

PEOPLE'S PARTICIPATION WORKING GROUP (PPWG)

# ASSOCIATIONAL LIFE

FROM CITIZENS' PERSPECTIVES

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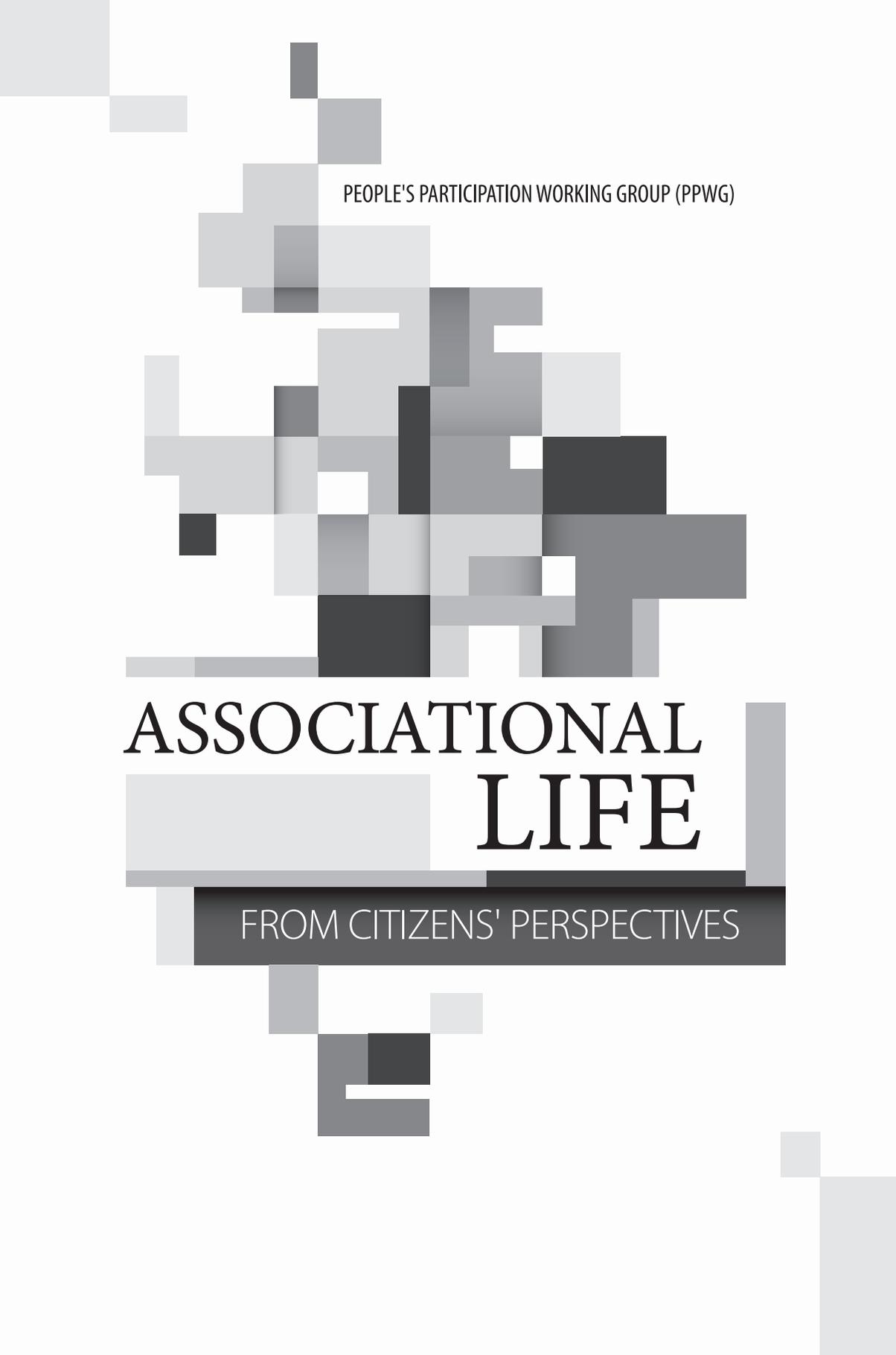
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# INTRODUCTION

In nature, association and assembly are natural characteristics of human society, and natural demand of individuals in connecting, sharing, and helping each other satisfy their own demands for security, sentiment and material. Connection and cooperation through Associations, those who share common objectives shall have higher capacity to satisfy their needs and achieve common objectives more effectively. In social aspect, Associations form channels, alliances, and connections enabling the flows of information, intelligence, and knowledge. To make the market perform well, besides the protected ownership companies should enjoy the freedom to establish, operate and go bankrupt. Similarly, to enable knowledge, intelligence and knowledge to flow smoothly, besides the protected freedom of expression, associations should enjoy the freedom to establish, operate and dissolve. Free market and free associations shall create essential grounds accelerating social development, besides a strong law-governing State, to establish and oversee law.

In addition, freedom of association plays a crucial role in balancing interest groups in society, albeit minority or majority, operating in economics or environment. When they are empowered to establish associations to make their voice heard, groups will invest in resources to advocate the State to design better policies for them. Even groups with contrary interests can also raise their voice, and the State plays the mediating role, listening to, analysing and making concessions to create the most balanced policies. It is thanks to freedom of association that the State could hear from the people and from groups with varied interests to produce balance policy and bring about the highest common interests. To that end, the State should create rules of the game to ensure equality among associations, a transparent environment to have healthy competition for the sake of the whole society.

In the context of Vietnam, with the existence of the Fatherland Front, five socio-political organisations and tens of thousands of associations, the formation of a Law on Associations to enable the people to form associations will be a significant renovation. Vietnam can learn from the open-door policy for economic development to intensify opening door for the life of associations. In 1990, Vietnam built the Law on Private Enterprises to open doors for the private sector to participate into the country's economic activities. When the country's economy was thriving, the State promulgated the Law on Enterprises in 1999, setting aside six chapters for private enterprises, and creating more favourable conditions for private enterprises to develop. In 2005, the Law on Enterprises 1999 merged into the Law on State-owned Enterprises 2003, and there was no discrimination between private and State-owned enterprises immediately. Probably Vietnam will not need 15 years to merge associations established by the State and associations to be established by the people as seen in the process of merging the laws on enterprises. Nevertheless, a transition is practical and necessary to stabilise the society.

Vietnam could also learn from experiences of other countries in the world in protecting the people's right to freedom of association, especially the nature, principles, and standards of the right to freedom of association. An "association" refers to "*any group of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests*". The right to freedom of association is prescribed in the Article 22 of the International Covenant on Civil and Political Rights (ICCPR) as follows: *everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*. As such, everyone shall have (1) The right to form a new association; (2) The right to join existing associations; 3) The freedom to operate, manage associations, including searching for and mobilising financial sources<sup>2</sup>. These are

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1 Report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 2012, A/HRCR/20/27, paragraph No 51.

2 La Khanh Tung, Nghiem Hoa, Vu Cong Giao. Associations and Freedom of Associations. Hong Duc Publishing House, 2015.

essential principles and norms enabling Vietnam to build a sound Law on Associations.

Above all, the formation of the Law on Associations should engage the participation and contribution of opinions of the people who have the right to freedom of association as prescribed in Article 25 of the 2013 Constitution. Their thoughts and status quo of the exercise of the right to freedom of association, advantages and difficulties they encounter, and how to ensure that the Law on Associations best protect their right to freedom of association should take into consideration. This is the reason why the research was carried out to provide law makers an insight into the reality to build a practical Law on Associations which will be used by the people.

## EXECUTIVE SUMMARY

Vietnam has witnessed remarkable changes in terms of associations since the country adopted the “open door” policy. Besides the Fatherland Front, and other socio-political organisations and professional associations, an increasing number of civil society organisations of various sectors, scopes and areas have been established, including non-governmental organisations, funds, hobby clubs, charity organisations, and community organisations such as migrant homeland origin associations (*Hội Đồng hương*) and school alumni associations. These organisations have made significant contributions to the national poverty reduction, environmental protection, and young people’s education and training. Civil society organisations have also advocated and provided comments on State policies, and protected the rights and interests of vulnerable groups.

An outstanding feature of associations established by citizens is presented through their relatively high voluntariness, self-control, and self-reliance. These associations take shape first and foremost based on actual demands to solve a problem of members or community, and they shall manage financial and technical resources to realise the objectives. Association founders are usually able, enthusiastic and highly committed to matters their association desire to deal with, and to the association’s development. Thanks to these characteristics, associations operate quite effectively, enriching association members’ spiritual and material life. It also helps facilitate living spaces for associations, cooperation, assistance, maintenance of moral standards, and practice of philanthropies. Nevertheless, these organisations are facing numerous difficulties and barriers in expanding their size and capacity to make greater contributions to the nation’s key issues, including the fight against corruption, accelerated equality and justice, enhanced culture, education and research

exchanges, rights protection, and improving the interests and status of Vietnam in regional and international arenas. There are quite a few causes behind this reality, and one of the most crucial causes is that the right to freedom of assembly has not been fully acknowledged. This results in a shortage of a legal framework for people's right to association. Specifically, registration procedures remain challenging, or even impossible for associations which are not directly under any State body. Operations of almost all types of organisations are still interfered or restricted through a multi-layered licensing scheme. Most importantly, social resources have not been encouraged to pour into public activities through non-profit organisations, associations or non-governmental organisations.

Therefore, a Law on Associations that respects freedom of assembly and enables the people to co-operate, to exercise self-control, and to self-resolve matters of their concerns would be a catalyst for the prosperity of Vietnamese society. In the long term, it would not only help the society develop healthily and honour the spirit of responsibility, but also promote social stability and business cooperation, balance interests, and mitigate conflicts and social evils. To that end, the Law on Associations should embrace important contents as follows:

*First, the right to form associations is a civil right, so it is necessary to respect the spirit that "the State recognises people's civil contracts to form associations", therefore, the Law on Associations should apply "informative procedures" (registration model) rather than "procedures approved in advance" (ask-give model) for all types of associations with and without members (including NGOs and foundations).*

The move ensures that anyone that wants to establish an association can do so whilst discourage them from "disguise". Difficulties in forming associations, for instance a religious association has to register as an association of science and technology or a non-profit organisation has to register as an enterprise, lead to nontransparency, consequently making their operation as well as State management difficult. Specifically, the Law on Associations should stipulate that representative of an association should only need to submit a registration dossier to a

provincial-level specialised body (for example, Department of Home Affairs) or a central-level body (for instance, the Ministry of Home Affairs) and clearly declare the type of their association. In terms of timing, after ten working days the dossier-receiving agency should grant a certificate attesting the legal status and existence of the Association with a third party. Also, the Law should exclude the so-called “governing ministry” system to avoid cumbersome and unnecessary procedures. That would reduce the administrative workload of State bodies whilst helping address one of the biggest obstacles currently facing civil society organisations in Vietnam, which is registration for legal status.

Second, *the Law on Associations should not restrict operation areas to administrative location where associations register their headquarters.* Specifically, when an association registers in a particular locality (for instance, in Hue), the association should have the right to operate across the country, even in regional countries and all over the world. This is necessary since the issues which associations deal with, such as environmental protection or culture and education exchanges, are not limited to a certain administrative location. Like the free market which is essential for enterprises to do business, the flow of information, knowledge and cooperation of associations should not be restricted to the area where they register.

Third, *the Law on Associations should not stipulate that in one locality, only one association will be established in each field as it restricts the people's right to freedom of assembly.* One of the essential features of the right to freedom of assembly is the right to choose to join or form a new association in a voluntary, unforced manner. If there is only one association being established in an area, local people are compelled to join that association or cannot establish their own association (as they will operate in the same field). Thus, their right to freedom of association is obviously infringed. In addition, the protection of the people's right to choose to join an association is a crucial condition to ensure the effective, transparent and for-the-public-interest operation of associations (thanks to competition).

Fourth, *the Law on Associations should recognise and protect legal*

*operations of associations without a legal entity (associations that do not register).* In fact, a number of associations and groups do not need to register and do not want to register, such as family clans, homeland origin associations, and alumni associations. The practice is reasonable and reduces social cost. However, from a civil law perspective, associations without a legal entity may not be recognised and protected in certain rights, such as the right to asset ownership, civil transactions, and legal responsibility as those with legal status. In other words, associations should choose to register or not depending on their own estimation of costs and benefits, but in either case their existence and operations should be legal. To encourage associations to register, the Law should simplify registration procedures as stated in the first recommendation.

Fifth, *the Law on Associations should allow enterprises and individuals to deduct financial contributions to associations in the public interest from their taxable income, and to register for foreign donations rather than struggling for approval as currently.* The Law should define activities for the sake of the public (such as poverty reduction, environmental protection, education and culture). In cases that associations carry out these activities, enterprises and individuals that contribute funds for the associations should receive tax exemptions for their financial contribution. Associations and non-profit organisations should have the right to receive donations from individuals and organisations, both at home and abroad, to organise fund-raising activities, to do business and earn income for public interests without being levied. Besides, the State could provide budget through socialising the provision of public services on the principle of equal competition among associations. No matter where the financial resource comes from, if it is for public interest and accords with the association's mission and operation, the association should only need to register the financial contribution with specialised bodies, not ask for approval.

Sixth, *the Law on Associations should protect the financial autonomy, the self-determination of leadership, and the self-responsibility of associations' regulations and operations.* In particular, the State should not intervene in the content of associations' regulations and selection

of leadership, and should not appoint State officials to lead associations. To put in another way, State bodies should not have the right to approve associations' regulations, leadership, or operation strategy. Only if the regulations were to violate the law or harm other people's rights would the State have the right to intervene. This process should be resolved through legal appeals or court proceedings to ensure justice for all involved parties.

Seventh, *the Law on Associations should only restrict the right to freedom of association in cases that are necessary in a democratic society in the interests of national security or public safety, public order, the protection of social health or morals, or the protection of the rights and freedoms of others.* These restrictions must be prescribed by the law. Any restrictions on freedom of association must be specific and obvious in line with international standards and as stipulated in Article 14 of the Constitution. For instance, national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force (Article 22 of ICCPR). A restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing (Principle No 2 of the Johannesburg Principles). In all cases that impose restrictions, the body that is responsible to explain restrictions on the right to freedom of association must be an independent body, for example a court, not an administrative body.

Eighth, *the Law on Associations should prescribe that when the people have the need of forming an association, the State has no right to refuse that need unless there are sufficient grounds and legitimate reasons.* In case that people are prevented from forming an association, or are requested to suspend or dissolve an association unsatisfactorily, they should be able to appeal in line with administrative procedures or enter into legal proceedings at court. Besides, the State needs to have proper compensation mechanisms in case of State administrative bodies' violations of the right to freedom of association.

Ninth, *the Law on Associations should apply to the Fatherland Front and other socio-political organisations if the State considers these bodies as exercising civil society activities rather than exercising the State's political power.* To clarify this, the State should clearly define the nature of the Fatherland Front and socio-political organisations. If the State does not consider these bodies as civil society organisations but rather as political organisations closely connected to State power, the State should design specific laws to govern them and should not make any adjustments in the Law on Associations. If the State considers these bodies as performing social and civic activities, the Law on Associations should apply to the Fatherland Front and socio-political organisations. Up to 84%% of people polled also agreed that the Law on Associations should apply to the Fatherland Front and socio-political organisations. Regarding expenditures, there should be a specific policy to ensure that associations depend less and less on the State budget and gradually self-finance. This is also the desire of the majority of people surveyed: 63%% of people asked said the State should not finance associations, and all associations should exercise self-autonomy financially. In cases when the State provides budget for associations to implement socio-economic programmes in line with the State's development orientation, 80%% of people asked said the budget should be disbursed through tenders based on equal competition and non-discrimination against any type of associations.

The issuance of a Law on Associations based on the above recommendations would create a new impetus for people of many social strata to engage in addressing social, economic, cultural and political issues in Vietnam. Newly-established associations would assist the State in solving issues such as professional ethics, fight against unhygienic food, and deceit in the society – issues that cannot be solely addressed by law, but relate to social norms created by associational life to adjust social behaviours. Associational life would also enhance cooperation, exchange and interdependence, generating wealthy human and social capital, and enabling individuals and the community to resist and overcome shocks in life. The establishment of self-governing associations would also help balance power against

the linkage of certain interest groups or groups exercising civil authority, enabling society to operate in a balanced, transparent and more efficient manner. A school establishing an association of its own should seek for social resources to help pay for the association's operations in the most competitive and efficient way, without expending the State budget or distorting interests due to imbalances in the freedom of association.

# INTRODUCTION **OF RESEARCH** **CONTEXT AND OBJECTIVE**

1

Since Vietnam adopted the *doi moi* (renewal) policy, Associations and Charity Organisations, Non-Governmental Organisations (NGOs) and Community Clubs have dramatically grown in Vietnam. This is a natural progress developing in parallel with the social openness, the diversity of economic sectors, and increasingly strong trade connections and exchanges between Vietnam and other countries in the world. In quantity, the country had 52,565 associations by December, 2014 (483 associations operate across the country and 52,082 associations operate in certain localities), among which 8,792 associations bear specific characteristics (28 associations operate nation-wide and 8,764 associations operate in certain localities)<sup>3</sup>. Additionally, the Ministry of Science and Technology's statistics show that Vietnam had about 1,150 public science and technology Organisations and 1,350 private science and technology organisations by the end of 2014<sup>4</sup> operating across the country<sup>5</sup>, around 200 funds<sup>6</sup> operate nation-wide and a great number of funds operate in communes, wards, towns, districts, and provinces such as the Assistance Fund for Victims of Agent Orange, Study Promotion Fund, and Fund for Scientific and Technological Creations. Currently there are about 400 social welfare organisations<sup>7</sup> established by associations and individuals, and operating mainly in the field of philanthropy<sup>8</sup>. Additionally there are hundreds of thousands

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3 Draft proposal of the Government on the draft Law on Associations dated September, 2015.

4 These organisations were established in accordance with the Government's Decree 81/2002/ND-CP dated October 17th, 2002. Vietnam's Non-Governmental Organisations (NGO) were mainly established in par with the Decree.

5 Draft proposal on the Approval of Planning of the network of public scientific and technological organisations by 2020, with an orientation to 2030.

6 The current Fund is organised and operates in line with the Government's Decree 148/2007/ND-CP dated September 25th, 2007 which regulates the organisation and operation of social and charity funds.

7 Social welfare organisations were established and operate in accordance with the Decree 68/2008/ND-CP dated May 30th, 2008 which regulates conditions, procedures for the establishment, organisation, operation and dissolution of social welfare organisations.

8 Nguyen Ngoc Lam, chairman of Research Centre for Management and Sustainable Development. A number of matters that need to be studied when developing the Law on Associations.

of organisations set up by the people, without any registration, and legal entity such as Clubs, Volunteer groups, Networks, Associations of Fellow-countrymen, Associations of Fellow-students, Associations of alumni from universities and high schools.

Under the context of Vietnam, the Fatherland Front, socio-political organisations, and professional associations played a crucial role in the history of the national liberation and unification. When the economy shifted to the socialist-oriented market economy, the role of associations also changed, some continued to uphold their strength whilst others faced challenges, even related to their existence. Especially when the national budget experiences hard times<sup>9</sup>, the question of which issues, economics, social affairs, culture, and environment should be addressed by the society, rather than by the State, must be raised. This is one of overriding important premises for Vietnam to open the way for new associations to be established by the people, fulfilling demands of the actual life, and self-managing social resources to exist and operate.

Acknowledging the importance of the freedom of association in social, economic and political development, the National Assembly included the Law on Associations in the law - and ordinance-making agenda in order to concretise the right to freedom of association prescribed in the Article 25 of the Constitution 2013. In accordance with the Resolution 718/NQ-UBTVQH13 dated January 2<sup>nd</sup>, 2014, the Law on Associations was expected to be ratified in the second session of the 14<sup>th</sup> National Assembly (October – November, 2016). This is also part of the implementation of the 2013 Constitution as well as Vietnam's commitment towards the international community, particularly the International Covenant on Civil and Political Rights to which Vietnam was a signatory in 1982.

Thus, the People's Participation Working Group (PPWG) conducted this research with the aim to learn about the status quo and people's actual demand for forming associations. Associating

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9 According to the "Estimated economic cost for public organisations in Vietnam" study (Hong Duc Publishing House, 2015), the State budget disburses about VND 14,000 billion for public organisations, whereas economic cost (opportunity cost) may range from VND 45,600 billion to VND 68,100 billion.

with international standards as well as Vietnam's cultural and political contexts, the research shall put forward recommendations to make certain contributions to a sound Law on Association, a law which satisfies people's demand for freedom of association whilst contributing to social and political stability, in direction to international norms in freedom of association to which Vietnam committed.

# 2

## RESEARCH METHODS

**Quantitative method:** a detail questionnaire was developed and uploaded to Survey Monkey so as participants could answer the questions online. The survey link was uploaded in social networks so as the survey could reach different social groups. Facebook functions to randomly select those who saw the link with parameters in gender, age, and locations to ensure the representation of research samples. Apart from advertisement on Facebook, the link was also sent to various networks through email to reach people of similar interests and those who are working in fields related to freedom of association. Data analysed and collated in accordance with the parameters shall be developed in detail to fully reflect the research objective and content.

**Qualitative method:** 33 participants in in-depth interviews were from 28 different social civil groups in Ha Noi, Thua Thien-Hue, and Ho Chi Minh City. These people were selected based on forms of associations they join, for example, community organisations, youth groups, social welfare establishments, non-governmental organisations, associations that have not registered and associations that have registered with the State. The interviewees represent different types of work, such as charity, protection of the rights of people with disabilities, children, environmental protection, and management of natural resource, culture, economic and learning activities. Written-form qualitative information (MSW)<sup>10</sup> was encoded in line with parameters developed in the quantitative questionnaire. The result was judged based on the phenomenology to learn about the interpretation, and feel of research participants through experiences.

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<sup>10</sup> When conducting interviews, we asked for permission from interviewees to record the interviews provided that their identification was kept secret. However, two interviewees in Ho Chi Minh City, two interviewees in Hue, and eight interviewees in Ha Noi requested no recording. With these people, we took minutes of the interviews down and analysed their main ideas in the research.

## A. RESEARCH SAMPLE

There are 302 Vietnamese nationals answering the questionnaire properly (those who pressed the button DONE after they answered the questionnaire). These research samples are sufficient for a verification statistics when analysing data. Since the percentage of Vietnamese under 18 years old and the percentage of Vietnamese abroad are low (both at 2%), in analyses we do not include these two indicators. Quantitative research samples are described in Table 1 as follows.

**TABLE 1: Description of quantitative research sample**

Characteristics	Percentage %	Characteristics	Percentage %
<b>Gender</b>		<b>Ethnic group</b>	
Male	51	Kinh	94
Female	45	Others	6
Others	4	<b>Religion</b>	
<b>Age</b>		None	69
13-17	2	Buddhism	18
18-22	23	Catholicism	7
23-30	33	Protestantism	1
Over 30	42	Others	4
<b>Educational background</b>		<b>Locality</b>	
University/post-graduate	70	Ha Noi	46
College/intermediate level	7	Ho Chi Minh City	25
High school	20	Other provinces	27
Others	3	Abroad	2

Qualitative research samples are described in Table 2 as follows:

**TABLE 2: Samples participate in in-depth interviews\*\*\***

Criteria	Content	Quantity
Locality	Ha Noi	10
	Thua Thien - Hue	12
	Ho Chi Minh City	9
Gender	Male	20
	Female	13
Type of organisation	Registered association	4
	NGO, fund	15
	Group, club, community organisation, or social welfare establishment	9

\*\*\*some organised group interviews for two people so the number of organisations is less than that interviewees.

In qualitative samples, due to the distribution of organisations in localities, the number of community organisations, social welfare establishments, or clubs interviewed in Ho Chi Minh City is higher whereas the number of NGOs or registered associations interviewed in Ha Noi is higher. In Thua Thien - Hue, the distribution of organisations is rather level.

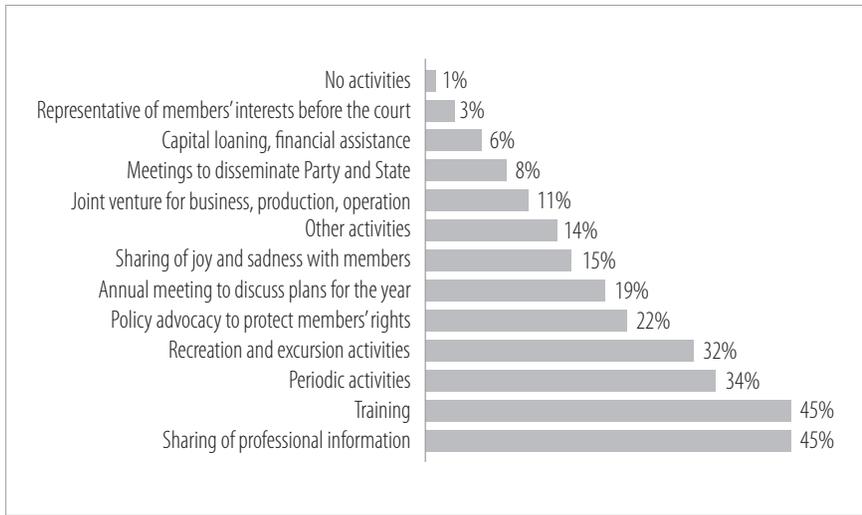
## **B. DESCRIPTION OF ASSOCIATION PARTICIPATION BY PEOPLE SURVEYED**

According to the quantitative survey findings, 70%% of people who answered the questionnaire are currently members of at least one organisation, association, or club/group, and 30%% said they do not belong to any organisations or unions. Among those who participate into organisations, the percentage of those who are member of clubs/groups is highest, equal to 35%%, followed by those who are member of NGOs/foundations, and socio-political organisations, equal to 23%% and 18%%. Specific findings are shown in Chart 1 as follows.

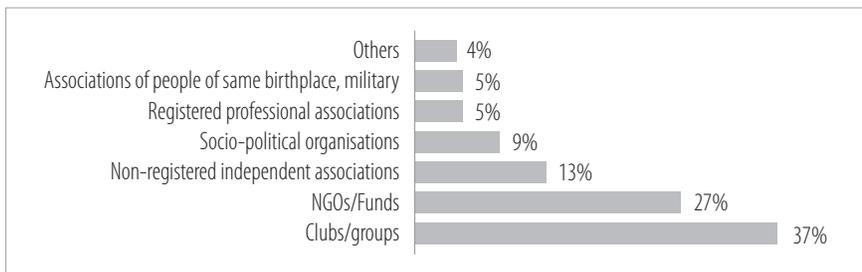
**CHART 1: The membership status of research participants (%)**

In regard to age group, people aged 18-22 make the highest percentage of participants into socio-political organisations with 38%%, followed by people aged 23-30 with 18%% and those aged over 30 with 10%%. It can be understood that many people in the age range of 18 to 22 are university students and join youth unions, and when these people graduate from university they are no longer members of youth unions, that is the reason why the percentage of participants into socio-political organisations decreases when the age range increases. The trend is similarly seen in clubs/groups as the percentage of membership regarding age range is 60%%, 38%% and 27%% for the age groups of 18-22; 23-30 and over 30 respectively. In regard to religion, the percentage of Catholics and Protestants who are members of socio-political organisations is relatively low, only 5%%, whereas the percentage of Buddhists is 20%% and non-religious members is 22%%. On the contrary, the percentage of Christians, Buddhists, and non-religious members in clubs/groups is 45%%, 22%% and 43%% respectively. Similarly, the percentage of Christians in non-registered associations is the highest, with 32%%, whereas the percentage of Buddhists and non-religious members is 7%% and 12%% respectively.

Associations often organise activities targeting various members. Survey outcome indicates that sharing of professional information and training are the most popular activities of organisations, equal to 45%%; followed by periodic activities and entertainment activities with 34%%, and 32%% respectively. Policy advocacy to protect the interests of members accounts for 22%% whereas there is only 3%% of activities representing and defending members' right. Details of organisations' operations are demonstrated in Chart 2 as follows.

**CHART 2: Organisations' activities targeting members (%)**

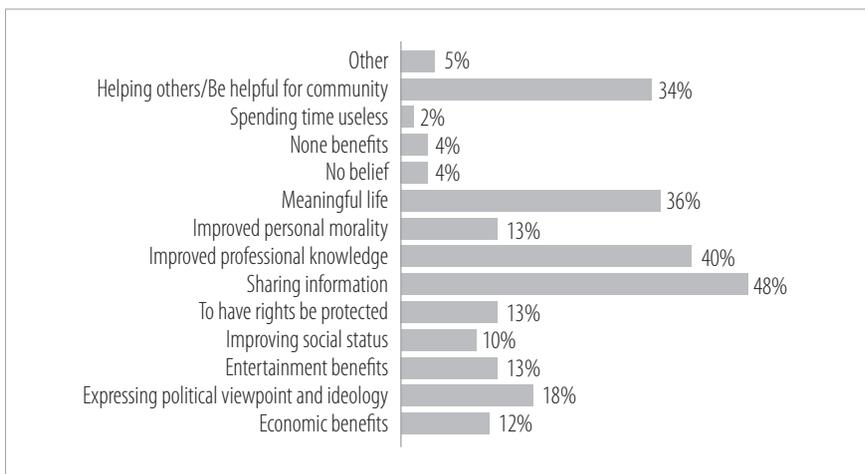
In in-depth interviews, NGOs, funds, clubs or social welfare establishments are often set up to assist vulnerable groups. Since their organisational model does not register function to represent members' right, this explains why this function is not popular, according to the survey findings. Nevertheless, in community clubs/groups, members are most active, with 37%, followed by members in Non-Governmental Organisations/foundations with 27%, whereas other members in other types of organisations show the least active operations, as displayed in Chart 3.

**CHART 3: Types of organisations in which survey respondents said they are most active (%)**

In regard to age group, the percentage of people aged 18-22 saying that they are most active in Clubs/groups, equal to 67%% of those asked; whilst the percentage of people aged 23-30 and over 30 said they are most active in these organisations, equal to 33%% and 20%% respectively. There is no considerable difference in socio-political associations. In regard to religion, none of the Christians said they are most active in socio-political organisations whilst the percentage among Buddhists and non-religious people is 13%% and 8%% respectively. On the contrary, the percentage of Christians saying that they are most active in clubs/groups is 50%%, whilst the percentage among Buddhists and non-religious persons is 29%% and 37%% respectively. There is hardly a difference in gender, except in the case of associations of people from similar birthplace, military units and age where none of women asked expressed their viewpoint whilst 10%% of men asked said they are most active in this type of organisations.

It can be said that clubs and groups are highly voluntary, which is suitable with the hobby and time as well as resource of members so they are more active. NGOs and foundations often bring about economic benefits for members, so their members are also quite active. Details of the interests of the people when joining associations are demonstrated in Chart 4.

**CHART 4: People's incentives when joining associations**



As seen in Chart 4, the major benefits of association participants are to share knowledge and information (48%%) and to improve professional knowledge and capability (40%%). Of note, up to 36%% of people surveyed said they gain benefit as their life becomes more meaningful and another 34%% of people asked said they can help others and do things helpful for the community. In in-depth interviews, many interviewees said they join associations not really for their own benefits, and not really for helping others as well. *A respondent shared “doing useful things for the community is good, but that is not the most important reason that I decided to join the Association. I do not have the mission to help the others, but I do want to have right viewpoints, sound morals, harmony with the environment and people around, respect the difference and discontent with the injustice, and I want to demonstrate these viewpoints through the Association.”*

The survey outcome does not reveal significant difference in gender and age group in assessing the benefits of joining associations. Nevertheless, there is a difference in certain benefits when referring to religion. Up to 55%% of Christians said joining associations makes their life more meaningful, whilst only 33%% and 35%% of Buddhists and non-religious persons respectively agreed with that. Similarly, 45%% of Christians said they feel helpful to the community whereas the percentage of Buddhists and non-religious persons feeling helpful to the community is 29%% and 40%% respectively.

As operation of associations is such meaningful, up to 83%% of people asked said Associations and their operation are important and very important to them. There is no difference in term of gender and religion in this assessment, however, more people in Ha Noi and Ho Chi Minh City than other provinces tended to think that activities of associations are significant, for example 87%% in Ho Chi Minh City as compared to 72%% in other provinces. In regard to type of associations, among people chose socio-political organisations as the organisations in which they are most active, 59%% said operation of associations is important or very important. The percentage of those who chose NGOs/Foundations, and Clubs/Groups as the organisations in which they are most active said operation of associations is important or very important is 89%% and 83%% respectively. Despite this slight difference, generally speaking, operation of associations is considered important by people surveyed.

## C. SOCIAL COMMUNITY-ORIENTED ACTIVITIES OF ASSOCIATIONS

As shown in the quantitative survey outcome, one of the crucial reasons behind people's participation into associations is to help others, and do useful deeds for the community. This is obviously demonstrated in in-depth interviews with associations, NGOs, Clubs and groups. In particular, these community-oriented activities can be detailed in various specific purposes as follows.

### i. Assisting vulnerable, impoverished groups

In interviews, assisting the poor, lonely, street children, and people with disability is the sole purpose of the majority of community charity organisations, NGOs and foundations in Vietnam. For instance, the Community Assistance Centre in Hue is currently caring for 179 people HIV positive, and providing support for 145 impoverished children, including 10 children infected with HIV. Also the centre is home to hundreds of people with mental illness, disabled people, lonely old people who are taken care of by the centre staff and volunteers who even have to talk to and confine in these people to keep them from falling into depression. Located in Hue, but the centre often organises visits to the leper stations in Quy Nhon (Binh Dinh Province), Lang Co (Thua Thien - Hue), Truong Son National Martyrs' Cemetery and Quang Tri Citadel to pray for the peace of fallen soldiers' souls. Organising similar activities, the leader of a charity fund in Hue said: *"We are assisting 450 people of mental illness, but we do not only take care of them, we also help them integrate into life. We instruct health patients to raise chicken. We provide them with chicks so as they can raise and sell grown chicken and then use the money earned buy new breed. The practice helps them integrate into the life easily"* (male, Hue, foundation).

The most assistance for the poor is provided by charity organisations. These groups are founded voluntarily by youths, Buddhist followers or working people. Many groups operate quite methodically: *"Whenever we are informed of an impoverished family, we shall assign our staff for a field assessment by asking both local authority and the family's neighbours to see whether their poverty is real. If the family is poor as said, they include them in the list of monthly rice recipients. We provide them rice for a year, not once as many other charity groups often do."*

*Currently, we are sponsoring 35 households in Hue. We have built of a network of benefactors providing financial assistance, with many of them knowing us through Facebook. Whenever an activity is done, we post photos, informing everybody of the result. This is really important as they believe that what we are doing is right, not dubious and they shall continue supporting our operation” (male, Hue, charity group).*

Besides groups set up by financially-able people to help disadvantaged ones, there are many local groups established by disadvantaged people or their relatives. A group of “deaf-mute” people in Ho Chi Minh City is currently accommodating 250 children, with the majority being homeless and orphans who migrated from Ha Noi, Hue, Quang Binh and Da Nang to Ho Chi Minh City. The group was formed by a parent of a deaf child. She set up the group based her own experience in raising her kid and sympathy towards people in a similar situation. She said: *“This house is very important as deaf-mute people have no voice, they are inhibited psychologically as they cannot communicate with their parents and family members when they stay put at home, thus, the majority of them will be desolate and like a fish out of water, and gradually become depressed and suffer from autism. Many children are beaten and driven out of their house so they flee home and go wandering. When they get together here, they can share with each other sorrow and experience as well. Before, many of them were even guilty of theft because of hunger. When they arrived here I told them that stealing is wrong and they should not so, if they steal something worth over VND2 million, they shall be imprisoned. I told them that if you feel hungry, they can help clean dishes for a food stall, for example, so they can give you some food. Obviously, if the deaf-mute children are not instructed this or that, they will become bad people, if they are educated, they will become good ones” (female, Ho Chi Minh City, community group).*

At present there is a network of 25 children assistance centres in Ho Chi Minh City. The director of a child protection centre in Hoc Mon District said her family is providing support for 96 disadvantaged children whose parents have no income, or suffer from disability and incapacity. *“We give them food for breakfast and take them to school. They will have a noon nap after returning home from school and then revise their lessons or play around. They all return to their own home in the evening. The demand in communities is huge as many families are*

*difficult in finance so they can let their children unattended if there is no assistance at all. Right next to my house, there is a couple of parents who finished first grade and are completely illiterate. They are assisting work at construction sites but irregularly so they often have no money and then let their children drop school. Many children, if they are not provided with education, will talk a load of shit, play games, or even commit theft. There is one kid who started smoking when he was four, sworn and was ready to pick up any cigarette thrown away to huff and puff. After he joined the centre, he quit smoking, started his education and now he is fine” (female, Ho Chi Minh City, social assistance centre).*

In addition to direct care and assistance, numerous organisations target community development through the supply of microfinance, breeding techniques for disadvantaged households as shared by the director of a foundation: *“At present our foundation is supporting 300 households in A Luoi District so they have capital for animal husbandry such as chicken, pig and cow raising. We work with specialists, and professors from universities to support them with breeding techniques. Generally speaking, depending on the real community demands that we direct our assistance. For instance, if there is a high demand for using river water in a commune we will support them build a safe water project, supplying them with water pipes and tanks, which make local residents extremely joyful”.* (male, Hue, Foundation).

Activities supporting poor communities are popular tasks of NGOs. They often focus on assisting ethnic minority groups, lonely women, and poor farmers in growing crops, raising animals, or getting access to markets for traditional products. The director of a NGO in Ha Noi said: *“We provide the poor farmers with a fishing rod, not fish. We often organise them in certain groups depending on their own needs. Then we provide them with technical training and loans, and help them buy good animal breeds. The formation of groups is essential as it creates collective strength, they can buy breeds at cheaper price and can negotiate for better price. It does not aim to reduce poverty merely but to achieve sustainable development”* (female, Ha Noi, NGO).

Therefore, supporting the poor and disadvantaged is one of the significant and common activities of associations, unions, NGOs, foundations, and charity groups. These organisations manage to mobilise resources from individuals and enterprises in the society, or

from international organisations to perform their mission. Although they pursue different methods, they look for the fine things in society, that is to help impoverished people to overcome their situation.

## **ii. Protecting natural resources, environment**

Apart from assisting the poor, vulnerable groups, many organisations focus on other important matters such as environmental protection, fight against climate change, and management of natural resources. A NGO specialised in sustainable management of natural resources and environment was established in Hue in 2005. The organisation was initiated by a group of friends who wanted to contribute to the community. They wanted to apply knowledge and studies at home and abroad into the reality of Vietnam. A leader of the organisation said: *“We assisted local authority and people in implementing forest land allocation, which is crucial as land plays an important part in production, and then assisting in means of subsistence. Then we organise community to let them practise self-control and bring into full play their strength so that they will no longer have to ask for anything. In short, we approached them based on their advantages, helping them manage and use natural resources sustainably. From this model, we advocated the local authority not only for cutting and allocating sections of forest land for local people but also for creating a chain to bring about actual effects for the whole community”* (male, Hue, NGO).

The director of another NGO said her organisation also considered the management of natural resources including forest, river, and water really significant. It is sustainable to provide training and improve capability of communities living by river banks, enabling them to protect their river. If communities living by river, both for a livelihood and culture, do not know how to protect their natural resource, nobody can do that for them. She said: *“As a river often stretches out not only from one province to the other, but even from one country to another, so it is vital to cooperate for sustainable management. Thus, we not only work with local communities and authorities, but also work with organisations in Laos and Cambodia to make sure we can well manage the shared assets. The practice is challenging, but can be done gradually. If we do not act right now, the future generations will have nothing to live by”* (female, Hue, NGO).

The public participation into natural resource management to make nature resources more sustainable is also emphasised by leaders of a professional organisation in Hue. According to the leaders, assigning local association branches to manage the water surface is most sustainable and efficient. No one can protect and exploit natural resources sustainably as those who own the natural resources. *“We have a network of 82 branches and over 6,000 members. We help each other develop our profession, develop fishing resource, and particularly manage fishing ground. When the Association helps its members to develop well, the members then will have capability and responsibility to pay fees for the Association to operate. Therefore, we think that pushing the Law on Associations to ensure the autonomy, self-independence, and freedom of association is crucial, enabling associations to be able do many more things”* (male, Hue, Association).

A number of NGOs working on newly-emerged and more complicated issues, for example, exploitation of mineral resource, with the aim to protect the rights of local communities, to prevent water resources from being polluted and, especially, intensify transparency in the whole process of mining. Nevertheless, the director of a NGO operating in this field said that that was completely complicated and hard to be realised due to interest conflict between enterprises and local communities. Furthermore, sometimes organisations like NGOs meet a plenty of procedures to get a project approved by local authorities before it is implemented. Sometimes, the project comes to a standstill, making the assistance of local communities in protecting their environment and natural resources impossible due to interest contradiction. More details are discussed in the section (d) presenting difficulties and challenges facing associations.

### **iii. Educating social issues for youths, students**

One of the effects of NGOs and community organisations is to create opportunities of apprenticeship, training, and voluntary activities for students and youths. A survey conducted on 600 students by a NGO working in environmental protection in Hue shows that 85%% of respondents said they wanted to join community activities. The majority of respondents said they wanted to learn from the real experiences on environment, climate change, livelihood, management skills, and

how to contact with people. Nevertheless, NGOs fail to satisfy these demands. For instance, the NGO mentioned above is able to receive only 25 students. Similarly, the director of a foundation which works with foreign students also recruits Vietnamese students to train and enable them to join the organisation. *“Last April we announced our recruitment plan and received application of nearly 100 young people. But we were able to recruit only 15, and the recruitment was done mostly through Facebook. After the youths joined activities, their awareness greatly changed, especially their activeness is quite high now. Previously they did what was told, but now they are quite proactive and think of what should be done. Before they thought that they could learn from foreign students, but now they think all should coordinate with each other, such change of thinking is quite good”* (male, Hue, foundation).

The recruitment of students and youths for NGOs' activities is increasingly popular. Quite a few organisations recruit them as interns, whilst others recruit them to carry out activities. Of note, there are organisations designing activities targeting youths, building up their capability. Director of a NGO in Ha Noi said: *“We are not only focused on improving capability for youths, we also inspire them, wanting them to become masterminds behind changes rather than beneficiaries of projects. Then, they will develop their own initiatives to deal with problems of environmental pollution, poverty and matters of their concern”* (female, Ha Noi, NGO). Head of a group of youths in Hue said: *“We want to target values that connect the love and sharing of all people, from the value of honesty, respecting each other, especially the ability to cooperate and working in group. We work with both students and high school pupils, organising separate classes or co-ordinate with schools' youth union to organise collective programmes. Generally speaking, these activities are pretty practical, enabling participants to gain experience through actual activities rather than general movements”* (male, Hue, group).

A group of Boy and Girl Scouts in Ho Chi Minh City is one of the organisations that have experience in working with young people. The key activity of the group is to provide education and training for youths. A senior in the group shared: *“The philosophy of Scouting is to instruct people to do acts of charity to help others; one must be helpful for others. Scouting also train people's self-reliance, for example, train little kids how to clean their teeth, how to use their personal belongings, how to tidy up*

*mosquito nets and pillows when getting up, and how to separate clean clothes from the dirty ones. Scouting teaches people to help each other, the senior helps the junior. Scouting also teaches people to be helpful for the community, for instance, whenever an activity is finished, one must clear all rubbish, leaving the environment clean”* (male, Ho Chi Minh City, scouting group).

Activities that spread beautiful values in the community, especially among young people, are crucial. Although investment remains inadequate, those activities have paid due attention to, contributing to building up fine values in the society. If this role of associations, NGOs, and community is brought into full play, surely enough, morals in the society will be improved.

#### **iv. Advocating and contributing opinions for policy**

One of the important roles of associations, NGOs and community organisations is to provide information, evidences and people's opinions for State bodies to make management and policy making much more efficient. The contribution of opinions for policies and laws is diverse in various fields such as gender equality, anti-violence, environmental protection, education, children's right, right of the lesbian, gay, bisexual and transgender people, or other healthcare, education, and socio-economic issues.

For successful advocacy, many organisations often get together to have additional resources and information. For instance, Vietnam Rivers Network (VRN) advocated the National Assembly to stop 483 small and medium-sized hydropower projects planned to be built on Vietnam's rivers. In particular, VRN successfully advocated the Government to stop the Dong Nai 6 and 6A hydropower projects as they would have serious impacts on the region, and cause serious forest damage, whereas environment recovery would be impossible. In addition, the rivers network operated in the sub-Mekong region and co-ordinated with international environment organisations, advocating for changes related to the construction of Xayaburi and Don Sahong hydropower projects to limit impacts on the local environment as well as livelihoods of the communities residing in Mekong Delta.

Organisations are also advocating for specific issues in relation to specific policies. For example, director of a NGO specialised in working

with ethnic minority people proudly talked about changes in policies related to the study of local languages. She said, previously the study of Thai language was largely prohibited in the locality Policy, but after years of advocacy, on December 23rd, 2014, the Ministry of Education and Training issued the Circular 46/2014/TT-BGDĐT on “the popularisation of Thai language at primary education level.” This is really significant as it realises the State policy on conserving national culture, and it is meaningful because *“the language plays an important role in preserving culture. When local people can use the Thai language they feel greatly proud. Such pride urges them to preserve what belongs to their culture. As far as I’m concerned, it is not only the issue of the written language, but the pride of the ethnic minority people. It seems learning to speak and write the Thai language asserts their being Thai people. Now we are assisting the Dao and Mong communities to urge the local authorities to support the study of their languages”* (female, Ha Noi, NGO).

There are a plenty of different examples showing NGOs contributing opinions and advocating for the Law on HIV/AIDS Prevention and Control, Law on Domestic Violence Prevention and Control, or Law on Marriage and Family. During the advocacy process, besides technical knowledge, NGOs often assist people living with HIV, women suffering from domestic violence, or lesbian, gay, bisexual and transgender people to participate in workshops with the Drafting Committee and National Assembly deputies to get their voice heard. The practice has made considerable contribution to the quality of laws, which is appreciated by the international community. *“Vietnam’s Law on HIV/AIDS Prevention and Control is quite good as the language for right protection in the law is very strong. The Law is said to be more progressive than many countries’ laws by the United Nations, which, I think, is thanks to the participation of NGOs, especially people with HIV positive”* (female, Ha Noi, NGO). Similarly, leader of a NGO in Ho Chi Minh agreed that the advocacy process for the rights to equal marriage for lesbian people also witnessed the enthusiastic participation of community organisations, NGOs. *“We think that Vietnam has made quick changes, both in law and social attitudes. More importantly, it is because the lesbian and transgender people have appeared and taken an active part in advocating the State to protect their right. Saying this is not to boast about one’s deeds but actually NGOs have made a significant contribution to this advocacy process.*

*Now, Vietnam takes the lead in ASEAN, which is widely acknowledged”* (male, Ho Chi Minh City, NGO).

It is obvious that when Vietnamese society becomes more diverse, social interests are interwoven and even conflict with each other, it is essential to have associations, NGOs, or foundations to promote and protect the interests of vulnerable groups. That also helps our State to promulgate sound policies, mitigating groups marginalised to become antagonistic or to create inequality, injustice that might increase social disorder.

#### **v. Promoting and protecting human rights**

In the interviews, activities promoting and protecting the rights of vulnerable groups are mentioned many times by representatives of organisations. The protection of human rights can be activities relating to human right education activities, legal support, capacity enhancement, or promotion of participation of people.

One of important roles of NGOs and the community is to protecting the rights of vulnerable groups. For example, a NGO in Ho Chi Minh City focuses on activities to prevent sexual assault for children in the Mekong Delta or preventing early marriage among girls. Their activities mainly focus on improving skills and awareness of girls and their families of risks as well as rights of children. Similarly, many organisations focus on improving women’s rights, HIV carriers or ethnic minority people. The director of a NGO in Ha Noi said: *“Vulnerable groups are at risks of having their rights violated the most so NGOs often work with these groups. In order to protect their rights, they themselves must acknowledge their rights first so we often help ethnic minority people better understand of their rights when working with ethnic groups. Their rights include rights relating to land, language and culture. If they understand, they can protect their rights themselves if their rights are violated by companies or even local authorities”* (female, Ha Noi, NGO).

In in-depth interviews, most of organisations have activities relating to communication and education to change social awareness of values of equality, freedom and human dignity. Many people said that the lack of knowledge and respect of rights lead to rights violation. Vulnerable groups and ethnic minority people whose rights are violated but do not dare to raise their voice because there are still many discrimination and

prejudices in the society. *“We try to eliminating discrimination against HIV carriers because it hurts many people and prevents them from getting access to medical services. If we cannot handle this problem, it is unable to reverse the HIV infection trend in Vietnam”* (female, Ha Noi, NGO). The situation is the same with other vulnerable groups such as people with disabilities and lesbian, gay, bisexual and transgender (LGBT) people. A leader of a NGO in Ho Chi Minh City said: *“the biggest success that we have made is to reduce discrimination against LGBT people. It used to be something terrible in the past and no one dared to make it public. Many people even thought that they were guilty and led a life of self-indulgent. But now it is totally different. Looking back many times, I think that if there are not such changes as now, this group will continue to live in the blackness”* (male, Ho Chi Minh City, NGO).

Although there are not so many organisations operating in civil rights, politics or using justice to protect individuals whose rights are violate, more and more organisations paying attention to and expanding their operation in promoting the rights of ethnic minority groups. In recent years, many organisations started to use international practice such as the Convention on the Elimination on all Forms of Discrimination Against Women (CEDAW) or the Universal Periodic Review (UPR) to promote human rights in Vietnam. *“This mechanism is important because the Vietnamese Government has been more active in participating in human rights mechanism of the United Nations. NGOs’ writing reports to CEDAW and UPR is very good because it opens up a dialogue channel in the society. Although it is still at early stage, the channel is considered a step forwards in the role of civil society in protecting human rights”* (female, Ha Noi, NGO).

So it can be said that human rights protection has become more important, particularly the rights of vulnerable groups due to profound changes in the society. Apart from the important role of the State, the participation and voice raising of NGOs will contribute to improving the human rights situation in Vietnam.

#### **vi. Promoting international exchange and connection**

One of important roles of social organisations, NGOs, community organisations is to promote the people-to-people relations between Vietnam and international friends. It seems to be natural because

most of organisations receive aids or have relations with embassies, UN organisations or international NGOs. Besides, they have direct exchange activities with people from other countries. The director of a foundation in Hue said: *“We annually receive many delegations of students from other countries to learn about, meet and work with local people. For example, we co-operate with the Singapore Technological University and it sends five delegations with 25 students each delegation to Vietnam annually. They mostly come on probation or study such as growing trees, gardening or teaching English for local pupils. Apart from Singapore, we also work with Thailand and Laos to promote exchanges and mutual understanding”* (male, Hue, the foundation).

Many Vietnamese individuals and NGOs take part in special networks or groups at national, regional and international levels such as the Asia-Pacific Network on Food Sovereignty or the ASEAN network on gay, bisexual and transgender people. Most of national or international networks are self-established with the aim of sharing information, doing research or campaigning for a regional or global issue. NGOs, Scouts or foundations all have relations or co-operation with similar organisations in the region or the world. For example, a social task club in Ho Chi Minh City often has exchange activities with similar associations in Cambodia, Singapore and the Philippines. Through international conferences and forums, they better understand both advantages and disadvantages of social tasks in Vietnam and vice versa, Vietnam also better understands their countries. Similarly, organisations operating in gender and women's rights often establish relations with NGOs active in gender and women's rights, and environmental organisations take part in environmental networks. This is an important channel to help the world know more about the situation in Vietnam and to create co-operation relations as well as joint programmes.

Amid the context of globalisation, co-operation in research and education, business and cultural exchanges has become more and more important. Non-governmental organisations, associations and foundations play an indispensable role in promoting people-to-people co-operation and exchanges. This is an important channel to help Vietnam develop and strengthen their international relations. It will not only help international friends better understand about Vietnam but also open up development opportunities for local people and society.

## D. DIFFICULTIES AND CHALLENGES FACING ASSOCIATIONS

Although NGOs and associations have made practical contributions to the development of the country, they are facing many difficulties. These difficulties not only reduce their operation efficiency but also limit their contribution to dealing with different issues of the society.

### i. Difficulties in registering legal status

According to the survey, all organisations classified as “socio-political organisations” registered and have legal status. However, 27%% of NGOs and foundations have yet had legal status and 52%% of other associations and organisations do not have legal status. The survey outcome shows that 39%% of interviewed organisations that do not have legal status said that they think it is not necessary to register; 23%% said they do not want to register, 19%% said they are not qualified for registration, and 9%% said they submitted registration files but were not accepted. In in-depth interviews, representatives of community organisations, associations and clubs, particularly in Ho Chi Minh City, said they met many difficulties in registering legal status with State agencies. Many stories relating to this issue were told such as the group of deaf-and-dump people, the social work club, scouts, or fund for community development all fail to get licenses.

For the group of deaf-mute people, they are operating as a volunteer network supporting each other in terms of food, clothes and accommodation. However, deaf people also have other demands such as education, jobs, marriage or contributing opinions to building social sponsorship policies relating to them. An association of deaf people is also a place for people from different regions to gather and work such as building a set of dictionaries about signal languages. According to the group's co-ordinator, *“the unification about language is very important. With the same word “you” but people in different areas use different signal languages such as some people pointing their hearts, while some people pointing their shoulders and some others pointing their heads. At present, there are around 1,600 words and if deaf-mute people want to get access to higher education like their international peers, they must have language. Getting access to higher education and having jobs are very important for them because they*

*will no longer think that they are useless and they will try to study” (female, Ho Chi Minh City, group of deaf people).*

However, according to the co-ordinator, the group of deaf people came to authorised agencies many times in three years to complete registration for the establishment of the association of deaf people but failed. *“I thought that it was done but after waiting for a long time without receiving a reply from the authorised agencies, I decided to come to the agencies to ask about the result. They said that the decision to set up the mobilisation board was expired and according to the Decree 45, the association could not be established when the decision was expired. I returned the old decision to set up the mobilisation board because they said they will grant the new one and then grant the licence to set up the association. But then it still could not be done and they said they had to exclude a person for ABC reasons that are not related to the Association of deaf-mute people. When we found a deaf-mute person with a university degree to serve as the association chairperson, they said that this person was too young to work as chairperson. I felt very confused and so tired. Until now, we still cannot establish that association of deaf-mute people” (female, Ho Chi Minh City, the group of deaf-mute people).*

Although it was suggested to join the city’s Association of People with Disabilities, the co-ordinator said that it was infeasible. Firstly, deaf people have many distinguishing characteristics and only deaf people could understand and support each other so if they join other groups of people with disabilities, it will reduce the operation efficiency of the Association. Secondly, all members work together and match with each other for many years so they want to keep their independence. Thirdly, as they work directly at the community so they want to exercise self-control and to not be “guided” from higher-level agencies which can reduce their flexibility and operation efficiency. These are primary reasons leading to the need to diversifying types of associations and allowing many associations to be established and operate in the same area.

According to interviewees, many social sponsorship centres also encountered difficulties in registering operation like the group of deaf people although they have different reasons. A specific example is about standard of services. An official of a social sponsorship centre in Ho Chi Minh City said: *“We are raising 30 children of between 2-18 years old.*

*Many of them are abandoned when they were born. We provide them with food, education and help them integrate into the community. We have just got operation licence after 20 years registering for the licence. We failed many times because every time we registered for the licence, officials at authorised agencies said they we still lacked many standards such as not having standard flagpole, funeral home and playground. Without licence, we cannot open a bank account, cannot register for financial assistance for the kids and cannot get tax reduction. Working charity is so difficult. Local authorities just check and set standards but do not help us to meet the standards although we do not work for ourselves, we work for the kids” (female, Ho Chi Minh City, social sponsorship centre).*

For NGOs, in in-depth interviews, no NGOs in Ha Noi said they had difficulties in establishing their organisations. Nevertheless, the establishment of a Fund or an Organisation is much harder. A participant into the study retold her two-year journey but finally failed to establish a Fund though the move had been backed up by a domestic supporter. She said: *“We handed in a request to the Department of Home Affairs whose staff asked why we planned to operate in so much fields, including environment even though there had existed a Fund for Environment. Then they questioned about financial sources. After one year, we completed necessary papers which were later proceeded to “one-stop” shop. We though it was almost done and just waited for licence, then they said they needed opinions from concerned bodies. After ten or eleven months at the “one-stop” stop, everything from papers, capital or humans was okay. But, one month later, we received a refusal saying that the establishment of the Fund “is unnecessary, inadequate.” So, two years were gone and we got such a few words” (female, Ha Noi, NGO).*

Request for establishment licences of various organisations remains hard in Ho Chi Minh City and other localities. An organisation relating to religion in Hue said they could not register legal status as a religious charity organisation so they registered as a technological and scientific organisation following the Government Decree 81/2002/ND-CP, dated October 17th, 2002, but in fact people working at the centre are monks and Buddhists. An organisation operating in protecting the rights of minority groups in Ho Chi Minh City said: *“We met difficulties in registering as a NGO so we had to register as a social business. We pay for taxes, and everything is clear and transparent and there is no difficulty*

*in our operation. However, I still want it to be registered exactly as its nature, better than having to “wear other’s hat”* (male, Ho Chi Minh City, NGO). The situation shows that the Law on Associations needs to have an open and simple procedure that stops Associations from “disguising” themselves because they fail to register their desired associations, which is not transparent and causes difficulties in the associations’ operation as well as State management.

Without a governing body or there have been other organisations working in one field are reasons among the others that have prevented groups from obtaining a legal status. For example, a member of a group of Boy and Girl Scouts said that *“we want to register with the Department of Home Affairs for the establishment of the Association of Scouts according to the Decree 45 but they said we did not have a governing body, so they refused to take our files. They said, like the ornamental creature association, it has the Department of Agriculture to act as its governing body. Then we found a document of the Ministry of Home Affairs saying that the home affair department still have to receive files of movements without governing bodies and submitted our files but they still refused to take our files. Then they sent us a document replying that because there are many organisations of youths in Ho Chi Minh City at present such as the Youth Union so they do not allow the establishment of the Association of Scouts. So we submitted an application for the establishment of the association since 2010 and after many times, we were officially denied in 2013”* (male, Ho Chi Minh City, scout).

Similar to the Boy and Girl Scout, numerous other Associations also found it hard to specify their governing body, such as the Association of gay, bisexual and transgender people (LGBT). In the interview, a member of the LGBT community said *“if we request for association establishment, we have no idea which agency will be our governing body and which criteria we should base on. The network of the LGBT people spreads across the country, even within a city like Ho Chi Minh City, there are various groups of LGBT people. To our understanding, only one Association is allowed in each locality. We feel a bit concerned for that. Suppose someone has registered to establish a LGBT Association in Ho Chi Minh City, we will have no chance to set up our own. It sounds irrational as we are deprived of our own right to form associations”* (male, Ho Chi Minh City, NGO). In reality, even with those who are

interested in and operate in cooperate administration, it is also difficult to define governing body if they want to establish an association, no matter how easy to define their profession. An interviewee said *“it took us two years of debate to know which body should be governning body of “corporate administers.” Following numerous discussions, the Ministry of Planning and Investment eventually agreed to be the governing body, which by then helped complete all procedures so that the Ministry of Home Affairs agreed to grant a licence”* (male, Ha Noi).

Thus, the request for a governing body goes against the spirit that associations are established to demonstrate the relatively high voluntariness, self-responsibility and self-control. Almost 100%% of interviewees from registered organisations (whether a governing body is necessary) said governing body has not much support for their organisations' development. Moreover, one of the basic essentials of the right to freedom of association is the rights to choose to join or establish new associations voluntarily. If in an area where only one association exists and local people are forced to join that association or are unable to establish their own association (because of operating the same field), it is clear that their right to freedom of association is violated.

Unlike the Boy and Girl Scout or the Foundation for Community Development that received official written refusals with specific reasons, a Club of Social Work handed in papers but never got a feedback. The club has 120 members and operates to promote the development of professional social work by building training curricula and programmes on social work and supporting university having social work training such as the Ho Chi Minh City Open University, Ho Chi Minh City University of Social Sciences and Humanities, and the University of Labour and Social Affairs in terms of professional knowledge and by meeting students to inspire them to engage in social work. They also submitted files to register for the establishment of an association of those doing social works professionally in Ho Chi Minh City. However, *“we have a mobilisation board and submitted registration files but wait for a long time without any result. We think that we have to find another way to operate so we join an existing Association that operates in the field of educational psychology. Until now, the club still does not have its own legal status and its seal is square*

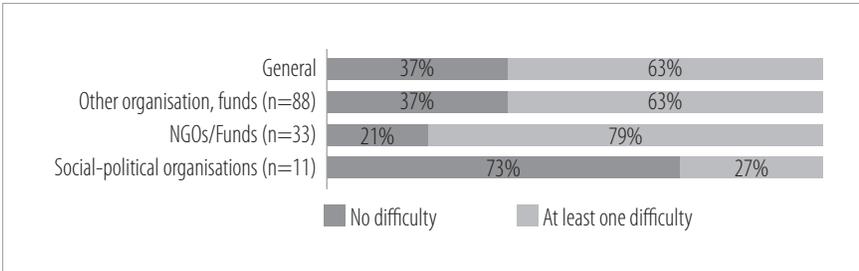
*and was made by ourselves. Its bank account is the personal account of a member of the club that is used to collect association fees*" (male, Ho Chi Minh City, the Club). Clearly, this case shows that the Law on Associations needs a clear regulation on explanation responsibility of administrative agencies in charge of receiving registration files for association establishment. This regulation requires these agencies to announce results in a limited period. These agencies are also required to clearly explain reasons in case they do not agree and local people can file a complaint or sue them if their registration is not handled properly by these agencies.

When the Social Work Club was not allowed to establish an association, it hinders operation of those who want to develop social work in Ho Chi Minh City. Apart from being unable to attract more members and mobilise sponsorship, they also cannot establish sub-branches such as training centres, research centres and businesses providing services to handle issues such as violence, sexual assault, gender issue, family issue or mental health. Not having legal status also affects the property ownership rights of organisations. For example, a social sponsorship establishment in Ho Chi Minh City was presented with two houses to serve as an office and a place to take care of disadvantaged children but they have to ask an individual for registering as the house owner for them. Without legal status, as a leader of centre on social activities relating to religion in Hue said: *"It will prevent us from opening a charity hospital and charity schools for poor people. Not everyone can afford health treatment and education fee for their children."*

## **ii. Difficulties in implementing activities**

Unregistered community groups and associations or NGOs often have difficulties in organising operation because of different reasons. According to the quantitative survey, popular difficulties include (i) applying for operation license (40%%), (ii) being required by authorised agencies to report about associations' activities (26%%), being dissolved or prevented by authorised agencies from operation (23%%), (iv) being interfered by local authorities in changing operation content and method (20%%). In general, 63%% of surveyed people said they encountered at least one above difficulty and 37% said they did not have any difficulty. This result is illustrated in the following Chart 5.

**CHART 5: Rate of association participants who encountered at least one of surveyed difficulties**



Basing on types of associations, we see that those from political-social associations have the lowest rate of meeting difficulties with 27%. Meanwhile, those from NGOs and foundations have the highest rate of meeting difficulties with 79%. Other associations such as clubs, community groups or unregistered associations have high rate of meeting difficulties, at 64%. Clearly, it is a big hurdle for operation of associations, NGOs and community groups.

In deep interviews, the freedom to operation is also a hot topic. There are following key reasons:

### **Not having legal status and the vagueness of “legality”**

This is one among reasons that are mentioned the most in interviews, particularly associations that have activities targeting the public such as conferences, training sessions, exhibitions or gatherings. Even large-scale charity activities of the youth are also interfered. Head of a group of youth in Ha Noi said: *“We sometimes encounter difficulties in organising activities. We were sometimes asked about legal status and license when we hired locations to organising activities because the locations owners were also afraid. We even met more difficulties when organising activities at localities. Local authorities like gatekeepers. We had to ask for permission if we want to work with local people but how we could ask for permission without legal status. Therefore, we have to ask for sponsorship from the Youth Union or NGOs. It is so inconvenient and is a loss of freedom”* (male, Ha Noi, volunteer group).

The lack of legal status for operation is quite popular among community-based groups. According to leader of a Union with a branch

in Hue, *“it is fine for small activities but when their activities are expanded, they often encounter difficulties because local authorities will ask about their legal status. Our study found that many charity groups operate effectively with many big activities because they have many members in many provinces, Ha Noi, Ho Chi Minh City and even Vietnamese nationals abroad. Therefore, the Union of Associations help to consider them as sponsored groups”* (male, Hue, Association). Director of a NGO in Hue said his organisation had to sponsor for many youth groups because they did not have legal status. The situation is popular in all localities, including Ha Noi and Ho Chi Minh City. *“I know a strong charity group with members ranging from Quang Tri to Da Nang, Ha Noi and Ho Chi Minh City, including even Overseas Vietnamese. They mobilise money to build houses for the poor. They also held music programmes to raise charity funds and improving capacity for local people. But now they have to split up to join Associations that already have legal status in different localities. They have to do that because they cannot act independently without legal status”* (male, Hue, NGO).

Difficulties in operation because of the lack of legal status prevent the development of groups active in social activities for the benefit of the community. An interviewee said: *“for youth groups, start-up in the field of social activities is more difficult than in the field of business. Start-up in the field of business will get support in many areas while the State has many policies and you just need several days to have your own company. What about social activity start-up? The youth lack not only skills, finance and human resources but also legal status. Without legal status, it is hard for you to implement activities independently, co-operate with partners and call for financial support from different sources. So do not say that the youth is emotionless and the youth do not care about social issues because we ourselves are pushing the youth away from good things”* (female, Ha Noi, NGO).

Besides, the majority of networks operating in a particular field such as environment, HIV, or education often work voluntarily without registering and without legal status so they also face certain difficulties in organising activities considered sensitive when having foreign element or relating to human rights. Director of a NGO said: *“Sometimes our networks meet difficulties in organising activities. They often ask for the networks’ legal status and license to operate conferences. Even there*

*was time we had to move from places to places to be able to organise a conference. We planned to organise the conference in Hue but local authorities asked for licence and we tried to explain but failed to get permission. Then we had to move to Da Nang to organise the conference with higher cost. We also had bad reputation because many people thought that we acted illegally” (female, Hue, NGO).*

According to the survey outcome, 62% of organisations without a legal status do not want to register or do not need to register. Low demand for obtaining a legal status is also demonstrated in in-depth interviews. They do not have demands because of worrying about expense and resources while they operate voluntarily and seasonally. Many people just want to have their activities treated legally without any prevention and be free to implement their activities. Therefore, the Law on Associations needs to simplify legal status registration procedures for associations to allow those associations that want to register can easily exercise their rights. Besides, the Law should also have regulations on associations that do not register because that is their choice and they are still allowed to operate freely provided that they do not violate laws.

### **Sublicense for Associations' activities and fields of activities**

Although having legal status and projects being approved, many associations still encounter difficulties in organising their activities. This is obviously demonstrated in quantitative research as up to 63% of respondents said they encountered at least one difficulty related to (i) asking for permit to organise activities (ii) being asked to report on the organisation of activities, being dispersed, being prevented from organising activities by authorised bodies, or (iii) having authorised bodies' involvement to change contents and methods. Among organisations, NGOs/Foundations are those that face difficulties caused by “sublicense” the most. Director of a NGO said: *“We mainly receive finance from international donors, who even have representative offices in Việt Nam. They got operation license from authorised agencies. Our projects were approved by seven or eight ministries but in principle we still have to ask for permission to organise every activity of the projects because of having foreign factor. It was difficult to ask for permission to organise a workshop in Son La, Lai Chau because of that foreign factor. It is even more difficult if the workshop has strange topic or is related to human rights” (female, Ha*

Noi, NGO). Director of another NGO said: *“There was time we organised a conference on human rights but we were asked about organisation license because of the appearance of logo of a foreign donor on the background. We were then forced to cancel the conference. This is unreasonable because the organising board including agencies with legal status and the foreign donor is allowed to operate in Vietnam”* (male, Hue, NGO).

Outdoor activities are also a challenge. According to the regulations, the organisation of outdoor activities must be licensed by local People’s Committees and if these activities are related to culture or arts, organisers have to ask for permission from culture management agencies. Therefore, certain NGOs, Foundations or youth groups which usually organise activities including communication, exhibition, workshops or social/environmental campaigns have to ask for license via an event organising company or they will not organise events with many participants because of difficulties relating to license. Both ways are costly and limited in efficiency as said by head of a youth group: *“It is such a fag. We want to do communication for the public but shrinking from thinking about rules and regulations. I just wish that I only have to think about how to make our activities be creative the most, not how to ask for permission. Now we are spending our energy in completing paper works, not in creativeness”* (male, Ha Noi, volunteer group).

In in-depth interviews, some representatives of NGOs and Foundations said they register to operate at a locality so they often encounter difficulties when implementing their projects in other locality. The director of a foundation in Ho Chi Minh City said: *“Although we register to operate in Ho Chi Minh City but most of our projects are implemented in the Mekong Delta region. For example, we work with street kids and have to come to their home villages in the Mekong Delta region if we want to help them. We have to work at both destination (Ho Chi Minh City) and targeting area (Mekong Delta region) to ensure efficiency. We cannot completely handle the issue if we only work in Ho Chi Minh City. However, the license only allows us to work in Ho Chi Minh City”* (male, Ho Chi Minh City, foundation). Obviously, associations registering at localities face the same situation because the mindset that you have to work in area where you register contradicts the regional, national and international development strategies. Currently, the majority of associations still have to rely on their personal relations

or “the transparency” of local authorities to operate as leader of a NGO said: *“It is fortunate that we have a network of former students and comrades across the central region so it is ok for us to operate wherever we go. I just call them, talk about our projects and they agree to support. We have never been asked whether we have operation license at these central localities or not”* (male, Hue, NGO).

However, not everyone is so lucky to have such a personal contact with local authorities. The director of a NGO in Ha Noi said: *“I had a project on human rights, community organisation, and democracy at grassroots level with a community in a north-eastern province. Working with local authorities, they mentioned different difficulties to not accept the project. But I tried to persuade that the project will benefit the local community and the province. I also used laws to persuade them. Finally, they said my organisation did not have provincial operation license so we could not implement the project here”* (female, Ha Noi, NGO). The director of another NGO said: *“We have a project on community development in three provinces. According to regulations, we have to ask for an operation license from authorities of the three provinces. The procedures are very complicated while local authorities had not support because the lack of professional skills and human resources. They just took our files on the approval of our foreign-funded project, annual reports and collected fee for management. Therefore, we still cannot implement the project. We are just able to carry out general activities of the project in Ha Noi but cannot go to these localities to work”* (female, Ha Noi, NGO).

So, in parallel with the right to freedom of association establishment, the right to freedom of assembly is also an important right that needed to be protected by eliminating sublicense like the field of business. If sublicense are eliminated, the rights to freedom of association and assembly will create strength for people to *“express their political view, participate in art activities and follow cultural, economic and social activities, participate in religious ceremonies or other faiths, establish and join unions and co-operatives, and elect leaders representing their concerns as well as make leaders have explanation responsibility”*<sup>11</sup>. In other words, if sublicenses are not

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11 Resolution 15/21 of the Human Rights Council, Preface (Cited La Khanh Tung, Nghiem Hoa, Vu Cong Giao).

eliminated, the efficiency of the right to freedom of association will reduce because association members do not have the right to freedom of assembly and so cannot express their opinions. This could be a reason for Vietnam to build a Law on the freedom of peaceful assembly or the Law on Demonstration in the law building programme of the National Assembly.

### **Financial assistance approval and capital mobilisation**

Unlike other political-social organisations and associations that get budget from the State, NGOs/foundations and Clubs/Groups often have to mobilise funds from different social sources. Charity organisations often mobilise money from donors and members of the organisations. This job does not have so many difficulties because group founders or those mobilise fund often have good reputation or have wide range of relationship in the society. Depending on the scale of each group, the money raised for each activity range from tens of millions of dong to billions of dong. Head of a charity group in Hue said: *“we regularly raise funds and donors made regular contribution to our activities. In special cases, we will take note, take pictures and post on social networks to raise fund. There was case when we raised fund to help an abandoned old woman. We raised VND500 million in three days. She now has a stable and fully-equipped house and has a saving for her to live when she gets older”* (male, Hue, charity group).

However, difficulty of these charity groups is the lack of a legal framework for raising funds and implementing activities. For them, raising fund is mainly done via social networks and donors directly send money to their personal bank accounts and they operate mainly base on people’s trust and kindness. Their current operation is free and has advantages and they want to keep that. However, they need a confirmation from the State that their activities are legal and are exempted from tax and protected by laws.

For NGOs/foundations, their difficulty is related to the procedure to approve foreign aids. The majority of resources for NGOs/foundations come from international NGOs, embassies or bilateral and multilateral assistance institutions. However, the current procedures to approve the aids must follow the Government Decree 93/2009/ND-CP on managing and using foreign non-government aids. Director of a NGO said: *“It*

*is difficult for us to raise fund and it is more difficult for use to ask for approval from the State to take that fund. We just need a single file which can be submitted to the donor via email to ask for fund while we need to submit up to eight files to ask for permission from seven or eight ministries to get that fund. We cannot take the fund if only one ministry does not approve and all of our efforts went away. They always want to call for financial assistance for Vietnam and I do not know whom they want to take the assistance as NGOs like us find it difficult to take financial assistance” (male, Ha Noi, NGO).*

So, it is necessary to simplify procedures for associations and civil social organisations to receive aid because the right to access to funds and resources is part of the right to freedom of association. According to a special representative of the UN General Secretary on the situation of human rights protectors, *“the government must allow NGOs to get access to foreign fund resources as part of international co-operation and basing on that, civil society should also have the same access like governments.”* Besides, Special Rapporteur on the rights to freedom of peaceful assembly and of associations Maina Kiai said: *“Good practice is a legal document that does not regulate the approval of authorised agencies before getting the funds from inside or outside the country. The State has responsibility to tackle money laundry and terrorism but this could never be used as a reason to disregard the reputation of the Association or to unreasonably persecute legitimate activities of the Association. To ensure associations to not be abused by terrorism organisations, the State must use replacing mechanisms to reduce risks such as adopting the law on banking transaction and the law on preventing terrorist actions”<sup>12</sup>.*

### **Complications and bureaucracy in laws**

The majority of associations, social sponsorship centres, NGO founders and participants are enthusiastic about their work. For example, there is a social sponsorship centre that was established by a journalist. Director of a sponsorship centre said: *“This journalist often comes to the park and plays with street kids. He found them vulnerable*

12 La Khanh Tung, Nghiem Hoa, and Vu Cong Giao. *Associations and Freedom of Associations*. Hong Duc Publishing House 2015.

*and decided to find a home for them and find ways to get them access to education. Then he established this sponsorship centre”* (female, Ho Chi Minh City, Sponsorship Centre). There are people who have deaf children and decided to build a group supporting deaf kids. There are people who want to contribute what they have learnt abroad to the development of the community and protection of the country’s resources so they co-operate with their friends to set up an association. Their enthusiasm helps to better the society and many people said that the laws must help individuals and associations engaging in social activities, not causing difficulties for them to operate.

Therefore, in most of deep interviews, participants proposed reduced procedures in managing operation of associations, groups, NGOs, social sponsorship centres and community groups. They all acknowledge that the State has hesitation towards certain forces but they said it is unreasonable to create a legal framework that restrains liberty of everybody. Such tightened management only causes difficulties for proper associations because anti-State associations do not need this legal framework to operate. Some people said that the State should not have hesitation towards associations operating in the field of human rights or politics as the director of a NGO said: *“How we could avoid issues relating to human rights and politics. Even neutral issues such as the environment, climate change and forest management also need politics to comprehensively deal with them. Who does cause the most loss of forests? Who did sign decisions for wood exploitation? Who does supervise it and how is it supervised? All of these things touch power and politics”* (male, Hue, NGO).

In order to do that, laws and decrees must be clear to not force associations to use loopholes to work because they are easy to violate laws, making it hard for the State management. As director of an association said: *“The issue relating to the law on associations are the same with the same issue of allotting forest land that we are working on. The State will allot forest land for local people to manage if it believes that they can do so. If the State does not trust local people, it will not allot forest land to them or will allot forest land to them with certain conditions for management. But these conditions are inadequate and local people cannot do anything with the allotted forest land. So it needs to be simple and less regulations to let associations be more active and take their legal*

*responsibility. The more licenses required, the more power authorities will have and it will be easier for public servants to make use of their powers. As a result, legal associations will reduce while those using loopholes of laws to operate will increase” (male, Hue, NGO).*

## **E. ANALYSES AND RECOMMENDATIONS FOR THE VIETNAMESE LAW ON ASSOCIATIONS<sup>13</sup>**

It is clear that associations, NGOs and community organisations are playing an important role in people’s life. Operation of associations helps enrich people’s personal life, protect their rights and promote collective actions to deal with common challenges<sup>14</sup>. The majority of association founders and members pursue a common interest, for the goodness and philanthropy. However, limitations remains in operation of associations, particularly the lack of a legal framework to promote activities of associations, adjust the degree of State management and particularly protect the rights to freedom of association from unreasonable intervention. Therefore, development of the Law on Associations needs to focus on lifting difficulties facing associations and protect the right to freedom of association of people in line with the 2013 Constitution.

### **i. Recommendations related to registration for legal status of associations**

Legal status registration is the most important issue in implementing the rights to freedom of association in Vietnam as being analysed at sections (i) and (d). Some Associations, Foundations and organisations, though having made contributions to social development, have failed to register legal status because of subjective, casual reasons or reasons unwritten in legal documents. For instance, in-depth interviews indicate that one Association was rejected due to the existence of other organisations operating in similar field in the same locality, one Association was rejected because “it was unnecessary and unsuitable,”

<sup>13</sup> This part of the report is based in part on speeches of experts at the scientific conference “Mechanisms to ensure the implementation of the people’s right to establish associations: theory and practice” held by the Law Faculty of the Hanoi National University on May 24th, 2016.

one Association stopped short because they could not complete all required documents in two years, and one Association did not receive any feedback from authorised bodies and did not know which mechanisms were available to lodge a complaint. Having no legal status prevents Associations from mobilising members and resources, and conducting civil transactions. Additionally, having no legal status also makes it hard for associations to ask permission for organising activities.

Therefore, to avoid casual practice in refusing citizens' right to associations, the Law on Associations should embrace certain contents. First, the Law should introduce simple and clear registration procedures, rather than multiple-step approval process, to ensure that anyone can establish an association procedures upon their desire, without having to "disguise" due to complicated procedures as shown in the case of religious organisations in Hue that had to register as organisations of science and technology or NGOs in Ho Chi Minh city had to register as enterprises. Second, certain technical barriers such as "only one association operating in a particular field is allowed in one locality" should not be employed to restrict the establishments of new associations like in the case of the Boy and Girl Scout. Third, the Law should introduce mechanisms to enable citizens to lodge complaints or enable Associations to self-announce their legality if authorised bodies did not respond to submitted establishment dossiers on time as in the case of the Association of Social Activists. Fourth, the Law should specify that organisations are held responsible before the law without referring to governing bodies as it would go against the spirit of self-control and self-responsibility of associations. Furthermore, the study reveals that the majority of governing bodies do not much serve the purposes of associations, or numerous associations find it hard to identify governing bodies such as LGBT Association (if they ask for establishment).

These contents present the view of the majority of survey respondents as up to 51% of surveyed people said "associations just need to register by filling in simple forms in line with regulations of authorised agencies" and 23% said "registration for the establishments of associations should have the same procedures as registration for establishments of private businesses as regulated in the Law on business". The survey also indicates that up to 85% of respondents said the Law on Associations "should not restrict the number of associations operating in a particular

field in one locality” and another 25% of respondents said their rights to freedom of association were infringed because there are not many choices of various associations for them to join.

In reality, the protection of citizens' right to choose Association to join is also crucial to ensure that Associations operate efficiently, transparently and for the shared interests. Related to simple registration procedures, almost in-depth interviewees said that State management should not cause difficulties for the establishment of associations but should focus on transparency and responsibility of associations. With a transparent life of associations, associations themselves will have to adjust to not violate regulations as well as to gain trust from the public and donors to exist and develop.

This is also an international practice<sup>14</sup> because rights to freedom of association is considered a civil right, a kind of freedom of contracts of individuals to promote the interests of members as well as contribute to dealing common issues of the community better. A number of countries such as the US, Germany, Thailand, Italy, and France consider the establishment of associations as a subject of the civil life so the rights to freedom of association is regulated by the Civil Law or the Commercial Law. For example, the Section 1274 of the Thailand Civil and Commercial Code has a definition saying that “Contract to establish union of associations is a contract through which many people negotiate and agree to carry out a common activity, apart from benefit sharing purpose”<sup>15</sup>. Similarly, Clause No. 1, Article 9 of the Basic Law for the Federal Republic of Germany affirms that “All German people have the rights to establish companies and other associations”<sup>16</sup>. The Supreme Court of the US considers the rights to the establishment of associations is a basic part of the rights to freedom of speech because in many cases, people could only exercise this rights effectively if they co-ordinate with others.

14 The European Court of Human Rights declared that people's legal status establishment to work together in a certain field of common concern is the most important factor of the rights to freedom of association, without this factor, this rights will be dispossessed of its meaning (The European Court of Human Rights, Sidiropoulos and others v. Greece, Application No.26695/95, July 10, 1998 – cited La Khanh Tung, Nghiem Hoa, Vu Cong Giao).

15 Dr. Chu Hong Thanh (Law Faculty, Hanoi National University). Ensuring the rights to association establishment in some countries and experience reference for Vietnam.

16 Le Thi Thuy Huong. Mechanism to ensure the rights to association establishment in law of the Federal Republic of Germany and experiences for Vietnam.

Because the nature of State management over civil rights is to acknowledge civil contracts between individuals so the procedures should be in the form of informing (model of registration) instead of applying for license (asking-giving model). Accordingly, individuals will inform State authorized agencies to be legally recognised volunteer connection of individuals and associations. Many countries apply this model of registration such as Japan, Brazil, Poland, Hungary, Romania and US. For example, in France, association founders only have to submit a declaration at the prefectures where association headquarters are located. In the declaration form, they have to clearly declare names, professions, nationalities and addresses of those in charge of managing associations. The declaration also clearly mentions methods to appoint association members as well as methods to adjust association regulations. The declaration will be attached with two copies of the association regulations. Heads of the prefectures will grant receipts within five days. After receiving the receipts, associations can announce their establishments. From that time, associations start to have legal status with third parties<sup>17</sup>.

So the Law on Associations should apply this model of registration rather than the model of asking for license for all types of associations, including associations with members and associations without members (NGO, foundation) Specifically, an association can register with authorised agency at provincial level (such as department of home affairs) or at central level (such as the Ministry of Home Affairs). The Law should eliminate the regulation of “governing body” to avoid prolix and unnecessary procedures. Associations will abide by laws and regulations relating to their professional activities. Regarding time, after 10 working days since the authorized agencies receive registration files from associations, they will grant certificates and the associations start to have legal status with third parties. This will help to reduce approval pressure for State agencies while deal with one among biggest difficulties of social associations in Vietnam: that is registering for legal status.

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17 Cited Dr. Nguyen Van Quan (Law Faculty, Hanoi National University). Association establishment rights and procedures in the draft Law on Associations.

## **ii. Recommendations related to free operation of Associations**

As analysed in the section about difficulties, quite a few associations, no matter with or without a legal status, encounter numerous challenges in carrying out activities. For unregistered organisations, main difficulties are related to the legitimacy or legal position to implement civil transactions. For registered organisations such as NGOs or Foundations, besides difficulties related to sublicence for activities or project location, they often face challenges in aid approval and resource mobilisation. Obviously, that Associations are faced with difficulties in carrying out activities demonstrates restriction on citizens' right to freedom of association. This hinders their operation, even humanities, community development and environment activities, and the protection of the vulnerable groups' rights.

This phenomenon is presented through quantitative research outcomes as 14% of people asked said they used to be prevented from establishing associations, 25% of people asked said they did not have many choices of associations, and 16% said they once restricted from participating into association's operation. The mostly-mentioned factor restricting the right to freedom of association is authorised bodies (41%), followed by work/study place (24%), and family/relatives (13%). Therefore, a great number of people asked, equal to 89%, said in case there are limits to the right to freedom of associations, for instance, the area associations are banned from operating, these limits must be written in law.

As a resolve to this issue, the Law on Associations should specific certain contents protecting associations' right to free operation.

First, the Law on Associations should not restrict operation location in accordance with administrative location in which Associations register for their headquarters. This means that an Association can register in one province but shall have right to operate across the nation, region and the world, not only because issues such as culture, social affairs and environment are no longer limited to one administrative location, but also because Associations are currently involved in addressing global issues, and promoting international exchanges. According to survey results, 70% of participants said associations register operation at one locality but are allowed to operate across the country, the region and the world (associations

will fill in the forms where they implement activities). This issue is also mentioned the most in deep interviews because the majority of associations register operation in Hue or Ho Chi Minh City but have activities in central region or the Mekong Delta region. It is clear that social, economic and environmental issues have no geographical boundaries and they can have special connection in the era of Internet and globalisation. Therefore, the limitation of operation of associations in terms of areas will limit their operation efficiency like a company being headquartered in Ho Chi Minh City but having to ask for permission to sell its products in Lao Cai.

Second, the Law on Associations should recognise and protect the legitimacy of Associations without a legal status and free operation of these associations. This is extremely significant as the majority of respondents are members of clubs, groups, foundations, and associations without a legal status (57% as compared to 26% who are members of registered Associations such as the Fatherland's Front, unions, professional associations, and 23% are members of NGOs/ Foundations). Also according to the survey, 39% of organisations without a legal status said they thought it was unnecessary to register whilst 23% said they did not want to register. These associations operate and cover their own expense without affecting normal activities of the society so in fact they do not need management or intervention from State authorised agencies<sup>18</sup>. However, the Law on Associations needs to regulate that although these associations do not register and do not have legal status, they still operate legally in Vietnam, providing that they do not violate laws. This is very important because it helps to save social costs, reduce burden for State management and particularly to promote collective activities for public purposes.

This is also opinions of the majority of survey participants with 73% saying that the Law on Associations should also regulate associations without legal status (without registration). However, to distinguish with associations with legal status, associations without legal status will not have independent rights and obligations like registered ones. According

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18 Trích theo GS.TS. Thái Vinh Thăng (nguyên Chủ nhiệm Khoa Hành chính - Nhà nước, Đại học Luật Hà Nội). Bảo đảm quyền lập hội của công dân thông qua Luật về hội.

to Dr. Nguyen Van Quan,<sup>19</sup> associations without registration will “suffer” a number of limitations in their rights as follows:

*Regarding assets and ownership*, unregistered associations (associations without legal status) cannot become owners and cannot receive presents, legacies or financial aids from authorized agencies. These associations could only receive assets from their members such as personal property, real estates, fees contributed by members... Because the associations cannot become owners, members will keep ownership rights over their assets and they can take their assets back when the associations dissolve. It means that assets that associations use are still owned by association members. In case association members contribute money to receive an asset for the operation of associations, each member who contributed money can take back the amount of money they had contributed when associations dissolve.

*Regarding civil transaction*, to maintain operation, associations have to carry out civil transactions such as contracting with those supplying services for association activities, contracting to lease houses or labour contracting... So without legal status, all necessary contracts must be signed by members as personal status. Association members jointly take responsibility for associations' debts and assets. In case of contract signing, the third party will ask for debt payment from the member who signed the contract. This member has the obligation to pay for all debts and then can ask other members to pay him what he had paid. Association representatives will take responsibility for contracts signed in the name of the associations. Therefore, only the member who signed the contracts will take responsibility for implementing the contracts. All transactions carried out by an association without legal status must be personally implemented by an association member. If not, these transactions will be considered invalid<sup>20</sup>.

*Regarding legal responsibility*: in case of holding administrative or criminal responsibility, only association members who carried out transactions will take that responsibility on personal status. Also, associations do not have status to act in terms of legal procedure. If an

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19 Cited Dr. Nguyen Van Quan (Law Faculty, Hanoi National University). The rights to association establishment and mechanism to ensure the rights to association establishment in the draft Law on Associations.

20 Making reference to the decision of the Cour Administrative d'appel de Paris: CAA Paris, 18.5.1995, BAF 1/95, inf 2.

association suffers damage (civil, criminal or administrative damage), a lawsuit can only be made by its members.<sup>21</sup>

Third, the Law on Associations should protect and boost financial resource for community-served activities, specifically, giving tax exemption for businesses and individuals' financial contribution to Associations (which means that contribution to social organisations for public purposes shall be counted in businesses' pre-tax spendings or deducted on the pre-tax income of individuals) and shall only require Associations to register for foreign aid rather than struggling for approval as present. According to survey results, 96% of surveyed people said associations have the rights to receive donations from domestic individuals and organisations, 89% said associations have the rights to receive donations from foreign individuals and organisations, 96% said associations have the right to organise fund raising activities, and 75% said associations have the right to do business and supply services to earn income to serve the activities of associations. In the interviews, the majority of participants said this is a basic right of associations, however, there needs clear regulations on proper expense for association activities to avoid the lack of transparency. Many people said the Law on Associations need to determine that the nature of associations is for public purposes to encourage private financial sources flowing into association activities.

This is also international experience. For example, in Germany, if associations' incomes are sourced from doing business or contributed by individuals and businesses with the aim of promoting science and research, education and training, art and culture, exchanges between nations, protection and caring for historical relics, protection of nature and caring for natural landscape, caring for the living environment and learning about the country, traditions and customs (including Carnivals), protecting animals, sports, development co-operation, and people's participation in services of public interests, charity and churches' purposes.... businesses will be exempted (or reduced) from corporate income tax and added value tax<sup>22</sup>.

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21 In France, regarding criminal responsibility, when an association does not register (real association - de facto), it will be prosecuted for criminal responsibility (the French Criminal Law holds legal status for criminal responsibility), and head of the association will have to take personal responsibility (Decision of the Cour d'Appel de Chambéry, 4 septembre 2014, RG n°13/01483).

22 Le Thi Thuy Huong. Mechanisms ensuring the right to associations in law of the Federal Republic of Germany and some experiences for Vietnam.

Apart from private sources of finance, the State needs to regulate that associations have the rights to get access to public budget sources and have the rights to carry out commercial activities to create more sources of income for association operation. Regarding public source of finance, the State will implement socio-economic development targets via associations. Financial provision will depend on equal competition mechanism between associations. This idea is expected to help improve the efficiency of associations doing public services because of having competition and they will gradually replace State agencies which are currently in charge of this task. Besides, the Law should also allow associations providing fee collection services for public and non-profit purpose. Business of non-profit associations has a basic difference with profit associations: profits gained will not be divided into revenues for association members or the management board. Sources of income of non-profit associations can only be used to pay for salary and other expense relating to activities of the associations, and the remaining income will be used for public activities as part of associations' mission.

Fourth, the Law on Associations should protect the self-control, self-responsibility of Associations as the majority of Associations come into being mostly from the real demands, will of individuals or groups, common purposes and social spirit. Without self-control and self-responsibility, motivation and initial mission of associations shall be distorted and ruined. Furthermore, self-control and self-responsibility are also prerequisite conditions for Associations to perform their role in protecting rights and interests of members, contributing to community development and balancing social interests. This is common viewpoint of the majority of survey respondents, with up to 66% maintaining that "all associations operate based on the principles of autonomy, voluntariness, and self-management".

Thus, State management on associations targeting self-control, and self-responsibility for associations in organisation and operation means that the State shall not intervene into associations' internal affairs<sup>23</sup>. This is an example of good practice of the right of freedom to associations,

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23 Le Thuong Huyen (State and Law Institute – Vietnam Academy of Social Sciences). A number of issues on State management on associations.

according to the Special Rapporteur on the rights to freedom of peaceful assembly and associations, Maina Kiai<sup>24</sup>. In particular, the State should not interfere with associations' regulations as well as selection of leadership or assign State employees to associations' leadership. In other words, the State has no right to approve Regulations or Leadership of associations or associations' operation strategies. All these activities must be self-determined by associations' members and approved at periodic members' congresses. In the Law on Associations in many countries, for instance, France, there is no regulation stipulating adjustments of Associations' internal activities, all these contents are self-determined and prescribed in Associations' regulations<sup>25</sup>. In case regulations break the law or do harm to people's rights, the State should have the right to interfere. However, this process needs to be settled through appeals or legal proceedings at court to ensure justice for concerned parties.

## **F. CERTAIN ISSUES RELATED TO THE DEVELOPMENT OF THE LAW ON ASSOCIATIONS UNDER THE CONTEXT OF VIETNAM**

### **i. Restriction to the right to freedom of association**

The right to freedom of association is not a complete right so it might be restricted under specific circumstances. According to international norms, the right to freedom of association shall only be restricted in cases necessary for a democratic society, for national security or safety, public order; for the protection of social health and morals; for the protection of rights and freedom of others<sup>26</sup>.

Normally, reasons related to national security, public interest – public safety – public order are quite ambiguous, so they should be put in specific contexts to exactly consider which elements might be violated. The United Nations and human rights organisations have ratified a number of documents to define connotation of these regulations: National security may be invoked to justify measures

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24 Paragraph No. 64 of the Report defines that "Members of associations must have the freedom to decide associations' charter and regulations, organisational structure and activities as well as make other decisions without any influence of the State.

25 Assoc. Prof. Dr. Nguyen Hoang Anh (Law Faculty, Hanoi National University). The relationship between the State and Associations in France and recommendations for the completion of the Law on Associations in Vietnam.

26 Clause No 2, Article 22 of the International Covenant on Civil and Political Rights.

limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

(Paragraph No 29 of Siracusa Principles); A restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing (Principle No 2 of Johannesburg Principles)<sup>27</sup>.

Vietnam can refer to regulations in certain countries, for example, the Federal Republic of Germany prescribes in Clause No 2 of Article 9 of the Basic Law that *“Associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding, shall be prohibited.”* Similarly, the Article 18 of the Constitution 1947 of Italy states that: *“Citizens have the right freely and without authorization to form associations for those aims not forbidden by criminal law”*<sup>28</sup>. However, contents of the criminal law are not allowed to infringe people’s rights protected by the Constitution and international covenants. Thus, the Penal Code and Law on Handling of Administrative Violations should be revised, supplementing sanctions against the refusal, prevention, and other behaviours infringing the right to freedom of association of people, and eradicating regulations which go against the spirit of this significant freedom<sup>29</sup>.

## ii. Administrative appeals and legal proceedings at court

The Law on Associations must stipulate that when citizens have demands for forming associations the State should not have the right so say ‘No’ without specific proofs indicating Associations’ law violation. According to the survey outcome, 66% of respondents said any decisions suspending, ceasing or dissolving an association involuntarily must

27 Dr. Dang Minh Tuan, PhD candidate Nguyen Anh Duc (Lecturer at Hanoi National University’s Law Faculty). The right to freedom of association in international covenants on civil and political rights 1966 and the compatibleness in the draft Law on Associations.

28 Prof. Dr. Thai Vinh Thang (former head of Hanoi Law University’s Administration-State Study Faculty). Ensuring people’s rights to associations through the Law on Associations.

29 Assoc. Prof., Dr. Vu Cong Giao (Law Faculty, Hanoi National University). Associations and freedom of association in Vietnam: development history and legal framework.

be issued by court. In case citizens feel unsatisfactory with decisions to refuse the formation, suspension, or dissolution of associations they shall have the right of appeal to the administrative court. Survey outcome indicates that, 49 percent and 31 percent of respondents said the State should take civil or criminal measures to deal with individuals and organisations infringing the right to freedom of associations of others. If there are violations of the right to freedom of association or damage caused to individuals and associations, 82 percent of respondents said the State should have proper mechanisms to make good the damage and reimburse victims of the infringement of the right to freedom of association.

The reality shows that law cannot anticipate all situations in which law makers can propose restrictions imposed on the freedom to associations (for the sake of public interests, social order, moral standards, etc.). Hence, court should have the right to explain law in order to put forward sound interpretation for cases in which restrictions on the right to freedom of association should be imposed<sup>30</sup>. Many countries, including France, regulate that administrative bodies are not permitted to suspend operation of associations or dissolve associations – if this procedure is available, it shall only be considered as an urgent temporary measures applied in the procedural process<sup>31</sup>. In the field of labour, if a body refuses one's request for association establishment, it must define reasons and clearly inform the applicant. Individuals, organisations whose application for association establishment is refused have the right to take lodge a complaint to an independent and unbiased court. The Freedom of Association Committee of the International Labour Organisation (ILO) judges that: *“The fact that it is impossible to bring an appeal before a judicial body regarding the action of a ministry refusing establishment of a labour union is a blatant violation of the principle of freedom of association.”*<sup>32</sup>

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30 Dr. Nguyen Van Quan (Law Faculty, Hanoi National University). Regarding rights and procedures of forming associations in the draft Law on Associations.

31 Assoc. Prof., Dr. Nguyen Hoang Anh (Law Faculty, Hanoi National University). Relationship between State and Associations in France and recommendations for the completion of the Law on Associations in Vietnam.

32 Postgraduate Nguyen Thuy Duong (Law Faculty, Hanoi National University). Right to form associations and ensuring the right to form associations in line with Vietnam Constitution.

### iii. Adjustment of the Fatherland Front and socio-political organisations

There are various opinions on whether the Law on Associations should adjust the Fatherland Front and five socio-political organizations, namely, the Women's Union, General Confederation of Labour, Youth Union, Farmers' Association, and War Veterans' Association. A current of opinions asserted that the Law should apply to these bodies for the principle of equality, non-discrimination. Many held that if the Law does not apply to the Fatherland Front and five socio-political organizations, it would be less meaningful as it has removed "big players" out. However, another current of opinions maintained that the Law on Associations should not adjust these organizations due to the different historical role and political institution of Vietnam. Thus, the State should have separate regulations for these bodies as already seen in the availability of separate laws for the Fatherland Front, General Confederation of Labour, Youth's Union and War Veterans' Association.

Those who said there should not have separate regulations mostly refer to the nature of the Fatherland Front and socio-political organizations. They asserted that *"these are mass organisations associated with the revolutionary cause of the Party. They are not social organisations (though their operation is socially-oriented) but associations associated with power (political activity – entering into politics)"*<sup>33</sup>. Furthermore, Clause 2 of Article 9 of the Constitution 2013 regulates that: Vietnam Trade Union, Vietnam Farmers' Association, Ho Chi Minh Communist Youth Union, Vietnam Women's Union, Vietnam War Veterans' Association are socio-political organisations. Thus, to ensure the constitutionality, uniformity, and synchronicity in the Constitution 2013, it should not consider and identify association criteria as socio-political and socio-political-professional organisations<sup>34</sup>. To put it another way, there is no need to adjust these organisations in the Law on Associations.

The survey outcome reveals that 84% of respondents said the Law on Associations should apply to the Fatherland Front, Labour Union, Farmers' Association, Ho Chi Minh Communist Youth Union, Women's

33 Assoc. Prof., Dr. Bui Xuan Duc (former director of the Fatherland Front's Science Research Institute). The Law on Associations and mechanisms ensuring the people's right to associations.

34 Le Thuong Huyen (State and Law Institute – Vietnam Academy of Social Sciences). A number of issues on State management on associations

Union, and Veterans' Association, whereas another 11% said there was no need to apply to these organisations. When asked about budget provision for these organisations, 15% said "Yes", 35% said "No" whilst the other 41% said "these organisations should be financed but less and less and eventually there should be no budget allocation any more.

As such, one of the reasonable solutions that the State could take into consideration is to clearly define the nature of the Fatherland Front and socio-political organisations. If these organisations are not considered as civil society organisations but political organisations closely attached to State power, there should be specific law and no adjustments in the Law on Associations. If the State regards these organisations as civil society organisations, then, adjustments in the Law on association are possible. In regard to expenditure, there might have a separate policy on financing provided that the financial provision will be less and less, and finally, organisations must self-manage finance. This is also the wish of the majority of respondents, with up to 63% of people asked said that the State should not subsidise associations and that all associations should exercise self-control in finance. In case the State uses budget to finance associations' socio-economic programmes in direction of the State's development strategies, 80% of respondents said that the budget spending should be put out to contract, ensuring equal competition and non-discrimination among associations.

Experience from the "open-door" policy for the private economic sector to develop indicates that it is essential and necessary to open doors for associations established by the people, suitable with Vietnam's development interests as well as international norms on human rights. More importantly, the "open-door" process should create an equal, transparent and competitive environment for all associations so as the newly-established associations bring about interests for the community, and public Associations are not isolated from the reality, dry and dependent upon State budget. As such, Vietnam could reach the target to balance the assurance of the right to freedom of association of the people with making State organisations.

# CONCLUSION

The right to freedom of association is an important right regarding both aspects of individual freedom and the right to better exercise other rights. International experiences and standards indicate that each individual has the right to join or not to join, maintain or not to maintain relationships and linkage with others, these are personal choices, with which the State is not allowed to interfere groundlessly. Regarding the aspect of right protecting, the right to freedom of association is protected as an instrument to exercise other constitutional rights, because the rights to freedom of speech, freedom of religion, and freedom to proposing expectations with authorities of an individual shall not be definitely protected from the State's intervention if the right to freedom to join groups or organisations to perform constitutional rights mentioned above is not guaranteed<sup>35</sup>.

Since Vietnam embarked on the *doi moi* (Renewal) path, the freedom of Vietnamese people has been increasing and the right to freedom of association is growingly expanded. Initially, there were only organisations such as the Fatherland Front, socio-economic organisations, and professional associations. Nowadays, Vietnamese people can establish various types of organisations including NGOs, funds, clubs, forums, or groups of same hobbies. These organisations have made contributions to liberalise the society, supporting disadvantaged people and helped address common issues for the public interests.

The issuance of a Law on Associations in the direction of freedom, equality, openness and protecting constitutional rights of the people shall realise the guideline of the Communist Party of Vietnam prescribed in Resolution 08B/NQ/-HNTW dated March 27th, 1990, that is “*in the new stage, it is necessary to establish mass organisations satisfying*

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35 Dr. Nguyen Bich Thao (Law Faculty, Hanoi National University). Law on the right to associations in the United States.

*legitimate needs for careers and life of the public, operating for the sake of the country and people, and for mutual affection. Mass organisations are formed on the principles of being voluntary, self-governing, and self-financing in each locality with activities spreading out nation-wide and not necessarily being similar...*<sup>36</sup> This is further stated in the Instruction 17-CT/TW dated August 28th, 2012, that is “Associations established must stem from essential needs of the masses, and in accordance with law; and are not necessarily organised systematically from the Central to the grassroots level. Associations operate on the common principles of voluntariness, self-management, self-financing, and abidance by law and the association’s regulations. The state funds association based on actual operation and implementation of specific tasks assigned by the Party and State”.<sup>37</sup> Recently, on August 5th, 2013, the 7th plenum of the 11th Party Central Committee issued Conclusion No 64-KL/TW highlighting a number of issues for continued renewal and completion of the political system from the Central to grassroots level, which stressed that: “... Strict regulations shall be applied on organisation and operation of associations on the principles of voluntariness, self-management, self-financing, and abidance by law. It is necessary to amend and supplement State regulations on the management of organisations and operation of associations to be appropriate with new situations...”<sup>38</sup>

As such, the Constitution protects the right to freedom of association in Article 25 and the Communist Party of Vietnam’s policy clearly demonstrates the necessity to boost the freedom of association. Although the implementation is late, causing certain obstacles and difficulties for the exercise of the right to freedom of association of the people, that the State is building the Law on Associations promises to address this shortcoming. Nevertheless, this depends on whether the Law shall defend freedom of the people as their prescribed rights in the Constitution,

36 Resolution 08B/NQ-HNTW dated March 27th, 1990 of the 8th National Party Congress on renewing Party’s mass work and enhancing the relationship between the Party and the people (Assoc. Prof. Dr. Nguyen Minh Phuong, vice dean of the Hanoi University of Home Affairs – A number of issues on associations and State management on associations in Vietnam currently).

37 Instruction 17-CT/TW dated August 28, 2012 by the Politburo on continued renewal and enhanced Party leadership on mass associations (Assoc. Prof. Dr. Nguyen Minh Phuong, vice dean of the Hanoi University of Home Affairs – A number of issues on associations and State management on associations in Vietnam currently).

38 Le Thuong Huyen (State and Law Institute – Vietnam Academy of Social Sciences). A number of issues on State management on associations.

satisfy their actual needs, and realise Vietnam's commitment to the International Covenant on Civil and Political Rights (ICCPR). If the Law on Associations embraces reality-based recommendations of this report, specialists' viewpoints, and international norms, surely enough the Law shall generate a steady foundation for a stable development and freedom of Vietnam and its people.

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