



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

Legal Needs Assessment Building Ownership and Partnership for Legal Reforms in Viet Nam

July 2003

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SUMMARY BOX

Categorization of lesson:

A needs assessment exercise that created a basis for formulating a long-term strategy and action plan to develop the legal system of Viet Nam. Lessons include strategies for ownership and partnership building.

Critical lessons for the sub-practice:

1. Identifying a clear and detailed scope for the LNA early on was an important factor in realising outcomes.
2. National ownership of the LNA is key to ensuring that the ultimate outcomes continue to be employed by Government.
3. The LNA process provided strategic development results because it involved the participation of high policy advisors and was an inter-Ministerial effort.
4. Ensuring donor involvement from the beginning also has ensured their further commitment and momentum supporting the reforms, but expectations also have been raised.
5. Political commitment at a high level and strong, involved leadership in the lead Government agency are prerequisite for co-ordination of various agencies.
6. Clear identification of UNDP as Government's key counterpart is essential to facilitate donor co-ordination, and proactive backstopping by UNDP was crucial in maintaining an open, interactive co-ordination mechanism between Government and donors.
7. Commitment to longer-term UNDP support in the high-profile and sensitive area of access to justice can maintain the needed momentum.
8. Creative modalities in supporting an LNA can be a factor for success

Recommendations:

- ❖ Sound co-ordination mechanisms among relevant Government agencies, among donors, and between Government and the donor community must be maintained during the entire process.
- ❖ High political commitment and strong leadership of the key Government agency must be in place to ensure all agencies' commitments.
- ❖ National ownership should be maintained to ensure that Government will use the ultimate outcomes, while a transparent mechanism for donor participation and constant feedback is needed to ensure donor support.
- ❖ Involvement of policy/reform advisors/experts in such important reform exercises must be ensured to make the process in itself be a development result.
- ❖ UNDP should focus on high-profile areas of intervention based on its comparative advantages in order to involve other donors.
- ❖ UNDP must support Government in being proactive and showing leadership in the co-ordination of donors and mobilisation of funds.
- ❖ Donors should be careful in raising Government expectations if not ready for funding commitments.

CATEGORISATION OF LESSON

A needs assessment exercise that created a basis for formulating a long-term strategy and action plan to develop the legal system of Viet Nam. Lessons include strategies for ownership and partnership building.

BACKGROUND

After the country's reunification in 1975, Viet Nam followed the former Soviet model in terms of political arrangements, a centrally planned economy and its legal system. The latter was poorly developed during at least the first decade after reunification. Lack of an adequate normative legal framework, and a capable institutional arrangement required for access to justice, were major shortcomings at that time.

Since the renovation policy was launched in Viet Nam in 1986, however, the country started to move toward a new market economy and global economic integration. By the mid-1990s an initial legal framework also had been established, but a comprehensive legal policy for building a society based on the rule of law was still lacking. More importantly, the legal implementation and enforcement mechanism was weak and inefficient. Judges were not well enough trained and not equipped with adequate professional skills. There were only 1,800 practicing lawyers in the country, which has a population of 80 million. The lack of public defense and paralegals, and a sound legal system for the poor and marginalised, was a further obstacle for access to justice.

Government legal agencies have made a number of efforts to address the issues, but these have not been well co-ordinated. A need existed to have a comprehensive, coherent and long-term vision for legal reforms and a well co-ordinated mechanism for donor interventions, so that needs could be identified in a prioritised order and address in a timely, co-ordinated way.

Based on the recommendation of the donor community, the Government decided in early 2002 to carry out a one-year, comprehensive legal needs assessment (LNA) exercise to review past efforts to identify problems in the legal system and to recommend prioritised directions and action plans for future reforms. UNDP was approached by the Ministry of Justice with a request to provide technical assistance and co-ordinate donors.

Five national teams were established to facilitate and conduct the exercise. The first four teams were assigned to prepare reports on each of four priority areas: (1) the legal framework of substantive and procedural laws, including international treaties; (2) institutional arrangements for law making, law implementation, dispute resolution and legal aid for the poor and disadvantaged; (3) legal education and training; and (4) legal information and dissemination. Based on the reports, the fifth team prepared an overall report summarising the most important conclusions. Members of the teams were experts from the relevant agencies/institutions; more importantly they were the policy/reform advisors and drafters in their agencies.

Assisting the national teams were a number of international experts/consultants provided by interested donors. Their main tasks were to provide international best practices for the national teams and to comment on draft reports. Except for a full-time resident advisor, all other international experts worked part-time and came to the country only at critical points. It was important, however, that the same consultants continued throughout the process. It also was important that the consultants were experts in the field and familiar with the political and legal system in Viet Nam.

FINDINGS AND CONCLUSIONS

Lessons on Output/Outcome

Identifying a clear and detailed scope for the LNA early on was an important factor in realising outcomes

In the beginning of the Legal Needs Assessment, great efforts were made by Government agencies to identify the scope of the exercise. A 15-page TOR covered areas of study/research, the main objectives and outputs, management arrangements, and mandates and duties of each research team and international consultant. It was agreed that the LNA would cover the four key areas mentioned above in the Background section.

National ownership of the LNA is key to ensuring that the ultimate outcomes continue to be employed by Government

Originally, the LNA was an initiative of the donor community, but it also was seen by the Government as what it needed to do. That was why the initiative was welcomed by the Ministry of Justice, which was proclaimed as the key Government agency in the legal sector and which took prompt action to move the project forward. By doing so, the Government could show donors its political commitment to reform and expect that donors would provide funds at the end. From the donor perspective, Government leadership in this exercise could clearly demonstrate that the LNA recommendations were not donor-driven.

The assessment was mainly conducted through a comprehensive desk review. Draft reports by the teams were shared with relevant stakeholders for comments, but unfortunately were not widely circulated with civil society, perhaps because Government may not have realised the need to do so. Another shortcoming was that the assessment did not include a comprehensive survey and analytical study on perceptions and assessments from clients regarding access to the legal system.

The LNA process provided strategic development results because it involved the participation of high policy advisors and was an inter-Ministerial effort

As mentioned earlier, many experts of the LNA teams were policy advisors in important legal agencies, whose key tasks were to advise the policy/lawmakers in carrying out the legal reform agenda. Their participation in the LNA strengthened their capacity and enhanced their awareness on the needs of, and understanding about, the reforms. Many LNA suggestions thus have been incorporated into a number of laws promulgated during the last two years, an unexpected outcome that has contributed to Viet Nam's overall reforms and development results.

Ensuring donor involvement from the beginning also has ensured their further commitment and momentum supporting the reforms, but expectations also have been raised

At the end of the LNA, a multi-donor joint formulation mission, led by Government, was conducted to identify priority needs for donor support and draft a UNDP co-operation framework to support implementation. The fact that 13 donors actively participated in the mission showed that the international community strongly supported the exercise, but it has raised expectations from Government about future possible funding. Only UNDP and a few other donors expressed commitment upfront, however. Donors should be careful in raising Government expectations if they are not ready for funding commitments.

Lessons on Process

Political commitment at a high level and strong, involved leadership in the lead Government agency are prerequisite for co-ordination of various agencies

Since the LNA task was to review the achievements and shortcomings in four areas, it was necessary to involve many legal agencies. To this end, in early 2001 the Ministry of Justice approached the Prime Minister¹ for support. A Prime Minister's decision established an Inter-Agency Steering Committee (IASC) to guide and monitor the LNA exercise. An important factor was that in the decision there was an indication of the composition of the IASC so that the indicated agencies had to commit to the exercise.

It was very important for the Ministry of Justice to run the LNA in such a way that other agencies did not perceive the exercise as Ministry-driven and -monopolised. Several IASC meetings were held to discuss how the LNA should be carried out and what management, evaluation and monitoring structures should be in place. Consultations were proactively conducted through monthly, weekly and ad hoc meetings or discussions with individual members. A Secretariat also was proactive in coordinating and facilitating daily work.

Clear identification of UNDP as Government's key counterpart is essential to facilitate donor co-ordination, and proactive backstopping by UNDP was crucial in maintaining an open, interactive co-ordination mechanism between Government and donors

UNDP was one of the first donors that supported Government in the legal arena, and it has gained the trust of Government. The request by the Ministry of Justice for UNDP to co-ordinate this exercise was a very clear and strong message from Government to the donor community; World Bank, Asian Development Bank, SIDA, CIDA, DANIDA, JICA, AusAid and France joined UNDP during the LNA process. The co-ordinating role was undertaken at several levels, from senior management down to the programme staff, through regular formal and informal meetings, working lunches, exchanges and dialogues with other donors. One of the most important factors was that no donor would feel it was "out of the loop," no matter how much or how little funds it provided for the LNA exercise.

Close and regular meetings and discussions also were held between UNDP and the Ministry of Justice during the LNA process. Donors were kept regularly informed by both the Ministry and UNDP on LNA progress and outputs. Great emphasis was placed on organising regular sessions between Government and donors, providing succinct, up-to-date information to all participants and allowing discussion of LNA outputs. The first Government-donor conference was held in November 2001, followed by a second event in April 2002. In addition, the Ministry held a number of meetings where relevant donors were invited to share information and provide inputs.

Commitment to longer-term UNDP support in the high-profile and sensitive area of access to justice can maintain the needed momentum

While the LNA was still being finalised, UNDP committed support to implementation of the future Legal System Development Strategy (LSDS) to be drafted after approval of the LNA outputs. A decision in May 2002 from the Prime Minister approving the proposed outline was a legal foundation for UNDP to maintain its existing role in the legal sector and a basis for the organisation to mobilise financial contributions from other donors within a programme approach framework.

¹ Please note that in Viet Nam there is no separation of powers between the three branches of Government, and the Prime Minister also is a member of the Politburo of the Communist Party; therefore, his/her decision would be respected by other legislative and judicial bodies.

Operational Lessons

Creative modalities in supporting an LNA can be a factor for success

The LNA exercise was not a conventional UNDP project; instead, it was an ad hoc activity attached to an existing project. UNDP rules, including financial management, were strictly observed. However, some flexibility was practiced – and worked. For example, a lump sum was granted to each national team to carry out all research and operational activities, with a requirement that results must be ensured.

UNDP also established a more flexible, responsive funding facility to support implementation of the Legal System Development Strategy, where interested donors can contribute anytime without additional programming and where relevant Government agencies can access for emerging needs. Having realised the importance of this high-profile project, SIDA and DANIDA have responded to cost-share with UNDP with about US\$1,800,000 and US\$460,000 respectively.

RECOMMENDATIONS

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- ❖ National ownership should be maintained to ensure that Government uses the ultimate outcomes, while a transparent mechanism for donor participation and constant feedback is needed to ensure donor support.
- ❖ Involvement of policy/reform advisors/experts in such important reform exercises must be ensured to make the process in itself be a development result.
- ❖ UNDP should focus on high-profile areas of intervention based on its comparative advantages in order to involve other donors.
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