



UNDP AND DENMARK WORK WITH VIETNAM'S LAW MAKERS, JUDGES AND PROSECUTORS

UNDP Staff Paper

Ha Noi - Viet Nam
November 2001



**SHARED COMMITMENT
AND RESOURCES
FOR STRENGTHENED LEGAL
INSTITUTIONS:**

**UNDP AND DENMARK WORK
WITH VIET NAM'S LAW MAKERS,
JUDGES AND PROSECUTORS**

**Ha Noi - Viet Nam
November 2001**

INTRODUCTION

“Good things come in small packages”. This is also true of this brief publication, which contains the lessons learned from Viet Nam’s very first and successful experience in using a multi-agency format for technical assistance to the legal sector development.

Viet Nam has been taking extensive steps in its reforms toward an open market economy, and its reform policy has included important efforts to build a state based on the rule of law. As a result of this reform process, legislative, judicial and procuratorial activities have been expanding rapidly, which has led to an urgent requirement that the institutions of the legal system – the National Assembly, the Supreme People’s Court and Supreme People’s Procuracy, the Ministry of Justice and Ministry of Interior, has been granted increased budgets and additional authority, as well as strengthening their capacities to cope with the pace of change.

At the beginning of Doi Moi, the Vietnamese leadership saw institutional reform and capacity building within these institutions as essential elements of the legal reform programme for supporting sustainable economic and human development in Viet Nam. In 1995, UNDP was approached by the Vietnamese government with a request to support Viet Nam’s efforts in this area. This is when the seeds of UNDP’s future governance projects – *Strengthening Legislative Capacity in Viet Nam*, *Strengthening Judicial Capacity in Viet Nam* and *Strengthening Public Procuratorial Capacity in Viet Nam* – were planted. The trusted relationship that UNDP has built over the years with the Vietnamese, and the approach UNDP has used in its development program, allowed UNDP to be the first donor to engage in the sensitive area of governance and provide objective policy advice to, and support capacity building in, Viet Nam’s legislative and judicial institutions. In addition, implementing the project ideas was made possible thanks to the very significant support from the Danish government, with whom UNDP has had a strong and long lasting partnership and cooperation.

The Government of Viet Nam, with the support of UNDP and the Danish Government, recently completed the first phase of a unique experiment in international assistance to development of law. These three projects represent the first and most significant technical assistance provided to Viet Nam’s legal development, especially to the Court and the Procuracy since the socialist bloc

legal assistance in the 1960s. Three separate, but closely linked projects, were carried out during 1996 – 2000 with Viet Nam’s highest level legislative, judicial and prosecutorial agencies. Two of the projects, with the Supreme People’s Court and the Supreme People’s Procuracy, represented historic “firsts”, as neither agency had been the focus of an internationally sponsored program of activities, nor had they regularly been visited by western trained specialists and consultants. The projects successfully combined the commitment of the three agencies with shared development resources, and produced a remarkable record of achievements during their initial phase.

Many of the most significant outcomes of the Government/UNDP-designed initiative resulted from the shared nature of the resources: the first major breakthrough in legal information network, Viet Nam’s first legal database in CD-ROM format (“LAWDATA”, which was followed by “YOUR LAWYER”), the first sustained in-country and overseas training in comparative law for members of the three Agencies, the first major English language training program, and the first regular posting of information about Viet Nam’s legal activities on the “internet”. These shared programs became the hallmark of the projects and demonstrated how law development activities can be much more effective when they are organized and implemented with the cooperation of several law-related agencies, rather than through a single institution or ministry, and when the design of the project is made based on a careful analysis of the needs of the government and through a participatory approach. Many of the above practices are good models for other technical assistance/capacity building initiatives.

A natural question “what made this work?” would be raised. We found that a “triangle approach” paved the road to success. This entailed:

1. Committed and competent project **counterparts as champions of reform initiatives** who were strongly supported by the highest level of leadership;
2. **Danish Government** as a bilateral partner who was convinced of the technical assistance needs for reform as well as the **partnership approach** in assisting the government to address the reform challenges, has strongly supported the process with a significant cost-sharing contribution;
3. Thanks to its long lasting relationship with the Government, a **neutral partner** such as **UNDP** was entrusted by the Government to help **open the door** to this sensitive area. Such a task would not have been carried out effectively

and efficiently without an experienced Senior Legal Advisor, Professor Ted Parnall, who played a very crucial role in facilitating the success of these projects.

This short monograph describes in a more detailed manner the major activities undertaken during the duration of the projects, and also presents certain “Lessons Learned” that may be helpful to similar efforts in the future.

We hope that you will find the publication enriching and that it will foster further exchange of “best practices.”




Vu Mao
Chairman of ONA



Trinh Hong Duong
Chief Justice of SPC



Ha Manh Tri
President of SPP



Edouard A. Wattez
UNDP Resident Representative

BACKGROUND

To ensure that Viet Nam has the resources to sustain its poverty alleviation and environmental protection activities, UNDP has been committed to building the country's capacity for robust economic growth, concentrating on macro-economic reform. UNDP has supported the Government as it takes steps to increase investment and growth, including strengthening its legal framework for a more open economy

VIE/95/016 - Strengthening the Legislative Capacity

General

Under Vietnam's 1992 Constitution, the National Assembly is the highest representative body of the people of Viet Nam, and is the only institution with the authority to enact the Constitution, codes and laws. The National Assembly has significant influence among the people and within the legal system. It elects Viet Nam's President and Vice President, Prime Minister, President of the Supreme People's Court and Procurator-General, among other high officials. The Assembly also has the decision-making authority on a number of key areas of national socioeconomic development. These include state budgets, financial and monetary policies and other domestic and foreign policies.

The Office of the National Assembly (ONA) supports the relationship between Assembly members and their constituents. If the ONA strengthens its capacities, the people of Viet Nam will have more opportunity to voice their needs and concerns.

The ONA plays a key role in the legislative process by providing research, general advice and organizational services. Project VIE/95/016 sought to enhance the capacity of the ONA to provide efficient legislative services to the National Assembly in its role of strengthening the rule of law and guiding the transition to a more market-oriented economy.

Project Resources

*** Technical Assistance**

The project provided technical assistance to the ONA in strategic planning capability, information, human resource development and technical facilities.

These were provided in order to upgrade basic human and material resources available to the National Assembly and its various bodies down to the provincial level.

*** Training**

Project training and workshop programs improved the skills and knowledge of ONA staff in four main areas: (i) foreign and comparative law and legislation, legislative drafting, and research facilities for work in comparative law and legislation; (ii) foreign language skills to serve legal, legislative, research and foreign affairs activities, especially in English and principally relating to law and the legislative process; and (iii) information services to enhance dependable, sustainable and rapid communication between the National Assembly, its Standing Committee, the ONA and Members' delegations at the central and provincial levels;

VIE/95/017 - Strengthening the Judicial Capacity

General

The workload of Viet Nam's judicial system has increased rapidly as the Government of Viet Nam deepens its reform process, yet resources are stretched and staff are relatively inexperienced. Because of its formal autonomy from the State, Viet Nam's court system is of particular importance as it can serve to protect and defend public and private rights on the basis of the law. However, Viet Nam's transition to a market economy increasingly challenges the Supreme People's Court (SPC) to more efficiently respond to the needs of the people, and thus calls for a rapid improvement in both staff qualification and facilities.

The 1992 Constitution provides that the SPC, provincial and district courts as well as military tribunals constitute the judicial institutions of Viet Nam. The SPC engages a wide scope of activities, such as (i) the organization and implementation of all stages of judicial work, including hearing appeals, reviewing judgements, supervising the implementation of sentences; (ii) the organization and conducting of professional training for judges, jurors and other court staff; (iii) providing professional guidance for drafting legal documents as requested by the National Assembly; (iv) providing professional guidance to local courts; and (v) carrying out a review of judicial practice.

Project Resources

* Technical Assistance

The Project organized study missions in Asia, Western Europe and North America, and brought (contract law and civil procedure) specialists to Viet Nam for discussions on comparative perspectives on contract law, civil procedure law and legal drafting.

* Training

The Project provided support to the Judicial Training School, with curriculum and master planning for new and experienced judges, and organized short and long term training overseas to explore judicial training methods and institutions. The Project also furnished foreign language and computer skills training.

VIE/95/018 - Strengthening the Supreme People's Procuracy

General

The 1992 Constitution and the Law on Organization of the People's Procuracy describes the Supreme People's Procuracy (SPP) as the agency under the National Assembly responsible for ensuring compliance with the law by ministries, organs of ministerial rank, other organs under the Government, local organs of power, economic bodies, social organizations and citizens.

Assisting the procuracy system in its reform efforts was a crucial part of UNDP's development activities in Viet Nam, as it is the Procuracy that has the responsibility of protecting public and individual rights.

Project VIE/95/018 specifically addressed the needs of the Vietnamese procuratorial system and gave priority to upgrading staff abilities and establishing an operationally effective computerized system for the SPP.

Project Resources

* Technical Assistance

The Project strengthened the understanding of comparative foreign

perspectives on the Criminal Procedure Code by organizing study missions to Asia and Europe and brought Criminal Procedure specialists to Viet Nam.

*** Training**

The Project helped develop the skills and capacities of the Procuracy personnel, training personnel in law and professional prosecutorial work. Additionally, training material such as prosecutorial handbooks was developed, while foreign language and computer skills were enhanced.

Joint Project Support Office

An important objective of all three projects was to encourage the efficient use of resources through shared activities whenever possible. This was facilitated by using a Joint Project Support Office, which provided both technical assistance and served as a clearing house for common or shared activities such as the English language and legal information programs. In addition, all of the training participants and international consultants were coordinated by this office. Because a legal system is made up of a network of interacting agencies, including those with judicial, prosecution and legislative functions, a premise of the projects was that the coordinated efforts of several agencies would yield more substantial results than purely “stand-alone” projects with a single agency. The Joint Project Support Office helped make possible this coordinated approach, and, in addition, helped recruit international consultants from a number of different countries, depending upon the specialty required.

The Joint Project Support Office was housed in a separate office, and staffed with a Senior Legal Advisor, a Project Coordinator as well as secretarial and administrative staff.

ACTIONS COMPLETED WITH SHARED RESOURCES

English Language Training

Strengthened legal institutions require that their personnel be trained in the legal requirements of a market economy. The three agencies therefore combined their resources and organized a sizeable foreign language training program for their staff. Following an international bidding process, the program was implemented by Ha Noi University of Foreign Studies and the British Council in order to build a suitable foundation for both overseas and in-country training. Launched in June, 1997, members of the three agencies coming from locations all over Viet Nam, traveled to testing centers in Ha Noi and Ho Chi Minh City. The program included both long and short term training in Ha Noi and HCMC for over 400 participants over a three year period. This language training program was viewed as an important step in the three Projects' plans to ensure that staff of all three agencies receive additional legal training in areas that are critical to Viet Nam's social and economic growth.

In addition to approximately 300 participants in full and part-time 800 hour courses, more than 100 high level officials of the three agencies attended a 100 hour course dealing with practical, basic English language skills.

Legal Information Network

Another significant program that benefited from the pooling of resources was in the adaptation of computer technology to law. A State governed by the rule of law requires an efficient system for the dissemination of new legislation and administrative decrees and guidelines. It is especially important that the key legal institutions of the State have complete and full access to all legal documents that affect the citizens of the State.

According to studies prepared by UNDP-specialists during 1997, the status of the legal information network of the Viet Nam's national legal institutions was characterized by:

1. Rapid change in legal documentation produced by the transformation to a more market-oriented economy;
2. Rapid increase in the numbers of legal documents;

3. Domination by print materials as the primary format for distribution of legal information;
4. Slow and incomplete publication and distribution of legal material;
5. Inadequate and slow indexing of legal material;
6. Lack of access by provincial offices to legal documentation;
7. Exclusive reliance on print publications by judges and other court staff;
8. Distribution, in limited quantities, of official publications, such as publications from the courts, from the National Assembly, and from the ministries.
9. Difficulties in the location of legal materials such as instructions from the Supreme People's Court, both because they are not indexed and because they are distributed in formats, like small pamphlets, which are easily lost;
10. The physical overcrowding and potential for deterioration and loss of records caused by housing conditions for legal documents in provincial offices, without adequate backup copies of records in case of damage or loss.

During the first phase of the three UNDP governance projects, Viet Nam made a significant move in addressing these issues and opened a new chapter in improving the transparency of its legal system. For the first time since the 1992 Constitution announced the twin principles of the supremacy of law and the assurance of greater accessibility of laws and regulations, the three projects assured that Viet Nam's key legal institutions were able to transmit laws and decrees electronically to every one of their provincial centers. The installation of the new legal information network by the three projects, following an initial training program involving over 500 members of the staff of the three institutions, represented a strong commitment to the idea that laws must be fully accessible and available throughout Viet Nam.

The new network consists of over 200 computers located in each of Viet Nam's 61 provinces, plus Local Area Networks (LANs) in Ha Noi and Ho Chi Minh City, that are able to electronically transmit and receive legal documents as they are drafted or adopted. In addition to facilitating the distribution of national-level laws and decrees, this new network is helping Viet Nam keep its provincial-level decrees and regulations consistent with those adopted at the national level, thus improving the coherency of the legal system.

The network is also a means of utilizing the new CD-ROM product developed by the Office of the National Assembly (described in the following section of this

monograph). This product presents all of the national laws and government-level decrees from 1945 to 2001 in full-text, word-searchable electronic format.

Legal Database on CD-ROM

UNDP Project VIE/95/016 , in coordination with the projects of the SPP and the SPC, prepared both an original and an up-dated edition of a CD-ROM containing an advanced version of the original “LAWDATA” legal database. Distribution of more than two thousand copies was made throughout Viet Nam to judges, prosecutors, law schools, and private law firms. The ONA’s Centre for Information, Library and Research Services had been developing a full-text, word-searchable legal database, (known as “LAWDATA”) for the past several years.

Using national resources as well as those from the Inter parliamentary Union, SIDA and UNDP, the ONA produced an important tool for law-makers and government agencies as well as the legal community and all Vietnamese citizens. The CD-ROM contains the full text of approximately 10,000 legal documents, including all Laws and Ordinances adopted by the National Assembly or its Standing Committee since 1945. It also contains many of the most important decrees of the Government and its Ministries as well as many guidelines prepared by the judicial sector.

The CD-ROM offers a means of quick access to Vietnamese laws and regulations. As it is capable of wide distribution, it provided for the first time, an effective method of learning about, and having immediate access to, the various laws and decrees that have been adopted with respect to any particular subject area. The development of the CD-ROM along with efforts now being pursued by the Ministry of Justice, is part of a coordinated effort to assure increased accessibility to all of Viet Nam’s laws and regulations. As more legal documents, such as ministerial, sub-ministerial and provincial legal documents are added to similar products, it will become an easier matter to both find Vietnamese law as well as to assure that laws and decrees from all levels are consistent.

In addition to the LAWDATA, the ONA has also produced another word-searchable practical legal tool in CD ROM format named “Your Lawyer”. “Be your own lawyer” is what this database is capable of giving to every ordinary citizen. Structured in the form of questions and answers, this legal database provides answers to the basic questions in eleven different law related areas, from land

law, family law to business and other laws. With this tool, ordinary citizen can ensure their rights at the least costs.

Expertise from diverse legal systems

During the course of the projects' implementation, the Joint Project Office was able to arrange for specialists from a number of countries to come to Viet Nam to work with the three agencies. These specialists included French, Italian, Swedish, Danish, American, Chinese and Japanese experts, who were able to provide their Vietnamese counterparts with a rich background of practical and theoretical information. The Joint Project Office always provided a list of potential experts from which the project leadership was able to make an appropriate selection.

Short-term training

The three projects organized a number of short-term training programs, both in Viet Nam and overseas. While most of the training was available only to the staff of the particular agency for which the training had been organized, there was substantial sharing as to the respective experiences. Also, several training initiatives were organized for a combined participation of all three agencies. Examples of the overseas training programs were those organized in cooperation with The Center for Asian and Pacific Law at the University of Sydney (CAPLUS) in Australia. A total of approximately 100 of Viet Nam's judges and procuracy officials participated in a series of 3 to 4 week courses in Sydney.

The courses for the prosecutors focused on criminal prosecution, including coverage of the prosecutors daily work skills, and the role of the prosecutor in the transition toward a socialist economy with a market orientation. There was special emphasis on the need to carefully consider whether a particular matter should be treated as civil or criminal.

The judicial courses focused on comparative judicial systems, the role of the judiciary in a market economy, as well as providing the participants with material on practical judicial skills such as the writing of judicial opinions and legal research.

The ONA staff, in separately organized programs sent approximately 50 members of its staff to Australia for short-term courses in economic law, comparative legislative systems, and legislative research and drafting.

Long-term training

The three projects selected a total of approximately 45 persons for medium (over six months) and long term training overseas. This training included persons having reached a high level of English proficiency as a result of the projects' language program. Participants included judges, judicial support officials, National Assembly support staff, and prosecutors. The long-term training was primarily focussed on helping staff of the three agencies to receive graduate-level law training at law schools in market-oriented countries.

Aid coordination and transparency

In an effort to coordinate donor assistance in the legal field, the three projects produced a "Resource Coordination Report" following each quarter of their activities. This report, which was placed on the project website maintained by the Joint Project Office, described each of the activities undertaken by the projects during the quarter as well as activities of several other law-related projects in Viet Nam. The report was produced in both Vietnamese and English versions, and was the first such effort to appear in Viet Nam. The regular publication of the Report provided a significant resource to the wider donor community and was a vehicle for the three projects to inform a broad range of interested parties about their programs, development plans and continuing needs for capacity-building assistance.

LESSONS LEARNED

Many of the procedures and practices of the three governance projects are good models for other technical assistance/capacity building initiatives. The following are considerations that may be helpful to similar efforts elsewhere:

General

There are at least two general categories of judicial and legal development support projects. One category of project focuses on reform in the texts of the laws. This type of project offers assistance in drafting or revising texts of e.g., commercial law, bankruptcy law, company law intellectual property or criminal law. The other category of law development project focuses instead on the strengthening of law-related institutions by increasing the knowledge, skills, access to legal information and comparative background of the staff of those institutions that are central to a country's judicial/legal system.

The most significant aspects of the three governance projects were clearly within the latter category. While there were activities scheduled and implemented for the development of specific laws, such as the Criminal Procedure Code (in the case of Project VIE/95/018 with the Procuracy) and the Civil Procedure Code (in the case of Project VIE/95/017 with the Supreme Court), the majority of the projects' resources were used for institutional strengthening by training initiatives and by increases in legal information communications capability. Law development involves decades, however, not years. Any progress toward a principled, transparent and participatory legal process requires changes in the behavioral patterns of thousands of decision-makers and hundreds of thousands of citizens. Law is about who gets to make decisions, and is therefore just as complex as Viet Nam's existing network of village, city, province and central level power-centers with the *de facto* authority to make decisions on issues involving e.g. property, business activity, and personal security.

If Law was simply a set of rules which, once adopted, would be applied logically and systematically, law development projects could be more easily measured by the speed with which they facilitate the adoption of the rules. As it is, law development projects are frequently only the initial steps in a process that will, ideally, outlast the lifetimes of their designers. This reality indicates that projects

such as these should be sufficiently specific in their design (with respect to detailed activities) to improve various aspects of the legal system by virtue of their being achieved, yet flexible enough to adapt to a constantly moving political/economic environment.

Moreover, judicial and law development projects without support at the highest levels of both the donor and the beneficiary may be of academic interest, but are unlikely to produce broad social or economic gains.

High-level support for law-related activities, such as that demonstrated by the Projects' leadership, was a major factor in the effectiveness of the three projects. The consistent efforts of the projects' management units, their cooperation among themselves as well as with the international staff of the Joint Project Office, and the strong support of the highest levels of the leadership of the Supreme People's Court, the Supreme People's Procuracy and the Office of the National Assembly, were essential to the success of the projects.

English language training

The English language program was an important foundation for the three projects' training activities. Many areas of concern to the projects, such as computer literacy, internet research, and comparative knowledge, were advanced by the three agencies' improved English language skills. The increase in the pool of staff who now have a good understanding of English would not have been possible without the international resources shared by the projects.

The overseas short-term training programs, with translation was a necessary substitute for increasing the agencies comparative background. The effectiveness of future overseas training will be increased by the available pool of English-speaking staff.

Legal information technology

The ONA's CD-ROM, developed in part with the shared resources of the projects, was Viet Nam's first efficient means of modern legal research. Its production stimulated other governmental and private sector initiatives to improve the availability of Viet Nam's laws and regulations.

The new legal information network of over 200 computer stations at each of Viet Nam's 61 central and provincial courts, procuracies and national assembly delegation offices, provided an impressive movement to a new attitude towards law and legal information. The provision of computers, CD-ROMs and training on a nation-wide basis has given a concrete reality to the projects' efforts to strengthen the three institutions.

Even more so is the case with English language training, the challenges of introducing new legal information technologies should never be underestimated. The significant training efforts of the projects have only begun to meet the continuing requirements for a complete utilization of the new technology. Establishing a culture of on-going human resource development for law-related agencies is a high priority for sustainable gains.

Short-term overseas training

The impact of short-term overseas training, especially for senior officials unfamiliar with Western legal institutions, was very positive. The significant number of participants for these courses, selected from a national pool of candidates, deepened the penetration of the projects' impacts throughout Viet Nam.

The use of translators for short-term overseas training courses had a mixed effect on participant comprehension of the material presented. After the success of the English language program, participants with at least some English language capacity are now available for any future similar courses. While this will be preferable to being required to use the translation format, the initial impact of bringing more senior-level judges and prosecutors into close contact with their western counterparts was an essential part of institutional development.

The projects' comparative legal exchange visits or study tours contributed significantly to the comparative experience of the three institutions. Both the pre-visit preparatory workshops, and post-visit workshops organized for a large group of staff members helped bring a wide range of relevant experience to a broad cross section of the three institutions' officials and staff. Several senior officials from the three institutions participated in the study tours, which significantly increased the projects' visibility and effectiveness within their respective institutions.

Long-term overseas training

Language skills for graduate studies in Law must be at a higher level than those required for many other subjects. Law is “language-intensive” and even students at high IELTS levels face a difficult challenge as they begin graduate-level law courses.

The projects allowed several weeks (and in some case, months) of intensive overseas preparatory English studies, even after completion of a Viet Nam-based program. This helped assure that the participants were able to perform satisfactorily in graduate law programs abroad.

Long-term study is a preferred means to assure in-depth understanding of new concepts of law and increased professional legal skills. Increasing the number of persons who have graduate degrees from western law schools was an important means of increasing the capacities of the three institutions.

Multiple-Agency design

Well-designed “multiple agency” law-related projects, with both shared and individual objectives and resources, may achieve more significant results than single agency projects. Shared resources, moreover, can increase the efficiency of their use :

- a) The shared resources must be equitably and transparently allocated and managed in order to achieve maximum results.
- b) A coordinating office such as the Joint Project Support Office, with competent international and national staff, is an essential element of the multiple agency model. The challenges of administering and managing complex, multiple agency projects should not be underestimated, and international support staff with significant administrative and management skills may also be essential for project success.

Aid Coordination

Establishing an integrated framework of donor assistance in the legal field is important to the success of any law development effort. Given the number of donors, and the diversity of legal systems, it is important that the host country and

the donor community seek some means of effective coordination. Upwards of twenty agencies, foundations and other organizations are presently supporting law-related projects in Viet Nam. They include development assistance agencies from Denmark, Canada, France, Australia, Sweden, Japan, Netherlands, Germany, Switzerland, the United States and the European Union. Added to this list are the World Bank, the International Monetary Fund, the Asian Development Bank, individual law firms, several foundations as well as UNDP.

Not all donors are able to cooperate in providing information on their present and proposed law-related project activities due to time and resource constraints and, in some cases, their own strategic considerations. The collection and provision of information on a regular basis is also not a recognized project priority in many cases. These factors are pervasive and beyond the capacity of any single project to overcome, even those such as the three interrelated governance projects considered here. The development of a transparent, integrated framework for donor assistance in the legal field, was, however, stimulated by the three projects. Their service as a voluntary clearing house and center of information about relevant donor assistance programs was an important example of the benefits that can arise from aid coordination.