

ANNUAL REVIEW REPORT

DATE: 15 January 2006

Project Number: 00048421

Description: Access to Justice in Cambodia

Implementing Partners:

- Ministry of Justice;
- Ministry of Interior;
- Supreme Court;
- Project Management Unit of the Council of Legal and Judicial Reform;
- Department of the Official Gazette of the Council of Ministers.

Period Covered: 7 April-December 31, 2006

I. PROJECT ISSUES:

<p>Status of Project Risks & Risks Management Strategy: Risk No. 1 has been decreased due to recent adoption of a joint Prakas between Ministries of Justice and Interior to create the Maison de Justice in four districts in two provinces. Project team managed to coordinate the two ministries to meet to discuss issues and obstacles to the creation of the Maisons.</p> <p>Risk No. 3 has been resolved because the National Authority for Land Dispute Resolution re-programmed the fund from creation of land complaint database to publication of land rights and land complaint procedures.</p>	<p>Open Project Issues & Issue Management Strategy: Issue previously identified regarding the establishment of the Maison de Justice has been resolved through UNDP coordination for Ministry of Justice and Ministry of Interior to meet to resolve their potential differences. From the meeting, the Ministry of Interior accepted the leading role of the Ministry of Justice in managing the Maisons, while it plays supporting role.</p>
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II. PROJECT PERFORMANCE

OUTPUT 1

Description: Rights awareness Raising Programme

2006 target: Preparatory phase for the creation of databases completed

2006 Achievement: Project Groups have been appointed and preliminary workplan has been developed.

Description of deliverables:

Activity ID: Activity1: Creation of 2 databases, training programme and communication campaign

1. Pathways to Justice: The research on "Pathways to Justice" was completed and launched on 1 June 2006 in Kompong Speu provincial hall with the participation of

Minister of Justice, Secretary of State of the Ministry of Interior, Director of the Project Management Unit, and high ranking government officials, commune councillors, police, gendarmerie, monks, district and provincial officials. Four hundred and eighty copies of English and 865 copies of the Khmer version of the "Pathways to Justice" were distributed to the government ministries and agencies, provincial courts and police, commune councils, monks training schools, universities, UN agencies, foreign embassies, non-governmental organizations, law firms, and individuals (on request).

.Pathways to Justice was widely used as reference documents in research papers on alternative dispute resolution in Cambodia.

Start and End Date: 07/04/06-06/04/07

% progress towards activity completion: 100%

2. Human Rights Training Database: The Rights Awareness Project Group of the Project Management Unit was formed to implement the activity. UNDP Project Manager developed a concept note for the implementation of the project activity. The concept note defines the objective of human rights training database as to collect the information concerning human rights trainings that have been offered by various training providers and to create an electronic database of updated information on human rights training activities. The concept note calls for the Project Group's consultations with NGO human rights training providers and other national and international stakeholders in order to establish the database and to seek their collaboration in the process of designing and maintaining the database.

The concept note was accepted by the Rights Awareness Project Group. The activity consists of 4 phases: (1) individual consultations with human rights training providers and stakeholders, (2) a general consultation meeting with training providers and stakeholders, (3) development of a web-based database, and (4) data entry, updating, and sharing. The first phase of the activity implementation began in the second week of November 2006.

Phase One has been completed and Phase Two starts in January 2007.

Start and End Date: 07/04/06-06/04/07

% progress towards activity completion: 30%

3. Database for registering land disputes: The National Authority for Land Dispute Resolution (NALDR) received a grant from Japan to equip the Authority with IT equipment and to develop database of land disputes. NALDR requested to re-program the fund allocated by UNDP for the development of database. In this regard, NALDR submitted to the Project Executive Group (PEG) a proposal to re-program \$13,000 to fund the publication of booklets on land rights and procedures on land dispute settlement. The proposal was yet to be approved by PEG.

Start and End Date: 07/04/06-06/04/07

% progress towards activity completion: 0%

Description: Publication of the Official Gazette

2006 target: Terms of reference for consultant developed and recruitment finalized

2006 achievement: Preparatory work has been done.

Description of deliverable:

Activity ID: Activity 2: Capacity building programme for a sustainable Official Gazette

Support for this project is shared between UNDP and the French Cooperation. The French Cooperation will contribute in the development of policies regarding the re-affirmation of the obligation by the government to publish legal texts as required by the Constitution, categories of legal texts to be published, roles and responsibilities of actors involved in information sharing and dissemination, targeted audience, funding commitment, volume of publication, and distribution. UNDP is responsible for the development of technical guidelines concerning the selection of appropriate software, formatting, editing, publishing and printing, archiving, and the training of selected staff of Official Gazette and relevant focal persons of the line ministries. The sequence of the implementation of the project is as follows:

1. Development of the policy;
2. Policy is shared with UNDP and the government;
3. Common agreement on the policy;
4. A memorandum of understanding is adopted among the Government, UNDP, and French Cooperation
5. Development of technical guidelines will start after the completion of the policy development;
6. Training of selected staff of Official Gazette and focal persons of the line ministries;
7. Design of web-based legal database;
8. Dissemination.

UNDP project team met with the French Cooperation in November 2006 to discuss on the progress and shared its inputs. The French Cooperation has finalized the policy and would submit to the government. Based on the policy, a memorandum of understanding would be drafted and signed the three parties.

While waiting for the final work of policy development by the French Cooperation, UNDP Project Manager drafted a tentative term of reference for the consultant in charge of developing technical guidelines. With the assistance of the UNDP Regional Office in Bangkok, three resumés of the technical specialists in gazette publications were obtained for the purpose of recruitment. The process of recruitment of the consultant would begin as soon as there is common agreement among the French Cooperation, the Government, and UNDP.

Because of the slow process in the policy development, the budget for this activity was re-phased to 2007. The activity was therefore pending till 2007.

Start and End Date: 07/04/06-06/04/07

% progress towards activity completion: 20%

OUTPUT 3

Description: Publication of Bulletin of Judicial Decisions

2006 target: Activity not yet activated.

Activity 3: Bulletin of Judicial Decision: Not to be activated until 2007 depending on funding availability.

The Project Group of the Bulletin of Judicial Decision was already appointed in July 2006. It was composed of 5 members from the Supreme Court.

OUTPUT 4

Description: Alternative Dispute Resolution at the Local Level

2006 target: Adoption of the Prakas for the establishment of Maison de Justice; staff of Maison de Justice trained and relevant studies completed.

2006 achievement: Legal framework for the establishment of the Maison de Justice has been adopted by the government.

Activity ID: Activity 4: Completed feasibility study on the establishment of justice of the peace and initiation of pilots of Justice of Peace at the district

Activity 5: Legal support services (Maison de Justice) piloted at the district level

Activity 6: Strengthened dispute resolution methods at commune councils

Description of deliverables:

Activity 4: Law firm BNO was commissioned to conduct the feasibility study in Rattanak Kiri, Mondul Kiri, Kompong Speu, and Kompong Chhnang provinces. The study is a follow-up on the recommendations by the "Pathways to Justice" on the possibility of the creation of a body which has the power to conciliate and to adjudicate matters that cannot be conciliated. The purpose of the research is to seek opinions of the people and stakeholders on the possibility of creation of such body and its model. This body would fill the gaps between local alternative dispute resolution mechanisms and the formal court system.

BNO research team conducted field surveys with local villagers, commune councils, district and provincial officials in these provinces. After the surveys two consultation workshops were organized respectively in Mondol Kiri and Kompong Speu provinces, which were attended by villagers, police, gendarmerie, court officials, and district and provincial officials. The national workshop was held in Phnom Penh in early October.

A final report was submitted to UNDP late November. The findings of the report indicated that the respondents were in favour of three main options:

- (1) The creation of a court or jurisdictional authority based at the district level with a single judge trying cases in the district office or a district judge travelling to communes on a regular basis to try cases;
- (2) The creation of a justice council in the district or commune, which is composed of members living in the community and entrusted with the power to apply local customs, local language, informal and simplified proceedings, and enforce its decision;
- (3) The creation of a modified form of justice council, which is composed of panel of community laypersons and a judge, with the judge holding investigative powers, while laypersons serving as jury or triers of fact.

Start and End Date: 07/04/06-31/10/06

% progress towards activity completion: 100%

Activity 5: UNDP Project Manager drafted a concept note with regard to the models of the Maison de Justice and its role, responsibilities, and operation. The note defined the Maison's missions as to build up the capacity of the commune councils on conciliation and certain legal matters, assess the local demand of legal information and disseminate it at the district and commune levels, and to provide referral services to disputants whose cases cannot be or are not desired to be resolved at local levels.

The Ministries of Justice and Interior adopted a joint (inter-ministerial) Prakas on the establishment of the Maison de Justice in December 2006. The Maison de Justice will be piloted in two districts in Kompong Speu province and another two in Kompong Chhnang province.

Start and End Date: 07/04/06-06/04/09

% progress towards activity completion: 40%: This constituted the preparatory commencement of the activity. The remaining part is the operation of the piloted Maison de Justice.

Activity 6: UNDP Project Manager drafted a concept note on the research on conciliation best practices to strengthen dispute resolution methods at communes. The research would collect all methods used by certain local NGOs and local communities during the course of their support to alternative dispute resolution projects. The research would then analyze the advantages and disadvantages of the methods used. Best practices would be then selected and piloted in 20 communes. If it proved to be workable, the Alternative Dispute Resolution Project Group would compile a manual of best practices in conciliation for use throughout the country.

The research was delayed until the first quarter of 2007.

Start and End Date: 07/04/06-06/04/08

% progress towards activity completion: 20%:

OUTPUT 5

Description: Special Support to Women

2006 target: Community conversations conducted to deal with issues of domestic violence and studies related to creation of jurisdictional authority at local levels completed..

2006 achievement: Studies completed and community enhancement conversations conducted in three communes in Kompong Chhnang conducted.

Activity ID: Activity7: Women and women's organizations empowered at the commune level and below through community enhancement conversations

Activity 8: Study on divorce, separation and related issues completed and recommendations for amendments to existing legal framework proposed

Activity 9: Opportunities for jurisdictional authority at the district level explored and implemented to grant rights to women and children, to prevent, protect women against domestic violence including arrest of weapons, and to decide on custody

Description of deliverables:

Activity 7: The current objective of the Access to Justice is to address the domestic violence issues through community conversations. Building on this, the Access to Justice Project has decided to collaborate with the HIV/AIDS and Partnership for Gender Equity Project (HPGEP) to streamline domestic violence into the Community Capacity Enhancement (CCE). Based on the experience of HPGEP to address the HIV/AIDS issues through the community conversations by using the CCE methodology, the Access to Justice Project would use 30 HPGEP trainers to integrate domestic violence issues in the community conversations. The CCE methodology would serve as a means to empower villagers, especially women, to solve their problems and to strengthen themselves.

In this regard, a domestic violence consultant was recruited in late October to prepare a curriculum on domestic violence and conduct the training of trainers. The trainers were expected to integrate domestic violence in the community conversations in 7 provinces in Cambodia where the HPGEP conducts the Community Capacity Enhancement.

In November 2006, a three-day seminar was organized to re-orient the 30 trainers in the subject of domestic violence. The subject mainly covered the cultural, social, and economic issues that impact on domestic violence and possible legal and social interventions for the protection of victims of domestic violence.

In December 2006 the Project Team, in cooperation with HPGEP trainers, the Ministry of Justice, District Department of Women's Affairs and commune councils, selected 18 village facilitators in six villages in three communes in Kompong Chhnang province (3 in each village, 2 of them were women). The facilitators had to possess the following qualities: willingness to assist the community; potential talent in facilitation; and respect from the community. Then, the HPGEP trainers conducted a workshop to train them how to conduct community conversations.



Training of Local Facilitators in Kompong Chhnang Province

After the training, the facilitators conducted community conversations in each of the six villages to address domestic violence issues. There were 20-25 villagers per village participating in the conversations. A series of community conversations would continue through the next fiscal year.



Local Facilitators Conducted Community Conversations In Kompong Chhnang Province

Before the community conversations started, the Access to Justice Project staff conducted a baseline survey to determine the current perceptions and social and legal interventions available on domestic violence in the villages piloted.

A supervisory committee was also set up to coordinate and monitor the progress of the community conversations. This committee was composed of the district chief, the head of the District Women's Affairs, and a member of the commune council (for each commune).

Start and End Date: 01/01/06-31/12/06

% progress towards activity completion: 100%

Activity 8: The final report on divorce, separation and related issues was submitted in September 2006. The research team conducted a field work in Rattanak Kiri, Mondol Kiri, Kompong Speu, and Kompong Chhnang, where they interviewed 189 people, including village and court parties to the cases, domestic violence victims, village chiefs, commune council members, police, prosecutors, judges, and central government officials. In addition, three workshops were held in Rattanak Kiri and Kompong Chhnang to organize roundtable discussions for commune council members, village chiefs, officials of Provincial Department of Women's Affairs, police, judges, and NGOs. The workshop discussions were on protective measures for victims of domestic violence.

The report identifies the following main problems:

- Commune councils and village chiefs did not perform their duties according to the law on the registration of marriages, conduct of divorce conciliations,

granting divorce awards;

- Inadequate funding to the courts which resulted in inadequate service of process in divorce cases and investigation; no uniformity and method of calculation of the amount of child support that the court should award; spousal support was rarely given and not well understood by the courts; because of lack of investigation the courts were unable to decide what constituted joint or separate property; legal representation, which was most of the time affordable from NGOs, was not adequate;
- Although the Law on Prevention of Domestic Violence and Protection of Victims was already enacted, the implementation was still a problem because the sub-decree by the Ministry of Interior to explain and allow the commune councils and village chiefs to intervene and protect women is yet to be adopted. In domestic violence cases, it is difficult to transport perpetrators from villages to provincial jails and there is no detention facility at the district level.

The report provides the following recommendations:

- There should be instructions issued to commune councils and village chiefs to clearly define their powers and duties and their limitations in dealing with divorce and domestic violence;
- Legal training for commune councils and village chiefs so they can understand how to apply laws in dealing divorce and domestic violence cases;
- To avoid excessive compensation and to promote transparency, fees for the services rendered by commune authorities for marriages and conciliations should be published and enforced;
- Clear instructions to commune councils and village chiefs on their legal powers to grant protective orders;
- Creation of referral mechanism in cases of domestic violence and the adoption of instructions on how to access to legal and human rights organizations;
- Introduction of the “mobile judges” pilot project, in which provincial judges, especially junior judges newly graduated from the Royal School of Magistrate Training, regularly travel to the district offices and try minor criminal and civil cases. The judges can adjudicate petty crimes, divorce, and issue protective orders in domestic violence cases. The judges could also participate in public education, for example, in Marriage and Family Law and legal issues of domestic violence;
- Introduction of the community conversations, in which people in the community can meet to discuss on how to protect rural women from domestic violence, for example to secure protective orders and prosecution.

Follow-up: From the recommendations of the study, the community conversation was implemented because it could be done quickly without resorting to the adoption of national policy.

Also, a concept note was also sent to Minister of Justice for consideration of the idea of “mobile judges.” The Minister supported the idea, but he said it was just a matter of timing for the implementation. Because the Ministry of Justice was at the moment piloting the UNDP’s Maison de Justice, he preferred to wait until the Maison gained

momentum before the “mobile judge” was piloted. However, the Draft Law on the Organization of the Judiciary and the Prosecution, which was prepared by the Ministry of Justice, incorporated the concept of mobile judge, which empowers the Minister of Justice to adopt a ministerial decision to allow the provincial courts to organize mobile trials in a commune at the request of the president of the provincial court (Article 62).

Start and End Date: 07/04/06-30/06/06

% progress towards activity completion: 100%

Activity 9: This activity will start in 2007.

OUTPUT 6

Description: Special Support to Indigenous People

2006 target: Coordination with relevant stakeholders established in Rattanakiri and Mondolkiri and relevant studies completed.

2006 Achievement: Relevant studies completed and Regional Legal Specialist recruited.

Activity ID: Activity10: Indigenous peoples and their organizations empowered

Activity 10: Indigenous peoples and their organizations empowered

Activity 11: Indigenous communal authority (IA), which legitimate and accountable is recognized and strengthened

Activity 12: Judicial services for indigenous people available in Mondolkiri and Rattanakiri provincial courts

Activity 13: National policy advocacy and legal framework developed to formalize indigenous communal authority (IA)

Activity 14: Peace Table-Inter-institutional coordination promoted and strengthened.

Description of deliverables:

Staffing: A Regional Legal Specialist was recruited. He assumed his duties on 25th October 2006. His primary responsibility is to oversee project activities at district and commune level in each province, in particular in Rattanak Kiri and Mondol Kiri. The recruitment was late due to lack of qualifications on the part of the candidates, which necessitated the team to re-advertise the position.

Activities 10, 12, 13, and 14: These activities were not activated until 2007. Funds allocated for these activities were re-phased to 2007. The Regional Legal Specialist made his trips to Rattanak Kiri and Mondol Kiri in November to coordinate with relevant stakeholders in order to assess the opportunity to launch these activities in 2007.

Activity 11: The final report entitled “A Case Study of Indigenous Traditional Legal Systems and Conflict Resolution in Rattanak Kiri and Mondol Kiri Provinces” was submitted in July 2006. The report examines the traditional systems and practices and raises issues for consideration in policy and legislative measures that would maintain better access to justice for indigenous communities through the protection of indigenous people’s authorities, procedures and norms. It also exposes some of the difficulties faced by indigenous people when they seek resolutions outside their communities.

The report would serve as a basis for administrative and/or legislative advocacy to recognize and strengthen the indigenous authority in dealing with its own typical problems.

The report presents the following key findings:

- Indigenous communities overwhelmingly used and supported their customary rules and conflict resolution mechanisms because they believed were fairer, pro-poor and more accessible than the formal system;
- The indigenous system not only sought to provide punishment and compensation against and for the wrongdoers and the victims, but was embedded with a goal of restoring social cohesion and harmony;
- There were areas where the indigenous system could operate well on their own without prejudice to the formal legal system, for example in inheritance, theft, marriage, intra-village disputes, and small infractions. The researchers compiled a list of about 257 cases that were commonly settled by indigenous authority from 2002 to 2006, which did not necessarily need to be subjected to the formal system. Even some matters fall under the jurisdiction of the formal system, there were opportunities for interface between the indigenous and the formal systems, for example, in land management where the law allows the indigenous communities to participate in demarcation of communal boundaries;
- With new problems over the control of lands and forests, disputes with neighbouring villages and powerful have become more difficult to solve;
- Because there was no clear place of the indigenous authority in the national legal system, those in the communities who had money tended to bypass this authority and resorted to the formal system, where they could buy favourable decisions. Also, even indigenous adjudicators could be bought off by powerful people;

The report provides the following broader recommendations:

- Delineate geographical or social boundaries to distinguish areas where a majority of indigenous people and a minority of outsiders are inhabited so the traditional system applies to these areas. When the outsiders are the majority, the indigenous minority should be able to practice their own customary law within their own groups;
- In land matters, the government should provide formal authority to indigenous authority to deal with illicit land sales and to mediate boundary disputes. If it is to be adopted, the sub-decree for indigenous land titling should recognize the indigenous methods of conflict resolution. If indigenous land titling proceeds without the adoption of the sub-decree, traditional authority should be recognized within the existing structures, such as the Cadastral Commission, Provincial Land Allocation Committee;
- Codify customary laws so it is easy for reference by adjudicators in a particular group and for public education. A facility within the Ministry of Justice should be created and liaise with other relevant institutions and to dialogue with designated indigenous representatives to do research and document the indigenous customary laws and systems;

- Improve cooperation between the traditional and formal justice system through the training on national and customary laws to traditional authorities and the government authorities (e.g. commune, district and court officials) and by incorporating certain traditional approaches in the formal system (e.g. allowing traditional authorities to participate in the formal proceedings of the cases they have dealt with);
- The Organic Law that is being drafted by the Ministry of Interior should take into consideration the specific needs in areas where the indigenous people live. The participation of the indigenous elders in the commune dispute resolution committee should be formalized.

Actions to Follow Up the Recommendations: The Regional Legal Specialist has analyzed the report and integrated some of the key recommendations into activities to be implemented in 2007.

Start and End Date: 07/04/06-30/06/06

% progress towards activity completion: 100%

III. LESSONS LEARNED

Databases

The implementing staff of the Rights Awareness Raising Programme was not quite familiar with the concept of database on human rights training because they did not have clear background of the project. It took some time to sensitize them about the idea and implementation plan. Also, the face-to-face contacts between staff of the Right Awareness Raising Programme with human rights training NGOs and donors brought about mutual understanding and trust and cooperation.

Maison de Justice

The progress towards the establishment of the Maison de Justice was somewhat slow due to the gap of communication between the Ministries of Justice and Interior. However, after face-to-face consultations by UNDP with the two Ministries, we were able to establish the channel of their communications. The two ministries expressed their willingness to speed up the process of establishing the Maison de Justice. As a result, the two ministries adopted a joint Prakas to create four piloted Maison de Justice in Kompong Chhnang and Kompong Speu.

Special Support to Women

It is important to bring synergy of HIV/AIDS and Access to Justice projects to promote the community conversations on diverse subject areas because this methodology can be used by the community to solve many facets of problems without using different resources. HIV/AIDS can contribute the same expertise to Access to Justice Project to promote people's access to justice.

Special Support to Indigenous Peoples

At the beginning, the Access to Justice Project was under-staffed to handle such a comprehensive project as this. The process of recruitment of the Regional Legal Specialist took a long time because both the degree qualifications and the experience in indigenous matters of the applicants did not match the job description of the post. The first group of applicants had a master's degree that meets the TOR requirement, but didn't have good experience in indigenous matters. The Project had to re-advertise the position.