

ABA-UNDP  
International Legal Resource Center

# VOICES OF THE VOLUNTEERS

2005



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I responded to a notice from the ILRC and was selected to work with UNDP/Viet Nam to assist in assessing a proposal received from the Viet Nam Lawyers Association (VLA) and to design a project for UNDP support for the VLA. Viet Nam is undergoing a process of significant economic reform which has also led to the adoption of a broad Legal System Development Strategy and Judicial Reform Strategy by the Government of Viet Nam.

The VLA's proposal to UNDP requested support for enhancing the VLA's role in a number of areas, including law reform, professional training, legal aid and the dissemination of legal information. The challenge was to determine whether the VLA was capable of taking on a meaningful role in these areas in the context of the legal and judicial reform process underway in Viet Nam.

Together with two national consultants hired by UNDP/Viet Nam, I met with senior officials of key legal and judicial organizations in Viet Nam, including the Ministry of Justice, the National Assembly and the Communist Party. We also met with representatives of the VLA and bar associations in Hanoi and in Quang Ninh province, and foreign donor organizations engaged in supporting the development of the legal profession in Viet Nam.

The VLA is a vast organization with 32,000 members. Its members include government lawyers, judges, prosecutors, private lawyers, law professors and law students. In the past, however, the VLA's activities have been very limited and it has not demonstrated significant capacity in any of the areas for which it was requesting support. In addition, we were advised that plans were being made to create a new national bar association that may be better positioned to take on some of the roles outlined in the VLA's proposal. However, a recent change in leadership

and some of the VLA's recent activities indicated that there was a strong commitment within the VLA to take on a broader role. This was supported by a number of recent decrees and ordinances from both the government and the Party that indicated the VLA was also being given a new and broader mandate that was aligned with the support being requested from UNDP.

Our team recommended that UNDP support a project with the VLA that would focus on three areas: (1) capacity development (developing the skills of the VLA's leadership and management team and their ability to communicate with and draw on the VLA's membership to support its work); (2) professional training programs (continuing legal education programs are very limited in Viet Nam); and (3) legal aid and the dissemination of legal information (support for two existing VLA legal aid centers and the establishment of two university-based legal aid clinics).

My experience in Viet Nam was both rewarding and an interesting professional challenge. Viet Nam's legal profession is at an early stage of development and needs significant support to improve its skills, knowledge and professional standards. While other institutions, such as the courts and the judiciary, are receiving a great deal of international support, the legal profession still has a long way to go. I am hopeful that through this project, the VLA will be able to support the development of the profession and assist it in taking on the important role it has to play in developing the rule of law in Viet Nam.

Andrea Redway  
Project Director, Int'l Development  
Canadian Bar Association  
Toronto, Ontario, CANADA

UNDP and the Republic of Serbia, with adroit assistance from ILRC, initiated the “Strengthening the System of Misdemeanors’ and Magistrates’ Courts” project. The project aims at strengthening the Misdemeanors’ and Magistrates’ courts by providing adequate training for those judges as well as developing a specific reform strategy. This will be accomplished through supporting the professional advancement and defining the legal status for magistrates through legal regulation and developing professional standards of conduct and a code of ethics.

Following the inspiring leadership of UNDP’s Project Manager, Ivana Ramadanovic, I had the honor of heading a three-person international team, whose overarching purpose was to develop indicators and benchmarks to measure the project’s future progress. After conducting in-depth research and extensive interviews with the Serbian MOJ, Supreme Court, Serbia Judges’ and Magistrates’ Associations, among others, our international team identified three major *near-term* goals and a fourth additional *longer-term* project goal. The team also suggested specific activities and outputs that would help accomplish those goals and offered particular indicators that will measure this compelling project’s progress towards achieving those goals.

The first identified project goal suggested *enhancing and expanding misdemeanor court judges’ educational training*. Our team believes this goal can be realized by creating a specific and formalized curriculum that adequately addresses the *new* skills, knowledge and abilities required of the newly constituted Misdemeanant Courts.

The second is to *enhance the professional status and public perception of misdemeanor court judges*. This can be realized by launching public outreach and media

campaigns that increase public awareness regarding Serbia’s renewed emphasis on judicial performance, judicial branch professionalism and the magistrate court reform project’s goals.

Perhaps the most important goal identified was to *enhance the coordination between various organizations interested in the magistrate court project’s success*. Our team respectfully suggested methods for streamlining administrative lines of authority and clarifying responsibilities of, sharing resources with and communications between various interested organizations. Central to this recommendation was the crafting of a one year strategic plan containing carefully articulated goals, activities to achieve those goals, timetables by when they should be achieved, indicators measuring progress, and assigning specific responsibility for achieving those goals. The strategic planning process was initiated during our October 2005 team-building and strategic planning workshop involving parties integral to the magistrate court project’s success.

A *fourth*, longer-term goal shall be *strategically planning for the long-term continuing education needs of judges and improving the public perception of magistrate judges*. Our team outlined actions to empower Serbia’s Judicial Training Center to become the permanent provider of judicial education in Serbia. Importantly, we articulated measurable activities that would invest it with budgetary discretion and in-house expertise to realize that recommendation.

The forgoing suggested goals and indicators were all aimed at transitioning Serbia’s Magistrate Judges into the regular judiciary, thereby harmonizing the Serbian system with relevant international standards. I encourage all attorneys to volunteer their valuable time and service towards this and other international technical

projects. I left Serbia feeling renewed after gaining new, divergent perspectives regarding challenging court reform initiatives and am motivated to pursue other, similarly challenging international service opportunities.

Thomas Nelson Langhorne, Esq.  
The Langhorne Group, Inc.  
Richmond, Virginia USA

Viet Nam is carrying out a series of legal reforms as part of its "Renovation Policy" in order to insure a country based on a law-governed state. To that end, the Revised Criminal Procedure Code ("RCPC"), became effective in July of 2004. The RCPC not only broadened the jurisdiction of the trial courts, but substantially strengthened the fairness of criminal proceedings by providing the right of the accused to defense counsel and to challenge evidence compiled against him at an early stage in the proceedings and in the courtroom. Moreover, in order to insure transparency, the RCPC provides judicial decision making based on evidence produced/proven at trial subject to challenge/testing by defense counsel.

The overall objective of the training workshops was to facilitate the successful implementation and application of the RCPC for judges at the district court level. In this regard, judges in Hanoi and Ho Chi Minh City would be provided the general principles of the RCPC by justices of the Supreme People's Court in order establish a solid foundation for them to have a better overall understanding of the RCPC. Thereafter, international judges from civil law and common law systems would describe the advantages and disadvantages of their respective systems with a detailed examination of the best practices of an adversarial

system as well as that system's drawbacks as well. It was hoped that trainees would use knowledge, experience, and materials to train others in their District Courts. Additionally, the short-term objective was to develop training materials and methodologies that could be re-employed elsewhere by the Supreme People's Court, UNDP and other donors.

The training at the workshops was conducted by three justices from the Supreme People's Court of Viet Nam, Judge Vichai from Thailand representing the civil law system, and the undersigned judge from the United States representing an adversarial system. I prepared advanced training materials which included written summaries of lectures by the undersigned on the following areas: Advantages and Disadvantages of Adversarial and Inquisitorial Systems; Role of the Trial Judge and Jury in the Adversarial System; The Concept of Checks and Balances in the United States Legal System; Criminal Procedure in the Adversarial System; and the Role of the Defense Counsel/Prosecutor/Evidence in the Adversarial System. The trainees found the sessions not only informative and practical in regards to the daily application of the RCPC, but were also exposed to different views and best practices from common law and civil laws systems allowing them to view their work from a broader perspective.

It was an honor for me to have participated in the workshops and I found the experience both professionally and personally rewarding. I appreciated the competence and professionalism of the staff of ABA/UNDP in both Washington and Hanoi.

Judge Russell F. Canan  
Superior Court of the D.C.  
Washington, D.C. USA

In late October of 2005, I traveled to Santiago, Chile for the first Ibero-american Conference on Access to Justice, an event co-sponsored by Chile's Ministry of Justice and the United Nations Development Program (UNDP) addressing the issue of justice sector reform in Latin America. I was asked to speak on the topic of class-action litigation through the International Legal Resource Center, a partnership of the American Bar Association with UNDP.

The conference focused on improving access to justice for disadvantaged groups such as indigenous peoples, women, prison inmates, children, and the poor. Over the course of three days, 1200 people attended the conference, which drew together Ministers of Justice from 22 nations to present and exchange experiences of reform. The conference took the form of a "Solutions Fair" where participants presented successful reform experiences from their own countries as models that other nations might adopt in their own justice sectors. Some of the solutions and models were familiar, such as the establishment of government financed legal services, pro bono networks, and the institution of public defender offices.

While this reform may seem basic, it is in fact a marked departure from centuries of criminal jurisprudence in Latin America, where most countries have historically operated under Napoleonic Code law. This has resulted in criminal justice systems that do not provide for trial by jury and do not presume a defendant's innocence until proven otherwise. The movement to establish judicial systems that include jury trials, court appointed defense attorneys and government funded public defenders offices constitutes a far-reaching reform. Similarly, family law codes are being revised throughout the continent to foster gender equality in all

civil matters, with a particular focus on issues around domestic violence and greater legal protections for minors.

My contribution was on the topic of class action lawsuits as a vehicle for increasing access to justice and facilitating legal reform. Class actions are very familiar to those of us in the United States, having been around since the 19<sup>th</sup> century, but the concept is new in most of Latin America. Initially, given the fundamental, core reforms being discussed at this inaugural conference, it seemed almost a luxury to be presenting on the intricacies of class action litigation. Upon reflection, however, I realized how basic and fundamental class actions are to moving large institutions and providing representation to large numbers of people who could not, individually, obtain lawyers to bring large systemic litigation. While the legal transformation taking place throughout the continent seems inextricably linked to democratization, most conference participants went out of their way to make it clear that the largest obstacle to democracy was the lack of political and economic equality, and that greater access to justice could not, by itself, eradicate injustice.

By the end of the conference, at least 60 agreements of knowledge transfer and collaboration had been signed, setting off the formation of a real Ibero-american network devoted to equitable justice sector reform. The conference outcomes are also being compiled into a book that will be distributed at next year's annual conference of Ibero-american Ministers of Justice. I look forward to reading that book and, I hope, further contributing to this movement.

Maria Blanco  
Executive Director  
Lawyers' Committee for Civil Rights of  
the San Francisco Bay Area (LCCR)  
San Francisco, California USA

Through the ILRC, I was tasked with advising the Vietnamese government and UNDP/Viet Nam, on the development of revised versions of the Unified Enterprise Law and the Common Investment Law. Revision of these laws is an important part of the process of Viet Nam's accession to the World Trade Organization ("WTO"), as well as achieving the Vietnamese government's goal of creating an updated legal infrastructure for foreign investment.

The project is ongoing, but I feel that the Vietnamese government is receptive to my suggestions to set up specialized 'windows' at Government offices around Viet Nam so that a person forming a business enterprise had a 'one-stop-shop' for their filing requirements. Also, I suggested that the Vietnamese Government consider becoming a contracting state to the International Centre for Settlement of Investment Disputes. Both of these suggestions are being considered by the Government.

This assignment has been both professionally and personally enjoyable and has allowed me to participate in a significant juncture in Viet Nam's legal development. It is an historic opportunity to influence the development of commercial rule of law in Viet Nam, an opportunity that would not exist but for the ABA-UNDP IRLC.

Michael C. Burke, Esq.  
Williams Mullen  
Washington, DC USA

Through ILRC-UNDP, I was extended the opportunity to perform an assessment of drafts of the Unified Enterprise Law (UEL) and the Common Investment Law (CIL) for UNDP/Viet Nam. The UEL will regulate the establishment and operation of

enterprises in Viet Nam and seeks to provide a level field for all economic actors, by regulating foreign and domestic business of all types through a single piece of legislation. Similarly, CIL will address the rights of those engaging in investment, as well as the regulation of such activities in Viet Nam. Both laws are of paramount importance for the development Viet Nam and critical to any commercial, securities, and corporate activities taking place within its borders.

I would further encourage lawyers with specialized experience with both government and corporate/commercial law to contribute international technical legal assistance as we can provide both a unique perspective and useful skill set to international development. I have worked extensively with the drafting of legislation, advising of policymakers and conduct of corporate/commercial transactions; this project required the use of all of those skill sets.

One of the biggest challenges that I (and I suspect other Western lawyers) face in providing our expertise as short-term foreign consultants is ensuring that our advice is appropriate within the unique context of the nation state receiving our advice. In this case, I was faced with the challenge of ensuring that my advice was proper to the context of Viet Nam's development.

My assignment was both highly professionally and personally enjoyable. It was indeed an honor for me to participate during this critical and historic juncture in the history of Viet Nam. I am optimistic that with the UEL and CIL, Viet Nam will succeed in its efforts in the achievement of social and economic development. I hope to further technical legal assistance with future projects.

Jason Bing Kin Fung  
International Legal Consultant

Saint Albert, Alberta CANADA

When the ABA/UNDP asked me to review Vietnam's draft Untied Enterprises Law, I eagerly agreed. This ambitious piece of legislation is intended to govern all forms of private enterprises in Vietnam, including sole proprietorships, partnerships, LLCs and Corporations. As a professor who teaches Business Organizations in the United States and a practitioner who has studied China's transformation from a purely socialist economy to one that is a mixture of privately and state owned enterprises, this was a fascinating opportunity to utilize all of my expertise.

The draft law consists of 10 chapters and 124 articles and the law's coverage includes formation, ongoing operation, mergers, reorganization and bankruptcy of enterprises. One of the most interesting aspects of the law reveals the tension between the goal of the government of Vietnam to promote the formation of private enterprises and its desire to retain some supervisory power. The law tries to find a balance between exerting some government oversight without undue interference in private management decisions.

In reviewing and commenting on the draft law, I found it necessary to take into account Vietnam's transitional economy, the need for the government to maintain control balanced against encouraging free market enterprises and cultural aspects such as the great likelihood of many family owned businesses and a societal preference for consensus. The experience was intellectually challenging and rewarding.

Professor Anna Han  
Associate Professor of Law  
Santa Clara University  
Santa Clara, CA USA

I was pleased to receive a notification that I was part of a group of experts chosen to assess the Unified Investment Law and later the Common Investment Laws of Viet Nam. In providing this assistance, one of the greatest challenges I faced was ensuring that the proposed laws fit into the sociopolitical circumstance of the country, have the desired impact and also meet international standards in order to attract foreign investments.

This has been a very enriching experience for me and I commend the ABA-UNDP ILRC for making it possible and encourage legal practitioners who have expertise to give to continue to donate their time and knowledge because that it the only way we can make the world a better place.

Chudi Ojukwu  
Council of Legal Education  
Nigerian Law School  
Bwari, Abuja NIGERIA



I responded to an invitation by the ILRC to assist in a UNDP project to provide an assessment of a draft Vietnamese Law on Environmental Protection. The assessment of the reforms came ten years after the National Assembly of the Socialist Republic of Vietnam adopted an Environmental Protection Law (in 1994). The Ministry of Natural Resources and Environment needed assistance in evaluating the structure and scope of the proposed reform and expert guidance for the National Assembly as part of their legislative process.

There were six main themes in the draft law addressed: environmental standards; poverty/environment linkage; environmental planning; hazardous waste management and reuse/recycling; liability and compensation for damage to the environment; and the socialization of environmental protection.

Much of what I delivered was technical, such as suggestions for redrafting of the proposed reform and possible innovations in regulation to meet policy goals. The project offered opportunities to learn a great deal, however, particularly on the issue of environment and poverty linkages. Many people in Vietnam depend greatly upon natural resources such as forestry and fisheries, but there are short term incentives to over-exploit these in ways that offer no longer term advantage – e.g. by individuals depleting forests for firewood. It follows that in attempting to regulate to break these linkages, the review was an assignment to which I was pleased to commit professionally and personally. The reform in Vietnam represents a carefully devised and serious attempt to minimise such environmental impacts and move towards more sustainable development.

Professor Robert G. Lee  
BRASS Centre, Cardiff University  
Cardiff, Wales UK

Through ILRC, I analyzed Viet Nam's Law of Environmental Protection for the Government of Viet Nam. As an attorney for farmers in the U.S. and through my other work representing U.S. growers in the negotiations relating to the Convention on Biological Diversity and Cartagena Protocol on Biosafety, I had a sense of Viet Nam's interest in protecting its biodiversity. I applied this understanding of Viet Nam's legal obligations under the above international environmental agreements to offer commentary on the Law of Environmental Protection. In my opinion, the environmental regulatory system needed to provide protection for agricultural genetic resources, such as plants with potential pharmaceutical uses I would recommend such service to any attorney interested in contributing to the ordering of the world around the rule of law, particularly with regard to pressing issues of trade, public health and environment.

UNDP is uniquely positioned to provide Viet Nam with the pro bono skills of attorneys and academics at the top of their fields and is well-positioned to assist in the building of legal and regulatory systems that meet diverse stakeholder objectives. I consider it an honor to have been asked to participate and as Viet Nam implements its Law of Environmental Protection and I expect to see it achieve compliance with its obligations under international environmental agreements while also managing its unique domestic environmental challenges in a manner tailored to its limited regulatory resources.

Thomas Parker Reddick  
Global Environmental Ethics Counsel  
Clayton, MO USA

In January 2005, I helped prepare and coordinate the submission of comments compiled by the ILRC on a proposed comprehensive update to Viet Nam's Law on Environmental Protection. The proposed update represented a thorough reworking of the country's original environmental protection law, which was adopted in 1993, and it also incorporated a variety of decrees and implementation guidelines that had approved over the last decade.

For some time, the United Nations Development Program (UNDP) supported Viet Nam's Department of the Environment (DoE) and Ministry of Natural Resources and the Environment (MoNRE) in developing the new legislation. I and a number of other lawyers and policy experts were asked to provide input on several different themes addressed by the legislation, including: environmental standards; hazardous waste management; environmental planning; poverty and the environment; liability and compensation; and the socialization of environmental protection activities. Detailed comments were assembled on each of these themes, as well as on the overall structure and scope of the law. Using these materials, the UNDP was then tasked with helping to prepare a final legislative draft for ultimate submission to Viet Nam's National Assembly.

The final legislative proposal, which comprises 10 chapters and 79 articles, was formally presented to the Standing Committee of the National Assembly by Viet Nam's Minister of Natural Resources and Environment, Mai Ai Truc, and endorsed by Nguyen Van Tri, Vice Chairman of the National Assembly Committee for Science, Technology and the Environment, on February 25, 2005. After months of consideration by the National Assembly, the new Law on Environmental

Protection finally was passed at the eighth session of 11<sup>th</sup> National Assembly on November 23, 2005. The Law will go into effect on July 1, 2006.

Working on this assignment was both challenging and very enjoyable. The legislation we considered represented a broad attempt to incorporate contemporary, international policies and standards for environmental protection within a distinctive cultural and political context that places a high emphasis on personal responsibility. This was in contrast with the more technical command and control regulatory approach utilized more generally in the United States and other Western countries. I hope that with sufficient resources for implementation, the new law will provide significant benefits to both the people and the natural environment of Viet Nam.

Kevin T. Haroff  
Partner  
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San Francisco, California