



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

Judicial Mentoring A Strategy for Capacity Development of the Judiciary in Cambodia

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SUMMARY BOX

Categorization of lesson:

Judicial Mentoring as a strategy for capacity development of the judiciary and the judicial administration. Lessons include substantive, process related and operational limitations on impact and effectiveness, as well as suggested recommendations.

Critical lessons for the sub-practice:

The critical lessons in judicial mentoring can be summarised as follows:

Lessons on outputs

Opting for judicial mentoring should be the response to a realistic assessment of the overall needs and capacities of the judicial system nation-wide in terms of trained human resources, facilities, utilities, policies for reform, political will. A realistic strategy for judicial mentoring will need to determine: the required number of judicial mentors and their profiles (national or international) and mandate, the selected courts to benefit from this programme and respective accountability for results, the target beneficiaries, the sustainability measures to be put in place to guarantee the long term impact of the intervention beyond donor funding and international presence, and the necessary tools to enable spill over effects between capacity development interventions on the ground to the overall government policy for reform of the sector.

Lessons on process

The involvement of local counterparts in the assessment and designing stages of the programme is critical to ensure the success of this intervention including identification of real needs and targeted beneficiaries as well as roles and responsibilities in the implementation of the programme. Scope and design of the judicial mentor programme can not be decided without the active involvement of those to be mentored. Accountability is very important for the achievement of the identified programme outputs in a judicial mentoring exercise.

Moreover, there is a need to ensure institutional support and technical backstopping to complement the work of the mentors. Team building in judicial mentoring is of foremost importance in order to achieve a comprehensive and common approach for the intervention.

Experiences and best practices should be systematically documented by the judicial mentors, and the supporting advisor. This will enable the programme to review from time to time the achievements, constraints and challenges lying ahead, as well as to devise mechanisms to further implement best practices and avoid unsuccessful experiences.

Operational lessons

The key operational issues that need to be addressed in the preparation of a judicial mentor programme are the following: a clearly defined institutional set up, an effective human resources management strategy, identification of appropriate profiles of the mentors, properly equipped work stations, and address security matters.

Recommendations:

Given the key lessons extracted based on the judicial mentoring experience in Cambodia, the main recommendations are as follows:

- ❖ The need for and impact of a judicial mentoring exercise needs to be carefully planned and monitored as it has mixed results depending on a number variables.
- ❖ Judicial mentoring based on internationally recruited expertise is very costly, and to a large extent not sustainable. Therefore, there is a need to weigh the pros and cons of this type of intervention, given the scarcity of available resources for development.
- ❖ Sustainable mechanisms to ensure the lasting impact of the intervention need to be put in place.
- ❖ The right profile and a clearly defined mandate of the judicial mentor is critical to ensuring the achievement of results and avoiding potential conflicts in this very sensitive field.
- ❖ Accountability systems for mentors and local counterparts must be devised and implemented.
- ❖ Close inter-agency co-ordination is a must in the implementation of this type of programme.

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CATEGORISATION OF LESSON

Judicial mentoring as a strategy for capacity building of the judiciary and the judicial administration. Lessons include substantive, process related and operational limitations on impact and effectiveness, as well as suggested recommendations.

BACKGROUND

The reports produced by the Special Representative of the Secretary General for Human Rights in Cambodia and the resolutions passed by the General Assembly since 1993 highlight the weak state of the judicial system as a theme of great concern. Following the complete collapse of the judicial system during the Khmer Rouge period the Cambodian government is committed to strengthening the foundation for the rule of law by establishing the basic legal framework, building the capacity of the judiciary and ensuring its independence. However, endemic corruption, lack of judicial independence from the executive branch, and lack of legal training in the judiciary continue to seriously weaken the enforcement of Cambodian law.

The main priorities, identified by numerous reports in preparation of the programme, were the following: (a) the provision of adequate salaries and allowances to judicial officers. The average salary of 50,000 riels per month (about US\$ 20) for judicial officers is totally inadequate to ensure independence and exposes them to temptations incompatible with their judicial function; (b) the provision of basic requirements - including legal texts, paper, photocopiers and funds for investigations; (c) separating the budgets of the courts from Ministry of Justice; (d) increasing the competence of the judiciary through regular seminars and workshops on human rights, providing for the exchange of experience between judicial officers; (e) respect for the separation of powers. The current practice of judicial consultations with the Ministry of Justice during the hearing of legal cases concerning up-to-date laws and legal principles should be replaced by consultations with an experienced, independent judicial officer or body having no connection with the Government. However, the responsibility for decisions in cases must remain exclusively with the judge hearing the case and must never be delegated or surrendered to any other person; (f) introduction of a system of judicial mentors and advisers; (g) assigning of public defenders to all provinces to assist, inter alia, in the conduct of serious criminal trials; (h) conduct of prison visits by judicial officers (in addition to visits to prisons by prosecutors); etc.

To address the above mentioned challenges judicial mentoring was developed as an entry point for further capacity development of the judiciary. Judicial mentoring was originally envisaged as part of the human rights activities in the context of the Human Rights Component of UNTAC. Resolution 1993/6 of the Commission on Human Rights, confirming the operational presence of the then Centre for Human Rights (now the Office of the High Commissioner for Human Rights) in Cambodia, includes, among the other elements, the continuation of assistance "with the training of persons responsible for the administration of justice" in Cambodia.

In 1995, the judicial mentor programme was initiated to assist the judiciary in the establishment of the rule of law within a larger UNDP programme in support of Governance, Democracy and Human Rights. The key responsibilities for the overall substantive and technical backstopping on the implementation of the project's activities were entrusted to the Office of the High Commissioner for Human Rights. The Judicial Mentor Programme in Cambodia consisted of international legal consultants, co-ordinated and, technically

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supported by the UNOHCHR, who were assigned to support 6 provincial courts at a time as well as 2 higher courts in the last two years of the programme (2001-2002).

The immediate output identified was "Strengthened Capacity of the Judicial System through Continuation of Existing Judicial Mentor Programme" through the following objectives: (a) assisting Cambodian courts in implementing legislation in conformity with international human rights standards; (b) assisting in improving co-ordination between courts, prison officials, police, military and provincial administration; (c) assisting judges in the day-to-day functioning of the courts relating to organisation, procedures and law; and (d) preparing an assessment of a long-term overhaul of judicial system and the policy and legal changes necessary to achieve such overhaul.

However, it appears, that the major challenges remain valid despite the JMP. These include: (i) Executive interference into judicial affairs through party affiliation, appointment systems and enactment of circulars by MoJ outside the scope provided by the law; (ii) Lack of national ownership in the largely donor driven legal and judicial reform process; (iii) Creation of multiple institutions and plans to tackle legal and judicial reform without developing the scope, role and responsibilities of key actors involved, e.g. MoJ, Council of Judicial and Legal Reform, Supreme Council of Magistracy; (iv) Inexistence of a separate budget of the courts from Ministry of Justice; (v) Severe shortage of lawyers, judges and prosecutors. There are currently only some 195 judges in the country and basic qualifications of many of the judges are lacking; (vi) Corruption engendered by inadequate salaries of judges and the absence of a Statute of Judges. Despite the recent approval of special monthly allowances for judges and prosecutors (varying from USD 325 to 625) the average salary remains of 50,000 riels per month (about US\$ 20) for judicial officers.

In June 2003, as part of its commitment under the Consultative Group between donors and the Royal Government of Cambodia, the government has approved a new strategy for legal and judicial reform, which outlines seven strategic objectives:

- 1) Improving the protection of fundamental human rights
- 2) Modernise the legislative framework
- 3) Providing better access to legal and judicial information
- 4) Enhancing the quality of legal processes and related services
- 5) Strengthening judicial services, i.e. the judicial power and prosecutorial services
- 6) Introducing alternative dispute resolution methods
- 7) Strengthen Legal and Judicial sector institutions to fulfil their mandates

FINDINGS AND CONCLUSIONS

Lessons on output/outcome

Limited impact of the intervention given the tremendous capacity gap and lack of trained human resources, facilities, utilities throughout the Cambodian justice system nation-wide. Only a few courts benefited from the presence of a mentor, and the duration of the mentoring varied from court to court. Mentors were assigned to a court to monitor and to provide overall guidance and advisory support to the judges and prosecutors, as well as to the clerks. The impact of the mentor's presence in each court varied dramatically depending on the following factors:

- duration of the assignment

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- relation and trust building with the court personnel
- acceptance of the mentor by local counterparts
- tailoring of the terms of references to actual needs
- overcoming the language barrier
- legal background and experience
- seniority

Sustainability and the potential for replication of the intervention is questionable because of high operating costs, and the inexistence of a uniform approach due to different methodologies and approaches applied by the mentors to transfer skills and know-how, as well as the diverse experiences in building the trust and confidence with national counterparts.

The definition of the mandate of the judicial mentor proved to be of foremost importance towards the achievement of the programme outputs and contribution to reach the outcomes. Clear definition of roles and responsibilities of the mentors is crucial and needs to take into account the country's specific formal and informal justice systems, the nature of state reforms promoted in the sector, the targeted beneficiaries, etc. Depending on the maturity of judicial system in given country the mandate of a judicial mentor can vary. Some envisaged tasks could include:

- advisory support on legal substantive and procedural matters
- sharing comparative experiences from similar legal systems, or other developing countries undergoing through similar reform processes and challenges
- sharing necessary knowledge on how to implement or apply international legal standards regarding the administration of justice in the creation or amendment of domestic legislation as well as the promotion of the legal reasoning and interpretation according to the principles of international law to which a country is to abide
- supporting the establishment of mechanisms for ensuring the co-ordination of institutions charged with the administration of justice including courts, police, prison authorities, military (in some instances), ombudsman, etc
- identifying constraints and challenges faced in the day-to-day practice of the administration of justice either by the justice providers or the recipients, to inform state policy making mechanisms
- providing training for judges, prosecutors, court clerks, prison authorities, judicial police, human rights NGOs on identified critical legal matters

In parallel, the responsibilities of national counterparts need to be clearly outlined to ensure accountability of results.

The lessons derived from the mentor experience and ensuing recommendations for reform of the judicial system have not succeeded in influencing the overall direction of the country's policy making processes in the sector. Mentor's experiences were documented through numerous monthly reports to the UNOHCHR, in addition to regular meetings of judicial mentors at the OHCHR office in Phnom Penh. It also provided first hand information to document the reports of the UN Special Representative for Human Rights in Cambodia. However, the compiled information was not systematically and strategically used to put pressure to Government, and more specifically on the institutions charged with the administration of justice, i.e. the Ministry of Justice, Supreme Council of Magistracy and the (former) Council for Judicial Reform, in order to improve the conditions and procedures at the court level. The project design should have included targeted policy advisory and advocacy services to ensure that lessons learned from the judicial mentoring exercises are captured in the reform process.

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It should also be recognized that mentoring is not always welcome by senior judges and prosecutors and depends very much on the capacity of the mentor to reach out to the judges and prosecutors building partnerships based on mutual trust.

Overall, judicial mentoring as a stand alone initiative did not provide the most effective entry point neither to tackle the tremendous capacity gap facing the Cambodian judiciary and even less so to address the profound structural problems of the justice system.

Lesson on process

Limited involvement of local counterparts in preparing the programme impacted on the sustainability of results. Generally, negotiations for the posting of mentors in the different courts were carried at the central level with representatives of the Ministry of Justice. Involvement of the beneficiary institutions in the preparatory phase regarding the selection of candidates, needs assessments and work planning, was not given. Hence, different issues relating to the type of support to be provided, targeted beneficiaries, acceptance at the court level by the judges and prosecutors only surfaced during the implementation stage, putting in jeopardy in some instances the judicial mentoring exercise.

The lack of transparency and ambiguity regarding the objectives of the mentor programme and the TORs of the mentors clearly impeded on the adequate reception of the mentors by national counterparts thus limiting impact and sustainability. In the absence of a proper consultation process on the TORs of the judicial mentors with their mentees judicial mentoring is likely to fail. In other words, for the mentoring exercise to succeed the beneficiaries need to be willing to be mentored.

Institutional support and technical backstopping of the work of the mentor was insufficient, leading to isolation of some mentors at the provincial court level as well as the higher courts. Ideally, the work of the mentors should be substantially supported by an advisor/ co-ordinator (or task manager) in order to provide them with overall direction and guidance in the postings based on previous judicial mentoring experiences at the court, and country specifics regarding the judicial practice and legal tradition.

Practices, experiences and lessons learnt by each judicial mentor, although shared in regular meetings with the OHCHR, have not been systematically compiled nor recorded in order to adjust the programme accordingly over the years. In this regard, the institutional memory based on the judicial mentoring experience in Cambodia is rather weak. It would have proven useful the compilation and extraction of lessons and best practices achieved by some of the mentors during their assignment in Cambodia.

❖ Operational lessons

In case of involvement of several UN agencies as for the JMP, it is important for the programme's institutional set up to be clearly designed in order to avoid misinterpretations on the role and responsibilities of each agency. Similarly any extension of the programme from the initial conception stage needs to include necessary revisions of the intended outputs and indicative targets to ensure the complementarity of involvement of each agency in the programme. The main operational issues that need to be addressed for this type of programme include:

- Design of the strategy for judicial mentoring including mandate, reporting lines, approach, profile of mentors, etc.
- Identify the targeted beneficiaries, more specifically the disadvantaged groups and the poor

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- Prepare detailed terms of reference and, at the same time, the TOR should be flexible to be adapted when the situation requires. The terms of reference will provide the overall framework and specify the profile needed (including languages, legal education and practice in different legal systems, previous experience in working with developing countries, etc.)
- Timely selection of the mentors, deployment and team building
- Monitor and evaluate the performance of mentors including achievement of results at all stages taking into consideration inputs provided by national counterparts
- Ensure continuity and timely disbursement of funds provided by the different donors in order to avoid discontinuities in the implementation of programme activities
- Set up adequate co-ordination mechanisms among implementing and executing agents in order to ensure efficiency and efficacy in the implementation of the judicial mentor programme

Management of human resources is always a critical issue when it comes to ensuring quality of results, common understanding of approaches and action in the judicial mentoring practice. Hence, team building, minimal turnover of mentors, and results oriented mentoring are critical to the success of a judicial mentoring programme.

Identifying the right profile of the judicial mentor has been proven of foremost importance in ensuring the desired impact of the intervention with minimal interference in the fragile local legal system. Cambodia's legal system is an hybrid based on civil law introduced by the French, combined more recently with elements of common law tradition given the presence of UNTAC.

Work stations should be properly equipped before the deployment of the judicial mentors. This will facilitate enormously the work of the judicial mentor in terms of liaising with counterparts, clarifying roles and responsibilities, timely commencing the assignment, and providing necessary advisory support to the counterparts including judges and prosecutors.

Security is also an issue to be carefully considered when implementing a judicial mentor programme. The administration of justice is by nature a very sensitive issue involving matters of great concern. The status of the judicial mentor is determined by the mandate in serving in a selected court. The judicial mentor is not to be involved on the presentation and investigation of a case nor pronouncement of a judicial decision. The mandate of the mentor is to provide advice on the legal substantive analysis and procedures based on comparative practices in other judicial systems in order to inform the Cambodian judges and prosecutors of the available resources and jurisprudence. Hence, the mandate of the judicial mentor should be clearly presented to the judges and court clerks as well as to the community were they serve.