



Country: Lao People's Democratic Republic
"Customary Justice Practices" Project Document

UNDAF Outcome(s): Outcome 3 : By 2011, strengthened capacities of public and private institutions to fulfil their duties and greater people's participation in governance and advocacy for the promotion of human rights in conformity with the Millennium Declaration.

Expected CP Outcome(s): Outcome 7: Increased and more equitable access to justice and strengthened rule of law

Expected CPAP Output(s): Output 7.1: Enhanced institutional capacity development of the legal sector to improve the application of the law in an impartial, effective and predictable manner, particularly for women, low-income households and vulnerable groups.

Implementing partner: Ministry of Justice

Responsible Parties: Ministry of Justice, UNDP

Narrative

To this day there is no reliable data on customary law in Lao PDR whereas it is acknowledged that it constitutes a main source of legal practise in the country, particularly among ethnic groups and in all rural remote areas.

On the basis of a strategic survey and data collection on customary legal practises of a representative sample of ethnic groups throughout Laos, but also by resorting to comparative studies with neighbouring countries, the project aims at building a national strategy on customary law.

This strategy should facilitate the practice of customary law where it serves the needs and interests of the people, enhance the knowledge of central authorities on informal practises so that they may govern in a more effective and responsive way, and ensure compliance with the general standards of Human Rights and gender equality principles,

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| Programme Period: 2007-2011 CPAP Programme Component: Output 7.1 Project Title: Customary Law Atlas Award ID: 00070144 Start date: 2 April 2009 End Date : 31 Dec 2010 PAC Meeting Date: 19 March 2009 | Estimated annualized budget: \$ 157,333 Total resources required \$ 236,000 Total allocated resources: \$ 236,000 <ul style="list-style-type: none"> • Regular \$ 50,000 • Other: <ul style="list-style-type: none"> o DGTTF \$ 186,000 Unfunded budget: _____ In-kind Contributions office space, MoJ |
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Agreed by Implementing Partner: Mr Ket Kiattisack, Vice-minister of Justice

Agreed by UNDP: Ms. Sonam Yangchen Rana, Resident Representative

1. Background / Situation Analysis

Customary practices remain a crucial source of law for many people in Lao PDR, especially among its forty-nine ethnic groups and in the most remote areas of the country. This means that the lives of a high ratio of citizens are very often regulated and formatted by informal traditional local rules rather than by official statutory laws and regulations endorsed and published by the State. Yet no policy addresses so far the issue of the role and place of customary law in the legal system of Lao PDR, and no comprehensive study has been led nor did any public debate ever take place on this topic. This problematic has been acknowledged by the authorities and recognized as a critical issue needing to be tackled in order to improve governance and the Rule of Law in Lao PDR. Thus, this need is reflected in the Legal Sector Master Plan drafted in November 2006 which, under its first pillar, calls for the implementation of a research project on application of customary rules as source of law by collecting local and customary rules especially among minority ethnic people, in order to ensure the application of a more efficient legal framework, suitable with people's education level. As a matter of fact, the project forms part of the Programme for the Support to the Implementation of the Legal Sector Master Plan, initiated in September 2008. A study on customary practices cannot ignore the institution of village mediation of which the existence is officially acknowledged and supported by the Government of Lao PDR. The project also has close links to the Enhancing Access to Justice Project implemented by the Lao Bar association, which includes a survey on people's understanding or perception of their access to but nevertheless doesn't deal with the substance of customary law and its institutional place.

2. Objectives

The ultimate goal of the project is to support the formulation of a national strategy on customary law formulating guidelines on the reconciliation of customary laws with state laws and ensuring that customary rules and practises are harmoniously integrated into the Lao PDR Legal system. As part of a general objective of developing legal empowerment for the poorest and most vulnerable groups, it seems of great importance to develop knowledge of customary laws and practices throughout the country in order to efficiently combine this source of law with the broader official normative framework. This should ultimately lead to a better understanding and harmonization of customary legal practices as well as an improved access to justice and information for villagers living in out-of-reach places. It should also promote gender equality as well as an enhanced and equitable application of international Human Rights standards based on the international treaties the Lao PDR ratified.

3. Strategy / Methodology

The initial output of the project is the delivery of a survey aiming at collecting local customary rules/practices through a dedicated data base. Customary law certainly can't be derived in the first instance by mere statistical or quantitative procedures. The scope of the survey will then have to be preliminarily defined using the combination or addition of relevant criteria. These criteria might be the numerical importance of considered groups of people but also the need for samples from different geographical or topographical parts of the country or the necessity to focus on the most vulnerable groups of people such as women, lowest-income household or people living in areas where they face specific difficulties in their environment.

A reliable estimate of the probability or propensity of the population turning to informal rules and practices can be determined through a sample survey. Nevertheless, what the informal rules and practices actually are can be documented only on the basis of a census since these rules will differ from community to community, and there can be no representative sample for all of them. Thus, the survey must certainly combine sampling and census methods. Since harmonization of both formal and informal legal systems through a national strategy is the final objective of the project, the study mustn't be limited to the creation of a database on the normative content of informal justice systems in Lao PDR but must mainly aim at getting information on normative differences leading to discord and conflict between the informal system and the state-sanctioned formal system, focusing on the consistencies or inconsistencies of customary laws and practices regarding official state laws and regulations and the provisions of international treaties Lao PDR has already ratified or is likely to ratify in the next future. Such a strategically focused and policy-oriented relevant database is also more manageable. It will then allow detecting where the formal system needs to reform in order to provide substantive justice or where the jurisdiction of the informal system is to be limited in order to serve universally accepted norms of justice incorporating gender justice, reasonable penalties, etc. Regarding specifically the mediation system, the survey should offer an opportunity to assess its running and to serve as a basis for proposals aiming at improving this system and ensuring a better articulation with formal judiciary procedures.

In addition, the approach should certainly be multidisciplinary and combine the legal dimension relating to legal processes and systems, a social dimension and an institutional dimension relating aspects of governance and institutional reform. It is indeed necessary to understand the role of the informal system within the broader framework of political and legal system. This should help in particular to find appropriate ways to address the problem of the alignment of informal systems with the principles of international human rights. It is also crucial to prevent as much as possible the risk that the process is biased from the beginning because of a subjective approach in the way data is collected and compiled. The collection of data must then be conducted by an anthropologist with local language competence or using very good interpreters. This expert should also have a good knowledge of customary law and legal practices. He will team at the time of the definition of the scope of data collection and then after the completion of his field study with both an expert on databases and a lawyer with a good knowledge of the context of the Lao PDR.

During a minimum period of four months, the anthropologist recruited will be doing "participant-observation" fieldwork to isolate local practices and the level of customary instances of dispute settlement and social control. This calls for both asking questions and observation of the processes of dispute settlement, since there is commonly a discrepancy between what people indicate as ideals and what is actually done in practice. The method above would call for at least one in-depth study in each of the key ethnic or local areas in Lao where customary law is operative. These studies can or should then be supplemented by some sample survey to establish the consistency of customary law procedures within the various areas studied. As previously mentioned, it is necessary to isolate early on and concentrate on the types of customary law that impact most on vulnerable groups of people. This criterium might be combined with the one consisting in a focus on communities and regions where there is potential for normative dissonance between the formal and informal systems. Moreover, the survey will concentrate on fields of customary rules particularly affecting people's economic and social well-being, such as land property, inheritance, family relations...

The data collected will then make it possible to propose the building of a real strategy in order to ensure that customary practices, including informal systems for the settlement of disputes, are harmoniously integrated into the Lao legal system or can be combined with it in the respect of cultural traditions of ethnic groups but also in line with the general principles of a Rule of Law state. The drafting of this national policy will result from a strategic exploitation of the data, completed by two specific studies: one will be a comparative study of the substance of informal rules and the content of the formal statutory system. The other study will focus specifically on the issue of the role and place of mediation in the judiciary framework and the coordination between formal and informal mechanisms for the settlement of disputes. As a result, on the basis of concept notes and through additional consultation, guidelines will be formulated in a draft strategic document. This strategy, which should also be fed by comparative surveys on the status of customary Law in neighbouring countries such as Cambodia, China or Indonesia, will aim at defining principles to be applied in the combination of formal and informal legal systems in such a way that customary laws and practices are fully recognized as a plenary source of law in the interest of people while citizens are made aware of their rights and duties. Built on the two pillars of substance of norms and settlement of disputes, consisting in activities fostering inclusive participation and communication, the strategy should propose a model of recognition of informal legal system that favours good governance practices grounded in human rights and gender equality. Finally, the strategy will be distributed to all legal practitioners throughout the country, at central, provincial and district levels while explanatory notes on specific legal issues or targeting specific groups such as women will be disseminated at village level.

I. ANNUAL WORK PLAN BUDGET SHEET

Year: 2009

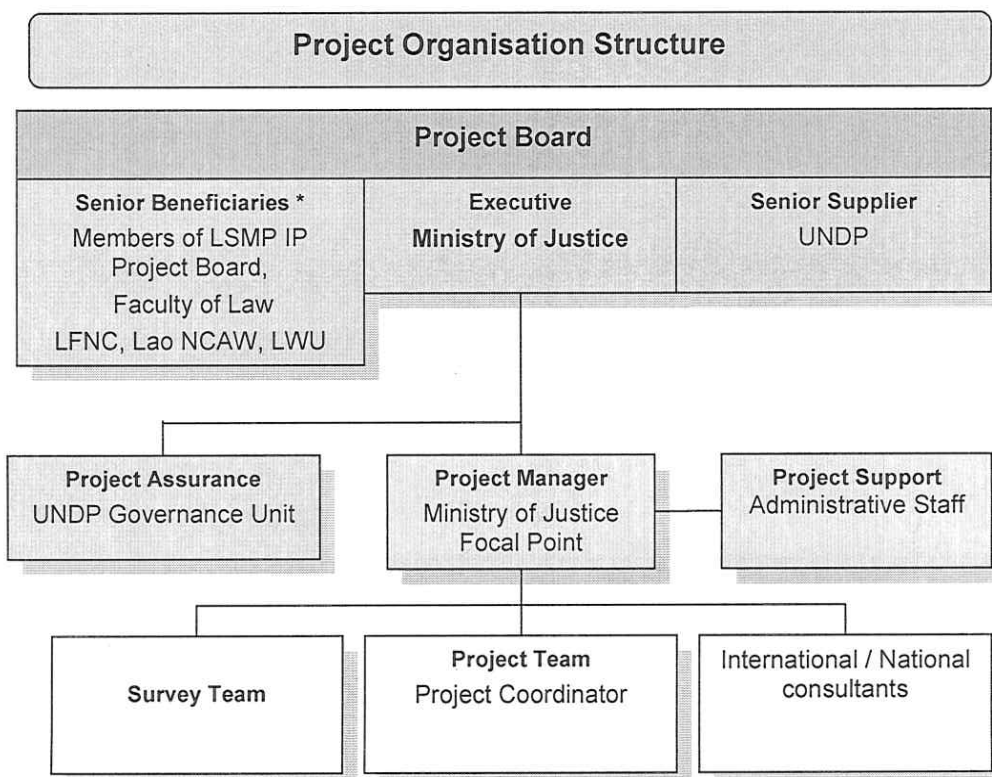
| EXPECTED OUTPUTS <i>And baseline, associated indicators and annual targets</i> | PLANNED ACTIVITIES <i>List activity results and associated actions</i> | TIMEFRAME | | | | | RESPONSIBLE PARTY | PLANNED BUDGET | | |
|--|---|-----------|----|----|----|------|--|----------------|--------------------|------------------|
| | | Q1 | Q2 | Q3 | Q4 | 2010 | | Funding Source | Budget Description | Amount |
| Output 1 Relevant database on customary laws and practices in Lao PDR created. | 1.1. Survey of informal legal rules and practices of representative ethnic groups (including village mediation units), paying specific attention to gender parity and the situation of most vulnerable people | | x | x | x | | Ministry of Justice National University of Laos | DGTTF DGTTF | | 20,000 40,000 |
| <i>Baseline: No existing database on informal legal rules and practices.</i> | - Project Staff recruited (1 pers) - Establishment of a consultant team of national / international legal and database experts and anthropologist. | | | | | | | DGTTF | | 15,000 |
| <i>Indicators: Existence of Database</i> <i>Target: Comprehensive database exists</i> | - Consultations at local and central level and determination of relevant areas of investigations - Field survey in pre selected areas of the country. | | | x | x | | | UNDP Core | | 50,000 |
| <i>Related CP outcome:</i> | 1.2. Relevant database created - Production of a database | | | x | x | | Ministry of Justice | DGTTF | | 7,000 |

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| <p>Output 2 Formulation of a draft National Strategy on customary law based on the survey previously carried out and resulting database</p> <p><i>Baseline: No National Strategy on Customary Law</i></p> <p><i>Indicators: Existence of a draft National Strategy</i></p> <p><i>Target: Draft National Strategy formulated</i></p> <p><i>Related CP outcome:</i></p> | <p>on customary rules and practices, with a focus on specific thematic fields and/or specific groups, such as women,</p> | | | | | | | | |
| <p>2.1. Comparative study of informal laws or rules and the formal statutory system</p> <p>-Workshops and consultations aiming at performing a comprehensive gap analysis</p> <p>- Concept Paper developed on gap analysis</p> | <p>2.1. Comparative study of informal laws or rules and the formal statutory system</p> | | | | | <p>Ministry of Justice</p> | <p>DGTTF</p> <p>DGTTF</p> | <p>15,000</p> <p>5,000</p> | |
| <p>2.2. Study of coordination between village mediation and formal judiciary system</p> <p>- Workshops on the improvement of coordination between village mediation and court system</p> <p>- Drafting of a Concept Paper identifying areas and means whereby the institution of Village Mediation Unit can be further integrated into the overall judiciary system</p> <p>2.3. National strategy developed on harmonization of formal</p> | <p>2.2. Study of coordination between village mediation and formal judiciary system</p> <p>- Workshops on the improvement of coordination between village mediation and court system</p> <p>- Drafting of a Concept Paper identifying areas and means whereby the institution of Village Mediation Unit can be further integrated into the overall judiciary system</p> <p>2.3. National strategy developed on harmonization of formal</p> | | | | | <p>Ministry of Justice</p> | <p>DGTTF</p> <p>DGTTF</p> | <p>12,500</p> <p>7,500</p> | |

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| statutory system and informal rules and practices with specific attention given to women and most vulnerable groups - Workshops aiming at designing a national strategy. - Study Tours to relevant country - Drafting of a National Strategy Guideline Document to be endorsed by GoL | | | | | | | | | | | DGTTF | 10,000 |
| | | | | | | | | | | | DGTTF | 16,500 |
| | | | | | | | | | | | DGTTF | 3,500 |
| 2.4. Strategy Guideline disseminated. - Dissemination of copies of Strategy Guideline at central, provincial and district level - Creation of leaflets or booklets on applicable laws and rules in regard with specific issues such as gender equality / dissemination at village level | | | | | | | | | | | DGTTF | 11,500 |
| | | | | | | | | | | | DGTTF | 22,500 |
| TOTAL USD | | | | | | | | | | | 236,000 | |

II. MANAGEMENT ARRANGEMENTS

In line with the Vientiane Declaration on Aid Effectiveness and since the Project is part of the overall initiation activities of the Legal Sector Master Plan formulation process, the management arrangements already established for the Initiation Plan of the Support to the Implementation of the LSMP will be utilized.



- The LSMP Initiation Plan Board will be expanded to the Lao Front for National Construction, the Faculty of Law, the Lao National Commission for the Advancement of Women and the Lao Women's Union in consideration of their specific interest in the project.

III. MONITORING FRAMEWORK AND EVALUATION

In accordance with the programming policies and procedures outlined in the UNDP User Guide, the project will be monitored through the following:

Within the annual cycle

- On a quarterly basis, a quality assessment shall record progress towards the completion of key results, based on quality criteria and methods captured in the Quality Management table below.
- An Issue Log shall be activated in Atlas and updated by the Project Manager to facilitate tracking and resolution of potential problems or requests for change.
- Based on the initial risk analysis submitted (see annex 1), a risk log shall be activated in Atlas and regularly updated by reviewing the external environment that may affect the project implementation.
- Based on the above information recorded in Atlas, a Quarterly Progress Reports (QPR) shall be submitted by the Project Manager to the Project Board through Project Assurance, using the standard report format available in the Executive Snapshot.
- a project Lesson-learned log shall be activated and regularly updated to ensure on-going learning and adaptation within the organization, and to facilitate the preparation of the Lessons-learned Report at the end of the project
- a Monitoring Schedule Plan shall be activated in Atlas and updated to track key management actions/events

Annually

- **Annual Review Report.** An Annual Review Report shall be prepared by the Project Manager and shared with the Project Board and the Outcome Board. As minimum requirement, the Annual Review Report shall consist of the Atlas standard format for the QPR covering the whole year with updated information for each above element of the QPR as well as a summary of results achieved against pre-defined annual targets at the output level.
- **Annual Project Review.** Based on the above report, an annual project review shall be conducted during the fourth quarter of the year or soon after, to assess the performance of the project and appraise the Annual Work Plan (AWP) for the following year. In the last year, this review will be a final assessment. This review is driven by the Project Board and may involve other stakeholders as required. It shall focus on the extent to which progress is being made towards outputs, and that these remain aligned to appropriate outcomes.

As the project is part of the implementation of the Legal Sector Master Plan, monitoring and reporting will be done in conjunction and as part of the LSMP formulation support programme.

IV. LEGAL CONTEXT

This document together with the CPAP signed by the Government and UNDP on 28 March 2007, which is incorporated by reference, constitutes a Project Document as referred to in the Standard Basic Assistance Agreement (SBAA) of 10 October 1988 and all CPAP provisions apply to this document.

Consistent with the Article III of the Standard Basic Assistance Agreement, the responsibility for the safety and security of the implementing partner and its personnel and property, and of UNDP's property in the implementing partner's custody, rests with the implementing partner.

The implementing partner shall:

- a) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the project is being carried;
- b) assume all risks and liabilities related to the implementing partner's security, and the full implementation of the security plan.

UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this agreement.

The implementing partner agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received pursuant to the Project Document are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Project Document".

ANNEXE I

OFFLINE RISK LOG



(see Deliverable Description for the Risk Log regarding its purpose and use)

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|------------------------------|--|-----------|--|--------------------|--|
| Project Title: Customary Law | | Award ID: | | Date: 2 April 2009 | |
|------------------------------|--|-----------|--|--------------------|--|

| # | Description | Date Identified | Type | Impact & Probability | Countermeasures / Mngt response | Owner | Submitted, updated by | Last Update | Status |
|---|---|--------------------|-------------------------------|---|--|---------------------|-----------------------|-------------|--------|
| 1 | Complexity of the field survey and subsequent difficulties in implementing some activities | During formulation | Operational | May hinder delivery of planned project outputs/outcomes P = 2 I = 5 P x I = 10 | Every efforts must be made to ensure the project is well managed | Project coordinator | PO | 09/02/2009 | |
| 2 | Difficulty in recruiting sufficiently high skilled and team spirited national consultants and staff for the project | During formulation | Operational Organizational | May hinder delivery of planned project outputs/outcomes P = 2 I = 4 P x I = 8 | Ensure that all options are employed to permit recruitment of top quality national consultants and staff aware of the need to work in synergy with other specialists | Project Coordinator | PO | 09/02/2009 | |

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|---|--|--------------------|---------------------------|---|---|-------------------------------------|----|------------|--|
| 3 | Possibility of bias in the way the field survey is led and the data is collected | During formulation | Operational | May impact on information and results P = 3 I = 5 P x I = 15 | The philosophy and expected outputs of the survey as well as methodology must be carefully discussed with experts | Project Assurance / Project Manager | PO | 12/03/2009 | |
| 4 | Weaknesses in understanding of project and lack of commitment at local level | During formulation | Environmental Operational | May impact on collection of information and results P = 3 I = 5 P x I = 15 | Every efforts must be made to ensure the project is understood and owned by officials and people at ground level | Project Coordinator | PO | 09/02/2009 | |