6 association organizations who operate outside the law, while the Union of Science and Technology Associations, having been determined as a socio-political organization, also set up by the Party, possessing a Party delegation operating under direct Party leadership, cannot? Why does the Federation of Friendship

organizations, Friendship Associations... also set up by the Party to carry out public relations duties, whose leaders are mostly the leading comrades sent by the government or the Party to lead the Associations, have to be governed by the stipulations of the Law of Association?

- Vietnam Communist Party, being a Party that directs the political system of the Vietnam Socialist Republic Government, also asserts itself as a Party that operates within the law! For what reason do the 6 Associations stipulated in Article 3 operate outside the framework of the Law of Association, if this Law is passed by the National Assembly?

If this Law is applicable only for NGO's then it must so clearly state. Or the Law of Association is for all then its content must contain stipulations specifically provided for activities of socio-political Associations that are established by the Party.

In brief, I think this Draft should not be presented to the National Assembly, but if presented, the National Assembly should not pass it.

- I propose that we search urgently for truth based on the facts, study the Draft prepared by the scientists (from the Union of Science and Technology Associations and the Lawyers Association) to make amendments to the draft by the Interior Ministry.

## **THE PARTY: THE PILOT THE STATE: THE SKIPPER THE PEOPLE: THE ROWERS**

*Engineer PHAN PHUNG SANH*

*Vice-President, Ho Chi Minh City Union of Construction Science and  
Technology Associations*

From being a colonised country with one half under feudalism that had just gained independence, then went through 30 years of atrocious war, we have triumphed over the powerful imperialist countries through our strategy of “the people’s war,” demonstrating the truth of our leader’s immortal saying: “*If [the condition is] a hundred times not easy, the people can bear with it, if it is a hundred times difficult, the people will manage to deal with it*” - the lesson of “the people’s war” is eternally valid not only for our nation, but also for many oppressed nations in the world.

With peace returned, the country re-unified, difficulties pile up, bringing many socialist countries to disintegration. Facing such a tragic situation, our Party and Government have laid down in good time the “total renovation policy” to stabilize socialism and achieve great undertakings that win admiration from many countries in the world. Our predecessors have taught that: “*In victory, [one should] not gloat vaingloriously, in defeat, [one should] not be discouraged,*” our victory is monumental, however, there are residual problems for us to overcome.

At present, the organization of our government’s administrative machinery is too cumbersome, duplicating functions, “salaries only”

cannot support subsistence, forcing organizations and individuals to resort to “legal and illegal” sources to supplement their wages.

The situation of wastage and corruption... has become a national peril without any effective solution because the government is too involved in economic activities. The decline in dignity and morality... of a number of cadres, Party members occurs at almost every level, damaging public confidence. This problem must be resolutely overcome. The costly lesson of the disintegration of socialist countries is a constant reminder to our Party and government that could not be ignored nor allowed to escape their awareness.

During the difficult period, a politician from overseas who came to visit our country, said: “During the war, you had an invaluable lesson to offer, that was ‘the peoples’ war.’ Now in the (peaceful) time of economic construction, why don’t you put that lesson into practice?”

The result of over twenty years of renovation is precisely the result of mobilizing “the people to row altogether” not only in the economic sphere but also in many other domains in society, in the step by step socialisation of many activity areas that have been undertaken by the State, state-owned enterprises or co-operatives.

Over the recent years, the government has allowed the formation of many associations, federations... with a “non-government” character, by objective demand of the process of integration to international economy. It is also a condition allowing the government to transfer those functions that hitherto have been the responsibility of the government (or the Party). If the Party becomes a pilot to show the right path, the government is a firm-handed skipper, without needing to subsidize or act on behalf of the people, the people will be the most powerful force, in charge of rowing the boat... then the government management machinery will be lighter and more compact, able to avoid economic pitfalls and errors, the nation vessel will travel faster and in the right direction.

The issue of associations and federated associations... comes about from the hope and aspiration of those working in different fields in society. As we all know “one trades with companions, and does commerce in the right guild,” it does not matter what field or occupation one is in, unless one had friends, and belonged to a guild (association), it would be difficult to develop oneself and failure would be likely, as one will not be able to compete on the market. To form associations, and federation of associations... is thus to achieve the aim: a wealthy nation and a strong country, a fair, democratic and civilized society. That is why the Law of Association must be liberal and open in order to attract a large number of participants.

The Ministry-(department)- in-charge role that has existed since our country gained independence must cease, as it has fulfilled its historic destiny that would bring autonomy to enterprises to operate according to the law. The enterprises will not have cause to be dependent and complacent, and will put an end to “*requisition and grant system*”. If enterprises do not have Ministry/department-in-charge, then why should associations and federated associations have Ministry/department in charge of them? It only requires to have one agency authorised to examine operation rules of the associations and federated associations to approve formation and monitor, inspect associations’ activities.

The Draft Law of Association is considerably biased towards managing associations and not giving any weight to laying out directions for their effective and law-abiding operation. And so in which aspect should State management be carried out? In our opinion, the most important thing is the “association rules,” and curriculum vitae extracts of the founding participants.

It is not too difficult to go through the procedure for formation of associations and federated associations, but attracting large numbers of members who are involved and bonded to association activities proves to

be very difficult in the present condition, as it has to answer the question: what actual benefit the association can bring to the members life, and not in theory! The suggestions we would put forward are as follows:

The State is to transfer step by step a number of delegatable functions and responsibilities currently assumed by ministries (departments) over to the care of associations and federated associations. If the State continues to assume the lot, then gives birth to public-interest services "with charge," it would be therefore absurd to allow associations to be set up at all.

Associations and federated associations are social and socio-professional organizations with capacity to assemble experts from many socio-economic areas. They rarely accept pressure from authorities, therefore the function of "consultation, critical assessment and inspection of society" would be most effectively carried out. Even if this would cost time and money, huge wastage as has occurred with previous large projects would be avoided, where formality criticism, obsequious agreement with leaders' ideas should not have happened. Speaking out the truth might upset others (and even ruin one's position), but it is extremely necessary to do so for the sake of our collective endeavour.

The semi-private, private schools will be responsible for training and graduating students when these tasks are no longer under the charge of ministries or departments... Enterprises must participate in the activities of occupational associations and federated associations. Associations and federated associations are to have programmes of refresher courses, of updating knowledge and to certify "professional proficiency" (limited terms). This should be as valid as providing a "practise permit". Naturally the certifier must be totally responsible for his/her signature.

For associations with a long history of activity, possessing sufficient capability, the government should give them privileged loans and land



leased at privileged rentals to set up headquarters, provide coaching services, short refreshing courses, seminars... to disseminate new skills, techniques, materials... badly needed by members in their practice of "using income to recover expenses". If meeting halls have to be hired, recovering expenses will be difficult, especially for special topics that require inviting teachers who come from far away in the country, let alone from overseas.

The organization of Associations and federated associations does not have to work for profit to distribute interests and profits among members, but it does not mean they do not make profits, which they do in order to accumulate resources to build up material bases, technical equipment... And those who work professionally for the association have to be paid, at least at a good rate compared to the average salaries in society at large, or it will not attract young and capable people to work for associations. Otherwise, association work is only done by aged and retired persons... who are bored at home, and want to find amusement in going work. This surely will never help the associations to develop.

For now, it is necessary that a number of associations receive financial subsidy from the government who, however, should make public the projected trajectory and date when funding will stop. Otherwise it is blatantly absurd for so-called "non-government organizations" to receive funding from the government!

Furthermore, it is necessary also to form teams of suitably trained cadres to study, observe etc the organization of associations and federated associations in developed countries to find out how they are organized and how they balance their budgets to apply to our country's condition. Moreover, research into the way the rapid formation of numerous NGO's in socialist countries has been used by unfriendly forces in the world to oppose progressive forces, in order to work out preventative measures for our country.

## **MAKING OUT THE SOCIO-POLITICAL ORGANIZATION WILL CREATE LEGAL INEQUALITY BETWEEN ASSOCIATION ORGANIZATIONS**

*Barrister NGUYEN TRAN KHANH*

*First Deputy - Director - Invest Consult Group*

1. Object of application: In Vietnam today, there are actually many social, socio-professional, developmental, communal, socio-political organizations...all working under such common aims as voluntary basis, serving not for profit, to protect the legitimate and lawful rights and interests of members and the community, contributing to national development. That is why making a distinction of socio-political organizations (Vietnam Labour Union, Vietnam War Veterans' Association, Vietnam Women's Union...) as has been laid down in Proposal 1 Article 3 of the Draft would not be necessary and would create legal inequality among all "Association" organizations.

2. On State management of Associations: The Draft Law of Association has similar traits to the Enterprise Law in the stipulations on registration procedure for formation (agency-in-charge approves Rules, lodging of document listing assets to underwrite Association activities...), and therefore it does not suit the activities as well as characteristics of the Association. Provisions and policy of management of Association that are completely different from business management should be introduced. Based on the following:

- The Association is a voluntary and autonomous social organization;

- Association members are subject to the Association Rules;

- The Association is a non-profit organization. However, Associations have the right to set up an enterprise, to organize its own business in the form of investment, to practice trading or provide service in accordance with related laws and legal provisions.

The State should manage Associations by law, where policy should be the principal focus, not the type of management applied to businesses by Government Offices and Ministries. We could imagine the task of State management as only at the level of creating a game-playing rule where an Association is recognized as a corporate entity in a common "playground," not contravening legal prohibitions, and where stipulations that intervene too far into the organization and internal affairs of Associations would undermine the intrinsic nature of the Association.

3. On qualifications and procedure of formation of Associations: As mentioned above, an Association is a "self-governed" organization in accordance with the Association Rules. It can therefore be said that the set of Association Rules is its "constitution", which the subjects wishing to join would, as a pre-condition, agree upon and comply to in order to become Association members. That is why, the issuing of permits for setting up Associations should proceed as follows:

i) Processing application and notification of approval for Association formation subject to Rules being passed;

ii) Based on Association Rules and General Meeting report, authorised agency issues certificate of formation to Association.

Separation into two processes as above will clearly reveal the supremacy of government policy and the law vis-a-vis Associations, at the same time it will safeguard the voluntary and autonomous nature of the Association while ensuring State management of Associations.

On State agencies authorised to issue certificates of formation to Associations, we submit that:

i) For Associations with an operational territory exceeding the domain of provinces or cities under Central administration (with members in different provinces and cities): The Police Department will be the agency authorised to grant approval;

ii) For Associations with an operational territory exceeding the domain of districts or cantons, but within a province, or a city under Central administration (with members in different districts and cantons within one province or city): the authority will be the People's Committee of the province or city where the Association has its headquarters;

iii) For Associations with an operational territory within the boundary of a district or canton (members in the same district or canton): the People's Committee of the district or canton where the Association has its headquarters.

Also at the conference to contribute ideas to the 9<sup>th</sup> Draft Law of Association organized in this Ho Chi Minh City, in agreement with Dr. Truong Van Da's ideas were also two other opinions, one from Writer Dạ Ngân (*Van nghe Weekly*) and the other from Barrister Pham Vinh Thai, Vice-president of the Ho Chi Minh City Lawyers Association.

Not being a researcher in legal studies, but with intuitive feelings together with comparisons based on language with other law texts, Writer Da Ngan maintains that the 9<sup>th</sup> Draft Law of Association does not provide us with a literally sound document on law infringement. As for content, Da Ngan remarks:

*I think the law is like a sky, ensuring equality for all the subjects standing under it. However, I notice the present Law of Association is like a tunnel, making people feel claustrophobic and suffocated. Putting the 6 social organizations outside current stipulations is unreasonable ...*

This is followed by her own arguments, and a warning from Writer Da Ngan: *The law also bears the stamp of the time, and of society. We have bid*

*farewell to the subsidized society long ago, but the Law of Association is not yet able to take this issue into account. That is why it becomes obsolete before it is issued. If it is an obsolete law, people will not abide by it, not only the law will be ineffectual, but also prone to the danger of fostering dishonesty in society.*

As for Barrister Pham Vinh Thai, his standpoint is wholly from a perspective of a researcher whose focus converges on a few basic points that call for solution. He maintains that: *“In order to have good Law of Association, the Drafting Committee or whoever given this responsibility must establish what the aim of constructing this law is...”*. For him, practically the aim of guaranteeing the people’s right to form and operate associations must be set out clearly. Secondly, the State is always inclined to suspect that some will take advantage of the right to form associations to do something else. Such suspicion is normal, but to design from the basis of that fear a law that oppresses the freedom to form associations is not a desirable thing...”.

Finally he also came to the conclusion that with a content such as that of the present 9<sup>th</sup> draft, it should not be presented to the National Assembly for consideration. Moreover, he proposes that the Organising Committee of this conference should collect all the ideas raised here to send to the National Assembly when the representatives will need to consult this Draft.

At the conclusion of the conference, the Organizing Committee assembled the proposals that the representatives had put forward. It is hoped that from this conference, with a frank and forthright, open and constructive spirit, coming from practical needs and working experience in a capital city that has been and is developing in many aspects, the proposals raised here will be accepted and implemented as they deserve to be, also in a constructive and soul-searching spirit.



*Civil society action towards the Law of Association*

## **SYMPOSIUM IN THE “SAIGON ECONOMIC TIME” PERIODICAL - THE DIFFICULTY IN FORMING AN ASSOCIATION**

*On celebrating the 13<sup>th</sup> anniversary of establishing (March 1993), Saigon Times Club organized a seminar with the topic “Promoting the role of associations in advancing towards civil society”. Nearly 30 delegates participated, with half of them representing associations and professional clubs. In the same period, another seminar aiming at contributing ideas towards the 9<sup>th</sup> Draft Law of Association was also organized in Ho Chi Minh City during the previous weekend. The Saigon Economic Time summarily records the ideas contributed at this seminar and also issues related to the role of the associations in a civil society.*





## **STILL GOVERNMENTALIZATION, STILL BUREAUCRATISATION**

### **WHEN ASSOCIATIONS ARE GOVERNMENTALIZED**

Since the start of renovation, especially when the socialization policy is stepped up, public associations have been formed in increasing number and have definitively contributed to the socio-economic development, and strengthened community bonds. In general, however, it is noted that the majority of public associations are still weak in organization, activity, and have not sufficiently heightened their social efficacy. Many associations only have a formal shell, while activities seem invisible. A number of associations have their stature exploited as cover for doing business, selling services in the interest of a small group. There are associations that have been formed not out of the people's real needs but by the pressure from super-ordinate associations, at up to four levels removed like with the echelons of public administration... There have been remarks to the effect that the shortcomings of occupational and professional associations since many years back, as revealed by public opinion so far, still persist today.

Many causes lead to this situation, but the most important of all, according to Mr. Nguyen Phu Binh, Head of Association Party Committee Office, Agit-prop Committee of Ho Chi Minh City Council Executives, is because the characteristics of civil society and the self-managing principle of associations have not yet given due

recognition and attention. Or, to put it in the words of the sociologist Tran Huu Quang, the public organizations and associations have been bureaucratized and governmentalized.

This trend to bureaucratize and governmentalize comes from the thinking of the subsidy era, according to which the public associations is an extension of the arm of the Party and the State. They therefore need to be managed, directed as a unit in the public service system, an administrative agency! There is fear that associations cannot be put under firm control, that is why there must be agency-in-charge, inspection of associations' executive personnel, funding for activities, payment of wages... The voluntary and autonomous characteristics are lost, and when their meanings and role are governmentalized, the effect and attraction of associations on people would greatly diminish.

## **ASSOCIATIONS ARE CIVIL ORGANIZATIONS**

In order to rectify and promote the role of associations, it is of foremost importance to determine clearly what kind of organization is an association, and whether society needs associations.

The 9<sup>th</sup> Draft Law of Association has explained that an association is a voluntary organization, having a legal corporate status, regular activities, without profit motive, and aimed to protect the legitimate rights, interests of members and the community, contributing to national development. The phrase 'without profit motive' is elaborated further as: not aiming to seek profit to divide among members but using it according to rules in their association activities (Items 1 and 2, Article 4). In the six principles of organization and operation of associations raised in the draft, the principles of voluntary participation, self-management, sole responsibility in front of the law, and financial independence are also reiterated.

Thus, the Draft Law of Association has firmly defined the basic characteristics of the association. However, there are many puzzling

questions raised as to why the draft does not clearly state that associations are NGO's as the term has been used internationally.

According to Mr. Tran Huu Quang, it is necessary to determine that the association - popular groups in general - is an institution within the civil society, alongside other institutions such as schools, religious bodies, the media...Associations are not political parties, nor are they units of the State machinery, but a civil organization formed to respond to socio-cultural needs of the people. These needs are very diverse, thus many different forms of association. Through their activities, associations contribute together with the government towards development of society, as reality shows, the State cannot do everything. When associations develop vigorously, society is further strengthened.

For Mr. Quang, we can define the association according to four basic characteristics: self-managed, independent organization, assembling voluntary participants and working towards certain common goals (charity, professionalism, entertainment, arts, etc. and naturally in compliance to provisions of the law).

## **IT SHOULD BE CALLED "THE LAW REGARDING THE RIGHT TO FORM ASSOCIATIONS"**

On the right to form associations, the Draft Law of Association recognizes the right to form associations and the citizens' freedom to join or leave an association (Article 1). According to Ms. Truong Thi Hoa, a lawyer, compared to the Law that stipulates on the right to form associations (dated 24/1/1957), the Draft Law of Association has made some progress, which is to allow foreigners with long-term residence in Vietnam (more than 24 months) and overseas organizations operating legally in Vietnam can form associations (procedure to be determined by the Government) as per Articles 53, 54, and 55.

However, Lawyer Hoa remarks that the 1957 Law is clearer on the right to form associations compared to this Draft. The 1957 Law not

only recognizes that: “Everybody has the right to form associations, except those who have lost their citizen’s rights or are being prosecuted by the law,” but it also stresses that: “The citizens’ right to form associations are respected and guaranteed, no-one can infringe on the right to form associations, and the freedom to join or leave an association, of another person,” and it confirms that: “the objective of forming an association is to contribute towards the building of our people’s democracy for our nation”.

Stressing the importance of the right to form associations, Lawyer Hòa maintains that the draft is incorrectly named Law of Association; it should be called the Law on the right to form associations. Many opinions at the seminar concur with this idea.

In relation to the procedure for forming associations, at the seminar held jointly by the Federation of Scientific, Industrial and Production Services Associations and the *Van nghe* Weekly in the previous weekend, Dr. Pham Huu Nghi, Editor-in-Chief of the *Journal of Government and Law*, stated that the draft has laid down too many conditions for forming associations, right down to the stipulated format according to which the association rules must be written. Meanwhile, rules are undertakings by participating members. Being guideline objectives for activities of each association organization, they vary from association to association. The State should not intervene into content details of the rules, Dr. Nghi proposes, so far as the guideline objectives for activities do not contravene the constitution, the law and do not commit offences regarding prohibited matters as well.

## **IN CHARGE OF ASSOCIATIONS IS THE LAW**

The 9<sup>th</sup> Draft Law of Association continues to retain the State management model for associations as follows: “The Interior Ministry exercises State management...; Specific Ministries exercise State management on association activities in the domain of their

responsibility." Many have expressed the opinion that since the Government has given the Interior Ministry the task of State management of associations, it would be sufficient to leave this task of State management completely with this agency. In the process of operating, associations abide by the law and the association rules as well as complying to other laws. They should not be forced to submit themselves to the management by specific ministries with other relevant authorities. Most ideas presented at the seminar organized by the Saigon Economic Time consist in stating that the content of the Draft this time concentrates on the issue of State management of associations but hardly mentions the role, power of the association and the support, ability to create conditions for development of associations. Mr. Nguyen Trong Xuat, Vice-President of the Ho Chi Minh City Support Association for Disadvantaged Patients, maintains that: "State management is for development, for creating conditions in which citizens could foster their own capacity, whilst up to now there has been a preferred management mode similar to the way of caring for children as someone has expressed. As the commentator observes, the Draft Law of Association is not unlike an administrative statute of a Government agency and not a law! The Law has not yet expressed equality between citizens and State agencies when it does not stipulate clearly in case of conflict between the citizens and the management agency in forming an association, whether or not citizens will be able to sue, and which court of law will arbitrate? Only such clear stipulations will show whether or not civil society exists."

Moreover, according to Mr. Xuat, the system of State agencies being in charge of associations should be abandoned.

In agreement with this viewpoint, Mr. Phan Phung Sanh of Ho Chi Minh City Construction Science and Technology Association, reasons: For popular collective organizations, the law should be liberal and open and not obsessed with tight management like in the Draft. And if

business enterprises operate without ministry or department in charge, why should associations have ministry (department) controlling them? For Mr. Sanh, “The Government needs to trust the people, delegating tasks to the people, instead of taking on all the work”.

In general, the views are that associations need to be allowed autonomy, independence within the law. There is a view asserting that the superior authority in charge of associations is the law itself. Or in the words of Mr. Le Hieu Dang, Vice-President of Ho Chi Minh City Vietnam Fatherland Front: “Associations operate within the law, there is no reason to have State agency-in-charge!”

That does not at all mean State management of associations should be abolished. Most views agree that associations must be registered to be able to operate and the Government needs to have an agency for monitoring, supervising, inspecting association activities and deal with infringements as laid out in the Draft. The issue is to implement in a one-office-door, one-nub regime and with easy procedures.

## **STILL NOT COVERING ALL REAL CASES**

Like previous drafts, the 9<sup>th</sup> Draft continues to place the 6 organizations including the Fatherland Front, the Labour Union, the Youth Union, the Farmers Association, the War Veterans Association, and the Women’s Union outside the governing scope of the law. The Draft also provides at the same time stipulations on associations with corporate status.

In the seminar organized jointly by the Construction Science and Technology Association and *Van nghe* Weekly magazine, Mr. Truong Van Da, Vice-President of the Gardening Association, maintains that it would be unfair and unrealistic to place these six organizations outside the governing scope of the law, because in real essence these are also association organizations and they also have connections with other association organizations. Although these six organizations have special

duties entrusted by the Party and State, and are called socio-political organizations, as distinct from other social organizations which are socio-professional ones, they are also objects of application of this law. However, in some specific activities, they will be governed by separate stipulations.

Dr. Hong Ngoc, a law academic from the National University of Hanoi, maintains that because of their special characteristics, these six organizations are also governed by separate stipulations but the Draft should be able to predict that in future, these organizations will become true association organizations. This is similar to the unification of law for all forms of business enterprises today.

On the governing scope of the Draft, Dr. Giao raises the issue that there are at present hundreds of unofficial associations formed all over the country since many years such as same-native-village associations, mutual help associations... They were spontaneously set up and have been very beneficial to society without needing a legal corporate status. According to the draft law, if applied, these organizations are considered to have violated the law. Forcing them to be registered will have disturbing ramifications as they form part of the natural existence of society. That is why the law must cover this reality.

According Mr. Nguyen Phu Binh's record, Ho Chi Minh City presently has 170 associations officially approved for operation and about 1,000 popular spontaneously formed associations, groups (such as same-origin, same-lineage, students friendship associations...) that are yet to be governed by law. Mr. Binh proposes that the law should clearly stipulate and recognize two types of associations: official ones (with compulsory requirement of being approved for registration and having corporate status) and unofficial ones (tacitly recognized by law, not required to possess corporate status - as in other countries, with registration regime applied only when meetings and activities are held) for spontaneous forms of associations and groups such as same origin and friendship types.

*Noted by CONG THANG – CAO CUONG*

## **CITIZENS HAVE THE RIGHT TO FORM ASSOCIATIONS**

*Mr. LE HIEU DANG*

*Vice-President, Ho Chi Minh City Vietnam Fatherland Front*

I think the Law of Association must be called the Law on the Right to Form Associations. Citizens have the right to form associations and the Government should create conditions for people to form associations. It is the need of civil society and is also for the sake of the collective development of the country. However, the important proviso enabling us to achieve that is to institutionalise the Party leadership. Without clear institutionalisation, it would easily lead to abuse of power.

How did a deputy secretary of the City Committee, not a student, get to be the President of the Students association? Or how come the Scouts as a good organization for educating youth, having had senior leaders who participated in the revolution, now that it wants to revive its operation, is not given permission? Is it because only the Communist Youth Union has the monopoly of operation?



## **FORMING AN ASSOCIATION – WHAT A DIFFICULT JOB!**

*Mr. NGUYEN CHAN TRUNG*

*Head of Overseas Vietnamese Committee, Ho Chi Minh City*

Mr. Trung remarks that the Draft contains no article referring to the issue of overseas compatriots participating in associations in this country or setting up associations relating to their interests. This is not appropriate when the Party Resolution 36 has recognized that overseas Vietnamese form an unalienable part of the nation, being a source of strength in contributing to national development.

Mr. Trung also informs that, recently at the Ho Chi Minh City Lawyers Association, there is a document proposing allowance for overseas Vietnamese lawyers to join this association. It did not get through, however, as it is snagged by Decree 88 (this Decree stipulates the organization, activities and management of associations, its section on members does not have any stipulation on allowing overseas Vietnamese participation). For this reason also an overseas Vietnamese Union of Science and Technology Associations could not be established. In the end, to get around this, a club was formed. Naturally, a Federated association differs vastly in characteristics, status and range of activities from a club.

## **ASSOCIATIONS TO DRAFT THE LAW – WHY NOT?**

*NGUYEN TAN*

In December last year, the Vietnam Union of Science and Technology Associations (VUSTA) caused a shock when they put forward a Draft Law of Association they themselves prepared following the Union's disagreement with the Draft put out by the Interior Ministry. The VUSTA Draft has six chapters, 56 articles and was prepared within 10 days immediately after the Draft Law of Association (8<sup>th</sup> version) of the Interior Ministry was publicized and met with severely adverse reactions from scientists. The Draft Law of Association has been prepared by the Interior Ministry for over ten years but has not reached the requirement. Contributed ideas have hardly been incorporated. "Facing this situation, we were unified in contributing to the Draft by another Draft we prepared ourselves" – Dr. Hoang Ngoc Giao, representing the editorial group, recounts.

The fundamental difference is that, for Dr Giao, if the Interior Ministry's Draft remains chiefly an administrative instrument to deal with the associations, then the VUSTA's Draft essence is to ensure that associations activities comply with the law, at the same time to create favourable conditions for associations to operate. One of the notable points is that the VUSTA Draft proposes to recognize also unregistered associations. As the right to form associations has been provided by the Constitution, with or without the law, a number of association types such as same-origin associations, support associations, associations for fostering scholarly studies... have been nonetheless recognized tacitly

by the State without worrying about their legal corporate entity status. However, an unregistered association will not have corporate status.

On registration procedure for formation, VUSTA designs to the effect that it only requires a period of time following registration with an authorized State agency before a general meeting can be called for formation of an association without approval paper. Further, applicants for association formation have the right to take legal action against the State agency concerned if registration is refused or association rules are not recognized or the association dissolves. Dr. Giao maintains that although the Interior Ministry Draft is claimed to have been modified in the direction of registration, its essence is still locked in the "requisition and grant" mechanism as permission must still be sought at many stages. In another aspect, there is no mechanism here to protect the right to form associations in such cases as mentioned above.

VUSTA proposes six prohibited acts in order to implement State management of associations. Besides these six prohibited acts, associations can do what they want. Another proposed administrative tool is to set up a list of associations and this list should be broadcast widely in the form of an almanac or uploaded on the Internet. According to Dr. Giao, the above administrative mode will not only create condition for association activities, but also contribute towards minimizing arbitrariness, negativities and alleviating losses of human resources from State agencies.

The proposal of a Draft put forward by a social-professional organization in parallel with the draft prepared by a government agency not only stimulated interest but also brought high regard in appraisals from the specialists' circle. Mr. Trần Quốc Thuận, Deputy-Director of the National Assembly Office, expressed surprise saying that there has never been a Draft that receives such thorough contribution of ideas as to have an altogether new draft proposed like that. As for Mr. Phạm Tuấn Khai, Deputy Head of Law construction Committee (Government

Office), these contributed ideas are appropriate and worthy of being discussed. Especially, he is in full sympathy with the innovative idea of setting up and publicize the list of associations. Madame Pham Chi Lan, member of the Prime Minister's Research Committee, also remarks that she prefers the VUSTA Draft to the Interior Ministry's draft as it is more encompassing and complete, especially in the recognition of the category of unregistered associations.

Regrettably, according to Dr. Giao, the whole lot of contributed ideas in the Draft to date has not been accepted. There has been correction done in a few places, says Dr. Giao, but only on the phrase and word levels. As such, can VUSTA present it to the National Assembly as a legal proposal? Dr. Giao informs that this is not possible, because by regulations, except for a number of State organizations and agencies, only National Assembly delegates have the power to do so. Meanwhile, approaching the Assembly delegates to present this issue is not an easy matter either, because there has not been a precedent or mechanism set up for it.

## **ASSOCIATIONS AT LEVELS HIGHER THAN DISTRICT NUMBER BY THE THOUSANDS ALL OVER THE COUNTRY**

Saigon Economic Time *Magazine* on 6/4/2006

According to a Government report, up to June 2006, there are 320 associations operating countrywide. Among these, there are large ones such as Vietnam Union of Science and Technology Associations with 53 member associations, or the Federation of Literative and Art Associations with 10 specialised associations and 61 province-level federated culture and arts associations. Besides, there are 2,155 associations at province and district levels (approved by province and district People's Committees for formation). Prof.Dr. Dinh Van Mau of the National Institute of Administration states that the phenomenon of increasing number of associations since the 1990s shows that the market economy has stimulated the appearance of groups with common interests, and they need guarantee and protection by an organization of the association character.



**AROUND THE DRAFT OF ASSOCIATION  
BY ASSOCIATION ORGANIZATIONS**





*As currently stipulated by law on the procedure of setting up a law, the Government is the agency responsible for the preparation of almost all laws and ordinances to present to the National Assembly. The drawing up of a draft for the Law of Association has been assigned to the Interior Ministry for directly proceeding with its preparation, and a number of State agencies to participate in drafting.*

*In the process of preparing for the Draft, as well as when the Draft is completed, the canvassing for ideas from the public, social organizations and objects of application of the Law is a legal requirement of the legislative process (Article 3, Law on legal documents issued have stipulated clearly on this subject matter, the Government also has issued Decree 101 with clear provisions on the responsibility of the drafting agency to consult with objects of application of the Law). To comply with this stipulation, after completing the 3<sup>rd</sup> Draft Law of Association, the Office for non-government organizations, Interior Ministry, began to hold many conferences, seminars with association organizations and social organizations to gather ideas. At these conferences (from the 3<sup>rd</sup> Draft to the 8<sup>th</sup> Draft), there have been many contributed ideas of strong conviction, practicality, objectivity and scientific soundness from researchers, specialists at State agencies, departments, branches of the Party, and the National Assembly. However, it is regrettable that until a fortnight prior to the presentation at the National Assembly, at a conference on the Draft Law of Association held by the Drafting Committee of the Government Office on 13/12/2005, the 8<sup>th</sup> Draft prepared by the Interior Ministry still caused much vexation about its basic content matters.*

*At the conclusion of the conference, delegates proposed the idea of organizing a group of experts to prepare a new Draft Law of Association as a reference basis, to be allowed to collaborate with the Drafting Committee towards a really workable Draft Law of Association.*

*Realizing the above mentioned proposal, receiving at the same time the support and encouragement of the Head of the Interior Ministry's Office for Non-government Organizations, who has in the past made a suggestion at seminars for contributing ideas to the Draft Law of Association, to the effect that: it is strongly hoped that contributed ideas will consist in drafts of actual articles of the*

*Draft Law of Association, and not just ideas that stop at general observations. The Vietnam Union of Science and Technology Associations, the Vietnam Lawyers Association and a number of association organizations have gone ahead with organizing a study group to prepare a text synthesizing the ideas and aspirations of various Associations and social organizations as presented at the seminars and conferences, to bring together ideas for the Draft Law of Association prepared by the Interior Ministry, under the form of a Draft Law of Association.*

*On 23/12/2005, the Vietnam Union of Science and Technology Associations held a conference introducing ideas and aspirations of Association organizations in relation to the content of the Draft Law of Association, under the form of contribution by a complete Draft Law of Association (provisionally called the Association organizations' Draft Law of Association). Although this is not an official Draft, the Association organizations hope that the content of this Draft will be examined, accepted and reflected in the official Draft Law of Association presented by the Interior Ministry.*

*Commenting on this endeavour by the Association organizations concerned, the Deputy-Director of the National Assembly Office, Mr. Tran Quoc Thuan says: "The fact that scientists, maintaining the Draft Law of Association has not reached required standards, take it on themselves to write another draft, is highly laudable. This should be judged a positive contribution of ideas... This is a complete and total contribution, should be praised by public opinion, as it is an expressed exercise in democracy. Up to now I personally have never seen any draft that has received such a total contribution of ideas as to have a new document produced like that".*

*In the above sense and spirit, the Draft Law of Association as prepared under the initiative of VUSTA is considered the Association organizations' Draft Law of Association. This draft has been sent to various experts, researchers, and a number of Association organizations to canvass opinions. It has been thus corrected and amended up to its 7<sup>th</sup> version and presented at the Science Conference of 23/1/2006 in the presence of a number of National Assembly delegates, researchers, representatives of various Party and State committees, departments, and agencies.*

## **THE LAW OF ASSOCIATION IS A LEGAL STIPULATION ON THE RIGHT TO FORM ASSOCIATIONS AS DETERMINED BY THE CONSTITUTION**

*Prof.Dr. NGUYEN HUU TANG*

*Vice-President, Vietnam Union of Science and Technology Associations*

Although there have been many conferences organized in the central as well as regional areas, the basic content of the Draft Law of Association is “persistently” kept unchanged. The Drafting Committee seems to have ignored many sincere ideas contributed by Federated Associations, Association organizations from central to regional areas, by lawyers, by those deeply concerned with the associations’ activities and development of society. In the final analysis, to my mind, the difference in viewpoints on designing the Law of Association between the drafters and the contributors of ideas has led to this phenomenon. The Draft Law of Association by the Drafting Committee clearly expresses the view that a tight management of association activity is necessary (associations have to apply for government permission and report on so many things, be managed by at least two State agencies, even this could be understood as having a Ministry-in-charge). The Associations have to perform too many duties, while too few of their basic rights are clearly determined. The Draft Law of Association contains many stipulations that interfere too deeply into Associations’ internal affairs, making it difficult for Associations to operate.

The Law of Association is a document stipulating the legality of

the freedom to form Associations, as determined in our Constitution (Article 69). To solve this problem means to sort out the relationship between the managing State agency and Associations. The less there is in the terms on management, the more freedom there is in its character. The Law must resolve this issue so that a harmony between management and the Associations' freedom to operate can be ensured. That is the basic content of the Law. In my opinion, the orientation in designing the Law of Association needs to ensure dealing with the following issues:

*1. Assuring equality between Associations of the same characteristics*

The Vietnam Union of Science and Technology Associations is a socio-political organization like the Farmers' Union, Labour Union... therefore these organizations need to be treated as equals. Moreover, our Party has affirmed the workers-peasants-intellectuals alliance is the revolutionary foundation of our country. The Law of Association can not treat discriminately against organizations that represent the intellectuals.

Because of these sticking points, I propose that this Law should not govern socio-political organizations.

*2. The Government needs to guarantee the citizens' high degree of freedom (or the highest) to form and dissolve Associations*

Procedures for forming and dissolving Associations need to be simplified to the maximum degree. The State managing agency only needs to know the initial parts of the matters: the Working Committee for setting up Association (minimum 3 persons) being capable, having acceptable civil demeanour, and the domain of Association activities not coinciding completely with that of an existing Association. These would be sufficient to ratify the approval for organizing the General Meeting for Association formation (which should only take 10 days).

The State managing agency needs a report from the Association following the General Meeting: Rules, Executive Committee, main headquarters, registration of assets and finance. After inspection, if there is no legal infringement (within 45 days), the State managing agency would issue the paper of registration of Association formation enabling its operation.

Regarding the dissolution of Associations, the State managing agency needs to concern itself with only two things: Violation of the law to the extent of forcing dissolution, and distribution of assets. The distribution of assets should be entrusted with an administrative tribunal. If the Association is not able to distribute its assets according to its rules, then on dissolution of the Association, those assets go to the public funds.

The law should not interfere too deeply into the internal organization of the Association (General Term Meetings, General Meeting agenda, voting principle, responsibilities and power of the Executive Committee...) or it will undermine the independence, autonomy and dynamism of the Associations in their social activities.

These matters are reserved for the State managing agencies to fulfil their consultant role to an Association in the design of Rules, the handling of its affairs, where they should not bring in the law. With such thinking, we could do away with dozens of Articles of provisions in the Draft Law of Association.

*3. The Association is an organization that needs to be equal to other organizations in society of the same activity domain, there must be therefore a separate chapter on the rights and obligations of Associations in society*

In my opinion, the Association needs to have these basic rights (it is impossible to have only those rights characterized by their concern with internal affairs as in Article 38 of the Draft):

- The right to participate in planning policy, laws in related domain of activities, as an Association is a people's organization, and State power belongs to the people;

- Equality in participating in activity domains registered, as with other organizations (including State organizations) such as: research, scientific and technological services, programs for national socio-economic development;

- The right to supervise (as a people's organization) activities of State agencies in registered domains;

- The right to do business lawfully, to earn income for the Association: the right to receive funding from inside and outside the country and the right to fund other organizations for charity, humanity and mutual assistance purposes within the same domain of activity;

- The right to conduct lawful international relations;

- The right to carry out duties as stipulated by the Association Rules.

The Association is to fulfil the following basic obligations:

- Complying with the law and Government stipulations;

- Not working against interest of the country and national security;

- Not working against the interest of other social organizations.

*4. State management of Associations is aimed at creating conditions for association to work through proper a legal corridor based on the principles of transparency and facility*

- State management of Associations should be done through one office door only. If the Government is not in the condition to do so, a Ministry or People's Committee should be assigned. The terms of management should only be within the necessary scope for a registered organization (annual report to monitor their activities, changes in

personnel, assets, finances needing re-registration; examination of possible law infringement). The State does not interfere into the internal affairs of Associations. It is up to each Association to submit voluntarily to the leadership of a certain organization, as it is their right.

- The government is to remove procedural mechanisms to create conditions for Associations to operate. The government has the right to fund certain aspects of an Association if such Association activities are greatly beneficial to society. The government can reward an Association materially for a certain activity having achieved great results.

- The State would be better to take early preventative measures against Associations' violation of the law than to let them transgress before dealing with them. This should show the government's compassion towards citizens.

With such viewpoints, I believe that the Law of Association will be clear and open, ensuring the freedom to form Associations (an indispensable thing in modern society), contributing to the advance towards a civilized society, and international integration.

## **THE NATIONAL ASSEMBLY STANDING COMMITTEE DISCUSSING THE DRAFT FOR THE LAW OF ASSOCIATION**

*HUONG GIANG*

*HANOI MOI periodical, 5/4/2006*

### **NO EXCEPTIONS FOR “SPECIAL” ASSOCIATIONS**

On the morning of 4 April, the National Assembly Standing Committee (NASC) heard the Interior Minister Do Quang Trung's presentation of the report on the Law of Association project. The Minister stresses that the Law of Association is being designed in the spirit of the Party Central Committee's Resolution 5 at the 9<sup>th</sup> Congress, “giving concrete expression to the citizens' right to form Associations, laying a legal foundation and creating conditions for Associations' activities, fostering creativity of all elements of society.” There are therefore many progressive points in the content by the NASC that receive favourable appraisal such as: widening the range of object members (associate members, honorary members), allowing foreign individuals, organizations currently working in Vietnam to form Associations.

However, the Head of the National Assembly Law Committee, Vu Duc Khien, has brought to the attention of the Drafting Committee the rather cumbersome and complicated procedure for forming Associations in the Draft, not compatible with the content of current



administrative reform. It is necessary to reduce as much as possible the unnecessary procedures to create favourable conditions for the formation of Associations. Many disagreeable ideas over the law “sidelining” the 6 big socio-political organizations of our country. They are: the Fatherland Front, the Labour Union, the Women’s Union, the Ho Chi Minh Communist Youth Union, the Farmers’ Association and the War Veterans, as one “dares not” consider these as ordinary associations. Delegates propose that these 6 organizations should be brought into the law’s governing scope to guarantee equality, openness, and transparency of associations in general and to overcome the situation of bureaucratising the organization and operation of “special” associations like what we have today.

## **PROCEDURES ARE STILL COMPLICATED**

*LE SON*

*Ho Chi Minh City Law periodical, 5/4/2006*

- **Draft still steeped in the idea of “tight” management of Associations**
- **Formation of foreigners associations and organizations are not yet allowed**

### **ABANDONING THE AGENCY-IN-CHARGE SYSTEM?**

“After the Association is formed, who will manage it, and how will it be managed?” – these are “hot” questions raised by members of the Standing Committee of the National Assembly while discussing the Draft Law of Association. Many opinions express dissatisfaction with the draft having stipulated too tightly on management. State managing agencies should not interfere too far into personnel structure, pleads a representative of the Union of Science and Technology Associations. He cites as an example the story of the Vietnam Union of Medical Associations. At that time, the Party committee in the Ministry of Health wanted to introduce some other person to the rank of executives but his fellow members did not agree. That is why the Law of Association this time must bring radical change to any outdated thinking, he says, and cannot turn associations into organs of the Ministries, government departments, or the associations are merely the tail extension for public authorities. This suggestion receives many expressions of support. The

Chairperson of the Law Committee of the National Assembly, Mr. Vu Duc Khien, maintains that replication of functions must be avoided in the management domain, at the same time the thinking that management is practised through a “ministry-in-charge” mechanism should also be avoided. However, this proposition does not seem to be received too warmly by the Drafting Committee. The Minister of Interior, Mr. Do Quang Trung, states clearly that the Government does not applaud the type of ideas which advocate that the task of State management by ministries and ministry-level departments should not be legally provided for associations in the domains of activity being managed by the respective agencies.

Similarly, stipulations on conditions and procedure of formation for associations have come up against fairly severe criticism. Facing so many procedures put in place, Mr. Khien maintains that such stipulated procedures are too complicated, not compatible with the terms and tenor of administrative reform. In addition, Mr. Khien also remarks that such setting up of so many steps not only causes difficulty for individuals when proceeding towards the formation of an association, but also leads to overloading the State management agencies.

## **DO NOT CREATE GAPS BETWEEN ASSOCIATIONS**

The matter of not bringing the six socio-political organizations – the Fatherland Front, the Labour Union, the Women’s Union, the Ho Chi Minh Communist Youth Union, the Farmers’ Association and the War Veterans – into the governing scope, by itself alone, has already created a fairly strong reaction right among the law practitioners circles. The Chairperson of the National Assembly Committee on Culture and Education, Youth and Children, Madame Tran Thi Tam Đan remarks that such a stipulation is not logical, will create contradictions and lead to disunity. For Mme. Tam Dan, if the Law of Association has provisions for all these six organizations, then these agencies should not think

that their position is downgraded as a result. The representative of the Union of Science and Technology Associations also concur with Mme. Tam Dan's approach to the issue. For him, to leave them out like that would be inequitable, and could lead to resentment by the intellectuals. Agreeing with the above ideas, the Chairperson of Economics-Budget Committee of the National Assembly, Mr. Nguyen Duc Kien, expresses the opinion that the drafting committee should not create a gap between associations who take care of everything themselves and associations that are funded by the State. The Director of Office of the National Assembly, Mr. Bui Ngoc Thanh, in particular, is more trenchantly critical in revealing the highly extraordinary weaknesses in the Draft. He asks: "At present, a number of organizations have already been called 'Associations.' Why are they not brought within the regulation scope of the Law of Association?"

Finance is also a matter that receives fairly thorough investigative exploration by many delegates. Mr. Vu Duc Khien maintains that the draft should not stipulate that the national budget will be a supplementing source, as this may easily lead to requisition-and-grant system, over-dependence and unrealistic expectation on the government. The National Assembly Law Committee Chairperson stresses that such stipulations are incompatible with the aims of formation as well as the principles of operation of associations. The Director of Office of the National Assembly, Mr. Bui Ngoc Thanh, also reacts adversely to this issue when observing that many associations keep asking for funding, for staff or for office venues. With this draft, there is only one point the delegates are unanimous about. That is, strict stipulations must be made on the receiving of overseas funding. Also related to the foreign-country factor, the National Assembly Standing Committee is unanimous on postponing the decision to process approvals for formation of foreign countries' associations and organizations in Vietnam.

## **FOREIGNERS CAN FORM ASSOCIATIONS IN VIETNAM**

VAN TIEN

The VietnamNet, 5/4/2006

*Foreigners with legal residency of more than 24 months, foreign organizations legally working in Vietnam are allowed to form associations. National Associations can admit foreigners as associate or honorary members. These are new items of the Draft Law of Association, presented for the first time to canvass opinions from the National Assembly Standing Committee at their 4 April session. This Draft has been “pregnant” for the 9<sup>th</sup> time, but appears to have “difficult birthing” for the contradictory views on these sensitive issues.*

### **A LAW IS BORN... TO THE LOSS OF SOLIDARITY**

According to the Minister for Interior, Mr. Đỗ Quang Trung, Chairperson of the Drafting Committee, the Law does not apply to the Fatherland Front, the Labour Union, the Women’s Union, the Youth Union, the Farmers’ Association and the War Veterans Association.

The reason is that “these organizations have an historical position and role in the Vietnamese Revolution, and are guaranteed of funding by the Government for operation like other government agencies; the majority of these organizations already are governed separately by specific laws or legal ordinances...”.

However, on examining the Draft, the Chairperson of the Law Committee Vu Duc Khien advises that there are many disagreeing

opinions from the Committee. Although these organizations are important, they are “not State agencies,” and need to bring into a “common playground” to ensure equality, openness, and transparency.

The Chairperson of the National Assembly Committee on Culture, Education, Youth and Children, Madame Tran Thi Tam Dan admits that, in the final analysis, all associations are political, and therefore “political nature” cannot be used to justify differential treatment of associations.

“Issuing Law like this only creates disunity rather than anything valuable! I propose that all those organizations be brought into the scope of this Law. The above organizations should consider themselves as core units instead of thinking that being brought into the law would degrade them!”, she states plainly.

“Clearly bearing the name of “association”..., why not recognize oneself as an association?”, is the nonsense pointed out by the Director of the National Assembly Office, Mr. Bui Ngoc Thanh. He agrees about one law of association common to all, while the particularities of each association can be catered for by separate rules or stipulated separately.

Vice-Chairperson of Vietnam Central Committee of the Fatherland Front Do Duy Thuong proposes that the Draft have separate Articles and Items for the types of associations formed and operated at local level, without corporate status, such as same-origin associations, same-class associations, same-age associations, cock-fighting associations... who operate for hobby interests, mutual help and friendship in the community.

## **ARE FOREIGNERS PERMITTED TO FORM ASSOCIATIONS?**

The Draft Law of Association has highly notable new points: Foreigners who reside in Vietnam for more than 24 months, foreign organizations who operate legally in Vietnam can apply to form

associations. The domain of activity is to be stipulated by the Government.

According to Minister Do Quang Trung, in fact at present there have been nearly 30 federated business investment associations set up according to Government Decree 08/1998. Through management operations, it has been proved that these federations work in strict compliance with the law.

Since 1986, Vietnam has participated in the Convention on Human Rights, which stipulates that everyone has the right to freely assemble, to form associations. Our duty is to implement the international undertakings. The legal stipulations on foreign individuals and organizations are also compatible with the policy of the Party and Government in the initiative to move towards international integration.

However, a number of opinions from the National Assembly Standing Committee members favour postponing the inclusion of these stipulations in the Law, because this is a new and fairly sensitive issue when we do not yet possess sufficient management experience.

Chairperson of Law Committee Vu Duc Khien expresses the view that for the time being, the status quo should be maintained in allowing the formation of foreign business investment associations, being those with an investment, commerce and service character. Other ideas suggest a separate law of association for the associations formed by foreigners, with the Ministry of Foreign Affairs assigned to prepare its Draft.

## **DOMESTIC ASSOCIATIONS CAN RECRUIT FOREIGN MEMBERS**

Minister Do Quang Trung states that the government concurs with the view that: "Vietnamese associations should be allowed to recruit foreigners as associate members. In the trend of international integration today, associations must conduct international relations to gain overseas experience and expertise."

Besides this, the Draft stipulates that associate members, honorary members have the same rights and obligations as formal members except for the right to vote, to stand for election into association executive positions and inspection committee, and to vote on motions concerning association affairs. Nevertheless, there still are ideas expressing apprehension about allowing domestic associations to recruit foreigners as members.

“Many Vietnamese professors are honorary members of overseas associations, why should we not permit domestic associations to recruit foreigners as members to benefit from their intellectual capacity and experience,” argues Minister Do Quang Trung.

## **ANXIETY ABOUT ASSOCIATIONS BEING USED THROUGH OVERSEAS FUNDING**

Director of the National Assembly Office Bui Ngoc Thanh produces the figures from the surveys conducted by Interior Ministry departments: 82% of associations want the Government to provide top-up funding, 70% wish to be given staff and public services. “The Government would find it formidably difficult to fund association expenses in this way!”, he says.

“The relationship between the State and associations is not an administrative one, with upper and lower echelons. The Draft’s stipulation, that one of the source of income is the national budget, will easily lead to the requisition-and-grant relationship and a dependent psychology, total reliance on government support. This is not compatible with the aims of formation and the principle of operation of associations,” says the Chairperson of Law Committee Vu Duc Khien.

To cover expenses for association activities, Mr. Do Duy Thuong proposes to allow associations to receive gifts, donations, monetary aid from foreigners, to publish books, periodicals, and printed matter, to



open theatre performances, to set up companies according to company law, set up research and development centres.

Lieutenant-General Nguyen Van Huong, Vice-Minister for Police remarks that it would be necessary to stipulate clearly: Which associations may conduct international relations, which to receive foreign funding support? The reason is that associations can be used, as behind the monetary aid are “democracy, human rights” organizations, including those plotting to sabotage our regime.

Members of the National Assembly Standing Committee agree unanimously to present for discussion the Draft Law of Association to the forthcoming National Assembly meeting which is planned to be opened on 16 May.

## **PROCEDURE FOR FORMING AN ASSOCIATION IS CUMBERSOME AND COMPLICATED**

According to the Draft, to form an association, the founders (numbering at least five in all) must set up a Working Committee. This committee is tasked with setting up registration document to be lodged with an authorised State agency. The State agency will issue a receipt once they have the document, and in 60 days maximum will issue a certificate of registration for formation of the association.

Within a period of 90 days from the day the certificate of registration for formation is received, the Working Committee will organise a general meeting for forming the association. Within a limit of 30 days from the conclusion of the general meeting, the executive committee must send a report on the results of the general meeting, rules, resolution to pass the rules, report on voting for executives, inspection committee, curriculum vitae of the head of association, program of association activities, and general meeting resolutions to the authorised State agency. Within a 60-day limit as from the date of receiving the

above documents, the State agency will issue a certificate recognizing the association rules. Within 30 days from the day the rules become effective, the executive committee must publicise the formation of the association on a daily newspaper for three consecutive days.

The Law Committee maintains that such a procedure for formation is too cumbersome, complicated and not compatible with the terms of administrative reform, advocating a maximum reduction of unnecessary procedures. On the one hand it will cause difficulty for individuals going through the procedure to form associations, on the other hand it will overload the government agencies when the number of registration applications for association formation grows large. This committee proposes that the formation procedure must be further simplified to ensure the citizens' exercise of their right to form associations will be facilitated.

*Civil Society Action Towards: The 9<sup>th</sup> Draft*

**THE LAW MUST FROM PEOPLE, BY PEOPLE AND  
FOR PEOPLE**

**INFORMAL DRAFT FOR OPEN SHARED BY  
TOWARDS ETHNIC WOMEN (TEW)**



# **THE INFORMAL DRAFT LAW OF ASSOCIATION FOR OPEN SHARING BY TOWARDS ETHNIC WOMEN (TEW)**

*Hanoi, 28/2/2006*

In accordance to the revised Constitution of Socialist Republic of Vietnam in 1992, associated with Resolution 51/2001/QH 10 dated December 25<sup>th</sup> 2001 of the National Assembly term X at the 10<sup>th</sup> Congress Meeting.

The Law regulates specifically on Association.

## **CHAPTER I - GENERAL PRINCIPLES**

### **Article 1: The Right to Associate**

1. Citizens and legal organizations in Vietnam have the right to establish Association, and the freedom to adhere and withdraw association. This excludes those who have not yet had citizenship or being prosecuted in the law.

2. No one is allowed to infringe upon the right to associate and the freedom to adhere and withdraw from Association of the other.

3. State manages the activities of Association on the base of securing the right to associate which has already been recognized by the Constitution. The State provides favorable conditions for associations to participate socio-economic development projects or programs on humanitarian assistance.

**Article 2: The affected target groups**

The law applies to all legally registered Associations. It excludes those that are under other separate laws.

**Article 3: Scope of adjustment**

This Law merely regulates the organizational and operational structure of Association.

**Article 4: Association and Union of associations**

1. **'Association'** is a voluntary organization of those who desire to promote principles of self-management, having regularly running activities, whilst attempting to preserve cultural identity and applying advanced scientific technology into all aspects of social lives. The organization also has a strong commitment towards sustainable development and sense of pursuing and protecting legal benefits for the association and its members.

**'The association which was legally established'** is granted by the State the certificate of establishment.

2. **'Union of Associations'** is as an umbrella organization to coordinate all the voluntary associations who share the common philosophy of action and development objectives. Union's scope of working can be provincial, cross-provincial, or nationwide. Member of the Union has her own legal entity and is self-responsible towards the law. Member association operates its activities according to articles of association and be obliged to articles of the Union. There are optional names for the Union such as Union of Associations, Association of Union, Alliance of Associations, Federation of Associations, League and etc. Adherence and withdrawal from the Union are done in accordance to articles of association, and also negotiations/compromise between Union and member association (and related organization, if necessary).

**Article 5: Principles of organization and operation of association**

1. Voluntary, self-responsible towards the law, and financially independent.
2. Democracy, publicity (openness), and transparency.
3. Program activities are regular and not-for-profits oriented.

**CHAPTER II - RIGHTS AND RESPONSIBILITIES OF ASSOCIATION**

**Article 6: Rights of Association**

1. The Right to operate in accordance to the articles of association
2. The Right to collect membership fees; gathering for charity; and receive official sponsorships from organizations and individuals in-and-out the country.
3. The Right to purchase and sell, and exchange of necessary property assets for further activities of association.
4. The Right to participate equally in the bidding programs for any scientific and research studies and socio-economic development programs (presented from the State and governmental agencies)
5. The Right to consult, criticize, and monitor programs that belong to the association's profession.
6. The Right to participate, consult, criticize, and monitor the varied legal documents during the law-making and policy-making processes; in particular, the ones that specifically related to association's activities.
7. The Right to participate and assess the law implementation processes.
8. The Right to make suggestions, comments, additional, revision, and completion of the governmental law documents.

9. The Right to establish international cooperation in accordance to the law.

10. The Right to lodge a complaint to the law court with regards to the law - breaking activities e.g. infringe upon the right to associate, the right to operate, and the freedom to adhere and withdraw association.

11. The Right to send an appeal to the law court with regards to its decision to dismiss association.

#### **Article 7: Responsibilities of Association**

1. Operate in accordance to articles of association.

2. Operate in accordance to the law and international agreements that Viet Nam has certified.

3. Transparency, democracy, publicity on accounting and financial resources.

#### **Article 8: Legal entity of Association**

1. Association has been certified by and official certification is the legal association. Its legal entity is limited.

2. The legal status of association is equal to other entities in the law court; in particular in conflict resolutions and other legal transactions.

3. Legal entities under Union of association and member association have their independent legal entity and operate in accordance to articles of association.

### **CHAPTER 3 - STATE MANAGEMENT TO ASSOCIATIONS**

#### **Article 9: Responsibility of State management to associations**

1. To issue the certification to certify registration, merge, and/or separation of associations. Retrieve the certification of registration when association dismisses with regards to the decision from the law court.



2. To publish legal documents and instructions for implementation so associations operate in the legitimate frame.

3. To monitor and assess the degree to which associations are obliged to the law. To logge appeal to associations who breach the law.

4. To make proofs and identity the guilt if associations broken the law (in accordance to the law).

**Article 10: Management of authorized government bodies towards associations**

1. Ministry of Internal Affairs has the authority to issue certification to register, merge, and/or separate of associations. It also retrieves the registration certification when association dismisses. This particularly applies to associations working at cross-provincial, nationwide, and international scales.

2. Department of Internal Affairs has the authority to issue certification for associations working at provincial, regional, and main country - town scales.

3. Government bodies are responsible to issue legal documents and instructions for law implementation are those of the ministerial and related agency at equal levels.

**CHAPTER IV - ESTABLISHMENT OF ASSOCIATION**

**Article 11: Members**

Members are the legal Vietnamese citizenships.

**Article 12: Prerequisites to establishment**

1. Having voluntary members and willing to coordinate.

2. Having development objectives and clear future orientation

3. Having the draft articles of association (that was brainstormed by all members participate in discussion it).

4. Having the basic resources for members to maintain activities and promote further development of association. The basic resources are approved by all members.

**Article 13: The founding board of association**

The founding board contains those who have been selected by other members. They are responsible with other members in terms of setting up a clear view on orientation, coordination, organization of administrative procedures (as referred to article 10 of this law).

**Article 14: Contents of articles of association**

1. Name of association.
2. Logo of association (if available).
3. Contact address, telephone, email, facsimile, and web-site of association.
4. Objectives, strategic orientation, development function, priority targets, and program activities of association.
5. Personnel and need for personnel.
6. Organizational structure, management and coordination of association's activities.
7. Procedures to elect, select, and exempt the head and the leadership board.
8. Regulation for members (rights and responsibilities for members, procedures for adhere and withdraw).
9. Regulation on conflict resolutions among members within an association and between associations, related to separation, merge or dismissal of associations.
10. Regulation on changes or additional to articles of association.
11. Instructions for implementation.

**Article 15: Name and logo of association**

1. Do not coincidental doubling the name with the other association's name.
2. Name of Association is written in Vietnamese.
3. In case it has the foreign language's name for easy communication, such name has to write after the Vietnamese name.
4. Logo is not allowed to be double with the other association's logo.
5. The main contact address is located in Vietnam.
6. Association has its own stamp and bank account placed at the official bank.

**Article 16: Registration to establish association**

1. Receiving the complete registration documents, authorized government body will issue the receipt, as regulated in article 10.
2. After 30 working days since the issuance of receipt, authorized government body will issue the certification of registration, as regulated in article 10.
3. After 30 working days without any feedback from authorized body, the founding board has the right to organize the Congress to announce the establishment of association.

**Article 17: Congress to establishment of Association**

The founding board organizes the Congress with the following contents:

1. Democratically discuss and obtain approval upon articles of association.
2. Elect the leadership board
3. Passing the resolution of congress.

4. Decision to approve organizational structure, personnel, and other administrative procedures related to management, operation, and development of association.

5. Publicly announce the registration certification of association.

6. In case things happened as referred to section 3 of article 16 of this law, the founding board has the right to announce from the congress and report to authorized government body, as regulated in article 10 of this law.

**Article 18: Legal documents after the Congress**

1. 15 days after the congress, the head of association signs, and sends reports to authorized government body, as as regulated in article 10 of this law.

a. Approved articles of association.

b. The leadership board, the head, and list of members (each might apply this differently).

c. Resolution from the congress.

2. Authorized government body has the right to refuse the result from the congress, as as regulated in article 10 of this law.

3. In case of refusal, within 15 working days since the receipt of outcome report from congress, authorized government body must inform by an official feedback report of its reasoning why refused such results.

4. Association has the right to disagree and lodge a complaint to the court in regards of such a refusal, as regulated in article 10 of this law.

**Article 19: Establishment of association of individuals and foreign organizations in Vietnam**

1. Individuals and foreign organizations currently reside and legally work in Viet Nam, and those Vietnamese have had the 2<sup>nd</sup>

citizenship currently reside and legally work in Viet Nam have the right to establish association.

2. The government regulates in detailed the prerequisites and procedures and conditions to establish association for this group at section 1 of this article.

**Article 20: The registered list of associations**

1. The authorized government body is responsible to set up and update the registered list of association, as regulated in article 10 of this law.

2. Register of newly established association will be updated on the list on website of authorized government body, as regulated in article 10 of this law.

**CHAPTER V - ORGANISATION AND OPERATION OF ASSOCIATION**

**Article 21: Things that Association is not allowed to do**

1. Activities that infringe the articles of association.
2. Activities that infringe the law and international conventions that Viet Nam has signed.

**Article 22: Operation and organization of association**

1. The leadership board
2. Departments, professional units, and logistic team.
3. Legal entity.
4. Branch or representative office.
5. Monitoring unit.
6. Regular congress, irregular congress.

Articles of association regulate in detailed the organizational structure of association.

**Article 23: Regular Congress of Association**

1. Regular Congress will pass resolution and other decisive documents of association at the meeting.

2. Delegates participate in the Regular Congress are elected democratically and publicly, as regulated in articles of association.

3. Articles of association regulate term of office, contents, and organization of the next regular congress.

**Article 24: Irregular Congress**

Articles of association regulate also cases whereby there needs to summon for irregular congress.

**Article 25: The leadership board**

1. The leadership board coordinates activities for association in between the two congress's terms.

2. Term of working of the board follows the congress's term.

3. Articles of association, and resolution of congress will decide the organizational structure, management scheme, and also rights and responsibilities of the leadership board.

4. Articles of association regulate the criteria for qualification, competence, and ethics for members in the leadership board.

**Article 26: Responsibility and rights of the head**

1. He/she is responsible in front of the law with regards to any activities of association.

2. He/she directs the future orientation and priorities for association, without breaking articles of association and law.

**Article 27: Monitoring office of Association**

The office is responsible to monitor and evaluate every activities of association in accordance to articles of association and the resolution,

which have been approved by authorized government body, as regulated in Article 10 of this law.

**Article 28: Legal entity under Association**

1. Association is permitted to establish its legal entity under the management of association. Such establishment must meet articles of association and regulations under law.

2. The authorized government body is responsible to update all newly legal entities into the registered list of associations, as regulated in Article 10 of this law.

**Article 29: Branch and representative office of Association**

1. Association can establish representative office and branch local region and oversea. Establishment of branch and representative office has to have approval from the local government and also authority at the international destination.

2. Once the branches and representative office are opened, association is responsible to inform to authorized government body without the need to double the registration procedure, as regulated in Article 10 of this law.

**Article 30: Separation and merge of Associations**

1. Separation and merge of associations are implemented in accordance to articles of association, resolutions, and also negotiations between associations and related entities.

2. Rights and responsibilities between associations during separation and merge processes must be done in accordance to articles of association and resolution.

3. Separation and merge processes must be democratically, publicly, and transparently implemented. These processes must secure the rights and legal benefits of each member association.

4. After these processes, newly association is responsible to report to authorized government body, as regulated in article 10 of this law. Authorized government body is responsible to update the new association onto the registered list, as regulated in article 10 of this law.

#### **Article 31: Dismiss of Association**

1. Dismiss by it-self.

2. To be dismissed by an administrative decision of an authorized government body after the official decision from the Court.

#### **Article 32: Self-dismissed Association**

1. If more than a half of the total members of association wanting to dismiss.

2. Without the competence to guiding future orientation as well as promoting the voluntary participation of members to continue association's activities.

3. Lack of financial resources.

4. Term of working ends in accordance to articles of association; and also no further need to work in the field.

#### **Article 33: Responsibility of the Head in the self-dismiss case**

1. Reporting the self-dismiss case:

- Ways to deal with rights and legal benefits of members in accordance to articles of association.

- Ensure assets management, financial payment, and resolve debts for all members and employers in accordance to articles of association.

2. Resolution on dismissal, documents and filing for the self-dismiss:

a. After 15 working days sending in the report on self-dismiss case, if authorized government body gives no response, the head of association has the responsibility to announce ending of association.



b. Association must be obliged to publicize on news and media at varied levels in regards to the self-dismiss of association, at least three times.

c. Authorized government body is responsible to delete the name of association in the registered list.

**Article 34: Self-dismiss of Association at the Court**

1. If the self-dismiss case created conflict between Association and its individual members and related entities in regards of assets and financial items; the legitimacy of Association would only be ended after the Court's decision.

2. The Head of association ended his responsibility only when the Court certified the self-dismiss of associaton.

3. The Head must report to authorized government body of the self-dismiss and the decision of the Court in resolving assets and financial management issues.

**Article 35: Responsibility of authorized government body in the self-dismiss case**

1. The report of Association's self-dismiss is legitimate only if,

a. Being approved by all members.

b. No conflicts occurred and no infringe upon legal benefits among each member of association.

c. Any financial payments must be made in transparent, publicly, and democratic to ensure legal benefits for all members.

2. After receiving a complete filing for the self-dismiss case (as regulated at section 1 of this article), the authorized government body is responsible to delete the name of association from the registered list. Authorized government body needs to inform over the public media at least three times of the self-dismiss case.

**Article 36: Association is forced to dismiss**

1. Un-operation within the continuous 24 months without proper reasoning.
2. When Resolution at the Congress decides to dismiss, yet the Leadership Board refused.
3. Activities of association infringe heavily upon articles of association.
4. Activities of association infringe upon law.

**Article 37: The administrative decision of the authorized government body towards association forced to dismiss**

1. The authorized government body, as regulated in Article 10 of this law, is responsible to issue a decision to forcing the association to dismiss with cases mentioning in the Article 37 of this law.
2. The Court resolves problems related to financial and property items.
3. Association has the right to appeal to the Court in regards of the administrative decision of the authorized government body towards association forced to dismiss, as regulated in Article 10 of this law.

**Article 38: Association is forced to dismiss by the Court's decision**

1. If Association's activities heavily violate articles of association and law regulations, authorized government body - as regulated in Article 10 of this law – has the right to lodge a complaint of the association to the Court.
2. If Association's activities heavily violate articles of association and law regulations and particularly when these are done by the head and leadership board, authorized government body - as regulated in Article 10 of this law - lodge a complaint over the head and leadership board to the Court.

3. Association will not be dismissed if the case happens as in the section 2 of this Article.

4. Association has the right to appeal with regards to the decision forcing association to dismiss by the Court.

**Article 39: Responsibility of the authorized government body when Association is forced to dismissed**

After issuing the administrative decision to force association to dismiss, the Court's decision, authorized government body referred in the Article 10 of this law are responsible to delete the name of association from the registered list, and inform to the public media at least three times of this dismiss case.

**CHAPTER VI - FINANCE OF ASSOCIATION**

**Article 40: Revenue of association come from**

Revenue sources of Association as below:

1. Membership fees.
2. Voluntary contribution from members.
3. Sponsorships from individuals, agencies and organizations in-and-out Vietnam.
4. Governmental assistance through schemes such as economic contracts, bidding assignments, restricted bidding, and other consultancy projects for criticize and monitor social programs.
5. Other legitimate sources of incomes generated from not-for-profit business and services activities.

**Article 41: Rewards for members**

Members obtain rewards in accordance to articles of association and law regulations. Other type of rewards will be specified at different

specific associations on the base of self-management, self-responsibility, voluntary, democracy, publicity, transparency, and legitimacy.

**Article 42: Business and services activities of association**

1. Association is permitted to do business and services activities (for only not-for-profit purposes) to generate incomes for further expenses, operation, management, maintenance and development.

2. Association works in the areas of humanitarian and for-societal-benefits will be exempted from taxation, in accordance to the Law on Tax.

3. The government provides favorable conditions for association to participate in bidding scientific research proposals, socio-economic development programs, social assistances in the equal and transparent principles with other government agencies and organizations.

**Article 43: Encouragement for further contribution for charity, or humanitarian programs**

1. Individuals contribute to humanitarian assistance are accounted to be exempted from income tax.

2. Enterprises contribute to humanitarian assistance are accounted to be exempted from enterprise tax.

3. Enterprises sponsor programs and activities for community benefits related to health, education, and environmental are accounted to be exempted from enterprise tax.

**Article 44: Use and management of assets and finance**

Association uses, manages, and develops financial, property, and other asset items in accordance to articles of association and legal regulations on the use and management of legal property and finance of association.

## **CHAPTER VII - IMPLEMENTATION OF ARTICLES**

### **Article 45: Law effectiveness**

This Law takes effects from date 25 February 2006

1. The Law replaces the Presidential Ordinance 102SL/L004 dated 20<sup>th</sup> May 1957 and other related legal documents concerning the Right to Associate.

2. If Association was established legally before this Law took effects, there is no need to reapply the registration procedures, as regulated in the law.

### **Article 46: Instructions for implementation**

The government guides the implementation of this law./.

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