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Workshop report

Organised by the People's Participation Working Group (PPWG)

Overview of the legal environment affecting Civil Society Organisations (CSOs) 29 May 2007

Final Draft, July 2007

Introduction

During the past few years the Government of Vietnam has showed determination to promote the growth and increasing role of Civil Society Organisations (CSOs) and the active participation of people at all levels in promoting socio-economic development nation-wide (VDR/PRSC Consultation Exercise, VUFO-NGO Resource Centre, 2006). Several legal documents have been or are in process of being drafted offering new spaces for operation and opportunities to CSOs.

To take stock of the legislative changes affecting CSOs role and active participation of people in the development process of Vietnam, the People's Participation Working Group (PPWG) organised a workshop on the Legal Environment Affecting the CSOs in Vietnam. The meeting was held on 29 May 2007 at the World Bank, Hanoi Office.

The overall purpose the workshop was to create and share an overview of the law making process and key legislations recently promulgated or in drafting relating to CSOs and people participation.

The workshop aimed to:

- i) Update information and increase awareness among CSOs about the overall legal environment that CSOs are operating in, and
- ii) Identify and discuss opportunities and constraints for CSOs concerning their participation in the socio-economic development process.

The workshop agenda included 4 presentations, followed by a panel discussion.

1. Overall legal document system and the process of making legal document,
2. Overall legal framework affecting the establishment, operation and management of CSOs,
3. Changes in the newly adopted Ordinance on Grassroots Democracy,
4. Planning reform in the process of Vietnam's integration into the global economy

Overall legal document system and the process of making legal documents

Mrs. Nguyen Thi Hanh, Legal expert, Ministry of Justice

The law making and its implementation process faces a lot of challenges in Vietnam. Legal documents overlap, are not sufficiently detailed, and the implementation guidelines often come into effect much later than the laws themselves. Awareness of legal documents among implementers and the population/target group is often limited and dissemination of new legal document often insufficient.

According to the Law on legal document promulgation (1996) there are 9 steps to follow in a process of formulating laws or ordinances:

1. A plan is prepared to making a law or ordinance
2. A drafting team is established and drafting done (public consultation is often carried out through out this process)
3. The draft is submitted to the Government
4. The Government reviews the draft
5. The Government submits the draft
6. The National Assembly reviews the draft
7. Standing Committee reviews the draft
8. Input is collected from communities and NA members/delegations
9. The draft is approved by NA (the ordinance is approved by the Standing committee of the NA)

The process is rather comprehensive and time consuming with participation of all types of different stakeholders. Currently, Ministry of Justice is in process of revising the procedures and is looking into possibilities of combining some of the steps in the process to simplify and make each step more efficient.

In 1996, it became a requirement to consult and get input from citizens and organisations in law-making processes. Still, until now the participation of CSOs and people in the legal drafting process has been very limited. Participation of CSOs and people in legal drafting processes is presently faced with a number of challenges. Depending on each law project, however, the processes in general are not sufficiently transparent for CSOs to easily know how and when to actually participate and provide inputs/comments. At the same time, the inputs/comments from external actors are in many cases not easy to accommodate, both in terms of mechanism and timing. The feedback mechanisms are not clear and effective and there are often complaints that the agencies that draft law tend to protect their own management or beneficial interests. With relation to timing, the deadline for inputs/ comments is often short. As a result, there are not many cases where inputs/comments provided during law making processes are effectively taken into account in the draft laws.

Participation of CSO is important and should be initiated from the very beginning of the law making processes. In Vietnam, the referendum on laws is not used frequently and does not reflect the actual needs and effects of participation. This makes it even more important to involve different stakeholders at the early stages of drafting legal documents.

Overall legal framework affecting the establishment, operation and management of CSOs

Mrs. Nguyen Thi Bich Diep, VNAH

Some of the key characteristics of CSOs are that they are non-state and non-market, voluntary, self-managed, self-financed and non-for-profit. In Vietnam, it is necessary to apply a broad concept of CSOs, including various types mass-organisations, associations, unions, federations, community-based organisations, faith-based organisations, non-membership organisations, funds, non-profit corporations, and media.

Participation of CSOs in the socio-economic development process is important for a number of reasons. CSOs have an economic and social impact in the society and can help fill the gap where the Government has limited capacity to cover. CSOs compliment the Government in delivery of public and social services and play a role in ensuring transparency and accountability of the Government.

The state encourages development of CSOs. The current legal framework is composed of a number of laws and decrees governing the establishment and operation of CSOs as well as areas of taxation, budget and financial issues, social services, decentralisation, grassroots democracy, etc. The Law on Associations is in the process of being drafted. But while the current legal framework is comprehensive in terms of number of law/by-laws affecting CSOs, and provides the legal base for CSOs to engage in various activities, the legal framework is rather complex, fragmented, unclear on a number of issues and not sufficiently facilitating.

It is important to have a facilitating legal framework for CSOs, which comprises rights, benefits, responsibilities and duties. Such a framework should protect the fundamental rights and freedom of associations; ensure open, easy and fair space for operation; promote integrity and good governance, accountability and transparency mechanisms, financial sustainability; and promote the interaction and effective cooperation among State-Civil Society-Market etc. Making a facilitating legal framework for CSOs is a long process, which will require involvement of all relevant stakeholders and a revision of related existing legal documents across various sectors.

Changes in the newly adopted Ordinance on Grassroots Democracy
Mr. Pham Quang Nam, PO, Oxfam Great Britain

The Ordinance on Grassroots Democracy was approved 20 April 2007 and will be effective from 1 July 2007. It replaces Decree 79/2003/ND-CP. The main principles of the Ordinance (and its implementation) are to ensure public and social stability, protect the interest of the state, organisations and individuals, promote transparency, and to promote respect the *right of people to know, comment, decide, implement and monitor*.

The means to implement the Ordinance is clearly defined and includes awareness raising, knowledge dissemination and decision-making processes at community level. The responsibility to implement the Ordinance lies with the lowest level of government, the Commune People's Council, the Commune People's Committees, and the Fatherland Front at commune level.

Compared to Decree 79 the Ordinance can be seen as an improvement, firstly because it has a higher legal status (from decree to ordinance). It is more detailed and clear in terms of implementation, responsibility and rights of government agencies and of people. But it does not include monitoring mechanism from the higher levels on the implementation nor accountability mechanisms, and does not guarantee resources for its implementation.

The Ordinance is a powerful tool to promote people's participation, but the success of the implementation depends on awareness and knowledge of the Ordinance at the grassroots level as well as the attitude and the implementation capacity of the commune cadres. CSOs can play an important role in raising awareness on the Ordinance and monitoring its implementation. Another challenge is to ensure necessary resources allocation for effective implementation.

Planning reform in the process of Vietnam's integration into the global economy
Mr. Le Viet Thai, Deputy Director, Dep. of Economic Institutions, CIEM

The definition of "plan" has changed from what it meant during the centrally planned economy. In Vietnam, the Socio- Economic Development Plan (SEDP) can be compared to a party election program in multi-party states as it provides social and economic targets with policies for socio-economy development and internal and external relations. Many of the targets are set as forecasts. Only those related to budget and basic construction are of compulsory direction. As people in Vietnam do not have the choice to choose between different "plans" (as to elect among different plans proposed by different parties in other countries), the participation in the planning process from the very beginning becomes very important to promote democracy. The draft SEDP 2006-2010 was launched out for consultation with and involvement of organisations and people (including many foreign organizations and actors) - and was the first time social organisations and people in general were directly involved in the drafting process.

The draft Planning Law focuses on clarifying the changed role of the state in the socio-economic development process of Vietnam. The revised draft law addressed the issues of: Planning contents with decentralisation to different level (specifies on the responsibilities and duties of authorities at different levels), and planning processes (emphasizes on transparency, people participation, and monitoring and evaluating the plan implementation). In general, The State will then only focus on important issues of the country, and that increases the potential role for the private sector and CSOs in the socio-economic development process.

Even though there are still a number of open questions in terms of the role and responsibility of state and non-state actors in planning, CSOs are given more responsibilities and play more important role in developing the content of development plans, and in the process of implementing and in monitoring and evaluation.

Panel discussion

Presenters as well as Mr. Nguyen Ngoc Lam, Ministry of Home Affairs and Mr. Nguyen Manh Cuong, Vietnam Union of Science and Technology Associations (VUSTA)

The focus for the panel discussion included the definition of CSOs, the extent to which the process of drafting legal documents does indeed provide opportunities for CSOs to provide input, and how legal documents are implemented at local level.

It was discussed how the definition of CSOs remains problematic. The concept of CSO is new in Vietnam and there is no common understanding of the term/concept. It was suggested that a possible way of dealing with the definition and confusion in Vietnam is to define the organisations according to function - what they do, rather than who they are.

It was noted that the important role of, and space for direct participation by, people and CSOs in socio economic development in Vietnam is increasingly recognised by the government. The new planning law, which provides a new division of tasks and roles between the government and non-government actors, offers a greater potential role for CSOs to participate, which adds to the general increasing potential role for people's and CSOs' active involvement in monitoring, public service delivery, etc. However, there is a general need to further redefine and clarify the changed role of the state, the market and CSOs - in particular in relation to public service delivery.

A concern was raised on the issue of capacity of CSOs to take up these new and increased roles and responsibilities and to make their involvement meaningful in the development process. It was emphasised that capacity building of CSOs is one important aspect for them to take up the new roles. CSOs should increase self-demands for strengthening internal governance structures, accountability and transparency. CSOs are encouraged to set up networks to generate resources for service provision and broader participation.

The Government and the Party has ensured provisions for organisations and people to participate in decision and law making processes. The challenge is that there are many different legal documents regulating different issues relating to CSOs and people's participation - and it is difficult to get an overview. This is also seen as a challenge in other countries where efforts are done to make such into a common legal framework, for example in Japan. Furthermore, it was emphasised that it is important to pay continued attention to improving the current legal framework for CSOs in Vietnam, a legal framework that is more facilitating and responsive to the growing needs and demands of CSOs. Revising the legal framework should mean not only filling the gaps and eliminating the redundancies, but also recognising the legitimate rights of CSOs.

The Government encourages input from organisations in law drafting processes. New opportunities are arising with the renovation of the law making processes where external organisations, such as Vietnam Lawyers Association, are even assigned to lead law drafting processes.

The challenge remains in particular after a law has been adopted and takes effect. A major issue remains on how to ensure awareness raising and dissemination of new laws or regulations, provision of easy implementation guidelines, and not least how to ensure that new laws actually changes behaviour. Dissemination is done by the state agencies and also through mass-organisations/social organisations and CSOs. Still, more is needed to ensure effective awareness raising and effective implementation.

