

**The influence of Vietnamese –Swedish development co-operation
on democracy and human rights in Vietnam**

Synthesis of the reports on health, decentralisation and the legal sector

Report to Sida – Viet Nam

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1. Executive summary

1.1. Main research questions and assessment process

The country strategy for the Swedish-Vietnamese development cooperation 2004-2008 requires Sida to make an assessment of the contribution of development cooperation to the situation of democracy and human rights in Vietnam, measured by indicators based on human rights standards from international conventions.

A joined Swedish/Sida - Vietnamese working group was formed in Hanoi to tackle the main research questions for the assessment, being:

1. Identification of relevant sets of rights in each sector, based on the rights enshrined in the international human rights conventions.
2. Assessment of the progress in the promotion and protection of rights each sector on the basis of quantitative or qualitative measurement.
3. Connection of the Swedish contribution to this promotion and protection of right in each sector.

The working group selected three sectors for the assessment: health, decentralisation and the legal sector. Sets of rights were identified and subsequently the indicators for achievement in each of the sectors, as well as the means of verification, were chosen and data sources were selected.

Based on this preparatory work studies were undertaken for each of the sectors (see acknowledgements).

As a last step in the process the present report was produced as synthesis of the studies in each of the sectors.

1.2. Approach and indicator framework

The framework of analysis of the contribution of the Swedish development cooperation to the promotion and protection to democracy and human rights in Vietnam is based on three main elements from the human rights based approach (HRBA) to development, an approach initiated by various United Nations agencies:

- Linkage to rights as recognised in international human rights standards: entitlement to rights in policies and strategies.
- Focus on vulnerable and disadvantaged groups and non-discrimination.
- Transparency, accountability of the duty bearer, the Vietnamese government, and participation and empowerment of rights holders in formulation, implementation and monitoring and assessment of the process of (progressive) enforcement of rights.

These three main elements of a HRBA match with the strategic orientation of the Swedish – Vietnamese development cooperation in each sector. Hence, indicators were developed accordingly.

For the health sector the first indicator relates to development of an overall policy and strategy as well as sub-sector policies for e.g. drug pricing, tobacco control, etc., but also to administrative reform and financial planning for improvement of effectiveness and efficiency in delivering health services. A second indicator relates to the right to participate of the various disadvantaged groups among the local population in the health planning system with a view to ensure that their needs are being addressed and met. A third indicator relates to the realisation of the right to health in terms of access to the health system with additional material support from Sida. A fourth indicator relates to one particular aspect of the right to health which is access to safe and affordable drugs. A fifth indicator relates to access to safe drinking water and sanitation.

For the decentralisation sector the first indicator relates to development of decentralisation policies, addressing the policies that are being and have been developed, as well as the legal framework that provides for the legal basis for decentralisation policies and measures. The other three indicators relate to the extent to which the Sida supported policies and practices focus on a rights based approach to poverty alleviation: focusing on vulnerable groups; participation of beneficiaries in the planning and decision making on access to poverty alleviation resources and the conditions for real

participation; extent to which beneficiaries are allowed and facilitated to actually govern their resources.

For the justice sector the first indicator relates to the legal framework for access to justice, as well as to access to justice policies and measures. A second indicator relates to capacity and institution building of the legal aid system, whereas a third one relates to actual delivery of legal aid services. A fourth indicator relates to the beneficiary groups served and satisfaction with services. The fifth indicator relates to including independent barrister in the legal aid system. The sixth and last indicator covers the role of academic education in helping to build the legal profession.

In brief, the indicators selected represent both the three main HRBA elements as well as the strategic orientation of the Swedish – Vietnamese development cooperation.

1.3. Findings for the health sector

Sida's support to the health sector in Vietnam aims at: 1) providing support to national policy, strategy and system/ institutional development, 2) and contributing to the implementation of these policies and strategies through concrete interventions.

The health sector study shows that the involvement of Sida in the health sector in Vietnam has promoted policies and strategies on overall and specific health issues aiming at pro-poor spending and enhanced awareness of health rights of beneficiaries. The Government of Vietnam is increasingly committed to providing health care to vulnerable groups such as the poor, people in disadvantaged areas and ethnic minorities, among others through a subsidized scheme of free health care. The policies and strategies have been gradually embedded in legislation and formal decisions approving overall policy and strategies, as well as legislation and decisions on policies for health care sub-sectors (e.g. accident/ injury prevention, tobacco control).

The Sida supported establishment of the Health Policy Unit is an important element in sustaining policy and strategy development aiming at equity and efficiency in the health system.

At the level of actual service delivery, the following was found.

Review of a project that is meant to introduce a needs based planning model in the health sector, showed that the model is in principle fit to enhance community participation in health needs assessment, as well as needs based planning, implementation, monitoring and evaluation of community health interventions. Whereas the model has not yet been evaluated, no conclusions can be drawn regarding the groups of villagers who participate in the planning process, disaggregated according to sex, social status and ethnicity. Although positive indications are there, it is also too early to conclude whether the model effectively improves addressing the needs of the vulnerable and disadvantaged groups.

Review of a project on providing material support for accessing health care demonstrated that from the various kinds of support given, only the support to facilitate the work of the health care mobile team at community level is running smoothly. The other kinds of support showed rather serious missing out rates. The main reasons found for these missing out rates were that patients, the primary beneficiaries for the support, are at a distance of the policy or not informed about their rights to receive support of this nature. Furthermore, it was found that health care providers are not well informed themselves. Hence, the project was less effective than it could have been.

The health care study demonstrates that the support given to improve access to safe and affordable drugs has indeed resulted in the availability of a range of essential drugs, against on average affordable costs. Acceptance of locally produced and therefore more easily affordable drugs has gone up. These locally produced drugs have gradually become of good quality.

In brief, the review of fifteen years of Swedish support to the health sector in Vietnam has generated evidence that the support has enhanced development of health care policy and strategy at the overall level, as well as in sub-sectors, including access to safe and affordable drugs. The support has partially enhanced actual health care service delivery, ensuring improved guarantees for the right to health. Still, there is scope for more effectiveness and efficiency.

1.4. Findings for decentralisation

Review of public administration reform projects revealed that those projects have contributed to promoting decentralisation policies when it comes to formulating and revising laws and sub-laws, and to formulating policies, methods and tools bringing government closer to people. At the same time it was found that those policies, strategies and methods were not always accompanied by measures or conditions for application in practice.

The projects reviewed provided capacity building to strengthen local governance systems and strengthening the capacities of the civil servants themselves. In one project signs were found that organisational benefits have been gained besides the individual competence building. The improved quality of civil servants and organisational benefits contribute to improved government service delivery.

One project showed how a one-door procedure generated close horizontal cooperation across local departments during the project life-time and there was a high degree of transparency and a high degree of accountability with the civil servants involved. The project did not provide for an institutional mechanism to sustain the transparent and accountable procedures. The result was that after the project had ended people again needed to go to several local departments and were again kept in the dark about the length of the procedure.

Another project showed a rather successful promotion of the access of vulnerable and disadvantaged groups to more and higher quality services. The participatory planning process in the project had improved the focus on services requested by the poor. No solid data were however available to conclude with certainty on the inclusion of vulnerable groups.

The same project was found to be successful in promoting the rights to participation in planning and decision making on local development funds. Also vulnerable groups were found to participate to a larger extent, but poor households seemed still to participate less genuinely and actively during meetings. Furthermore, there are limitations when it comes to villagers' participation in implementation and monitoring of plans. Current regulations stipulate that the commune level is the lowest level of ownership for investment projects.

In the same project villagers show improved knowledge about complaint systems, but few complaints were filed in the period used for the review, which was relatively short.

Access to information is a prerequisite for participation in decision making. Villagers do have information on matters of content, but information on processes and procedures is disseminated solely top-down through the administrative structures. Indications were found that some village leaders "select" which information is to be passed on to the villagers.

The decentralisation study furthermore shows that villagers generally feel more empowered and govern the local development funds in the project under review, but only on planning. The implementation and monitoring was in general not handed over to the villagers. There are further no mechanism for promoting more general and active participation in implementation and monitoring of activities. Forming associations or collective groups whereby poor people may enhance their bargaining power and maximize their social resources, still plays a modest role in the project

In brief, the decentralization study showed that with Sida's support policies were developed and systems strengthened to bring government closer to the people. Service delivery and problem solving capabilities of local administrations improved. However, the sustainability of the outcomes of the projects is not strongly ensured yet. The projects also resulted in more active and informed participation of vulnerable social groups in formulation and monitoring of poverty reduction plans. It remains a challenge to ensure that the beneficiaries themselves receive the information and have the possibility to organize for involvement in the process of making decisions on issues that affect them directly.

1.5. Findings for the legal sector

Sida's support for the legal sector focused in an initial phase much on necessary daily activities. At present the support focuses more on building a strategy for the development of the legal aid system in Vietnam. This includes development of legislation and other normative documents on legal aid, the development of effective mechanisms to control the quality of legal aid services, exchange information among legal aid organisations, the development of guidelines on mainstreaming gender equality in legal aid work, etc. However, much of this work has not yet commenced and could therefore not be assessed in this study.

Nevertheless, the support for some daily activities such as hiring private lawyers to represent clients or organising mobile clinics is still essential for running the legal aid system for the poor and vulnerable groups in this transition period to a system sustained by the Government of Vietnam according to its own strategy and plans.

The Swedish supported project on legal aid helps to ensure that a number of core rights relating to access to justice, a basic human right, are being improved. Hence the Swedish co-operation is having an effect on the every-day access to justice for the people. Furthermore, the role of the lawyers is being clarified and formalised. The Swedish support to the preparation and drafting of the new Law on Lawyers has been very important in this regard, and it provides a sound legal foundation for the future establishment of a National Bar Association. Gradually the respect for the work of lawyers is increasing. The role and position of the lawyer in the court proceedings is gradually also being improved and clarified. This is important in order for lawyers *inter alia* to better protect the rights of their clients. Alternative professional training and ethical control of lawyers is improving.

In brief, the Legal Aid System of Vietnam is being strengthened and has now a more developed and formal (legislative) platform. The possibilities for access to justice for the poor and vulnerable have improved.

The legal education at university level is gradually being improved. The activities in the master programmes contribute to the overall development of the human rights situation in Vietnam. A critical mass is being built up and the students graduating can be of great value in the implementation of the overall judicial reform strategy until 2020.

1.6. Contribution of development cooperation to democracy and human rights

The analysis of the contribution of the Swedish development cooperation to the promotion and protection to democracy and human rights in Vietnam has been based on three main elements of the human rights based approach (HRBA) framework:

- Linkage to rights as recognised in international human rights standards: entitlement to rights in policies and strategies.
- Focus on vulnerable and disadvantaged groups and non-discrimination.
- Transparency, accountability of the duty bearer, the Vietnamese government, and participation and empowerment of rights holders in formulation, implementation and monitoring and assessment of the process of (progressive) enforcement of rights.

The Swedish cooperation with Vietnam has been found to contribute to a development of policies and strategies and relevant legislative platforms in each of the three sectors reviewed which has resulted in increased *entitlement* to rights in each sector.

In the health sector an overall health care policy has been developed as well as policies for sub-sectors. Policies and strategies have been gradually embedded in legislation and Government decisions, giving Vietnamese people entitlements in access to health care services, to safe and affordable drugs and health care related issues. The entitlements increasingly are developed with a focus on poor and vulnerable groups (women, children, ethnic minorities) from an equity perspective in line with a rights based approach to development.

In the sector of decentralisation Sweden has assisted in formulating and revising laws and sub-laws and formulation of policies along the same lines as in health, although the support of Sweden in that sector does not have the long history of that of the health sector. The same holds true for the judicial sector where Sweden assisted in developing the legislative framework for the legal aid system and the Law on Lawyers, the basis for further developing the legal profession.

The rights entitlements in each sector do not have direct reference to international standards. Conceptualisation and focus of the entitlements provided for in legislation are according to the Vietnamese context and not always stated in terms of (human) rights.

With regard to the next main element of the HRBA framework, the focus on vulnerable and disadvantaged groups (including non-discrimination), it has generally been found to increasingly become a guiding principle for policies and strategies in each of the sectors. The extent differs to which the focus on these groups actually materialises. It was found that the support provided by Sweden did stimulate a focus in both policy orientation and in strategy on poor and vulnerable groups. The implementation of these policies and strategies has in some situations been effective, in some situations less. In some cases the effectiveness cannot be assessed, due to the lack of data, which calls for more emphasis on establishing procedures for data gathering and monitoring and implementation of projects.

Next to the focus on the vulnerable and disadvantaged groups, stimulating participation and empowerment is one of the key features of the support provided by Sweden and is a constituting element of development interventions in each of the three sectors.

The support provided by Sweden has improved the overall orientation towards participation and stimulated the introduction of pilots and models aiming at enhancing participation of direct beneficiaries.

From the sector studies it is not evident whether programme and project beneficiaries and stakeholders are seen as having a *right* to information, or whether provision of information is regarded as a functional accessory. To be in conformity with human rights standards and to function effectively it should be both. In Vietnam some of the features of participatory systems that are common in many other countries, like having a right to information, a right to remedy and redress and the possibility of forming civil society organizations that function as monitor and provider of feedback, are not guaranteed.

In other words, in some situations at direct beneficiary level there may be transparency and accountability of the duty bearer towards the rights holder, but in other situations transparency and accountability are not always secured.

From the above it can be concluded that from an overall human rights perspective that in the period and sectors under review the Government of Vietnam has managed to improve its performance related to implementation of international human rights obligations, both in terms of *minimum obligation* and as obligation of *progressive realisation* and that Sweden contributed substantially.

It has to be noted that the entitlement to enjoyment of the rights mentioned is not yet always fully ensured in the policies, decisions and legal document that have been reviewed in the framework of this assessment. At the same time it can be concluded from the sector studies that there is enjoyment of these rights at the level of programmes and projects and that there is awareness that the enjoyment of these rights enhances the effectiveness of development efforts.

The overarching conclusion is therefore that the orientation and positive development towards ensuring entitlement to the rights and principles embedded in the international human rights standards, relevant to each of the three sectors, is clearly visible. This conclusion can be underpinned with the findings of the three sector studies. The conclusion can also be that the development support provided by Sweden stimulated and supported this trend and therefore has had a positive effect on the improvement of situation of democracy and human rights in the three sectors reviewed.

1.7. Concluding remarks

The overall goal of the review was to assess the contribution of the development cooperation between Sweden and Vietnam towards the situation of democracy and human rights.

Entitlements to enjoyment of human rights have gone up in each of the sectors in the years of Swedish – Vietnamese development cooperation. The actual enjoyment of rights that are important from the perspective of democratic values in relation to participation, such as the right to information, the right to association and the right to remedy and redress are still subject to scrutiny by the Government and the Party and not fully guaranteed in legislation and policy. Where these rights are found to have been enjoyed in the actual situation of programmes and projects this has had a positive impact on the effectiveness of the programs and projects concerned.

The three sector studies have shown a relevance of the rights based approach across the various sectors. For example, decentralisation based on HRBA principles is important for health and access to justice, but access to justice is likewise important to enjoyment of the right to health or participation in the governance of one's own situation.

The development of the sets of rights in each sector, the development of indicators and the identification of quantitative and qualitative data and sources of data, is the result of a participatory process between Sweden and Vietnam. This enhanced commitment to and ownership of the assessment exercise as well as its outcome and possibly a continuation in a more sophisticated form.

The overall conclusion with regard to the key question as to what contribution of the cooperation between Sweden and Vietnam on the situation of democracy and human rights is that different positive effects are clearly demonstrated in the assessment. The contribution of Sweden has been important at policy and strategy level as well as the level of programs and projects.

2. Sector selection, main research questions, methodology and scope

2.1. The study as input in the mid-term review

In the country strategy for the Swedish-Vietnamese development cooperation 2004-2008 a process for various assessments on the results of the development co-operation is outlined.

One of the assessments to be carried out is an estimation by Sweden/ Sida of the progress towards adherence to the international human rights conventions. More specifically the country strategy requires that the assessment focuses on the contribution of development cooperation to the situation of democracy and human rights in Vietnam. The strategy also stipulates that the indicators used for the assessment are based on “generally accepted principles/standards based on the international human rights conventions”.¹

This report reflects the results of the assessment of the contribution of the Swedish development co-operation to the democracy and human rights situation in Vietnam. The process of the assessment has been the following.

The first step was to create a Swedish Vietnamese working group in Hanoi which selected three areas of development co-operation for the assessment. The three areas that have been identified for the assessment are:

- the health sector,
- decentralisation/local authority,
- the legal sector.

The next step was the identification of relevant sets of rights for each sector, the selection of the approach and the development of the indicators. For this purpose joint Swedish (Sida) – Vietnamese working groups were set up in Hanoi which developed sets of indicators for the assessment in each sector with input on possible sets of rights and approaches in indicator development of an international expert.² Apart from developing the indicators the working groups were also tasked with identifying the means of verification, including sources of data and means of data gathering.

On the basis of the identified indicators and means of verification, assessments were made for each of the selected sectors. The assessments were made mainly by teams of consultants who conducted the review of each sector and produced sectoral reports.³

As a last step in the process this present report was produced as synthesis of the three sectoral reports.

2.2. Main research questions and selection of the rights based approach

The main research questions for the assessment as input for the review were the following:

1. Identification of relevant sets of rights in each sector, based on the rights enshrined in the international human rights conventions.
2. Assessment of the progress in the promotion and protection of rights each sector on the basis of quantitative or qualitative measurement.
3. Connection of the Swedish contribution to this promotion and protection of right in each sector.

¹ Country Strategy for Development cooperation Vietnam, January 2004- December 2008, page 12.

² Marcel Zwamborn, Paper for Sida, Identifying indicators for measuring the influence of Vietnamese –Swedish development co-operation on democracy and human rights in Vietnam, November 2005.

³ Dr Tran Tuan, MD, PhD, Health Sector Report, Hanoi, November 4, 2006; Henny Andersen, Data Analysis and Indicator Assessment Decentralisation, Hanoi-Stockholm, July-September 2006; Ulrik Ashuvud, Data Analysis and Indicator Assessment of the Legal Sector, December 2006.

Whereas the scope of the assignment is to assess the contribution of the development cooperation to the promotion and protection of international human rights standards, the approach that has been selected is the human rights based approach (HRBA or RBA) to development.⁴

The HRBA to development is developed among others by the UN Office of the High Commissioner for Human Rights (OHCHR) and the HURIST program run jointly by UNDP and OHCHR. It has been further elaborated by numerous scholars and researchers. It is a conceptual framework that integrates the norms, standards and principles of the international human rights treaties and declarations into the plans, policies and processes of development. The concept identifies two major stakeholder groups:

- duty-bearers, those who have an obligation to respect, protect and fulfil rights, and
- rights-holders, those who can claim rights.

A HRBA seeks to contribute to the capacities of duty-bearers to meet their obligation and of rights-holders to claim their rights. Key elements in a rights-based approach to development are:

- express linkage to rights
- accountability
- empowerment
- participation
- non-discrimination and attention to vulnerable groups⁵.

This approach has been specified for the assessment of the effects of the Swedish – Vietnamese cooperation, in particular for the development of the sets of rights and the indicators to be used in the assessment as follows.

State Parties, the primary bearers of duties with regard to upholding human rights, have different kinds of obligations under the international human rights treaties. Sometimes a State is obliged not to interfere, sometimes action is needed to protect a right or to guarantee against abuse. In short, sometimes there is the obligation to *respect*, sometimes to *protect* and sometimes to *fulfil* the enjoyment of a right.⁶

When adding the HRBA, there are three additional questions:

- a. Who needs to benefit from that right? All, or are there priority groups, as is especially relevant in a HRBA?
- b. Who should be consulted for the implementation of the right?
- c. What possibilities are there for review and remedy in case of differences or conflict regarding the implementation of the right?

By breaking a right down in various components relating to these questions, components that can be termed as “material scope – primary beneficiaries – transparency and participation – legal remedy and redress” and measurement is facilitated. One does not attempt to measure the implementation of a right in all its dimensions at once, but rather tries to measure the implementation of the various constituent components.

One has to bear in mind though that an obligation can be a core (minimum) obligation or an obligation of progressive realization, which constitutes a different kind of obligation for the State as duty bearer. Box 2.1 shows how a right can be seen as consisting of four components representing the obligation of a State.

The minimum core obligation, for example with regard to the right to health protected by article 12 of the Covenant on Economic, Social and Cultural Rights (CESCR) “... is the obligation to ensure the satisfaction of minimum essential levels of each of the rights...”. If this would not be the case, the

⁴ Terms of Reference, 4 October 2005, at 2.

⁵ See www.unhcr.ch/development/approaches-04.html. For elaboration, see also the report and statement of Common Understanding of the UN Interagency workshop of rights-based programming held in Stamford, USA, 5-7 May 2003. <http://www.undp.org/governance/huristadvoc.htm>

⁶ See also, OHCHR, Draft Guidelines: a human rights approach to poverty reduction strategies, par.6 at 2, online at <http://www.ohchr.org/english/issues/poverty/guidelines.htm>

right”...would be largely deprived of its *raison d’être*”⁷ and would lose its substantive significance. The minimum core obligation has a priority claim on the states resources.⁸

Even if certain elements of an economic, social or cultural right create an immediate duty on the part of the State (duty bearer), each right contains elements that only can be realized over time. These elements are not part of the minimum core obligations, but are subject to progressive realization and are obligations of conduct, rather than obligations of result.

In brief, the minimum result is the point of departure (minimum core content) and is the obligation of result with a priority claim on States’ resources. The progressive realisation over time is the development perspective and holds an obligation of conduct to apply all appropriate means.

Box 2.1 Matrix of State obligations

	Minimum core obligation, minimum outcome prescribed	Progressive realization, process prescribed, outcome prescribed over time
a) Material scope, enshrined in legislation as well as policies	Minimum material coverage of the right	Developmental perspective
b) Primary beneficiaries (vulnerable groups) and non-discrimination (poverty reduction orientation)	Focus on vulnerable at risk of exclusion	Society at large; still special care for groups at risk of exclusion
c) Ensuring participation in making of policies and laws as well as the implementation thereof (transparency and accountability)	Government accountability for making policies and laws	Transparency and participation in making of policies and laws that directly affect one’s rights
d) Legal remedy and redress (enforcement)	Obligation of outcome	Obligation of process

An additional advantage of the approach which breaks down a right in the elements in box 2.1 is that it allows for cross-referencing and cross-cutting approaches, as is the case with the sets of rights under review. Decentralisation, translated in the right to participation is a right in itself (vertical column), but also an accessory to the realization of the right to health (combination of right to health as a vertical column with the second horizontal column).

2.3. Indicator framework

The framework of different dimensions of the obligations of the State, in this case Vietnam, was kept in mind when developing the various indicators for each sector. As will be seen in the chapter 3, 4 and 5 on the different sectors, the indicators for each sector have been developed to represent one or more dimensions of the obligation as described in box 2.1:

- Indicator(s) on development of policy and strategy, representing the material content of the rights sets for each sector; the indicator is used to assess whether policy and strategy are developed, whether legislation or decisions are taken and whether there is progress in the development of policy and strategy;
- Indicator(s) to assess whether the primary beneficiaries or the policy and strategy are intended to be the vulnerable groups and if the effect of the policy and strategy is indeed that these groups increasingly enjoy the rights included in the rights sets for the sector.
- Indicator(s) on the intended and real extent of participation of the beneficiaries and other relevant stakeholders in the process of decision making and review of the policies and strategies intended to enhance their enjoyment of rights in the sector.

⁷ CESCR General Comment 3 (1990), The nature of States parties’ obligations (art.2 (1)), para.10; online <http://www.ohchr.org/english/bodies/cescr/comments.htm>

⁸ General Comment 3 (GC3), para.10

- Indicator(s) representing the possibility for remedy and redress in case there are infringements of rights.

As will be seen in the sets of rights per sector and the indicators developed for the assessment in that sector, not every right will have all vertical and horizontal dimensions, and therefore not all dimensions have been translated into indicators for each sector. Nevertheless, the overall picture fits.

The indicators developed therefore represent the extent to which the sets of rights in each sector are upheld, assessed by qualitative and quantitative means. The emphasis is not so much on the situation on the moment of assessment, which would only provide a “snap-shot” of the situation, but rather on the progress in promotion and protection of these rights in each sector over time and the circumstances accompanying the development. The focus is therefore on research question 2, *Assessment of the progress in the promotion and protection of rights each sector on the basis of quantitative or qualitative measurement.*

The question regarding the *connection of the Swedish contribution to this promotion and protection of right in each sector* is included in the indicators. No indicators were drawn up to assess separately the extent of the contribution of Sweden to the achievements that were found for each of the sectors. One of the important reasons for this is that the role of Sweden often cannot be singled out from the roles of other actors.

The approach chosen has rather been to describe the strategic orientation of the development cooperation in each sector as well as the role and efforts of Sweden, which in this respect bears testimony to the contribution of Sweden to promotion and protection of the rights in each of the three sectors. The description in this synthesis report is rather summary in this respect and does not describe to the full extent the Swedish contribution. A much more detailed overview of the Swedish role and contribution can be found in each of the three sector reports.

2.4. Structure of the report

The report includes in this chapter 2 an explanation of the background of this study, the main research questions and the justification of the indicator approach.

The chapters 3, 4 and 5 give an overview of the finding for each of the three sectors. The first sub-paragraph of each of these chapters describes the relevant rights for the sector as included in the international human rights treaties.

Next a description is given of the strategic orientation of the development cooperation Sweden – Vietnam for the sector in terms of material content but also in terms of processes relating to focus on vulnerable groups, participation and, if relevant, remedy and redress.

Subsequently a summary overview is given of the framework of indicators developed for each of the sectors. After that the findings with regard to each of the indicators for the sector are given one by one. Each description starts with the indicator and the breakdown in sub-components. Each chapter ends with a summary of conclusions.

Chapter 6 contains the findings regarding the main question to what extent the development cooperation has contributed to the progress in promotion and protection of human rights. The issues are approached from the perspective of:

- enhanced entitlement to rights,
- increased focus on vulnerable and disadvantaged groups,
- increased participation and empowerment.

Chapter 7 gives a summary overview of conclusions regarding findings, methodology and process.

3. Health sector

3.1. Health set of rights

The international human rights normative framework includes several rights relating to health. The basis of the right to health can be found in article 12 CDESCR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The right to health is the entitlement of the rights holders to a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health and the obligation of the duty bearer to provide these to the best extent possible.

The right includes health care, as well as factors that bear an influence on health, such as physical (potable water) and socio-economic factors.

The right not only includes entitlements, but also freedoms, such as the freedom not to be subjected to medical or scientific experiments without free consent and the right to reproductive health.

An overview of the international human rights standards in relation to health is given in box 6.

Box 3.1 Health set of rights⁹

Core rights	Source
1) Recognition of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	Article 12.1 CDESCR
2) Steps to be taken by the State Party include: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.	Article 12.2 CDESCR
3) Rights to safe and healthy working conditions; work harmful to children's health should be punishable by law	Article 7 b) CDESCR; article 10.3 CDESCR
4) Freedom not to be subjected to medical or scientific experiments without free consent	Article 7 CCPR
Matching rights in other treaties: CERD, article 5 e) 1v; CEDAW, article 10 h), 11 f), 12.1, 14.2 b); CRC articles 3.3, 23.3 and 24	

The overview of health rights shows that the right to health includes also specific health rights: maternal health, child health (reduction of child mortality), prevention, treatment and control of diseases, including HIV/AIDS; reproductive health rights (most specifically mentioned in CEDAW provisions).

The Committee ESCR has pointed at four important aspects of the fulfilment of the right to health, a) *availability*, b) *accessibility*, c) *acceptability* and d) *quality*.¹⁰

Availability relates to the sufficient quantity of health care (facilities), goods and services in a State party. The nature of these will depend on numerous factors, including the developmental level of the country, which has a bearing on the availability of resources and technical and other capacities.

Accessibility relates to four overlapping dimensions:

- non-discrimination: accessible to all, especially the most vulnerable and marginalized, without discrimination on any of the prohibited grounds.

⁹ A somewhat more limited list can be found under the heading right to health in OHCHR, Draft Guidelines: a human rights approach to poverty reduction strategies, at 23.

¹⁰ CDESCR General Comment no. 14, The right to the highest attainable standard of health, para 12, at 3

- physical accessibility: within safe physical reach and adequate for those with disabilities, again with special attention for vulnerable and marginalized groups; it includes not only medical services, but also underlying determinants such as safe water, adequate sanitation.
- economic accessibility (affordability): payment for care and services has to be based on the principle of equity; poor household should not be disproportionately be burdened with health expenses than richer ones;
- accessibility of information on health issues.

Acceptability relates to respect of medical ethics and of different cultural, gender and life-style requirements.

Last but not least quality relates to complying with scientific and medical quality standards, which requires skilled and qualified medical personnel, scientifically approved and unexpired drugs and equipment, safe water and sanitation.

References to health from a rights based perspective are included in United Nations documents on health and poverty. Health issues play a key role in documents relating to the Millennium Development Goals, since health is such crucial component of the MDGs.¹¹ According to the UN Special Rapporteur of the Commission on Human Rights on Health, health is central to the MDGs because it is central to poverty reduction and development.¹²

Ill health is both a cause and a consequence of poverty by destroying livelihoods, reducing worker productivity, lowering educational achievement and limiting opportunities. But poverty also leads to less access to health care, malnutrition and other health risk factors. Health is, as stated in the UN OHCHR Draft Guidelines on Poverty reduction, key to creating and sustaining the capabilities that people need to escape from poverty: health is not just an outcome of development; it is also a way of achieving it.¹³

3.2. Strategic orientation co-operation in the health sector

Cooperation between Sweden and Vietnam in the health sector has a long history and dates back to the 1070s and 1980s, when support from Sida focused on providing medical supplies, including building and running hospitals, as well as on strengthening primary health care.

The emphasis and nature of the cooperation has shifted over the years. The research conducted for the health sector review concludes that support from Sida to the health sector in Viet Nam during the period 1989-2006 knows three phases:¹⁴

- Phase I (VSHC-I), until 1999, covered 7 areas: 1) Support to Disadvantaged Areas, 2) Drug Policy and Control, 3) Maternal and Child Health /Family Planning, 4) Primary Health Care, 5) Central Hospitals, 6) Training System Support, and 7) Health Insurance.
- Phase II (VSHC-II (1999-2002) was marked with a termination of some areas from phase I (3 to 7), replacing these for policy work in the terminated “areas” by 8) the “Health Policy Component” and introduction of some new components: 9) Public Administration Reform in the health sector, 10) Community Based Education, 11) Accident/ Injury Prevention and Safe Community, 12) Tobacco Control, 13) Programme Coordination Unit.
- The current Phase III continues the VSHC-II approach with some modifications, notably starting the health care in the Central High Lands Project and building the Community Based Health Development Model in disadvantaged areas.

The overview of phases and components shows that Sida supported in the last 15 years a broad range of components at both central and community levels, with a strategic orientation developing from a project based approach to overall systems development:

¹¹ Goal 4: reduce child mortality; goal 5: improve maternal health; goal 6: combat HIV/AIDS, malaria and other diseases; goal 7: ensure environmental sustainability (which includes the rights to access to safe drinking water).

¹² UN Special Rapporteur on Health Paul Hunt, The rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/59/422, 8 October 2004, para. 13 at 5, online at <http://www.ohchr.org/english/issues/health/right/annual.htm> .

¹³ OHCHR, Draft Guidelines: a human rights approach to poverty reduction strategies, paras.112 - 114, at 22.

¹⁴ Health sector report, page 11.

- Health policy development, with sub-components:
 - o the health sector attacking poverty, gradually increasing financial resources for health care,
 - o strengthening and developing the health care system,
 - o capacity building and competence development.
- Health policy development and capacity building in specific areas (accident and injury prevention: smoking and health; drug management)
- Public Administration Reform (PAR): streamlining the legal framework, improvement of the structure/ operational mechanisms, incremental development/ quality increase health sector staff, renewal public financial management system, and renewal administrative reform procedure.
- community health: improve health status of people in disadvantaged areas, especially women, children, ethnic minorities and the poor.

The trend in Sida's support in the health sector is moving towards a poverty reduction and a (human) rights based approach. This is clearly demonstrated by the now followed systems approach which comprises the elements of material scope (legislation/ legal entitlement), policy development and institutional improvements, improved access to health care and the focus on non-discrimination and attention for vulnerable groups and the actual enjoyment of facilities and goods, which is the actual enjoyment of the right to health. It is also formally acknowledged in the 2004 – 2008 Country Strategy, which states as the overall goal for the health sector in Vietnam is to promote adequate health care for all, including improved access to health services for the poor.

The next question is to what extent this strategic orientation towards poverty reduction and fulfilment of the right to health actually materialises in terms of outcomes and can be underpinned with evidence.

That question will be reviewed on the basis of the indicators developed for this purpose for the health sector and the research conducted to assess the indicators.

3.3. The indicator framework for the health sector

The framework of indicators reflects the three level of assistance provided by Sida to the Government of Vietnam to improve the right to health:

- developing and approving the policies and legislative framework in the health sector,
- building the capacity of the relevant institutions,
- the improvement of the actual access to health services by the poor and disadvantaged groups.

There have been five indicators identified for the assessment of the Swedish contribution to improving upholding the right to health in Vietnam.

Indicator 1 relates to the contribution of Sida to the development of policies that aim to improve the right to health. Elements are the development of an overall policy and strategy for the health sector from rights based perspective, as well as for various sub-sectors (e.g. drug pricing, tobacco control, etc.). It also addresses the issue of administrative reform and financial planning which relates to improvement of efficiency in delivering health services and thereby improved access to health services.

Indicator 2 relates to the right to participate of the various disadvantaged groups among the local population in the (changed) health planning system with a view to ensure that their needs are being addressed and met.

Indicator 3 relates to the realisation of the right to health in terms of access to the health system with additional material support from Sida, without which access to the health care system would not be possible.

Indicator 4 relates to one particular aspect of the right to health which is access to safe and affordable drugs.

Indicator 5 relates to another particular aspect of the right to health which is access to safe drinking water and sanitation.

However, in implementation, indicator 5 was considered as a vehicle for executing the community-based health planning system development¹⁵. Indicator 5 has therefore not been reviewed separately from indicator 2.

The indicators that are reviewed and the breakdown in verifiable statements are listed in full at the beginning of each sub-paragraph below where the findings in relation to the indicators are given.

3.4. Indicator 1: policies aiming to improve the right to health

Indicator	Breakdown
<p>Indicator 1</p> <p>Sida supported policies aiming at improving equity and efficiency in health care are developed and approved</p> <p>Note: equity and efficiency are to be understood in terms of enhancing the availability, accessibility, acceptability and quality</p>	<ul style="list-style-type: none"> • An overall health care strategy based on improving equity and efficiency has been developed and approved. • Policies for various health sub-sectors have been developed and approved. • Policies and plans for administrative reform and health financing have been developed and approved.

The findings of the health sector study in relation to the indicator and its breakdown components are the following.

Until the early ninety nineties the common sense among Vietnamese scientists and health managers with regard to the development of health care strategies and policies seemed to be that health policies are made by the Communist Party. The decision of the Communist Party Congress no VI to change Viet Nam from a centrally planned to a market oriented system in fact forced every sector, including the health care system, to start a process of reform.. The primary health care system seemed in danger of collapsing soon after the introduction of private practice, commercial sales of drugs and fee for services. A response was needed in terms of revision and development of health policies.

The first response was an institutional one, aiming at building the capacity for policy development: the establishment of a Health Policy Unit (HPU) in the Ministry of Health in 1993. The HPU has become the key actor within the Ministry of Health working on the development of health policies, as well as monitoring, evaluating and revising these policies. The HPU is also involved in capacity building in the field of health policy development through training and development of methodologies.¹⁶

Secondly, equity and efficiency were introduced as the basic orientation of developing health care policies. Review of the development of overall health policies in the fifteen years of Vietnamese – Swedish health cooperation demonstrates a development of policies, geared to ensure equity and efficiency in health care and commitment of the Government of Vietnam to providing health care to vulnerable groups such as the poor, people in disadvantaged areas and ethnic minorities through a subsidized health care scheme or free health care. The policies were embedded in formal decisions

¹⁵ See footnotes in the health sector report on page 12 and 27 as follows:

- Page 12: One report for two indicators 2 and 5"
- Page 27: In the process of building a model of Community-Based Health System Development (CBHD) in Yen Bai and Quang Nam (Indicator 2), a need of access to safe drinking water and sanitation was recognized as a priority for health. Therefore, the community-based health system development in these project sites in fact is the introduction of the participatory method in need appraisal and planning for having safe drinking water and sanitation in these communes (Indicator 5). The success of indicator 5 is totally dependent on the success of implementation of indicator 2. As the CBHD model has not been evaluated, no information available for indicator 5 for review.

¹⁶ Evidence is listed in the health sector report on page 15 - 16.

approving the principles of equity and efficiency.¹⁷ Policies for health care sub-sectors (e.g. accident/injury prevention, tobacco control) were also developed.

In brief, the period 1989 – 2005 can be characterized as a period in which formally approved strategies and policies in the health sector became increasingly focused on health equity and efficiency, aiming at ensuring availability, accessibility, acceptability and quality of health services.

At the same time it has to be acknowledged that policies and plans with regard to administration and financing of the health system are not always supporting this development. The Ministry of Health tries to avoid the consequences of applying the market principles in health care, whereas the Ministry of Finance and the Ministry of Home Affairs have emphasized in formal decisions that health care facilities and institutions are considered like all other governmental institutions which collect service fees. These services and institutions therefore have to apply self-financing and management to meet management efficiency. At the one hand self-financing and decentralisation may help to increase income and quality of services. On the other hand, there is evidence showing that strict application of this policy will result in inequity between regions in access to health care. Furthermore, any increase of service fees would increase the financial burden on the poor and thereby endanger economic accessibility.

3.5. Indicator 2: introduction and use of a needs based planning model

Indicator	Breakdown indicators in verifiable statements
<p>Indicator 2</p> <p>Introduction and use of a needs based planning model through participation of villagers (disaggregated) in developing health plans in the project intervention areas.</p>	<ul style="list-style-type: none"> • A needs based health planning model is developed and introduced. • The needs based health planning model is used in an increasing number of villages in the project intervention areas. • Disaggregating of villagers who participate in the planning process according to sex, ethnicity and social status (e.g. female headed households) shows an increasing proportionate representation in local health planning of vulnerable and disadvantaged groups. • The introduced health planning model effectively improves addressing the needs of the vulnerable and disadvantaged groups

In 2001 and 2002 a Communist Party Decision and Directive encouraged the health care system to involve community people and local government in community health development. This approach was confirmed in 2003 by the general rules issued for democracy at the communal level affirming the principle that “*community people have a right to know, a right to discuss, a right to be involved in implementing community development activities, and have a right to monitor and evaluate community development projects*”.

A Community Health System Development (CBHD) model in disadvantaged areas to improve access to information and participation at community level in the health sector was introduced in Yen Bai and Quang Nam for the period 2002 - 2006. The purpose was to maximize community participation in community health needs assessment, as well as planning, implementing, monitoring and evaluating community health interventions. This approach is not only intended to contribute to an effective implementation of the right to health, but also to promoting democracy and fighting corruption in health care, which in turn would enhance the effectiveness of the health care system to ensure the right to health.

There is evidence that the model is an important tool for building community action plans. It has been applied in other communes in Viet Nam than those that were originally selected for the program. The

¹⁷ Evidence is listed in the health sector report on page 17 - 19.

training documents developed for the model are used in the Accident and Injury Prevention Program and the Tobacco Control Component and by the Hanoi Medical School for the purpose of training medical staff.

However, the model has not yet been evaluated for its effects, sustainability, its potential for replication in other areas or the participation of groups participating in the process (disaggregation according to sex, social status, ethnicity). No conclusions can therefore be drawn regarding the verification of the indicator components “disaggregating of villagers who participate in the planning process” and “effective improvement of the needs of vulnerable and disadvantaged groups”.

3.6. Indicator 3: accessibility of health care services

Indicator	Breakdown
<p>Indicator 3</p> <p>Sida support for food, transport, high medical costs and outreach mobile services increased accessibility of health care services</p>	<ul style="list-style-type: none"> • People eligible for additional support increasingly use health care services in HICH 5 provinces. • Eligible people could not have accessed the health care system without the additional support.

The assessment of this indicator is related to assessment of Sida’s support to health care funds for the poor in the Central Highland region, which consists of five provinces with a population of just over four and a half million people (2004), forty dialect groups and forty-six percent of the population ranked as poor.¹⁸

Accessing health care services is difficult in the region due to: (1) poor household socio-economic status, (2) poor community infrastructure including health care services, and (3) barriers from culture, dialects, beliefs, and transportation.

Residents in the central highland region mostly became eligible for free health care when in 2002, the Government of Vietnam issued Decision 139 on providing funds for supporting the poor and other vulnerable groups including minorities and people living in disadvantaged communes¹⁹ to access health care services²⁰ (here after called the 139 funds). However, whereas the 139 funds only cover the direct costs section defined by the health insurance scheme, patients have to pay out-of-pocket expenses related to direct costs that are not covered by health insurance and all indirect costs including transportation, food and communication for both patients and their caregivers²¹. As a result the beneficiaries’ access to health care services through 139 policy has still not improved significantly as total expenditure for hospitalization is still beyond their ability to pay.

A case study on three public hospitals in the region found that 139 funds covered fifty one percent of the total expenditures. The remaining forty nine percent had to be paid out of pocket by the care receivers.

The Sida supported Health Insurance Central Highlands project (HICH), launched in September 2005, aims at supplementing the 139 funds for patients: 1) food during hospitalization, 2) transportation to public health care facilities, 3) coverage of medical expenditure not covered by 139 funds, 4) supporting mobile health care teams and outpatient health care activities.

¹⁸ below the national poverty line of US\$12.5/capita/month

¹⁹ government of Viet Nam (1998). Decision of Prime minister No. 135/1998/QD-TTg approving the “program for socio-economic development of very difficult communes in mountainous and remote areas”. Hanoi July 31, 1998.

²⁰ Government of Viet Nam (2002). Decision of Prime Minister No. 139/2002/QD-TTg on Health Care for the Poor. Hanoi, October 15, 2002.

²¹ In some provinces the 139 funds were not used to buy health insurance card for the poor. Instead, the 139 funds were managed by the provincial health service bureau. In this case, 139 funds could be used for covering all actual expenditure occurred during treatment process for the targeted patients. That means 139 funds in this case cover all parts of direct cost.

The health sector study concluded that from these four kinds of support given from HICH only the support to facilitate the work of the health care mobile team at community level is running smoothly. The other kinds of support showed rather serious missing out rates:

- food support: twelve percent for ethnic minorities, up to sixty four percent for the Kinh group,
- transport support: up to forty nine percent for severe cases.

The main reasons found for these missing out rates were that patients, the primary beneficiaries for the support, are at a distance of the policy or not informed about their rights to receive support of this nature. Furthermore, it was found that health care providers are not well informed themselves. Lack of understanding how to combine various support entitlements was found to be an important reason why health care providers failed to ensure maximum benefits for their patients from these four kinds of support.

The conclusions is that the HICH project was less effective in ensuring access to health care than it could have been due to a lack of communication aimed at building awareness of the support facilities among beneficiaries and health care providers, as well as due to fact that the lack of knowledge among health care providers if and how the different kinds of support could be combined to support their patients. Participation of the poor in design of a guideline for health staff and patients how to implement HICH in combination with other support policies was expected to enhance the effectiveness of the project in contributing to access to health care of the poor.

3.7. Indicator 4: improving access to safe and affordable drugs

Indicator	Breakdown indicators in verifiable statements
<p>Indicator 4</p> <p>Sida supported mechanisms are developed, introduced and implemented to ensure that quality and affordable drugs are sufficiently supplied, prescribed, sold and used in a rational and safe way</p> <p>Note: mechanisms are policies, laws, tools, institutions, guidelines, formularies, committees</p>	<ul style="list-style-type: none"> • Policies have been developed and approved. • Legislation has been developed and approved. • Institutions have been set up and function. • Guidelines, formularies have been developed, introduced and are used. • Trainings for health staff are developed and given. • BCC/IEC ²² strategies and means are developed and broadcast through the mass media, with attention for languages of ethnic minority languages

Sida supports the Vietnam pharmaceutical sector in drug production in early 1980s. As of 1994 the transition to a market-oriented system required changes in policies and institutions and Sida started supporting strategy and policy development, capacity building, exposure to and exchange of information, institution development and initial operation, training, supervision and evaluation.

Important policies and sub-law regulations/guidelines were developed and legislation approved for the Vietnam pharmaceutical sector. Three key documents are:

- The National Drug Policy (approved June 1996)
- Drug law (approved by the National Assembly, valid from 1 October 2005)
- The Strategy for the Pharmaceutical Sector Development 2001-2010 (approved by the Prime Minister in August 2002).

In addition, a series of regulations, formularies and guidelines were developed or updated as standards for the national pharmaceutical sector to monitor performance of companies, institutions and to control the quality of drugs produced and distributed. ²³

²² BCC (behaviour change communication), IEC (information, education and communication)

²³ See health sector report page 21 for further elaboration.

In the framework of institutional capacity building drug research centres were established and developed. Furthermore, antibiotic susceptibility tests were developed and the quality of performance was improved of institutions and health facilities via training, workshops and regular information updates. Substantial numbers of health workers were trained and leaflets and monographs were produced and distributed. A training manual on safe and appropriate use of drugs with a CD-ROM of lectures became a national guideline to all health facilities and all health workers including doctors, nurses and pharmacists at national/provincial hospitals who were trained to train their colleagues.

To prepare for integration of the Vietnam Pharmaceutical sector to participate in relevant international agencies, a *Strategic plan for the regional and international harmonization and integration of Vietnam pharmaceutical sector* has been developed and was approved in March 2004. Relevant staff were sent to participate in regional activities on the topics of integration and harmonization in the pharmaceutical sector.

A few examples of achievements in capacity building in the pharmaceutical sector:

- Establishment of two ADR centres in Hanoi and Ho Chi Minh city
- Establishment of the Antibiotic susceptibility centre
- Improvement of Drug Information Centre at Hanoi College of Pharmacy
- Improvement of Drug Quality Control Institute
- Strengthening the operation of the Vietnam Pharmacopoeia Commission

In terms of overall achievements in the drug sector the health sector study concludes the following.

In terms of availability:

- essential and special drugs are at present widely available
- domestically produced drugs now account for seventy percent of the drugs on the market, which is important since domestic drugs are cheaper and more readily available than non-domestic ones

In terms of accessibility:

- there is a pharmacy per two thousand inhabitants of the country, while the spread of pharmacies in mountainous and rural areas has increased
- health insurance and the healthcare fund for the poor enable the poor and ethnic minorities access to both common and special drugs
- economic accessibility is a problem from time to time due to a lack of capability of the Ministry of Health to control drug prices at all times and the practice among physicians to prescribe expensive drugs (to earn commission) in stead of cheap alternatives.

In terms of acceptability:

- awareness building efforts have enhanced the population's acceptance of domestic drugs
- due to training health staff prescribes increasingly domestic drugs, although the rate of prescribed drugs on the list of essential drugs is still relatively low.

In terms of quality:

- drug quality regulations have been developed and control mechanisms installed and used
- the number of companies that meet the ASEAN and WHO Good Manufacture practice has gone up from zero in 2002 to fifty nine in 2006.

3.8. Swedish contribution to the health sector

Sida's support to the sector in Vietnam aimed at contributing at two levels: 1) providing support to national policy, strategy and system/ institutional development, 2) and contributing to the implementation of these policies and strategies through concrete interventions contributing to sustainable health care service delivery at the local level with a focus on vulnerable groups.

Areas of support that were reviewed in the framework of the health sector study included health policy change towards improving equity and efficiency in health care, introduction of a needs- based planning model in developing health plans, financial support to the poor to access health care services and availability and use of quality and affordable drugs.

With regard to the level of policy and strategy the following can be concluded.

The health sector study provides supporting evidence that the involvement of Sida in the health sector in Vietnam has promoted policies and strategies with regard to overall health policy and a range of specific health issues, aimed at pro-poor spending and enhanced awareness of health rights of beneficiaries. Review of the development of overall health policies in the fifteen years of Vietnamese – Swedish health cooperation demonstrates a development of policies and strategies, geared to ensure equity and efficiency in health care, which shows increasing commitment of the Government of Vietnam to providing health care to vulnerable groups such as the poor, people in disadvantaged areas and ethnic minorities through a subsidized health care scheme or free health care. The policies and strategies have been gradually embedded in legislation and formal decisions approving overall policy and strategies, as well as for policies for health care sub-sectors (e.g. accident/ injury prevention, tobacco control).

At the same time it has to be acknowledged that policies and plans with regard to administration and financing of the health system are not always supporting this development. The Ministry of Finance and the Ministry of Home Affairs have emphasized in formal decisions that health care facilities and institutions have to apply self-financing. There is evidence showing that strict application of this policy can result in inequity between regions in access to health care.

The Sida supported establishment of the Health Policy Unit and its integration into the line management of the Ministry of Health can be seen as contributing to a sustainable policy and strategy development function in line with the advocated approach of equity and efficiency and thereby a contribution to sustaining the right to health. As the health sector report concludes: systematic improvement gained in the field of health policy has its roots in the Health Policy Unit.

The review of the projects at the level of actual service delivery leads to the following conclusions.

With regard to the needs based planning model (Community Based Health Model, CBHD, with safety of drinking water and sanitation as a specific implementation strategy), introduced in 2006, the health sector study concludes that the model enhances community participation in health needs assessment, as well as needs based planning, implementing, monitoring and evaluating community health interventions. As a result, the model turns out to be an important tool for building community action plans. It has been applied in other communes in Viet Nam than those that were originally selected for the program. The training documents developed for the model are used in the Accident and Injury Prevention Program and the Tobacco Control Component and by the Hanoi Medical School for the purpose of training medical staff.

However, the model has not yet been evaluated for its effects, sustainability, and its potential for replication in other areas or the participation of groups participating in the process. Due to the fact that there is no evaluation, no conclusions can be drawn yet regarding the groups of villagers who participate in the planning process, disaggregated according to sex, social status and ethnicity. It is also too early to conclude whether the model effectively improves addressing the needs of the vulnerable and disadvantaged groups. An important lesson learned is that strategies aiming at ensuring that the poor understand their rights to benefit from health care measures need to be incorporated into the policy implementation plan as a priority.

The enhancement of community involvement in health needs assessment, planning, implementation, monitoring and evaluation according to the model is expected to have a beneficial influence on transparency and accountability and on the fight against corruption in the health sector, rendering health care support more effective and efficient. This expectation has not been verified.

Assessment of financial support for accessing health care demonstrated that from the four kinds of support given only the support to facilitate the work of the health care mobile team at community level is running smoothly. The other kinds of support showed rather serious missing out rates:

- food support: twelve percent for ethnic minorities, up to sixty four percent for the Kinh group,
- transport support: up to forty nine percent for severe cases.

The main reasons found for these missing out rates were that patients, the primary beneficiaries for the support, are at a distance of the policy or not informed about their rights to receive support of this nature. Furthermore, it was found that health care providers are not well informed themselves. Lack of understanding how to combine various support entitlements was found to be an important reason why health care providers failed to ensure maximum benefits for their patients from these four kinds of support.

The conclusion is that the project supporting access to health care was less effective than it could have been due to a lack of communication aimed at building awareness of the support facilities among beneficiaries and health care providers, as well as due to fact that the lack of knowledge among health care providers if and how the different kinds of support could be combined to support their patients. Participation of the poor in design of a guideline for health staff and patients how to implement the project in combination with other support policies was expected to enhance the effectiveness of the project in contributing to access to health care of the poor. Against the background of an increasing pressure of self-financial management for public hospitals in contemporary Vietnam, any intervention to help the poor through investment in the hospital system needs to be well aware of the consideration that in the long run investment in prevention is more effective than investment in cure.

The health care study demonstrates that the support given to improve access to safe and affordable drugs has indeed resulted in the availability of a range of essential drugs, against on average affordable costs, for which the acceptance of their local production has gone up, which are also of good quality.

In brief, the review of fifteen years of Swedish support to the health sector in Vietnam has generated evidence that the support has enhanced development of health care policy and strategy for the overall level, as well as for sub-sectors, including access to safe and affordable drugs. The support has partially enhanced actual health care service delivery, but improvements are needed.

4. Decentralisation

4.1. Decentralisation set of rights

The international human rights normative framework includes a series of rights that are relevant to decentralisation.

The right to take part in the conduct of public affairs (article 25 CCPR, see above, paragraph 1.2.4) is key to decentralisation described in above terms, but so are a number of other political rights and freedoms, without which meaningful and effective participation in the conduct of political affairs is not possible. These rights are included in the overview in box 2.

A democratic social order based on constitutionalism and free and fair elections is an essential prerequisite for enjoyment of this right. However, effective participation by the poor requires more than a functioning democracy. It calls for specific mechanisms and detailed arrangements at different levels of decision-making that help to overcome the impediments that the poor, and marginalized groups in general, face in playing an effective part in the life of the community.²⁴

Box 4.1 Decentralisation set of rights²⁵

Core rights	Source
1) Right to participate in a) the conduct of public affairs, b) to vote and be elected at genuine elections and c) have access to public service	Article 25 CCPR
2) Right to freedom of a) opinion, b) expression (including to seek, receive and impart information in various forms; the right may be restricted by law if necessary for specific situations	Article 19 CCPR
3) Right to assembly; may be restricted in conformity with the law and for specific situations	Article 21 CCPR
4) Right to freedom of a) association (including to form trade unions); may be restricted by law for specific situations	Article 22 CCPR
5) Enjoyment of the rights 1) – 4) equally and without discrimination	Article 2 CCPR
Matching rights in other treaties: CERD, article 5 c), d) viii and ix; CEDAW, article 7; CRC articles 13 and 15	

The relevance of the right to freedom of opinion and expression which includes the right to seek, receive and impart information is quite clear. There can be no meaningful participation in the conduct of public affairs if one cannot express oneself freely and does not dispose of the relevant information concerning the (local or regional) government's activities and services. The UN Human Rights Committee (HRC) has stressed that it is not enough if freedom of expression and information is guaranteed under the Constitution or in law, but that the rights needs to be observed in practice. It is the interplay between the principle of the freedom of expression and limitations and restrictions which determine the actual scope of the enjoyment of the right.²⁶ Moreover, one can add that in a HRBA to development it is not only the government's duty not to interfere, but also to actively provide the primary target groups and their chosen representatives with all the relevant information, especially in the various stages of preparation, implementation and monitoring of strategies that aim at improving their situation in any chosen area, be it health, education, housing, etc.²⁷

The rights to freedom of assembly and association are equally important accessories to the right to participate in the conduct of public affairs. The rights to assembly serves to conduct various types of gatherings or meetings to exchange information, to discuss and to express opinions on the conduct of public affairs and at which representatives of governments can give account of their decisions and actions. The freedom of association serves to establish and join associations, including political parties, trade unions or civil society organisations, political parties that can represent the ideas and

²⁴ OHCHR, Draft Guidelines: a human rights approach to poverty reduction strategies, par.10 at 2.

²⁵ The same list can be found under the heading "political rights and freedom in" in OHCHR, Draft Guidelines: a human rights approach to poverty reduction strategies, at 50.

²⁶ Human Rights Committee, General Comment 10, Freedom of Expression, para. 3, online at <http://www.ohchr.org/english/bodies/hrc/comments.htm>

²⁷ See also, OHCHR, Draft Guidelines: a human rights approach to poverty reduction strategies, par. 205, at 49.

interests of the members and can monitor the actions of government and hold government accountable.

One has to bear in mind that these rights may be subject to restrictions. However, these restrictions must be prescribed by law and must represent a legitimate public interest, such as for example national security or public order, health or morals, or the protection of the rights and freedoms of others. Governments need to prove that the restrictions are necessary in a democratic society to achieve the specific legitimate goal and that the restrictions are proportional and non-discriminatory.

The matching rights in CERD and CRC cover more or less the same substance as CCPR, although CRC does of course not include a right that matches the right to participate in the governance of one's country. The provisions of CERD and CRC oblige State Parties to *respect* the right to participate, to freedom of expression, etc. However, article 4 in combination with article 7 CEDAW requires not only respect the principle of non-discrimination, but requires that the State Parties take special measures. As pointed out by the Committee on the Elimination of All Forms of Discrimination against women, removing *de jure* barriers is not sufficient. "...to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality ...".²⁸ CEDAW requires therefore a pro-active attitude, rather than merely an obligation to respect. The Committee recommends various measures that State Parties can and should take.²⁹

Decentralisation is part of the overall UN democracy and participation agenda, which in turn is part of the overall UN agenda of Governance. Important references with regard to the scope and nature of decentralisation from a rights based perspective can be found in various United Nations documents on poverty, rights based approaches and governance. Poverty reduction strategies require active and informed participation by the primary stakeholders (the poor) in the formulation, implementation and monitoring of those strategies. From a HRBA perspective to development and poverty reduction decentralisation can be seen as a human rights goal in itself, conferring responsibility for decision and action as close to those affected as possible.³⁰

The orientation of decentralisation and local governance is to:³¹

- promote policies to bring government closer to the people and strengthening local and regional governance systems for service delivery, policy formulation and resource management, and local and regional development,
- promote the participation of all social groups in economic, social and political decisions at the local and regional level without discrimination on any ground,
- strengthen the ability of cities and towns in developing countries to deliver services to their populations and to increase their potential for tackling the problems of urban growth and poverty,
- involve local governments, the private sector, NGOs and community members who collaborate as partners in identifying problems and seeking solutions to development issues (particularly urban issues).

4.2. Strategic orientation of co-operation regarding decentralisation

A comparison of the strategic orientation of Vietnamese - Swedish development co-operation with decentralisation as part of the UN agenda on Governance, which has a rights based approach, shows a difference in reference base, but a clear match in principles. The intended outcomes are the same:

²⁸ CEDAW, General Recommendation No. 23 (16th session, 1997), women in political and public life (art. 7) par 15, online at <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

²⁹ CEDAW, General Recommendation No. 23 (16th session, 1997), women in political and public life (art. 7) par 16 – 34; these recommended measures could be included as targets for the area of decentralisation in relation to gender.

³⁰ See also Leonard Joy, Decentralisation and Local Governance Enhancement: A Human Rights Checklist, at 1, online at http://www.undp.org/governance/guidelines-toolkits.htm#guides_justice

³¹ See the ACC Matrix of Governance, annex VI to ACC/2000/15, April 2001, report of the 17th session of the Consultative Committee on Programme and Operational Questions, New York, 20-22 September 2000, online at <http://ceb.unsystem.org/hlcp/ccpoqsessionreports.htm>

- government closer to the people and strengthening of local and regional governance systems, conferring responsibility for decisions and action as close to those affected as possible
- active and informed participation of all social groups in formulation, implementation and monitoring of poverty reduction strategies without discrimination on any ground,
- strengthened service delivery and problem solving capabilities of local administrations
- involvement of local government and civil society actors in identification and solution of development problems.

Reform of the public administration is an important condition for the implementation of the Government of Vietnam's (GoV) CPRGS (comprehensive poverty reduction and growth strategy). The GoV has formulated a Public Administration Reform (PAR) Master Program for the period 2001 - 2010. Decentralisation of administrative management between the central and local levels, and between the different levels of local authorities is part of the GoV Master Program for PAR.³²

Introduction of a rights perspective in the implementation of the Program for Administrative Reform (PAR) is an important objective of the country strategy for Swedish development co-operation with Vietnam in the years 2004 – 2008 and includes:³³

- promotion of a professional, transparent, accountable, service-oriented and non-discriminatory public administration;
- encouragement of grass roots democracy as tool for participation and democratization;
- emphasis on gender equality.

Decentralisation is a cross-cutting theme. There are several types of decentralisation and, in essence, decentralisation is equally relevant in relation to the other two areas identified for assessment, i.e. for the health and legal sectors. The study on decentralisation was limited to two bilateral Public Administrative Reform (PAR) Programmes (PAR Ministry of Home Affairs (MoHA) and PAR Quang Tri) and the Chia Se Poverty Alleviation Programme as representative for Swedish support to decentralisation.

The MoHa project aimed at strengthening the capacity of the Ministry of Home Affairs in, among others, personnel management. The project started in 1997 and ended in 2003. It supported MoHA to revise the legal framework for personnel management, to train personnel managers and policy makers in modern human resource theories and practices, including gender equality and decentralisation, as well as to provide management tools such as a management information system.

The Quang Tri (pilot) project aims at building up a strong, clean and capable public administration system that properly uses the authority it has and manages its operations effectively and efficiently. Through a pilot "fence-breaking" land allocation procedure reform, the project has aimed at faster, timelier and simpler land allocation to the people and to contribute to enhance the managerial capacity of the local authority in Quang Tri province in the socio-economic development. Secondly, the project has aimed at upgrading the capacity of civil servants and grass roots cadres in Quang Tri through pilot intervention in management and training. The first phase of the programme started in 1999 and ended in 2004. The province is preparing a proposal for a second phase.

The overarching goal of the Chia Se programme is: poverty is alleviated and growth is sustainable. To reach this programme goal the objective of the provincial projects is to give poor families access to poverty alleviation resources. The programme objective is further concretised in a number of operational objectives, which are relevant to human rights perspective and entitlements of the PAR programme. The way in which the project document proposes to achieve this is through the following outputs:

- effective resources delivery in terms of finance, skills and information
- effective structures for delivery in the form of institutions, agencies and organisations
- effective systems in terms of planning, management, information and legislation

³² See for example: Master Programme on Public Administration Reform for the period 2001 – 2010, par. 1.5, at 6, and par. 2.1, 2.3 at 10. Transferal of activities and public services which are not necessarily to be handled by government agencies to enterprises, social organizations, private organizations and non-governmental organizations is also part of the agenda of public administrative reform, but is strictly speaking privatization and not decentralization and will not be dealt with in this paper.

³³ Country strategy for Swedish development co-operation with Vietnam, January 2004 – December 2008, at 14 and 15.

- effective capacity by empowering households, communities, public institutions, organisations and the private sector.

4.3. The indicators for decentralisation

There have been four indicators identified for the assessment of the Swedish contribution to decentralisation in Vietnam in the joint working group of Sida staff at the Swedish embassy in Hanoi and their counterparts in various Vietnamese Government Ministries. The indicators, the breakdown of these in verifiable statements and the means of verification are listed at the beginning of each of the following paragraphs. Below a brief overview of the issues covered by each of the indicators.

Indicator 1 relates to the contribution to decentralisation policies, addressing the policies that are being and have been developed, as well as the legal framework that provides for the legal basis for decentralisation policies and measures.

Indicators 2, 3 and 4 relate to the focus of the Sida supported policies and practices on a rights based approach to poverty alleviation.

Indicator 2 addresses the important issue in a rights based approach of focusing on vulnerable groups.

Indicator 3 addresses the participation of villagers in the planning and decision making on access to poverty alleviation resources and the conditions that need to be met for meaningful and real participation.

Indicator 4 relates to the extent to which villagers have been allowed and facilitated to actually govern their resources.

4.4. Indicator 1: polices aiming to enhance decentralisation

Indicator	Breakdown indicators in verifiable statements
<p>Indicator 1</p> <p>Sida supported policies were developed and approved and implemented which aim at bringing government closer to the people and strengthening of local and regional governance systems, conferring responsibility for decisions and action as close to those affected as possible.</p>	<ul style="list-style-type: none"> • New laws enacted, legal documents reviewed • Policies, strategies and methods developed and applied • Better qualified and trained public officials and civil servants • One-door pilot developed in one province and replicated in three others • Decentralisation to local administration levels has taken place • Process and procedures for issuance of land-use certificates has improved to the benefit of the poor, due to decentralisation to district level

Indicator 1 is related to the contribution to decentralisation policies as well as the legal framework, with no explicit reference to specific rights. However, important prerequisites for successful decentralisation policies are aspects such as clear division of responsibilities and a clear system of accountability, which includes the duty to pro-actively provide information, as well as the right to receive and distribute information (see 4.1, set of rights).

The decentralisation study concludes that the PAR MoHA and the PAR Quang Tri projects have contributed considerably to promoting decentralisation policies in their respective areas, both when it

comes to formulating and revising laws and sub-laws and when it comes to formulating policies, methods and tools. Also, the PAR MoHA project contributed to more consultative processes in the drafting of legal documents. In addition, the PAR MoHA contributed in a broader sense to the formulation of the draft Decree on Decentralisation and thus contributed to laying the foundation for moving further ahead with decentralisation. A limitation is that policies, strategies and methods were not always accompanied by enforcement measures, such as official legal documents or necessary conditions for application in practice. It is further not possible to assess the extent to which the policies, strategies and methods are applied in practice or the extent to which established consultative processes are sustained.

Both PAR projects have provided extensive capacity building to strengthen local governance systems and the civil servants themselves perceive that their capacity has improved. A limitation within the PAR MoHA project is, however, that there is no mechanism to measure whether the new skills are applied or not. When it comes to the PAR Quang Tri the effects of the capacity building components has been assessed as less successful and with negligible impact.

The One-door pilot of the PAR Quang Tri was successfully implemented in two districts of Quang Tri Province, and replicated in the remaining districts of the province as well as in four other central provinces. The one-door procedure was efficiently applied during the project life time with close horizontal cooperation across local departments involved in the issuance of Land Use Certificates (LUCs). There was a high degree of transparency and a high degree of accountability within the civil servants involved. The pilot further contributed to permanently bringing the service closer to the people through institutionalising a one-stop-shop at the district level for the issuance of LUCs. A limitation is, however, that no institutional mechanisms were introduced to sustain the piloted transparent and accountable administrative procedures when the project ended. In reality, people again need to go to several local departments to receive their LUCs and they do not receive information on when they may expect the process to be finalised.

4.5. Indicator 2: introduction and use of a needs based planning model

Indicator	Breakdown indicators in verifiable statements
<p>Indicator 2</p> <p>Sida supported decentralisation focuses on vulnerable and disadvantaged groups</p>	<ul style="list-style-type: none"> • Improved public service delivery (quality and quantity) in poor areas as opposed to non-poor areas, for females as opposed to males and for ethnic minorities, • Focus on services that are important for the mentioned groups (health, education) • Improved quality of civil servants as reflected in their training focused on priority poor areas, ethnic minority areas

The decentralisation study found that both quantity and quality of services reaching the vulnerable groups have improved through the programmes focusing on decentralisation. This is more so for the Chia Se programme than for the PAR Quang Tri. The PAR Quang Tri focused on one service: the issuance of primarily residential Land Use Certificates (LUCs which are of higher importance in urban, and thus less poor, areas of the province.

The Chia Se programme has overall been rather successful in promoting the access of vulnerable and disadvantaged groups to more and higher quality services. In general, the Chia Se programme has been established in poorer areas of the selected provinces, although there are exceptions. Services

provided through Chia Se also generally reached the intended vulnerable groups, although there are signs of emerging elite capturing in the villages.³⁴

The participatory planning process has improved the focus on services requested by the poor. No solid data is as of yet available to conclude with certainty on the inclusion of vulnerable groups such as women led households and ethnic minority households. The monitoring system of the Chia Se programme will provide information on this once operational.

A limiting factor is that there is not yet any mechanism to off-set situations where poor and vulnerable households are a minority. In such situation there is a tendency that the local less poor majority overrides the interests of the poorer and more vulnerable local minorities. This poses an immediate problematic issue but at the same time provides valuable empirical evidence from varying socio-economic and socio-cultural contexts, which will provide a more solid basis for the Government of Vietnam’s continued policy development in the field of decentralisation.

Civil servants perceive that their capacity has improved through the training provided as part of the Chia Se programme. There are also visible indications of certain changed perceptions and mindsets towards favouring community participation. There are also signs that organisational benefits have been gained besides the individual competence building.

The improved quality of civil servants and organisational benefits achieved through Chia Se provides an opportunity for consolidating established principles.

4.6. Indicator 3: villager’s participation

Indicator	Breakdown indicators in verifiable statements
Villagers have participated actively and informed in formulation, decision making, implementation and monitoring of poverty reduction plans at the local administration levels	<ul style="list-style-type: none"> • Poverty reduction plans were formulated • Information was provided and understood about the purpose and process to all groups • A significant proportion of poor, female headed and ethnic minority households have participated in decision making village meetings • Villagers voice their assessment of the quality of government services openly. • A system of filing complaints exists and operates effectively in terms of settling complaints

This indicator assesses the participation of villagers in the planning and decision making on access to poverty alleviation resources and the conditions that need to be met for meaningful and real participation.

The decentralisation study shows that Chia Se has overall been successful in promoting the rights to participation in planning and decision making on Chia Se local development funds, and particularly so when it comes to the use of the Village Development Funds (VDFs), which make up eighty percent of totally available local development funds. In particular, also vulnerable groups participate to a larger extent following the introduction of the Chia Se programme. There are, however, strong indications that poor households participate less genuinely and actively during meetings. Ethnic minority women are particularly passive during decision making meetings.

There are limitations when it comes to villagers’ participation in implementation and monitoring of plans. Reference is frequently made to the current regulations which stipulate that the commune level is the lowest level of ownership for investment projects.

³⁴ If not appropriately designed or if introduced in environments where local participation and accountability are constrained, the effects of decentralisation can be negative in the sense that it offers the opportunity for the local powerful to capture the benefits (“elite capturing”)

Villagers do, however, voice their assessment of the quality of services provided to a larger extent following the introduction of the Chia Se programme. In particular, it has been assessed that the Chia Se programme does contribute to translating the GoV grassroots democracy into practice. The villagers also have improved knowledge about complaint systems although few complaints have been filed (the monitoring period is on the other hand relatively short). A good foundation has thus been laid to further "deepen" villagers' participation and improve their access to information on rights provided in Grassroots Democracy.

Access to information is a prerequisite for genuine participation in decision making and villagers do have information on purpose and use of particularly the Village Development Funds. When it comes to the processes and procedures they do, however, have less information. One limitation is that information is disseminated solely in a top-down chain through the administrative structures. There are indications that some village leaders "select" which information to be passed on to the villagers.

The generally successful outcomes of the participatory planning and decision making within the Chia Se programme have been noted by the provincial leadership and may be extended to encompass also other government local level investments

4.7. Indicator 4: villagers governing their resources

Indicator	Breakdown indicators in verifiable statements
<p>Indicator 4</p> <p>Villagers have been enabled and allowed to govern their own poverty alleviation resources</p>	<ul style="list-style-type: none"> • Decision making on resources for development (e.g. handling of public funds) was handed over to villagers in project areas • A significant proportion of poor respondents state that they feel empowered by participation in LDF management and village planning.

Indicator 4 assesses the extent to which villagers have been allowed and facilitated to actually govern their resources.

The decentralisation study found that in the Chia Se project villagers generally feel more empowered now since their participation in the use of the local development funds provided through the Chia Se programme. The village planning process during which decisions were taken on the use of Chia Se resources was largely handed over to the villagers. However, the implementation and monitoring was in general not handed over to the villagers. There is further no mechanism for promoting more general and active participation in implementation and monitoring of activities, i.e. to make use of the rights provided for in the grassroots democracy ("people know, people discuss, people do, and people supervise").

An important dimension of empowering the poor is, next to access to information as discussed under indicator 3, building and strengthening people's capacity to organise themselves. Through organising themselves people can analyse, inquire into and understand their conditions, pool efforts and resources to support common goals. By forming organisations or collective groups, poor people may gain bargaining power and self-confidence to maximise their social resources. This dimension seems to be relevant for Chia Se in seeking a methodology for poverty reduction but seems to have played a rather modest role to date.³⁵

Empowerment processes equal power change processes, and are thus universally slow and by no means unique for Vietnam. A good foundation has, however, been laid to deepen the empowerment of

³⁵ The National Assembly also recently accepted the 11-time rewritten draft law to ensure citizens the right of association. (Reported from Vietnam News Agency (VNA), 24 August 2006).

villagers rights to govern their poverty alleviation resources. The commitment of GoV towards the basic principles of Chia Se is further outspoken.

4.8. Swedish contribution to decentralisation

The decentralisation study focussed on the development and implementation of decentralisation policies and strategies, on targeting vulnerable and disadvantaged groups, on the active participation of these groups in the formulation and implementation of development processes directly affecting their livelihood and the ability to govern their own resources.

With regard to the policy formulation and implementation, the decentralisation study shows that two PAR projects (PAR MoHA and PAR Quang Tri) have contributed to promoting decentralisation policies when it comes to formulating and revising laws and sub-laws, and to formulating policies, methods and tools. The PAR MoHA contributed to the formulation of the draft Decree on Decentralisation and helped to lay the foundation for moving ahead with decentralisation.

Formulation of policies, strategies and methods were not always accompanied by enforcement measures (e.g. legal documents) or necessary conditions for application in practice. Due to a lack of data it is not possible to assess the extent to which the policies, strategies and methods are applied in practice.

All projects have provided capacity building to strengthen local governance systems and the civil servants themselves perceive that their capacity has improved.

In the PAR MoHA project application of new skills cannot be measured. In the PAR Quang Tri project the capacity building component is assessed as less successful or with negligible impact (PAR Quang Tri). In the Chia Se programme there are visible indications of changed perceptions and mindsets towards favouring community participation. There are also signs that organisational benefits have been gained besides the individual competence building. The improved quality of civil servants and organisational benefits represent an opportunity for consolidating established principles.

Service delivery was shown to have improved in both the PAR Quang Tri project and the Chia Se project. Improvement of quantity and quality of services reaching the vulnerable groups was stronger in the Chia Se project than the PAR Quang Tri project.

The PAR Quang Tri one-door procedure generated close horizontal cooperation across local departments during the project life-time and there was a high degree of transparency and a high degree of accountability within the civil servants involved. However, no institutional mechanism was introduced to sustain the piloted transparent and accountable administrative procedures. When the project ended, people again needed to go to several local departments and were again kept in the dark about the length of the procedure.

The Chia Se programme has overall been rather successful in promoting the access of vulnerable and disadvantaged groups to more and higher quality services. The participatory planning process in the project has improved the focus on services requested by the poor. No solid data is as of yet available to conclude with certainty on the inclusion of vulnerable groups such as women led households and ethnic minority households. The monitoring system of the Chia Se programme will provide information on this once operational. There is not a mechanism yet to address situations where poor and vulnerable households are a minority. In such situations there is a tendency that the local less poor majority overrides the interests of the poorer and more vulnerable local minorities.

Chia Se has overall been successful in promoting the rights to participation in planning and decision making on Chia Se local development funds, and particularly so when it comes to the use of the Village Development Funds (VDFs), which make up eighty percent of totally available local development funds. In particular, also vulnerable groups participate to a larger extent following the introduction of the Chia Se programme. However, indications are that poor households participate less genuinely and actively during meetings. Ethnic minority women are particularly passive during decision making meetings.

There are limitations when it comes to villagers' participation in implementation and monitoring of plans. Reference is frequently made to the current regulations which stipulate that the commune level is the lowest level of ownership for investment projects.

Villagers voice their assessment of the quality of services provided to a larger extent following the introduction of the Chia Se programme. The villagers show improved knowledge about complaint systems, but few complaints have yet been filed in the relatively short monitoring period.

Access to information is a prerequisite for participation in decision making. Villagers do have information on purpose and use of particularly the VDFs, but less on processes and procedures. Information is disseminated solely top-down through the administrative structures and there are indications that some village leaders “select” which information to be passed on to the villagers.

The generally successful outcomes of the participatory planning and decision making within the Chia Se programme have been noted by the provincial leadership and many be extended to encompass also other government local level investments

The decentralisation study shows that villagers generally feel more empowered and govern the local development funds provided through the Chia Se programme, but only to a certain extent. The village planning process during which decisions were taken on the use of Chia Se resources was largely handed over to the villagers. The implementation and monitoring was in general not handed over to the villagers. There is further no mechanism for promoting more general and active participation in implementation and monitoring of activities, i.e. to make use of the rights provided for in the grassroots democracy (“people know, people discuss, people do, and people supervise”). Forming associations or collective groups whereby poor people may gain bargaining power and self-confidence to enhance their bargaining power and maximize their social resources, still plays a modest role in the project

In brief, the decentralization study showed that with Sida’s support policies to bring government closer to the people were developed and that mechanisms and procedures local and regional governance systems were strengthened for that purpose.

Within the framework of the projects reviewed service delivery and problem solving capabilities of local administrations were strengthened. However, the sustainability of the outcomes of the projects is not strongly ensured yet. The overall policy and political will to move towards decentralization are there, but enforcement mechanisms are lacking.

The projects resulted in more active and informed participation of vulnerable social groups in formulation and monitoring of poverty reduction strategies. Nevertheless, it remains a challenge to ensure that those who are mostly affected and who are the primary target groups receive the information and the possibility to organize for involvement in the process of making decisions on issues that affect them directly.

5. The legal sector

5.1. Access to justice set of rights

Equal access to justice is one of the key rights in the international human rights normative framework. The scope of this right, enshrined in article 14 CCPR encompasses equality before the courts and tribunals and procedural guarantees in civil and criminal courts. Equality means that all persons must be granted, without discrimination on any ground, equal access to independent and impartial court of tribunal for the determination of civil disputes or criminal charges. An important procedural guarantee in all proceedings, be it civil or criminal, is the right to a fair and public hearing, including the principle of equality of arms between the parties. This principle includes the right to legal assistance, but only in criminal cases, although in many countries there are forms of legal assistance in civil cases as well. Especially this type of assistance is important in a rights based approach to poverty reduction.

As is stressed by the UN Human Rights Committee, the judiciary has to be competent, impartial and independent.³⁶ The requirement of competence relates to the need to ensure the legal expertise, not in the least in relation to human rights standards and therefore relates to legal education strategies.

Box 5.1 Access to justice set of rights

Core rights	Source
1) Arrest Deprivation of liberty	Articles 9 - 11
2) Equality before courts and tribunals.	Article 14.1 CCPR
3) Rights to a fair and public hearing by a competent, independent and impartial tribunal (either in criminal charges or a suit at law).	Article 14.1 CCPR
4) Procedural guarantees in case of criminal charge, including access to counsel, if necessary free of charge	Article 14.3 CCPR
5) Special procedures for juvenile persons (criminal charge)	Article 14.4
6) Right to review of conviction/sentence by a higher tribunal of law	Article 14.5 CCPR
7) Right to recognition everywhere as a person before the law (Article 16)	
8) Effective remedy and enforcement of such a remedy in case of violation of a right recognised in CCPR	Article 2.3 CCPR
Matching rights in other treaties: CERD, article 5 a); CEDAW, article 15; CRC article 40	

The right to access to justice in article 14 CCPR provides more elaborate guarantees for procedures under criminal law than under civil law. The right to legal assistance does not apply in non-criminal procedures (although many State Parties may have legal aid schemes) and there are no specific guarantees in the case of civil law suits.

Yet, the enforcement of rights which are important to the poor and to vulnerable groups, such as land rights, housing rights, health, social protection and education rights may not necessarily require criminal law enforcement, but rather civil law strategies. The Committee on Economic, Social and Cultural Rights (Committee CESR), has pointed out that an effective remedy to enforce social, economic and cultural rights, may not always be a judicial remedy, but could also be an administrative remedy which should at least be accessible, affordable, timely and effective, for which an ultimate right of judicial appeal "would also often be appropriate". The Committee concludes that whenever a CESCR Covenant rights cannot be made fully effective without some role for the judiciary, judicial remedies are necessary. The Committee furthermore considers that too often the implementation of the rights of the Covenant, which often involve the allocation of resources, is seen as to be left to the political authorities rather than the courts. The Committee asserts however that often the courts are already implicated in a considerable range of matters with important resource implication and concludes that putting social, economic and cultural rights beyond the reach of the courts would curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in

³⁶ Human Rights Committee, General Comment 13, Equality before the courts and the right to a fair and public hearing by independent court established by law, para 1 and 3, online at <http://www.ohchr.org/english/bodies/hrc/comments.htm>

society.³⁷ However, although economic, social and cultural rights are just as justiciable as civil and political rights, the conclusion remains that the international human rights standards include less safeguards for civil procedure where these rights are often at stake. Legal enforcement strategies for a rights based approach to development do not have a ready made reference base in international standards. This clearly has been recognised in a HRBA to development, where legal strategies for rights enforcement are being developed, as shown in the above quoted UNDP guidelines “Programming for Justice: Access for All.”

As with regard to the right to participation, the matching provisions in CERD and CRC more or less cover the same substance as article 14 CCPR, but from the perspective of racial discrimination and children.

Again CEDAW is somewhat different. Article 15 does not only provide that States Parties shall accord to women equality with men before the law, but it also specifically acknowledges that women have the legal capacity identical to that of men and the same opportunities to exercise that capacity. In many states the denial of such legal capacity either formally or materially, is in many states an important stumbling block for access to justice.

5.2. The strategic orientation of co-operation in the legal sector

The overall goal in relation to the legal sector of the 2004 – 2008 country strategy is the development of a rule of law that ensures predictability, equality, non-discrimination and protection against abuse. The country strategy asserts that respect for the rule of law, including independent and non-corrupt judges and police, functioning courts and law enforcement institutions are not only necessary for protection of human rights, but also for pro-poor growth. The strategic orientation of Swedish support in the legal sector should be directed at:³⁸

- advocating the human rights perspective in the legal system, in particular the rights of the poor and groups with special needs, e.g. children;
- the grassroots level and integrated into the support to public administration reform and poverty alleviation programmes.

The support given by Sida aims at developing and approving the policies and legislative framework regarding access to justice, building the capacity of the relevant institutions and the improvement of the actual access to the justice system by the poor and disadvantaged groups. There is a specific focus on legal aid, legal education and the development of the lawyers’ profession in Vietnam.³⁹

The legal aid component aims at contributing to ensure equal access to justice for the poor and other disadvantaged groups so that they can enforce their rights under Vietnamese law and international human rights standards.

The specific objectives are to:⁴⁰

- improve legal awareness and access to legal aid services for the poor, preferential policy beneficiaries and special groups of people such as women, children and ethnic minorities,
- strengthen the capacity of legal aid organisations to efficiently and effectively respond to the needs of the target groups,
- create a comprehensive legal framework for the organisation and operation of legal aid and a long term strategy for the development of the legal aid system.

The decision to set up legal aid for the poor and for people enjoying preferential policy dates back to 1997 and included setting up a National Legal Aid Agency (NLAA) up under the Ministry of Justice (MoJ) in order to help the Minister to perform the state management.⁴¹ The NLAA is to be considered as a separate legal entity, but it functions as a department of the MoJ. Apart from managing and

³⁷ CESCR General Comment 9, The domestic application of the Covenant, para. 9 and 10, online at <http://www.ohchr.org/english/bodies/cescr/comments.htm>

³⁸ Country strategy for Swedish development co-operation with Vietnam, January 2004 – December 2008, at 15.

³⁹ The support given to the Legal System Development Strategy through UNDP (Embassy memo of 11 July 2003) is not included here, since this is a multi-donor contribution to an international programme, rather than a Swedish development co-operation intervention.

⁴⁰ Embassy memo continued support legal aid system, 26 April 2005, at 3

⁴¹ Decision 734/Ttg, 6 September 1997

monitoring the system, the NLAA drafts or participates in the drafting of the normative acts necessary to implement the system, to provide legal aid when necessary, to be responsible for the training of staff performing legal aid duties at the provincial and district level, and to manage the international cooperation within the field of legal aid.

Part of the legal aid system are the Provincial Legal Aid Centres (PLACs).⁴² The role of the PLACs is to provide the legal aid services at the provincial legal and below.⁴³ Towards the end of year 2000 PLACs had been established in 59 provinces, and at that time it meant that only two provinces lacked the system of legal aid. Today there is a PLAC in all existing 64 provinces. PLACs provide legal advice and counselling, representation mainly through external lawyers hired by the PLAC, make petitions to relevant bodies when a state agency's decision is considered to be not in accordance with the law, mediation between parties, legal dissemination and provide recommendations to supplement or amend legislation based on specific cases dealt by PLACs.

Swedish support to legal aid dates back to 2001, when support for a three year period was decided.⁴⁴ For the second phase four donors, covering various target groups and/or provinces supported one NLAA project/programme document covering a joint support to the legal aid system as such in Vietnam.⁴⁵

The main project activities in the second phase include a range of activities: from drafting the legislative framework for legal aid, to actually providing aid through the PLACs, to capacity building activities (training, develop and publish guide books, organising national and international study tours) and, last but not least, conducting surveys on legal aid awareness and awareness building activities.

The beneficiaries are the poor people and other preferential groups eligible for free legal aid, and especially some disadvantaged target groups who in relation to the legal aid system are mainly children, ethnic minorities and women.

The legal education component aims at:

- achieving an accomplished curriculum development and teaching methodology for bachelor, master and doctorate degrees, which fit the principles of a state based on rule of law,
- strengthening legal education capability by improving gender equal lecturer's qualification, strengthening libraries information system and widening international co-operation.

As part of an agreement for cooperation in the legal field concluded between the Government of Vietnam and the Government of Sweden in January 1997, it was agreed to implement a project called "*Strengthening Legal Education in Vietnam*". After a competitive bidding the Vietnamese authorities chose the Faculty of Law of Lund University as cooperating partner. The project, considered by both sides as the start-up phase, began in 1998.

A new agreement was made for 2001-2005 in August 2001.⁴⁶ The Government of Vietnam has designated the Hanoi Law University, HLU, and the Law University of Ho Chi Minh City, HCMLU, to be the Vietnamese partners of the project.

The main activities of the second phase included: a joint Swedish/Vietnamese master programme in international and comparative law, short term pedagogical and courses and study in Lund for teachers and to some extent the managers of HLU and HCMLU, upgrading the law libraries of HLU and HCMLU, seminars by visiting Swedish professors open for a wider group than the students of the joint master programme, arranging international conferences in Vietnam on actual topics and international study trips on university management

⁴² Each PLAC functions professionally under the Department of Justice and administratively under the PPC to which it belongs.

⁴³ Information from the report "From an assessment of possible Swedish support to the system of legal aid in Vietnam".

⁴⁴ Support for three years amounted to SEK 10.500.000

⁴⁵ The four donors (Sweden, Switzerland, Novib (the Netherlands) and Save the Children Sweden) fund USD 11.6 million (MSEK 83,5), the government of Vietnam and the People's Committees at the provincial level is USD 10.5 million (MSEK 75,6).

⁴⁶ The Swedish financial contribution in that agreement was SEK 24 million, out of which one million was set aside for monitoring, auditing and evaluating activities related to the project.

To sustain the results achieved in teachers training and curricula development, the third phase will establish a pedagogical centre and an academic quality centre ensuring and enhancing the quality of the legal training beyond the presence of the project.

In order to assist the Government of Vietnam in developing the legal profession, Sida supported the drafting of the new Law on Lawyers. Whereas at present the total number of lawyers is too small (around 3500) compared to the population of Vietnam, and more than 2/3 of them are working mainly in the two big cities (Hanoi and Ho Chi Minh City), there is an acute lack of lawyers, especially in the rural areas. The new law provides an improved platform for lawyers to work and act, with the purpose of encouraging young graduates to work as lawyers.⁴⁷

5.3. The indicator framework

Six indicators have been identified for the assessment of the Swedish contribution to access to justice in Vietnam. The indicators and the subcomponents of which the indicators consist are given at the beginning of the paragraph of each specific indicator. A short introduction to the issues covered by each of the indicators is the following.

Indicator 1 relates to the contribution of access to justice policies, addressing the policies that are being and have been developed, as well as the legal framework that provides for the legal basis for access to justice policies and measures. The indicator covers the Governmental legal aid system, but also the increasing inclusion of the Vietnamese Bar in the official legal aid system as an inherent component of the overall system of access to justice.

Indicator 2 relates to the contribution to capacity and institution building of the Provincial Legal Aid Centres (PLACs) in the 15 provinces in which Sida supports access to justice through the National Legal Aid Agency (NLAA), a Department subordinated to the MoJ.

Indicator 3 relates to the actual delivery of legal aid services in the Sida intervention areas to the primary target groups of the legal aid supported by Swedish development assistance, the poor and disadvantaged groups.

Indicator 4 relates to the extent to which the clients that have been supported by the legal aid system supported by Sida are satisfied with the support received and the solution of their problem.

Indicator 5 relates to the increasing role of independent barristers in the provision of legal aid in the project intervention areas by way of co-operating with PLACs on the basis of agreements between PLACs and law firms in the project intervention areas.

Indicator 6 covers another area relevant to the area of access to justice, the importance of formal, academic education of the legal profession through improving the lecture force, the curricula and the support system, such as libraries.

5.4. Indicator 1: policies and legislation on the legal sector are developed

Indicator 1	Sub-components
Sida supported policies are developed and approved that aim at establishing a legal aid system that ensures equal access to justice for the poor and disadvantaged groups, women, children and ethnic minority people, with a view to enforcing their (human) rights	<ul style="list-style-type: none"> • The Law on Legal Aid is developed, adopted by the National Assembly and implemented • The Law on the Establishment of the autonomous National Bar Association of Vietnam is developed, adopted by the National Assembly and being implemented;

⁴⁷ The MoJ has a vision that there should be 18-20000 lawyers by 2010.

	<p>the professional ethics (code) for practicing lawyers is strengthened</p> <ul style="list-style-type: none"> • National Bar Association of Vietnam established • Long term development strategy for the lawyer's profession in Vietnam until 2020 elaborated
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The new Law on Legal Aid was adopted on the 29 June 2006 and will enter into force on 1 January 2007.⁴⁸ The law is replacing the Decision No. 734. At this stage the MoJ is working with the implementing decree which is expected to be ready during October 2006.

The new law changes the legal aid system substantially:

- The State continues to have the responsibility for ensuring a system of legal aid, the separation between legal aid provided by the PLACs and by social organisations (e.g. the Vietnamese Fatherland, Farmers' Union, Women's Union, Youth Union) is eliminated.
- The National Legal Aid Agency (NLAA) does not handle actual cases anymore, but focuses on managing, monitoring and evaluating the national legal aid system and the work of the PLACs.
- Introduction of a National Legal Aid Fund, which is foreseen to be used by not only the State Centres and Units but also by the mass and social organisations. The exact terms of operation are however not yet clear.
- A website on legal aid will be set up to complement the publicity activities conducted in the provinces.
- The law regulates the function of "Legal Aid Official" and "Legal Aid Collaborator", which enhances and clarifies the status of the Legal Aid Official, and at the same time encourages other persons (lawyers and law graduates) to contribute to the legal aid system.

The law mentions the categories of persons who are eligible for legal aid: (a) poor people, (b) those who are recognized having contributed to the Revolution, (c) old people, handicapped and children without family support, and (d) people of ethnic minorities living in socio-economic harsh areas. Specification of the exact criteria is expected to be provided in the implementing decree. Still very few people are aware of the national legal aid system, although substantial project resources have already been used for this. The plan is that quite some time and effort is set aside again for publicity activities on a provincial/district level.

The NLAA is working on cooperation agreements with the provincial Justice Departments and the relevant parts of the police and prosecution authorities in view of providing legal aid under the new law. Such agreements are expected to be signed before 1 January 2007.

No separate Law on the Establishment of the autonomous National Bar Association is expected to be drafted or adopted in the foreseeable future. However, the new Law on Lawyers includes a number of articles on the establishment of a National Bar Association, or a National Lawyers' Association, as the English translation reads.

The Law on Lawyers was adopted on 29 June 2006 and will enter into force on 1 January 2007. An implementation decree is presently being prepared by the Department of Management of Judicial Supporting Activities, MoJ, to be adopted by the Government before 1 January 2007. Also a circular is expected to be prepared. The circular is to provide more detailed rules as far as lawyers' involvement in criminal procedure is concerned.

The improvements in the Law on Lawyers compared to the old ordinance, addressing both Vietnamese and foreign lawyers practicing in Vietnam, are: detailed provisions on ethics of lawyers, possibility for lawyers to be involved in different types of procedures and legal services (e.g. litigation, consultation, representation before the court), expansion of forms of practice, e.g. permission for law firms with limited liability and, last but not least, establishing a clear legal basis for the establishment of the National Bar Association.

⁴⁸ There is not yet an English translation of the adopted law available.

Notwithstanding that the Law on Lawyers clearly states that a National Bar (Lawyers) Association (NBA) should be set up, the actual establishment of an NBA can be complicated. It is at present still unclear who has the initiative to start the process of establishment: the MoJ or groups of lawyers. No matter what, the Government has to formally approve the Statute of the NBA so the MoJ has to take an active part in the formulation of the Statute of an NBA. One of the issues to be solved is whether being a NBA member is compulsory to practice. A lawyer needs to be a member of a Provincial Bar Association to practice at provincial level.

The MoJ has not yet started the work with the development strategy for the lawyer’s profession. The focus has so far been on the work with the Law on Lawyers, and the coming months are expected to be devoted to the work with the establishment of the NBA. It is expected that the work could commence in mid-2007.⁴⁹

5.5. Indicator 2: increase in number of legal aid units

Indicator 2	Sub-components
Increasing numbers of legal aid units are available in project areas at various levels with capacity to address peoples' needs	<ul style="list-style-type: none"> • Increasing number of various legal aid units • Increased capacity: <ul style="list-style-type: none"> ○ knowledge and skills among legal aid staff improved ○ equipment improved ○ regular budget secured and increased ○ language skills of staff to serve different ethnic groups improved ○ areas of legal advice expanded and including issues relevant to the poor and disadvantaged: land issues, family law, gender issues, HIV/AIDS

Overall there is an increasing number of legal aid units in the project period, from 59 in 2000 to 64 (one PLAC in every province) in 2006.⁵⁰

The important figure is however not the increase in units, but the increase of staff with hundred and twenty two persons (thirty four percent) from 2005 until June 2006, bringing the total professional staff for the legal aid system to four hundred eighty three, which is however still very low bearing in mind that the country has a population of more than eighty million people. However, also more than 7000 collaborators (i.e. persons assisting the PLAC) are involved in the legal aid system and around 1000 are said to be lawyers. The PLACs have at present 1000 branches on district level - in around 600 districts.

Setting up mobile clinics seriously improved access to legal aid for people on a district and commune level. Statistics show that the mobile clinics account for many of the cases, and when the number of mobile clinics went down, the number of cases was drastically reduced. This was in particular noticed in the period between the two legal aid projects: there was a clear decrease in the number of cases when the project funding came to a halt for about 9 months in 2005.

There is a procedure for obtaining statistical information on cases, requiring PLACs sending the NLAA monthly reports. On average thirty percent of the monthly reports are not sent in, which makes monthly statistics incomplete and therefore inaccurate.

A training plan has been developed, based on a survey and seminar on training needs assessment in 2002. There is no hard evidence, such as test results and surveys, that the training activities carried out during the Legal Aid project has improved the knowledge and skills, but bearing in mind the

⁴⁹ According to the MoJ this work is not considered to be part of the support provided by Sida, but part of a Danida project. Sida , however, co-funds the support to the MoJ. Therefore the work with the strategy has a clear link to support provided by Sida.

⁵⁰ Statistics provided by the NLAA, MoJ.

number of training sessions held and the focus spent on training, it cannot be but assumed that there is an improvement. In order to provide reliable information on which future development of training can be based it is worthwhile to conduct a systematic evaluation of the effects of training, as concluded in a 2002 report⁵¹ by Save the Children Sweden.

A structural approach to capacity building of the staff is currently being considered by the NLAA: development of a comprehensive training strategy, introduction of participatory training methods, introduction of training of trainers and other means, publication of case books etc. A comprehensive strategy will contribute to avoid duplication of efforts and enhance efficiency in spending resources twice on the same issue on different occasions.

The improvement of the equipment is quite limited so far. In the first phase each of the 15 PLACs were in 2003 equipped with support from the Swedish project with only a few items. On occasion the Provincial People's Committee (PPC) will provide additional resources and equipment to a PLAC. A national plan with standard equipment for the PLACs seems not to exist.

The budget is not set on a national level but decided by each PPC. To ensure the sustainability of the legal aid system in Vietnam, before the start of the present project, at the request of the Minister of Justice, Chairpersons of all Provincial People's Committees provided written commitments to increase the budget for the PLACs year by year. Recent monitoring visits made by the NLAA show that the local budgets for the visited PLACs have increased compared to the previous years. The NLAA will have the overall picture of how the Provincial People's Committees have followed their commitments in January 2007, when it receives yearly financial reports from all the PLACs. Yet, there are concerns that the growth in expenditures for the development of legal aid services will challenge the provincial authorities' ability to sustain funding for the cost.⁵²

5.6. Indicator 3: legal aid system ensuring equal access to justice

Indicator 3	Sub-components
<p>The legal aid system increasingly ensures equal access to justice in project areas for the poor, preferential policy beneficiaries and disadvantaged groups in particular, women, children and ethnic minority people, etc. so they can enforce their legal rights upheld by Vietnamese law and international human rights treaties, to which Vietnam is a member.</p>	<ul style="list-style-type: none"> • Increasing numbers of eligible people are reached with information about legal aid services • Increasing number of eligible people make use of the available services

Quite a lot of time and resources are spent on spreading information about legal aid services, but the knowledge among the population on PLACs and on legal aid is reported to be quite limited. The legal sector report shows that various serious efforts are being made to address this lack of awareness (distribution of leaflets, distribution of tapes, leaflets in minority languages, etc.).

No survey has been conducted until now as to how potential and actual clients get to know of PLAC services. From the statistics it can be noted that the mobile clinics seem to be the most efficient way of attracting more cases and clients.⁵³

The national statistics show that there is a steady increase of the number of clients. Table 6.1 shows that during the first phase of the project 2001-2004 the total national increase was 76%. The difference in numbers between male/female is quite small which is a sign of that women also have equal access to legal aid.

⁵¹ Support to Legal Aid for Children and Juveniles in Vietnam, Save the Children Sweden, May 2002
⁵² Lessons learned from Legal Aid in Vietnam, p. 28.
⁵³ The complete field survey reports, compiled by the team from Investconsult, can be found in Annex C of the legal sector report. In total 9 cases were studied.

Table 5.1 legal sector – Number of clients (national statistics)

Year	2000	2001	2002	2004	2004	2005	2006/6m
Male	31 977	46 335	54 349	67 939	76 537	75 367	35 243
Female	26 271	38 352	45 345	62 535	72 795	61 603	30 592
Total	58 248	84 687	99 694	130 474	149 332	136 970	65 835

The legal sector study has reviewed client statistics, broken down in types of eligible clients, type of case and assistance received. From that it can be seen that land and other types of civil law cases are the most common. Ten to fifteen percent of the clients receive legal representation in court.

The proportion of criminal cases receiving legal aid of the overall case load is, compared to the overall case load, rather low. There can be a variety of reasons for this phenomenon. However, since legal assistance in case of criminal charges is a core legal right, these data merit further investigation if there is reason for concern and if so, what are the concerns and how these need to be addressed.

It is clear from the statistics that an increasing number of eligible people make use of the legal aid services. This is a clear indicator for increased access to justice for the poor and other target groups.

Establishment of a client monitoring system as mentioned earlier would enable the legal aid system to tailor the legal services more to the needs of eligible people and to specific issues and target groups, which would make the system more efficient.

5.7. Indicator 4: cases solved with satisfied clients and target groups

Indicator 4	Subcomponents
Number of cases solved with satisfied clients from various target groups.	<ul style="list-style-type: none"> • Increased no of cases solved over time at various legal aid units, including representation provided in court • Target groups: <ul style="list-style-type: none"> ○ Poor ○ Women ○ Ethnic minorities ○ Children

The number of cases have increased at a steady pace since 1997. During 2001-2004 the number of cases increased nationally with sixty three percent. As stated earlier (paragraph 6.6), statistics suggest that the most effective way of reaching the clients and receiving cases is through the mobile clinics. However, the statistics do not provide information to what extent clients have been assisted effectively and whether they are satisfied. The evidence showing effective assistance and satisfied clients consists of a few case studies conducted during the legal sector study.

The statistical data to assess which groups use the legal aid system provides evidence that the project target groups, the poor and women, indeed use the legal aid system the most. The number of children using the legal aid system is relatively low – around 5 % in 2004, but in 2005 and 2006 there is a clear increase. If this is a permanent increase remains to be seen. The number of ethnic minority people that use the legal aid system has also gone up considerably – even more than the group of children.

Table 5.2 – Target groups (national statistics)

Eligible persons/Year	2000	2001	2002	2003	2004	2005	2006/6m
The poor	31 396	39 701	40 283	45 637	49 865	41 364	20 480
Women	26 271	46 335	45 354	62 575	72 795	61 603	30 592

Children	3 826	16 122	6 229	6 969	9 473	15 371	22 231
Policy	12 588	13 761	13 943	23 708	24 117	21 560	9 255
Ethnic minority	3 654	8 674	18 938	20 888	29 457	25 833	14 489

Although the statistical material needs to be interpreted with some caution, the general trend is clear – there is an improvement and an increase of the number of persons, from the target groups, being helped by the legal aid system as well as the number of cases.

A monitoring system, as mentioned earlier, would assist in getting better statistical material. Such a monitoring system would also have to gather information on how effectively clients have been assisted and whether the client is satisfied about the assistance.⁵⁴

5.8. Indicator 5: bar associations ensuring professional lawyers

Indicator 5	Sub-components
Bar associations that promote and ensure provision of quality professional services by lawyers at all levels of legal dispute resolution and legal representation are established or being established in project areas	<ol style="list-style-type: none"> 1. Agreements between PLACs and law firms in project areas increase 2. Professional capacity of practicing lawyers strengthened

There is no evidence that there is an increase in framework agreements between PLACs and law firms. However, the value of this indicator can be questioned. According to the Ministry of Justice there seems to be no need to increase the framework agreements, since so far most PLACs have already signed agreements with law offices.⁵⁵ Only few PLACs still sign agreements on a case to case basis.

The Provincial Bar Associations play an important role in ensuring that the lawyers perform according to ethical rules. With the new Law on Lawyers a more unified standard is expected as it requires the NBA to prepare and adopt a national lawyer's ethics code.

It is foreseen that when the National Bar Association (NBA) has adopted its Statute the professional capacity of practicing lawyers will be strengthened through a number of activities. For example, the NBA will in the future be able to be responsible for professional/formal training and certification in the same way as the Judicial Academy is today. However, with a sharp expected increase in the number of lawyers special measures in terms of professional training will have to be taken.

The NBA will have an important role in ensuring the quality and independence of lawyers in the whole of Vietnam. At this stage the PBAs are responsible for this, but have very limited resources, in practice only the membership fees of the lawyers. Future development co-operation with the NBA could be one way of ensuring that "start-up funds" will be available. When ensuring the quality of the lawyers and the possibility for them to protect the rights of their clients, the actual independence of the NBA and its members is another important aspect. It should be remembered that the interest of the state, which provides legal aid does not necessarily coincide with the interest of the client. It is through the independent court, not through assigning legal aid, that the interests of the state and the client need to be balanced and decided.

The UN Basic Principles on the Role of Lawyers provide important guidance for the basic principles that need to be adhered in developing statutes, procedures and practices of the NBA.⁵⁶

⁵⁴ Such a monitoring system would have to be based on standard formats for collecting statistical data and for reporting in order to yield comparable information.

⁵⁵ Interview of the author of the synthesis report with Mrs. Ta Thi Minh Ly, Director Legal Aid Agency, 12 December 2006

⁵⁶ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Two relevant provisions: "Lawyers shall be entitled to form and

5.9. Indicator 6: development of legal education

Indicator 6	Sub-components
A curriculum, teaching methodology, gender equal teaching force and library system are being developed for bachelor, master and doctorate degrees, which fit the principles of a state based on rule of law	<ul style="list-style-type: none"> • Increase in gender equal lecture force (% increase up to 50-50), • Application of modern teaching methodologies and literature, • Establishment of support system of accessible and up-to-date law libraries, • Increasing international co-operation and exchange (% increase from baseline to target).

In 1998 already there were more female than male lecturers (131 against 107) and the trend continued over the years. It should in this context be noted that the third phase of the project has a separate activity on developing a Gender Equality Programme. For example gender committees have been established in both universities.

A questionnaire survey conducted in the framework of the legal sector study indicated that a large majority of both the graduates and the students felt that the capacity had been improved. This could be interpreted as a sign that the application of modern teaching methodologies and literature is perceived as improving. At the same time there are strong indications that new teaching methods had not yet won widespread use.⁵⁷ According to information received during interviews the lecturers are encouraged to use the new methods, when possible. There is no system actually obliging them to use the new methods.

The libraries at HLU and LUHCMC, thanks to the project, are now equipped with online connections with multi-national databases, such as WestLaw and HeinOnline. This gives the students the possibility to access more than 20 000 different databases.

The interviews with concerned staff at HLU confirmed that there was a limited international orientation and limited contacts before the project on legal education started. Through the project that has changed quite drastically. Until this year 34 Vietnamese students have completed the joint master programme and about 15 students have passed the Lund international master programme in English. Various international conferences on various legal topics were held in the past few years. Also, the two faculties in Vietnam, as well as the Lund faculty, have built up lasting relations with universities in Japan, USA, Canada, Great Britain, the Netherlands and Germany. The project is also working together with universities in the region, namely Laos, Cambodia, China and the Philippines.

A further sign of increased international orientation is that more and more texts and academic theses comparing the present Vietnamese legal system with other countries are being published through the activities of the project. It is noteworthy that these theses make explicit references to the fulfilment of Vietnamese international commitments in the field of human rights. Moreover, the attention for international human rights standards, national human right standards and their inter-relationship has increased. Various specific human rights topics are being taught and several of the scheduled LL.M. theses touch upon topics that have relevance to the development of the Vietnamese legal system and the overall application of human rights in the justice sector.⁵⁸

join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.” and: “Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.”

⁵⁷ Details are to be found in the legal sector report, paragraph 4.6.2 and Annex D.

⁵⁸ For example Mr. Van-Hoa To (LL.M.) *Judicial Independence: A Legal Research on Its Theoretical Aspects, Practices from Germany, the United States of America, France, Vietnam, and Recommendations for Vietnam* defended doctorate thesis defended on 6 November 2006 at the Faculty of Law, University of Lund

Last but not least, a Quality Assurance Centre is being established. The Centre can play an important role in ensuring the application of modern teaching methodologies and literature and assessment of the achievements of changes in the development of legal education.

5.10. Swedish contribution to the legal sector

The Legal Aid System of Vietnam is being strengthened and has now a more developed and formal (legislative) platform. The risk of a drastic decrease of activities is minimal provided that the necessary funds are secured. The possibilities for access to justice for the poor and vulnerable have improved.

There was a substantial difference in the support of Sida between the first and the present phase of the project. In the present phase, apart from the support to some important daily activities, the project provides support for the building of a strategy for the development of the legal aid system in Vietnam, including legislation and other normative documents on legal aid, for the development of effective mechanisms to control the quality of legal aid services, for exchange information among legal aid organisations, for the development of guidelines on mainstreaming gender equality in legal aid work, etc.

Yet, the support for some daily activities such as hiring private lawyers to represent clients or organising mobile clinics is still essential for running the legal aid system for the poor and vulnerable groups in this transition period to a system sustained by the Government of Vietnam according to its own strategy and plans.

Through the implementation of the Swedish supported project on legal aid a number of core rights relating to access to justice, a basic human right, are being improved. Hence the Swedish co-operation is having an effect on the every-day access to justice for the people. The most relevant international human rights provisions that are actually being applied in practice are *Article 14.1* – Equal before the courts, *Article 14.1* - Right to a fair and public hearing by a competent, independent and impartial tribunal and *Article 14.3* - Right to legal assistance (criminal charge) all under the International Covenant on Civil and Political Rights.

The role of the lawyers is being clarified and formalised. Gradually the respect for the work of lawyers is increasing. Alternative professional training and ethical control of lawyers is improving.

The legal education at university level is gradually being improved. The activities in the master programmes contribute to the overall development of the human rights situation in Vietnam. A critical mass is being built up and the students graduating can be of great value in the implementation of the overall judicial reform strategy until 2020.

All in all, the effect of the financial and technical support of Sweden on the legal sector assessed on the basis of the indicators developed for this legal sector study is substantial.

Also Sida has, in its coordinating role for the legal aid project, made it possible to save resources and facilitate a more focused approach for the Vietnamese partners. A further contribution can be made by stimulating and assisting the Vietnamese partners to develop an effective system for monitoring and evaluation, including gathering of qualitative and quantitative data which would serve to make access to justice even more geared to the needs of the (potential) clients and more cost-effective.

6. Swedish contribution to promotion and protection of human rights

6.1. Introduction

The approach underlying the analysis of the contribution of the Swedish development cooperation to the promotion and protection to democracy and human rights in Vietnam, has been built on an assessment of the following main elements, representing a human rights based approach (HRBA) to development:

- Linkage to rights as recognised in international human rights standards: entitlement to rights in policies and strategies.
- Focus on vulnerable and disadvantaged groups and non-discrimination.
- Transparency, accountability of the duty bearer, the Vietnamese government, and participation and empowerment of rights holders in formulation, implementation and monitoring and assessment of the process of (progressive) enforcement of rights.

6.2. Entitlement to rights

Swedish development cooperation with Vietnam has contributed to a development of policies and strategies in each of the three sectors. The cooperation also contributed to a steadily growing legislative platform in each of these sectors.

The achievements in this respect are clearly visible in the health sector. With the assistance of Sweden an overall health care policy has been developed as well as policies for sub-sectors. The policies and strategies have been gradually embedded in legislation and Government decisions, giving Vietnamese people entitlements in access to health care services, to safe and affordable drugs and health care related issues, such as tobacco control, and accident and injury prevention. Furthermore, these entitlements increasingly are developed with a focus on poor and vulnerable groups (women, children, ethnic minorities) from an equity perspective in line with a rights based approach to development.

In the sector of decentralisation Sweden has assisted in formulating and revising laws and sub-laws and formulation of policies along the same lines as in health, although the support of Sweden in that sector does not have the long history of that of the health sector. The same holds true for the judicial sector where Sweden assisted in developing the legislative framework for the legal aid system and the Law on Lawyers, the basis for further developing the legal profession.

The legislative platforms developed for each sector provide increasingly for rights entitlements in each of these sectors. This trend in the development in each of the sectors to ensure increased entitlement to rights does not mean that there is a direct translation of each of the international human rights standards quoted at the beginning of each chapter into legislation, nor is there a direct reference to these international standards. Conceptualisation and focus of the entitlements provided for in law are according to the Vietnamese context, as in any other country in the world and the international standard do not always define the exact nature of the obligation of the Government with regard to ensuring the enjoyment of a right.

With regard to health there is legislation, there are policies and strategies to improve and ensure availability, accessibility, acceptability and quality of health care services, which together provide for entitlement to a series of health care provisions, although maybe not always stated in terms of an *entitlement*.

6.3. Focus on vulnerable and disadvantaged groups

Focus on vulnerable groups and disadvantaged groups (including non-discrimination) is clearly the guiding principle in the policies and strategies in each of the sectors that have been reviewed. For example, review of the long history of the cooperation between Sweden and Vietnam in the health sector shows a trend whereby in this sector an overall market oriented health policy that did not take into account the health care needs of the poor, developed towards a health care system that is

deliberately designed to cater to the health care needs of the poor from an equity and efficiency perspective. The cooperation in the other two sectors, with a shorter cooperation history than the health sector, show more of a focus on poor and vulnerable groups rights from the beginning.

The extent to which the focus on these groups actually materialises differs between and within the sectors.

The review of the health sector found with regard of one of the projects that the project did benefit the targeted group, but that the organisation of the support was not effective and efficient: more eligible people could have benefited from the support. The other project that was reviewed had not been evaluated yet and therefore did not provide a breakdown of those involved in the project according to relevant criteria (sex, social status, and ethnicity).

The review of the decentralisation sector found that one project in particular had been quite successful in promoting access of vulnerable and disadvantaged groups to more and higher quality of services. The participatory planning process conducted in the framework in the project was found to have improved the focus on services requested by the poor. Nevertheless, the study also found that there are indications that poor households took less active and genuine part in the project processes. Especially ethnic minority women were seen to be passive.

The legal sector study shows that the legal aid project has improved the possibilities for access to justice for the poor and vulnerable groups. However, the legal aid service is still in its development phase. The huge lack of qualified lawyers throughout the country and the lack of resources in relation to the size of the poor population, the potential clients of the system, leads to the conclusion that it will take a long time before the legal aid system will actually be equipped to meet the needs of the poor and vulnerable.

In brief, the conclusion is that the support provided by Sweden did stimulate a focus in both policy orientation and in strategy on poor and vulnerable groups. The implementation has in some situations been effective, in some situations less. In some cases the effectiveness cannot be assessed, due to the lack of data, which calls for more emphasis on establishing procedures for data gathering and monitoring and implementation of projects.

6.4. Participation and empowerment

Like focussing on the vulnerable and disadvantaged groups, stimulating participation and empowerment is one of the key features of the support provided by Sweden. It is a constituting element of development interventions in each of the three sectors.

In the health sector a pilot model has been introduced to enhance community participation in health needs assessment, as well as planning, implementing, monitoring as well as evaluating community health interventions. The model turns out to be an important tool for developing community action plans in the health sector. It is being applied in communes in Vietnam other than those that were originally selected. No conclusions can be drawn yet regarding the effectiveness of the model, due to a lack of evaluation, but the signs of beneficial effects on the involvement of staff and community in the planning exercises, and thereby positive effects on the usefulness of the plans, are promising. Furthermore, the increased participation is expected to have also a positive effect on fighting corruption in the health sector. Due to the lack of evaluation the cost effectiveness and potential for replication of the model are not clear either.

In the decentralisation sector the Chia Se programme has overall been rather successful in introducing a participatory planning and decision making process local development funds. However, there are indications that poor households participate less. Limitations to this participation are that formally communes are the lowest level of ownership for investment projects and that therefore villages, which are at a lower level than communes, cannot take final decisions in this respect.

Access to information is a prerequisite for participation in planning and decision making. The review of Chia Se showed that information on purpose and use of village development funds is available, but less so on processes and procedures. Due to a paternalistic attitude of some village leaders, villagers do not always receive the information they should have. Furthermore, villagers participate in the

planning, but less so in implementation and monitoring. Last but not least, from the sector studies it is by no means evident whether programme and project beneficiaries and stakeholders are seen as having a *right* to information, or whether provision of information as a functional accessory. To be in conformity with human rights standards and to function effectively it should be both.

Having a possibility for complaint and redress is an important tool to make one's views be tended to if necessary. In the Chia Se programme villagers were found to voice their assessment of the quality of services provided to a larger extent following the introduction of the Chia Se programme. They also showed improved knowledge about complaint systems, although few complaints were filed in the short period of the project. As with access to information, it is not always clear whether there is a *right* to remedy and redress included in policies, strategies and program and project procedures or whether a complaints procedures is seen as a simple feedback mechanism. Again, to be in conformity with human rights standards and to function effectively it should be both.

The legal sector study shows little concrete evidence of participation in the development of the legal aid system, either of target groups for legal aid or from other stakeholders, such as groups of lawyers.

The various sector studies bring one particular participation issue to the fore. The policies and strategies are clearly and sincerely oriented towards participation of direct beneficiaries, such as the vulnerable and poor in the projects in the health and decentralisation sectors referred to above.

When direct beneficiaries are not quite obviously identified, there is no mechanism for more general and active participation in planning, implementation and monitoring of activities. Due to a lack of civil society organisations, such as for example patients' organisations, organisations that represent the interests of clients and consumers, it is difficult to see who can represent the interests of patients and other who use, for example, medicines. Forming associations or collective groups whereby beneficiaries and other stakeholders may gain bargaining power and represent the interest of a social group to and maximize their impact from participation, is not acknowledged as a mechanism that can usefully provide feedback on needs of those who are affected and could be an actor in a system of checks and balances.

The overall conclusion is that the support provided by Sweden has improved the overall orientation towards participation and stimulated the introduction of pilots and models aiming at enhancing participation of direct beneficiaries. At the same time it needs to be concluded that some of the features of participatory systems that are common in many other countries, like having a right to information, a right to remedy and redress and the possibility of forming civil society organizations that function as monitor provider of feedback, are not guaranteed. In other words, at direct beneficiary level there may be transparency and accountability of the duty bearer towards the rights holder, but in other situations transparency and accountability are not always secured.

6.5. Fulfilment of obligations and the Swedish contribution

As for the extent to which the Government of Vietnam fulfilled its obligations to ensure the rights in each sector as *minimum obligation* and as obligation of *progressive realisation* and the extent to which Sweden contributed to this fulfilment of obligations, the following can be concluded.

From the above it can be concluded that from an overall human rights perspective that in the period and sectors under review the Government of Vietnam has managed to improve its performance related to implementation of international human rights obligations, both in terms of *minimum obligation* and as obligation of *progressive realisation* and that Sweden contributed substantially.

In the health sector the Vietnamese Government can be seen to fulfil its minimum core obligation as well as its obligation of progressive realisation, although it has to be noted that the health care study only covered two projects. At least there one can conclude that the Government of Vietnam fulfilled its minimum core obligation in the two projects, to which Sweden contributed. Furthermore, whereas the health care study found that in the health sector that is a progressive expansion of access to health care services in policy and strategy, the conclusion can also be that the Government of Vietnam increasingly fulfils its obligation of progressive implementation of international human rights standards

in the health sector Given the substantial support given by Sweden for this development, one can safely conclude that Sweden contributed to this achievement.

With regard to the other two sectors it has to be noted that there are rights that have the nature of a stricter obligation, such as the obligation to respect and ensure the right to freedom to receive and impart information and the right to association, which are particularly relevant for participation and empowerment of target groups. The same holds true for various rights in the legal sector, such as the right to a hearing by an independent tribunal and access to counsel in criminal cases.

The studies in each of the three sectors have shown positive developments with regard to enjoyment of these rights. With regard to access to counsel in criminal cases this has even been embedded in the legislative platform for legal aid, although the actual enjoyment will largely depend on the development of the legal aid system which now hinges on the lack of availability of trained law professional and lack of resources.

It has to be noted that the entitlement to enjoyment of the rights mentioned is not yet always fully ensured in the policies, decisions and legal document that have been reviewed in the framework of this assessment. At the same time it be concluded from the sector studies that there is enjoyment of these rights at the level of programmes and projects and that there is awareness that the enjoyment of these rights enhances the effectiveness of development efforts.

The overarching conclusion is therefore that the orientation and positive development towards ensuring entitlement to the rights and principles embedded in the international human rights standards, relevant to each of the three sectors, is clearly visible. This conclusion can be underpinned with the findings of the three sector studies. The conclusion can also be that the development support provided by Sweden stimulated and supported this trend and therefore has had a positive effect on the improvement of situation of democracy and human rights in the three sectors reviewed.

6.6. Concluding remarks

The overall goal of the assessment was to assess the effects of the development cooperation between Sweden and Vietnam on the situation of democracy and human rights.

In the previous paragraphs it has been concluded that the development cooperation has had positive effects in each of the sectors.

Entitlements to enjoyment to human rights have gone up in each of the sectors. The actual enjoyment of rights that are important from the perspective of democratic values in relation to participation, such as the right to information, the right to association and the right to remedy and redress are still subject to scrutiny by the Government and the Party and not fully guaranteed in legislation and policy. Where these rights are enjoyed in the actual situation of programmes and projects this has positive impact on the effectiveness of the programs and projects concerned.

It is important to note that the three sector studies have shown a relevance of the rights based approach across the various sectors. For example, decentralisation based on HRBA principles is important for health and access to justice, but access to justice is likewise important to enjoyment of the right to health or participation in the governance of one's own situation.

It is also important to note that the development of the sets of rights in each sector, the development of indicators and the identification of quantitative and qualitative data and sources of data is the result of a process in which both the Government of Vietnam, represented by various relevant Government Ministries, and the Swedish side fully participated. The participative nature of the process has enhanced commitment to and ownership of the assessment exercise as well as its outcome.

This fact enhances the possibility of the development of a continued monitoring of the development cooperation between Sweden and Vietnam from a rights based perspective. The present exercise will provide a baseline for such continued monitoring. At the same time it provides lessons learned for future assessments of the contribution of development cooperation on the situation of democracy and human rights.

First, the translation of development goals into sets of rights can become more specific if there will be a more elaborate dialogue between the Vietnamese side and the Swedish side on how the international human rights standards and obligations are enshrined in Vietnamese legislation. This requires a stronger input of the Vietnamese side on how the relevant international human rights obligations in a sector are actually embedded in Vietnamese law.

Secondly there are various methodological issues. More time is needed for the development of indicators and there needs to be a clear identification of which aspects of the contribution of development cooperation on the situation of democracy and human rights are being assessed by what type of indicator: process, outcome, impact, attribution.⁵⁹

Thirdly, one of the difficulties in assessing the indicators was the lack of quantitative and qualitative data and the lack of baselines to measure progress in each of the sectors. The assessment has shown that there is quite a lack of practice in data gathering and monitoring with the purpose of learning from previous experiences. Learning from best practices in monitoring and stimulation of monitoring and evaluation as standard practice is an important lesson for programmes and projects in each of the sectors.

Positive lessons learned are the added value of the human rights based approach (HRBA) to development. The HRBA has also been useful for structuring the elements for assessment: entitlement, focus on poor, participation, transparency and accountability. Hence the HRBA has been useful in focusing on process as well as outcome and not outcome only.

The overall conclusion with regard to the key question as to what were the effects of the cooperation between Sweden and Vietnam on the situation of democracy and human rights is that different effects are clearly demonstrated in the assessment. The contribution of Sweden has been important at policy and strategy level as well as the level of programs and projects.

⁵⁹ See also Swedish Agency for Development Evaluation, Policy brief November 2006, How to Trace Results of Democracy Support, online at <http://www.sadev.se/Bazment/56.aspx>