

ACTION FICHE FOR VIETNAM

1. IDENTIFICATION

Title/Number	Vietnam - Justice Partnership Programme (JPP) DCI-ASIE/2009/20529		
Total cost	Total cost of the project: EUR 18.7 million EC contribution: EUR 8 million Other donor contributions: <ul style="list-style-type: none"> • Denmark (DANIDA): EUR 9.7 million • Sweden (SIDA): EUR 1 million Estimated contribution by the beneficiary (in-kind): EUR 2 million		
Aid method / Method of implementation	Project approach – direct centralised management		
DAC-code	15130	Sector	Legal and judicial development

2. RATIONALE

2.1. Sector context

Vietnam has adopted a number of laws and policies in recent years to modernize its administrative and judicial systems. Notably, the high-level Political Bureau Resolution No. 49-NQ/TW 2005 on the Judicial Reform Strategy (JRS) to the year 2020 calls for improvement of criminal policies and procedures, clear distinctions between administration management and judicial decision-making (including safeguarding the independence of judicial authorities and officials in exercising their judicial tasks within Vietnamese constitutional and political parameters), introduction of adversarial litigation modalities, restructuring the district courts, publication of judgments, restructuring of the mandate of the Procuracy in line with the restructuring of courts, improving the quantity and quality of practicing lawyers, and creating a self-regulating bar.

Independent, ethical and efficient judiciary is one of the pillars of sound social and political life. It provides also the stability and security to private and commercial transactions, so much at the heart of social peace and economic development.

The laws and policies regarding the justice system in Vietnam would, if properly implemented and enforced, significantly contribute to greater efficiency in governance and improved protection of individual and collective rights. However,

the implementation lags behind, with adverse effects for individual citizens, groups, private entities, state institutions and other sectors in society. Often members of weak and vulnerable groups (poor, women, children, and people living in remote areas) are the most seriously affected.

The most apparent reasons for the problems in implementation and “delivery” are lack of structural autonomy and institutional and human capacity within key justice sector institutions.

The European Commission (EC) has been involved in the sector of legal and judicial support since the start-up of the Institutional Support Project (ISP), which ended on 30 June 2009. EU MS Denmark and Sweden have been implementing a parallel project, entitled “Phase III of Support to Legal and Judicial Reforms in Vietnam”, working with the same institutions as the ISP (National Assembly, Ministry of Justice, Supreme People’s Court, Supreme People’s Procuracy). This project is also coming to an end in 2009. While encouraging results have been achieved under both projects in terms of sharing international perspectives, the EC, Denmark and Sweden have decided that for a new phase of support to Vietnam’s judicial reforms a higher level of ambition is both desirable and necessary. First of all, in the context of the Paris and Accra aid effectiveness agendas, the EC and EU MS Denmark and Sweden are determined to move forward on the basis of a joint initiative. Second, the EC and partner Donors (Denmark and Sweden), acting in close coordination with the Government of Vietnam, would like to put in place a programme approach supporting the justice sector as a whole (or at least a substantial part thereof). The proposed €18.7 million Justice Partnership Programme (JPP) is the result of this joint Donor effort and is fully owned and supported by the Government of Vietnam. While a sector approach is not yet possible (the JRS does not fully qualify as a sector programme, as it lacks milestones and time-bound indicators), it has been necessary to formulate the JPP as a project. However, both the intention and level of ambition of the JPP go beyond a traditional project (by combining policy dialogue with capacity development).

2.2. Lessons learnt

The following constitute lessons learned through the implementation of the EC-funded Institutional Support Project (ISP) and the project Phase III of Support to Legal and Judicial Reforms in Vietnam, funded by EU MS Denmark and Sweden:

- *Policy difficult to influence.* Donor attempts to engage in and influence high-level policy on legal and judicial matters have rendered little success. Policy remains the carefully regarded prerogative of the Party and Government, and there have been no real openings to domestic political outsiders and international actors.
- *Ideas possible to promote where platforms exist.* Discussions around new and alternative ideas and concepts have been possible to promote, particularly where there have been appropriate “platforms” for such discussions. These platforms may consist of Vietnamese policy and strategic documents requesting further analysis on difficult and sensitive issues. Partners and Vietnamese actors still hesitate to articulate a view on substantive matters or take action without the endorsement of the (Party) leadership.

- *Academic, educational and international fora accommodating for debate.* The placing of discussions in academic fora and similar settings has often helped to ensure open and free exchange of opinions. Similarly, the room for discussions has been greater in fora with donor and international participation than in purely domestic fora.
- *Research-based approaches wanted and appreciated.* There is much interest in conducting various kinds of research and studies to underpin future policies and laws. Promotion of “research-based action” is thus a vehicle for introducing new ideas and concepts into policy-making, and for enhancing the relevance and effectiveness of new policies generally.
- *Harmonization of donor initiatives has been difficult.* Vietnamese institutions have not seen the utility in such arrangements, and donors have likewise prioritized their individual projects or bilateral programmatic interventions. As legal and judicial reform efforts touch upon many crosscutting issues, there is a need for moving away from a fragmented approach towards joint programming-funding.
- *Strategic rather than ad hoc TA enables long-term impact.* The bulk of technical assistance (TA) provided by most of the capacity development programmes in the legal and judicial sector have so far been on an *ad hoc* basis. TA has been provided on short notice against demands (or in many cases supply driven), to issues as they emerge. This has resulted in small wins, usually in the form of drafts of laws or short-term training, but limited (documented) long-term impact. Linking TA strategically to results and longer-term goals will enable more focused capacity development and thus promoting impact.

2.3. Complementary actions

The proposed Justice Partnership Programme (JPP) would coincide with the end of some Member States and EC individual justice sector programmes in 2009, notably the EC-funded Institutional Support Project (ISP) and the project “Phase III of Support to Legal and Judicial Reforms in Vietnam” (“JOPSO”), jointly funded by the Embassies of Denmark and Sweden.

The JUDGE project (2003-2011), funded by the Canadian International Development Agency (CIDA), would still be in operation for the training of judges with an overall budget of EUR7.5M. UNDP is currently at the identification stage for another phase of its support to legal and judicial reform in Vietnam. UNDP and the three Donors of the JPP are liaising closely, in order to ensure there will be no overlap. In essence, the new UNDP project will support a number of research papers. France remains active in the legal and judicial sectors through its *Maison du Droit Vietnamo-Française*; however, funding levels have gone down. Other Donors are involved in the justice sector with narrower angles, smaller budgets or *ad hoc* interventions.

2.4. Donor coordination

Coordination with other Donor initiatives has been sought, notably as regards CIDA, UNDP’s envisaged support to policy dialogue and research work and the legal support programme of the Japan International Co-operation Agency (JICA).

By teaming up the EC with the Member States most involved in the justice sector (Denmark and Sweden), the proposed JPP is in itself highly conducive to meeting the objectives and commitments on donor coordination. The JPP presents an innovative and agreed upon policy facilitation mechanism between the beneficiary country and the Donors involved. Regular coordination meetings among Donors in the legal sector in Vietnam are currently facilitated by UNDP.

3. DESCRIPTION

3.1. Objectives

The overall objective of the Judicial Partnership Project (JPP) is: “A capable, ethical, democratic and rights-protecting justice sector developed”. This objective is pursued by the three purposes of the three proposed components:

I - Support to State institutions in implementing the Judicial Reform Strategy - JRS (*i.e.* the Ministry of Justice, the Supreme People’s Court and the Supreme People’s Procuracy):

“Justice sector state institutions strengthened in their efforts to implement judicial reforms”;

II - Support to the Vietnam Bar Federation (VBF):

“Empowerment of a self-managing Vietnam Bar Federation and lawyers supported”;

III - Support to Non-Government Organisations:

“Capacity of Non-Government Organisations to contribute to awareness of rights, access to justice and judicial reforms enhanced”.

The EC input into the JPP –the EC project- will concern the following elements:

- The provision of short-term and long term technical assistance under Component I – State Institutions (Ministry of Justice; Supreme People’s Court; Supreme People’s Procuracy);
- The organisation of Judicial Reform Strategy (JRS) conferences; as well as the organisation of reviews, studies, assessments and a final evaluation.

3.2. Expected results and main activities

Component I (support to the State institutions: Ministry of Justice, Supreme People’s Court, Supreme People’s Procuracy):

- Result: judicial procedures improved to ensure they are consistent, democratic, transparent and respectful of human rights.

Activities: to support assessing, drafting and implementing key procedural laws, for example the Civil Procedure Code, Criminal Procedure Code, Administrative

Procedure Law and the Law on Lawyers. Another is to promote various aspects of legal aid. Support will also be provided to assess and facilitate the publication of court judgments.

- Result: judicial organs and judicial support institutions re-organized and strengthened.

Activities: the introduction of a jurisdiction-based court structure and the re-organisation of the Procuracy to reflect the jurisdiction-based courts structure. The result area also includes support to a pilot on private bailiffs in Ho Chi Minh City (HCMC). Activities will consist of providing advice to and monitoring the implementation of the pilot, in order to formulate recommendations on the possible future up-scaling of the use of private bailiffs in other localities.

- Result: capacity of judicial staff, support staff, lawyers, legal aid providers, and other categories of justice sector professionals and actors strengthened.

Activities: this result area comprises a range of capacity-development initiatives linked to the JRS. For example, assistance and advice in establishing introductory and continuous training of various categories of professionals including legal aid providers, topical training on matters related to new legislation (for example the new Criminal Procedure Code), and support to reform of appointment and promotion structures.

Component II (“Empowerment of a self-managing Vietnam Bar Federation and lawyers supported”): the Vietnam Bar Federation (VBF) will be helped to create and put into place norms and structures for self-management and regulation of the profession. The VBF will receive support to assert itself as articulator of professional common interests and views, and to organise training for aspiring and already active lawyers.

Component III (“Capacity of Non-Government Organisations to contribute to awareness of rights, access to justice and judicial reforms enhanced”): the programme will provide application-based support to non-government organisations (NGOs) to facilitate a range of initiatives relevant to law and justice. The initiatives may have a bearing on enhancing popular awareness of the rights and opportunities the law and justice system provide; enhancing understanding of judicial reforms through research; enhancing dialogue and information sharing on matters relevant to judicial reforms; and improving access to independent legal advice and aid. Special attention will be paid to marginalised groups in society and women.

Activities will consist of training of staff and organisation of workshops and seminars; and the provision of technical assistance through *e.g.* the drafting of documents or reviews of laws and procedures.

3.3. Risks and assumptions

The Justice Partnership Programme (JPP) is a complex multiple stakeholder project, to be implemented across three components (and five sub-components). Moreover, the JPP will operate in the area of judicial reform, which is a highly political and sensitive area. The JPP proposes to help Vietnam move along the road towards

creating an independent judiciary, a goal which is reflected in the Judicial Reform Strategy (JRS). Crucially, however, the JRS leaves open the question when this goal should be achieved and how in a one-party system (dominated by the Communist Party of Vietnam, CPV) the relationship between the CPV and the judiciary will be.

Consequently, there are different tiers of risks. At the overall political level, there is a clear risk that Vietnam will not introduce –at least not during the five to six year time-span of the JPP- major breakthroughs necessary for an independent judiciary as part of an overhaul of the functioning of the Vietnamese State and Government towards a more democratic system. Another risk is that Vietnam may only tinker with reform. In such cases the technical co-operation activities under the JPP would not result in the desired outcomes and impact. Achievements would not go beyond the provision of international expertise and training, and familiarisation with international standards.

At the level of the JPP project itself, there is the risk that the complexity of the project -three components and five sub-components, and the involvement of three Donors- may result in difficulties and slow-down in implementation.

To mitigate the risks identified the EC and partner Donors have stressed the importance of high-level dialogue with beneficiaries. The dialogue should help ensure that Donors and beneficiaries continue to have the same level of understanding about the JPP and its objectives. At the same time, the EC and partner Donors have agreed to continue to liaise closely together during the lifespan of the JPP, in order to identify and try to solve problems before they arise and negatively influence implementation. In this context, Donors have also agreed that each of them will be represented on all steering committees.

3.4. Crosscutting Issues

- Environmental sustainability

The programme is not envisaged to have any direct environmental impact. However, training provided to justice sector professionals and civil society representatives, as well as elements of the legal advice and aid provided under the civil society and non-state component, may involve issues related to land rights or the environment. This support, if provided, should be placed in a context of judicial reform and good governance.

- Gender equality

Gender will be mainstreamed throughout the JPP. More specifically the programme will seek to address gender inequalities by the following measures:

- Legal aid provision through government and civil society and non-governmental organisations will be supported to ensure a focus on marginalized sections of society as well as equal access to legal aid services for women and men.
- In dialogue with the Ministry of Justice, the EC will advocate gender mainstreaming in particular in relation to the revision of human resource policies, provision of training, introduction of merit based promotion, *etc.*, as per the JRS.

- The Ministry of Justice will be required to take into consideration gender mainstreaming in the development of annual work plans, ensuring equal access to training and related capacity development opportunities. An average of at least 30% of participants in training seminars and other project activities should be women.

- Human rights

The overall objective of the JPP is to contribute towards the establishment of a capable, ethical, democratic and rights-protecting justice sector (*cf.* section 3.1).

3.5. Stakeholders

JPP formulation has involved the relevant stakeholders for the programme, notably:

- the Ministry of Justice (MoJ);
- the Supreme People's Court (SPC);
- the Supreme Peoples Procurary (SPP);
- the Vietnam Bar Federation (VBF);
- Non-Government Organisations (NGOs).

All stakeholders will be involved, to varying degrees, in the implementation and management of the JPP. The Ministry of Justice will serve as overall government coordinating body for the JPP. The Supreme People's Court (SPC) will be assisted in its reform efforts, notably through the revision of judicial procedures and legislation for administrative cases. The Supreme People's Procurary (SPP) will be assisted in its reform efforts, notably to revise the criminal procedure code. The Vietnam Bar Federation (VBF), which has recently been formally established, will receive support in order to become a self-managing and empowered organisation. Strategic partnerships will be sought with civil society actors who can raise grassroots awareness of the legal system as well as of rights and responsibilities of citizens.

The EC support under the JPP will focus in particular on the state institutions under component 1: the Ministry of Justice, the Supreme People's Court (SPC) and the Supreme People's Procurary (SPP), through the provision of international and national technical assistance (TA). The EC has built up good relationships with these institutions in the course of the implementation of the Institutional Support Project (ISP).

The Ministry of Justice, as overall government coordinating body of the JPP, will inform the EC-Vietnam Subgroup on co-operation in the areas of Institution-Building and Admin Reform, Governance and Human Rights about progress in the implementation in the programme.

4. IMPLEMENTATION ISSUES

4.1. Method of implementation

Direct centralised management through the signature of a financing agreement with the beneficiary country.

The Ministry of Justice (MoJ) will assume an overall coordinating role for the JPP.

A Partnership Committee (PC) will be set up, co-chaired by the MoJ and Donors (on a rotating basis), with the task of taking stock of progress under the three components and providing strategic guidance to overall programme implementation (the “dashboard” function). Crucially, the PC will also be the forum for policy dialogue on issues relating to the Judicial Reform Strategy (JRS).

In particular, the project will be carried out as follows:

- Component 1

Services will be managed by the EC delegation through the signature of a service contract following a call for tenders.

Three steering committees will be located within each institution: the Ministry of Justice (MoJ), the Supreme People’s Court (SPC) and the Supreme People’s Procuracy (SPP). The Steering Committees will oversee the overall direction and policy of the project and will review the Project overall and annual workplans, budgets, progress reports, *etc.* Although Donors will be represented on the steering committees (as observers with the right to speak), they will not take decisions: ownership of the programme will rest with the institutions themselves. The technical assistance (TA) to be provided by the European Commission (EC) will operate in line with the EC guidelines on “Making Technical Assistance More Effective”. This means that experts will assume a strict advisory role, reporting to and acting on requests for assistance from the government/state institutions who are fully in charge of directing and realising their development plans. The overall purpose of the TA is to help strengthen the capacity of the three State institutions.

- Component 2

This component will be implemented by the VBF itself, with technical assistance provided by Donors in the form of a twinning arrangement with an international bar federation.

- Component 3

A steering committee will be set up chaired by the Ministry of Justice with the task of formulating general guidance principles for the award of grants to Non-Government Organisations (NGOs) A grants committee will be in charge of issuing calls for proposals, evaluation and contracting.

Moreover under components 2 and 3 Donors will be represented on the steering committees (as observers with the right to speak).

4.2. Procurement procedures

All contracts implementing the action (*i.e.* the elements of the JPP to be funded by the European Commission) must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by the Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 on establishing a financing instrument for development co-operation (“DCI”). For the present action, participation will also be extended to persons from Australia. Further extensions of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in articles 31(2), (7) and (8) of the DCI.

4.3. Budget and calendar

The total cost of the project is EUR 18 700 000, of which EC contribution is EUR 8 000 000.

<i>Category breakdown</i>	<i>EC contribution (€)</i>	<i>Denmark and Sweden contributions(€)</i>	<i>Total (€)</i>	<i>Contracting authority / Paying authority</i>
1. Services				
1.1 Technical assistance for component 1 (Ministry of Justice, Supreme People’s Court, Supreme People’s Procuracy), including studies, reviews, annual assessments, JRS conferences and communication & visibility	7 600 000		7 600 000	EC
1.2 Technical assistance for component 2 (Vietnam Bar Federation) and component 3 (civil society)		1 700 000	1 700 000	DK and SE
1.3 Audit		700 000	700 000	DK and SE
1.4 Evaluation	200 000		200 000	EC
2. Grants		2 300 000	2 300 000	DK and SE
3. Operating costs (for components 1 and 2)		6 000 000	6 000 000	DK and SE
4. Contingencies	200 000		200 000	EC
Total	8 000 000	10 700 000	18 700 000	

The in-kind contribution of the Government of Vietnam (estimated at EUR 2 million) will fund all staff necessary to implement the programme activities including management through project management units.

The foreseen operational duration as from date of signature of the Financing Agreement is 66 months.

The procurement schedule for EC-funded TA Team will comprise preparation of tender documents (December 2009 / January 2010), publication of a contract forecast (February 2010), sending out of invitations to invited tenderers (April 2010), evaluation of offers (June 2010), and signature of contract (July 2010). The expected date for the deployment of the TA Team is August/September 2010.

4.4. Performance monitoring

The JPP will first and foremost rely on existing monitoring procedures by the Government of Vietnam and the implementing institutions. In cases where these are absent monitoring systems will be developed.

At objective and purpose level monitoring of progress, outcomes and impact will be based on:

- Government reports:
 - Reporting on progress against the Socio-Economic Development Plan (SEDP);
- Joint reviews as outlined below.

At results and activity level the programme will rely on internal institutional reporting systems. Where non existent, or the system is not in compliance with Donor requirements, systems will be developed or revised. Indicators at objective level are based on the SEDP. It is assessed that these are aligned with the SEDP and the JRS and therefore valid beyond 2010, but verification of this will be required following the formulation of the 2011-2015 SEDP.

Indicators for the purpose levels are based on the JRS and a compilation of results indicators of the JPP. Indicators for results and indicative activities have been identified together with the institutions supported.

4.5. Evaluation

- Evaluation and review

The proposed JPP will introduce reviews on an annual basis. The funding Donors will undertake all reviews jointly with representatives from all Institutional Steering Committees. The programme will be subject to the following reviews:

- A joint inception review in 2010/11;
- A mid-term evaluation in 2012;
- A final evaluation in 2015.

4.6. Communication and visibility

Public relations and awareness-raising activities will be designed to increase the visibility of the project. At programme level, the Delegation will ensure a high level of visibility to the programme. Contractors will propose and implement a visibility plan agreed with the Delegation. A final dissemination event will be organised upon closure of the programme to disseminate results and outcome of the final evaluation. The Judicial Reform Strategy (JRS) conferences will also serve to give Commission-funded co-operation maximum visibility.