

TECHNICAL ASSISTANCE COMPLETION REPORT

Division: SEID

TA No. and Name TA N0 3727-VIE: Enhancing Resettlement Legal Framework and Institutional Capacity			Amount Approved: \$310,000	
			Revised Amount: \$310,000	
Executing Agency: Ministry of Finance		Source of Funding: TASF	TA Amount Undisbursed \$21,070.49	TA Amount Utilized \$288,929.51
Date			Completion Date	
Approval 24 Sep 2001	Signing 11 Jan 2002	Fielding of Consultants 25 Feb 2002	Original 30 Apr 2003	Actual 30 Jan 2006
			Closing Date	
			Original 30 Apr 2003	Actual 27 Oct 2006
Description				
<p>The Government of the Socialist Republic of Vietnam requested an advisory technical assistance (TA) from ADB to help the executing agency Ministry of Finance (MOF) (i) prepare a new decree on land acquisition, compensation and resettlement that is within international standards and ADB policy, (ii) prepare the decree's implementation guidelines; and (iii) assist with the capacity building of government staff implementing these legal instruments. A fact-finding mission was fielded in May 2001 and reached an understanding with the government on the objectives, scope, financing plan, implementation and outline of the terms of reference (TOR) of the consulting services of the TA.</p>				
Outcome and Outputs				
<p>The TA outcome was to improve the living standards and reduce poverty risks of displacement among people affected by land acquisition by establishing principles in accordance with good international standards, supported by sound planning and consistent policy implementation.</p>				
<p>The outputs of the TA were structured to deliver assistance to the government in three phases, namely: (i) prepare a new decree on land acquisition, compensation and rehabilitation for use when the state recovers land from its citizens; (ii) formulate complementary implementation guidelines; and, upon approval of the new decree acceptable to ADB, (iii) build capacity to implement these legal instruments.</p>				
Delivery of Inputs and Conduct of Activities				
<p>The TOR was comprehensive and adequately designed to meet the TA objectives. The consultant was mobilized in early February 2002 with an initial input of 5.0 person-months of consultant work which only considered work under Phase 1. Phase 2 was intended as Government's responsibility for approving the decree and implanting guidelines, and thus no consultant input was required. An additional 4 person-months well within the budget was later added to the services to implement the preparation of course outlines and materials based on the targeted participants under Phase 3 capacity building.</p>				
<p>The consultants, whose performance is considered fully satisfactory, provided the EA with the capacity to assess and narrow the gap between the decree and those of the IFIs, and interacted well with line agencies and members of the steering committee, set up by MOF.</p>				
<p>The performance of the EA was highly satisfactory. In 2005, MOF, particularly the Asset Management Department where the TA was situated, had turned around since the approval of the TA in 2001. By end 2005 when the workshops were being held, implementing government staff attitude to the new decrees and law had become positive.</p>				
<p>The delay on the TA completion was mainly due to government, that mid-way through the process of drafting the new decree on resettlement which commenced in March 2002, decided to completely review the Land Law of 1993 and new Land Law was subsequently passed by the National Assembly 2004.</p>				
<p>The performance of the ADB staff was highly satisfactory. The EA found the capacity building to be so successful that they have already requested further capacity building from ADB along the same line as that done under the TA.</p>				
Evaluation of Outputs and Achievement of Outcome				
<p>In 2001 resettlement reform and the corollary expenses resulting from its enforcement were a low priority in the overall reform agenda of the government then heavily committed to pushing forward its infrastructure projects. Tasked mainly with the prudent stewardship of the country's limited financial resources, this largely explained the executing agency,</p>				

MOF and other line agencies' lukewarm reception to the initiatives under the TA at the onset. The key factor that contributed to the effective implementation of the TA was the resolve and political will of a few key officials – namely, the Vice Minister of MOF and officials of MONRE who understood the overall social and economic benefits to be gained from the TA objectives.

An unanticipated achievement of the TA was its contribution to the Land Law after the Ministry of Natural Resources (MONRE) requested help from ADB to incorporate resettlement into drafting of the Land law. For the first time, resettlement was included in the Land Law, specifically, 15 clauses on resettlement were included. The corollary Implementing Decrees 197 covering Compensation, Assistance and Resettlement when the State Recovers Land and Decree 181 for Governing the Implementation of the Land Law 2003, were issued end 2004. The EA then issued three publications containing the various land-related legislation and their summaries, disseminated widely to other line agencies and presented the summaries to more than 2,000 government staff in more than 64 provinces.

The TA also conducted a training needs assessment for sector, provinces, districts and line agencies, prepared training materials and delivered highly effective training workshops. The capacity building program was held in six cities – namely, Hanoi, Son La, Da Nang, Quang Nam, Ho Chi Minh, Bien Hoa and Vinh. At least 50 participants from each city or a total of 300 officials were expected to attend from the most directly involved implementing offices—namely, the Department of Finance, Natural Resources, Construction Planning and Investments and the districts in each host city. However, over 450 participants actually attended. The training was so successful that the EA has already asked ADB to continue the training momentum as soon as possible.

Overall, and towards the end of TA implementation, MOF was very positive with the results of the TA implementation and recommended amendments to Decree 181 improving land-use fees and protocols on handling complaints and denunciations against government officials administering the land law and its decrees approved on 27 January 2006. As a result, more than the outcomes envisaged originally under the TA were achieved.

Overall Assessment and Rating

The TA is highly successful.

Major Lessons Learned

It was Important that ADB be very certain of the EA's commitment to the objectives of the TA. Initially ADB was reluctant to process this TA but finally agreed after strong appeals from MOF. ADB encountered MOF resistance at the working levels at the outset of the TA as the working level appeared to be more interested in the possible study tour and management of the financial side of the TA. It took considerable and persistent effort by ADB to get across the message about the importance of the TA objectives. This persistence has paid off, however, as the MOF project director has now become a strong advocate within the Government for good resettlement standards. Unfortunately, there is still resistance in some sections of the Government to adjust to these standards and the project director has now been replaced by someone who would like to turn around the achievements that have been made in the Land Law and Decrees on resettlement. This likelihood may be counteracted to some extent by MoNRE.

The TA conducted a gap analysis of the differences between the Government's new resettlement legislation and the policies of donor agencies, including the ADB. There are very few differences between the Government's legislation and ADB's Policy on Involuntary Resettlement. The main difference is that some articles of the Decree are open and leave interpretation to the discretion of local authority.

The greatest barrier to the satisfactory assessment of correct current market values for compensation purposes, identification of suitable resettlement sites, minimizing land requirements for projects and appropriate land use planning, is the lack of a comprehensive land information system data base in each city and province.

There is a great lack of understanding of the necessity for full public consultation with, and prompt dissemination of accurate information to, all potentially affected people. There is a lack of understanding of the importance of comprehensive, compensation, resettlement and rehabilitation assistance plans of internationally accepted standards.

There is a great lack of knowledge of how to prepare and what needs to be included in an acceptable and comprehensive compensation, resettlement and rehabilitation plan.

There is an institutionalized inability to freely share information within and among ministries, departments in provinces and districts accompanied by a consequent lack of knowledge and understanding of the work of other ministries, departments and districts.

The well-intentioned attempts by commune and district officials to satisfy the actual needs and reasonable requests of affected people are often frustrated at higher levels due to lack of planning, budget provision, fear of making incorrect decisions and corrupt practices.

There is a lack of understanding of the desirability of adequate, impartial and authoritative dispute resolution procedures and tribunals outside the court processes and outside the administrative processes of People's committees.

Many laws, ordinances, decrees and circular instructions are written in terms that often confuse officials, and are sometimes contradictory. Many of them are not understood fully by the officials responsible for implementing them and sometimes officials at commune and district levels do not have copies readily available.

Some local authorities are dissatisfied with parts of the new Land Law, Decree 197 and Circular 116. Some do not consider themselves bound by Circular 116. As a consequence these local authorities make and issue their own regulations for compensation, resettlement and rehabilitation assistance within their province or city. It appears that they have the constitutional ability to do so.

Very few local officials have any knowledge or understanding of the provisions of the Civil Code 2005 that provide for compensation to be made to any person who suffers damage or quantifiable disadvantage as a result of the actions or negligent inaction of another person, including State agencies. This qualifies for compensation people who are indirectly adversely affected by a project or Government work.

There is a need for more tertiary education in land and property valuation and land use planning. Existing university courses on these topics need to be improved and supplemented, preferably by content sourced from developed countries with well regulated and developed land and property markets.

Recommendations and Follow-Up Actions

Much work still needs to be done to make the implementation of the Decree and related legislation consistent and fair and the initiative gained under the new Decrees to continue. As evinced from the feedback from the capacity building presentation made about Land Administration by MoNRE, this was the subject of the greatest interest in all the venues and generally regarded as the single most comprehensively useful land information, management, planning and valuation tool ever encountered. Notably, land and property valuation and compensation education need to be provided in the national and provincial levels, at both senior and working levels, and is therefore strongly recommended to be the subject of further assistance from the ADB. Specialized land and property valuation courses should also be provided both as part of more general capacity building programs and as additional 2-3 day courses or workshops with practical valuation exercises in the field.

The goodwill and momentum built up by this capacity building program should not be lost. Further programs of similar nature are definitely needed in probably all parts of Viet Nam. The MoF is firmly of the view that ADB, having provided such successful support to date should not abandon the field of development of the capacity of officials to properly and expeditiously prepare and implement satisfactory plans for compensation, resettlement and rehabilitation but should capitalize on the benefits of this TA and follow up with one or more successive TAs to extend the required capacity building.

Support for improved tertiary education in land and property valuation in particular should be supplied by either a multilateral or a suitable bilateral donor by way of improvements to courses in Vietnamese universities and some study tours of appropriate university staff to tertiary institutions in suitable developed countries.

In order to maintain the momentum established so far, at least one further TA in the 2007-2008 financial year should be mounted. This could concentrate on one or two of the most critical areas such as Hanoi and Son La and the Vu Gia-Tu Bon River Basin (where ADB is now assisting the Government to prepare hydropower projects).

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