



**ACCESS TO JUSTICE IN VIETNAM – FROM
A PEOPLE’S PERSPECTIVE**

UPDATED SURVEY IN 2010

OFFICIAL REPORT

EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

The updated 2010 survey on “Access to justice from a people’s perspective” is an UNDP funded project which has been carried out in two stages:

- *The first stage:* surveying via interviewing people in different localities, processing data and completing the preliminary report from May, 2010 to August, 2010.
- *The second stage:* holding seminars in different provinces where the survey was conducted regarding survey results and drafting the official report from December, 2010 to September, 2011.

Survey methodology

The 2010 survey is conducted to update information, data and findings from 2003 survey, through which to evaluate the changes in people’s awareness and perspectives about issues in relation to conditions, means, and their capacity to access to justice in the past seven years. Therefore, the Research Team, in principle, still keeps and continues developing the survey and research methodologies carried out in 2003, especially those relating to regions (or geographical areas) being surveyed, questionnaires, subjects of interview and interview process.

The survey was conducted in six provinces and cities including Ha Noi, Thai Binh, Hoa Binh, Dak Lak, HCMC and Can Tho. The geographical allocation of 1,000 questionnaires still remained as that in 2003 on the basis of taking population density into account but paying attention to and setting priority for regions with lower development as set forth in the survey objectives.

When selecting social groups for interviews, on one hand, the Research Team referred to the natural population structure to achieve the representative nature, on the other hand, the Team applied some compulsory criteria to allocate exactly the quantity of interviewees set forth (“target group”) according to occupation, sex, ethnicity, “vulnerability”, and also to gather required information about age, income and education level as grounds for sociological analysis.

The Research Team contacted with local authorities in rural and mountainous areas to inform about the survey and request for support, if necessary, so that the meetings with people in villages, hamlets for interview would be favourable. Exchanging sessions between surveyors and interviewees, however, went on independently and privately without any witness or supervision of local authorities. Particularly in Ha Noi and Ho Chi Minh City, the Research Team, without asking for support by local authorities, could directly meet interviewees incidentally or by self-arrangement.

Upon completion of the survey, the Research Team already held 12 seminars in 6 surveyed provinces with two different groups, including representatives of interviewed people and representatives of relevant state agencies in order to have “qualitative” assessment of the survey results. Participants in such seminars provided the Project with helpful explanations about the reasons for people’s assessments given in the interviews, and also reflected further the real situation of their localities via specific and vivid stories about access to justice.

Assessment of people regarding access to laws and legal agencies

Access to laws

Questions were set forth in relation to the participation of people into the draft of legal documents, the access to legal information and their awareness of specific legal documents.

Being asked about the fact that whether they had ever commented into any draft legal documents or not (regardless they were of central or local level), 16.4% of the interviewed persons answered that they had ever done that; in 2003, such rate was 17.7%. With respect to the sources for searching legal information, the first option of the respondents was “mass media” and followed by “internet”. In 2003, “mass media” also ranked the first, while “internet” ranked the third after “friends/neighbour”. Regarding their awareness of legal documents, 51.5% of the participants in interviews said that they had ever read or used a legal normative document, which was not much improved compared to the rate of 45% of 2003 survey. Among those who had ever read legal documents, only 45.7% found that such laws and provisions “very easy to understand”, “easy to understand” or “understandable”. In 2003, the corresponding rate was 44.5%.

Assessment of access to law protection agencies

People’s Courts

In 2003 survey, up to 28.9% of the respondents did not know anything about the court, except its name. This rate reduced to 17.7% in 2010 survey, which showed a significant improvement.

As in 2003 survey, people were also asked to give their assessment of courts’ operations. Based on the survey results, there was a positive change in the general perception of people regarding adjudication quality of courts between the two years of 2003 and 2010. About the question about their assessment of courts’ improvements in the past five years, 50.8% of the interviewees responded that they found positive change.

People's Procuracies

The Procuracy plays a very important role in the protection of people's rights when they are being violated by judicial institutions, from investigation and prosecution stage to adjudication and judgment enforcement stage.

The percentage of interviewees who did not know about the Procuracy was 47.9%, which was nearly similar to 2003 survey with 46.2%. The rate of interviewed persons believing that Procuracy officials were just and right when exercising their tasks was not high with 46.0%, but it was much higher than the rate of 27.9% in 2003 survey. However, when evaluating changes in operations of the Procuracy in the past five years, only 36.7% of the persons being asked said that they were "positive changes".

Police agencies

The police agency has the important role and close relation to the daily life of people, from registration of family record in residential areas to settlement of violence as well as traffic-related matters.

Responses of people to the question "Do you think that Police Agencies always obey the laws when executing their tasks?", the "Yes" answer accounted for 81%, which increased compared to 69.8 % of 2003 survey. Among the total interviewed persons, the rate of those reckoning that police agencies changed positively within recent five years was rather high, up to 63.7%.

Judgment Enforcement Agencies

Organisationally, it is distinguished between the JEA of criminal judgments under the Ministry of Public Security and the JEA of civil judgments belonging to the system of judicial agencies at district and provincial levels with the General Department of Civil Judgment Enforcement under the Ministry of Justice.

In 2003 survey, only 41.8% of the respondents knew about the JEA. The rate increased to 64.4% in 2010. Regarding the general question of the Research Team for interviewees that "Do you think JEAs always execute judgments upon request seriously and legally?"; in 2003 survey, just 13.4% of the respondents said "Yes", and such percentage increased to 30.6% in 2010 survey. When being asked about the change of JEA in five recent years, 37.0% confirmed or believed that there was a "positive change".

People's Committee

People's Committee is the local authority, organised in three levels, namely commune, district and province. According to reflection of representatives of PCs at seminars after the

survey, PCs at commune and ward level were the busiest agencies handling specific requirements of people.

According to 2003 survey, only 7.1% of the interviewed was not clearly aware of PCs; such rate remained nearly unchanged in 2010 survey, equivalent to 7.3%. In 2003, only 35.5% of the asked persons said that they were aware of PCs “well” or “quite well”, and PCs ensured people’s rights and interests. The situation was improved in 2010 with the rate of 50.3%. Up to 74.6% of the interviewed persons said that PCs “changed positively” in the past five years.

State Inspectorate

Under the Law on Inspection 2004 (amended in November 2010), State Inspectorate includes Administrative Inspection (which is set up in all state agencies such as ministries and PCs) and Specialty Inspection (which is set up in some agencies with particular functions such as environment, land, construction, education, health care management agencies, and so on).

With the question about their awareness of such body at different levels, up to 36.4% of the respondents said that they were not aware of SI. However, the figure revealed an improvement compared to that of 2003 survey, where the percentage of “do not know” answers was 54%. Regarding the role of SI in protection of people’s rights, in 2003 survey, only 23.7% of the asked persons believed that SI played “important” or “very important” role, while in 2010 survey, such rate rose up to 48.5%. The interviewed who said that SI “changed positively” accounted for 38.9%.

Grass-roots Conciliation groups

A grass-root conciliation group is established at grass-root level (in villages of rural and mountainous areas and urban residence groups in urban areas) on the basis of the Ordinance on Grass-root conciliation 1988 to settle “small disputes” of people with their “neighbours” or within their community.

The figures from 2003 survey showed that up to 70.2% of the interviewees knew very well about GCG. The survey results of 2010 were even more encouraging with 89.5% of the respondents expressing that they knew quite well about GCG and conciliators. Regarding the quality and effectiveness of GCGs in handling disputes, 55% of the asked persons had positive answers, which significantly increased in comparison to that of 2003 survey with 22.6%. There were 57.9% of the interviewees commenting that GCGs “changed positively” in the past five years.

Hamlet leaders or village patriarchs

Pursuant to legal documents, under ward and communal PCs there are hamlet with leaders who are elected directly by people, approved and recognised by the President of the relevant PC. Hamlet leaders do not have administrative functions as local authorities, but play supporting role for PCs to perform the state governance on their residential areas. In mountainous areas, in ethnic minority communities, in addition to hamlet leaders, there are also patriarchs of mountainous villages, directly elected by local people to decide on various matters of the villages including settlement of disputes on basis of customary laws, and their decisions will be executed voluntarily by the parties.

In 2003 survey, 62.3% of the interviewed persons evaluated the role of hamlet leaders and village patriarchs as “important” or “very important”; such rate increased up to 76.4% in 2010 survey. Particularly in rural areas, up to 87.2% of the asked persons shared the same evaluation, while such rate in mountainous areas was even higher, up to 92.0%.

Socio-political organisations

A specific characteristic of Vietnamese political system is the existence of organisations namely “socio-political organisations”. They are supported by the State; however, they do not belong to the government system but they are part of the political system under the leadership of Vietnamese Communist Party. The key organisations including Farmers Association, Women’s Union, Youth Union and Veterans Association are all converged in a mother organisation so-called Vietnam Fatherland Front, which plays the role of both supporting and supervising operation of governmental agencies in term of political aspects. In addition, within a certain extent, these organisations may intervene to protect rights and interests of residential groups that they represent when there is any conflict against authorities, or play the role of consultant or conciliator to settle the relationship between authorities and people toward the higher benefit of comprehensive political stability in the localities.

Generally, the interviewed persons basically assessed the role of these organisations higher compared to the assessment of 2003 Survey. However, only 1.4% to 2.5 % of the interviewees said that they had ever used any of the abovementioned organisations for dispute settlement, in which Women’s Union reached the highest rate of use for this purpose.

Lawyers

The number of lawyers increasing across time indicates that the awareness of the society about their services has been broadened. In 2003 survey, if up to 39.3% of the asked persons did not know about lawyers’ services, the figure reduced to 24.7% in 2010. When being asked about the role of lawyers in dispute settlement, 75.8% of the respondents said

that lawyers played an “important” or “very important” role. This rate was much higher than that in 2003 survey, which was only 44.2%.

61% of the interviewees believed that courts considered opinions of lawyers carefully when issuing judgments. The corresponding rate in 2003 survey was 37.1%. However, only 46% of those who had ever employed lawyers’ services agreed with this assessment.

35.4% of the interviewed persons said that lawyers’ services were “very costly” or “costly”. This answer was confirmed with a higher rate of 44% in the group of those who had ever employed lawyers’ services. The majority of interviewees in 2010 survey believed that lawyers’ services had improved in five recent years.

Legal Assistance Centers

The Department of Legal Aid under the Ministry of Justice established in 1997 is the junction to manage legal assistance activities at central level. Subjects entitled to legal assistance include the poor, people credited to the revolution, homeless elderly and children, the handicapped and ethnic minorities in exceptionally difficult areas.

According to the survey results, 63.1% of interviewees did not know about legal assistance activities. In 2003, this rate was 65%. A quite high rate of 50.6% of the asked persons could not give any assessment of legal assistance activities’ influence, at the same time only 34.2% of the respondents thought that legal assistance centers were actually helpful for supporting people in protecting their rights. However, those who ever had experience with such centers gave much better appreciation of their helpful role with the rate of 73.2%.

Press and means of mass media

Being asked “How do you assess the role of the press and mass media in the protection of people’s rights?”, 91.3% of the total respondents chose “important” or “very important”. That rate in 2003 survey was lower with 79.3%.

In relation to the impact of press and mass media on the settlement of disputes and/or complaints of people, in 2003 survey if 64% of the asked people believed that press and mass media may be influential “well” or “quite well”, such rate increased to 82.9% in 2010 survey. Notably, up to 88.6% of the respondents commented that press and mass media “changed positively” in the past five years, which is the highest rate of positive assessment compared to that of other institutions.

Civil society organisations

The assessment of the role of socio-professional associations belonging to civil society is an issue newly introduced in 2010 survey in order to have comparison with socio-political organisations.

According to the survey results, 31.7% of the interviewees were members of a certain socio-professional association. 45.3% of participants in the survey had positive evaluation on the role of associations. 33.9% of the asked persons admitted that associations were “very influential” or “influential” in handling complaints or disputes.

People’s assessment of legal reforms

The awareness of “the on-going legal reform” also includes people’s acquisition of information by any way about legal reform programs, including new enactment of change of law to serve the objective of developing the market economy and constructing the rule-of-law state. Accordingly, 32.5% of respondents did not know about this; this rate in 2003 survey was 28%.

While only 54% of the interviewees in 2003 survey said that legal reform was important to their life, such proportion increased remarkably in 2010 survey with 70.9%. With respect to different aspects of legal reform such as law making, legal information education and dissemination, administrative reform, judicial reform and judgment enforcement reform, from 33.1% to 56.1% of the interviewees admitted that reform in all of those aspects brought about “an improvement” or “a significant improvement”; in 2003, such rates ranged from 22.7% to 40.4%.

Particular psychological and socio-cultural characteristics influencing the access to justice

Participants in the survey were requested to select one of the two statements which best described the available relationship between civil servants and people upon their opinions, including (a) “civil servants are people’s servants” or (b) “civil servants are people’s supervisor and manager”. 52.5% of the respondents selected Option (a) and the remaining (47.5%) selected Option (b). This result changed significantly in comparison to that of 2003 survey, where only 32.5% of the asked persons selected option (a) and 67.5% selected option (b).

“How do people behave if their legitimate rights are violated by civil servants or State agencies?” According to results of 2010 survey, 61% of people were ready to complaint or sue civil servants or state agencies to the court. In 2003, only 45% of people believed that they would do so. Similarly to 2003 survey, in the circumstance of disputes, the first option of the interviewees was to “request the PC or communal/ward police to help”. With

respect to farmers, their priority selection was still to “Ask hamlet leaders or GCGs to help”.

Survey on people’s will and determination “to go to the end” to seek for justice when facing up with disputes, up to 90.4% of the asked persons were prepared to appeal against a wrongful and unjust judgment, of which 86.7% wanted to continue appealing to the Supreme People’s Court in case where the appellate court still issued a wrongful and unjust judgment/decision.

A fair and rule-of-law based society needs to be built with the participation of all people. The Research Team asked: “Supposing you witnessed a crime commission by chance, are you ready to denounce it to the authorities?”, in 2003, the percentage of respondents confirming “certainly” was 48.1%; and this rate rose to 60% in 2010 survey.

Regarding the execution of the Law on prevention and fight against family violence, according to the survey results, 53% of the interviewees answered that they were prepared to notify the authorities about domestic violence acts, which increased compared to 22.6% in 2003 survey.

Access to justice of the vulnerable groups

In 2006, two important laws were enacted, namely Law on Gender Equality and Law on HIV/AIDS Prevention and Control. In June 2010, Law on the Handicapped was also promulgated. With regard to the poor and ethnic minority groups for many passing years, the Government has carried out various supporting policies.

However, regarding the general question that “In your opinion, whether or not the vulnerable groups are subject to unfavourable treatment when requesting legal institutions to settle their complaints or disputes?”, a considerable rate (from 31% to 82%) of the interviewees said “Yes”, in spite of different levels.

According to assessment of people participating in the survey, it seemed that there was no positive change within seven passing years in this aspect, and the rate of assessment that the vulnerable groups faced much unfavourable conditions was even higher. The most affected group was the poor, followed by the handicapped (ranking the second), ethnic minorities (the third), HIV/AIDS infected persons (the forth) and the last was women. In 2003 survey, if ethnic minorities ranked the second among those who were subject to disadvantages, such group shifted to third rank in 2010 survey.

Conclusions

Generally, people’s awareness about legal institutions so far has been improved and people’s assessment of access to justice has changed significantly toward more positive

direction since 2003. People have recognised the improvement of judicial institutions; however, such improvements seem to be far behind the administrative reform.

The vulnerable groups still have to face up with unfavourable conditions in lawsuits at law protection agencies. No improvement has been seen since 2003. Lawyers' services and legal assistance activities have not been improved as expected toward serving the need of such group.

People seem to be prepared to fight for justice and build a just and fair society. However, it is required that there are more comprehensive measures from the State side to support and protect them in the event that they denounce crimes or become witness at the hearings.

Press, mass media, and civil society organisations have been playing an increasing role in protecting people's rights and interests and assessment of people on the positive changes of such institutions in recent years reached the highest rate.

Compared to 2003, the percentage of people putting their confidence in laws as well as the current legal reform has increased remarkably, even though in fact information about the legal reform has not been better disseminated and propagated to them.