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Executive Summary

GRASSROOTS MEDIATION

EXPERIENCES FROM THE PROJECT IMPLEMENTATION AREAS OF THE JUSTICE INITIATIVES FACILITATION FUND (JIFF)

Hanoi, May 2020





Source: Quang Ninh Rural Development and Poverty Reduction Fund (RDPR)

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“Grassroots mediation has provided an opportunity for all of the people, including vulnerable groups, to have equal access to justice. Once properly and principally implemented, grassroots mediation will contribute to protecting the rights and interests of citizens, especially disadvantaged groups.

However, due to inadequate guidance and grassroots mediators’ unmet capacities, the mediators may have misapplied the principles or even applied grassroots mediation to some cases outside the scope of grassroots mediation, or may not have applied the regulations and provisions given by the laws; they just used their common sense/experience of their own and local community conventions to handle the disputes. As a result, disadvantages were sometimes inadvertently laid on the vulnerable groups.”

Centre for Indigenous Knowledge Research and Development (CIRD), an implementer of JIFF’s funded initiative in Quang Binh province

In Vietnam, mediation in a community has a long traditional history. It provides opportunities for disputing parties to negotiate on their own and agree to settle their disputes, to reconnect to each other and strengthen solidarity. Throughout the development of society, grassroots mediation (GM) continues to play a very important role in addressing problems, emerged disagreements/disputes or minor violations against the law in the community, in efforts to avoid litigations raised to state authorities or courts, and on the other hand contributing to protecting the rights and interests of the disadvantaged groups, particularly women in cases related to gender inequality and domestic violence.

In order to provide a legal framework for resolving local disputes/conflicts, the Law on Grassroots Mediation (GM) was passed by the National Assembly of the Socialist Republic of Vietnam in June 2013 and took effect from January 1, 2014. After five years of implementation, GM has achieved a handful of successes in the process of communication, dissemination of laws to residential areas, improvement of organization and implementation of GM. Thereby, a number of conflicts/disputes in the communities has been addressed, contributing to social security and stability, as well as protection of the citizen’s rights and interests. According to Report No. 265/BC-BTP of the Ministry of Justice, as of December 31, 2018, about 107,074 mediation teams had been established at village level with 650,366 mediation members. During the period of five years (2014-2018), GM teams all over the country had handled 759,118 cases, in which 611,817 were successfully mediated, accounting for 80.6% of total cases.

However, GM is still facing many difficulties and effective mediation is still lower than expected. Many cases in the project areas supported by the JIFF have been mediated, nevertheless the parties are still in the situation of being “harmonized outside but not in heart” and the disadvantaged groups, especially women, are still suffering from disadvantages, “being refrained themselves to gain peace”. In many families and communities, disagreements/disputes are still smouldering even after mediations.

To help identify existing shortcomings and barriers in the legal framework and implementation of the GM, the JIFF Secretariat in collaboration with Vietnam Judicial Support Association for the Poor (VIJUSAP) and 14 grantees of the JIFF’s first grant call have conducted this research. The research utilized practical experience policy analysis to identify problems and provide recommendations. We conducted a survey for quantitative data with 182

grassroots mediators and 18 local people in 12 communes of 06 districts in Hoa Binh, Hanoi, Quang Binh, and Dong Thap provinces, which are under JIFF's project sites. We also conducted 06 focused group discussions and 20 in-depth interviews with grassroots mediators and local people in six communes in the above provinces. The research team also looked into experience and implementing status of legal support activities from 14 grantees in JIFF's first grant call to provide our recommendations.

It is shown that all of the interviewees highly appreciated the importance of GM. The well-developed Law on Grassroots Mediation in 2013 of which implementation was guided by the Decree No. 15/ND-CP 2014 represent a great effort in improving the legal framework on GM in Vietnam. However, there are several specific provisions from the Law and Decree, which are still not relevant to reality, therefore it has not been able to achieve the expected effects in supporting grassroots mediators. Those limitations include:

- A "gap" between the nature of GM and the regulations/procedures in conducting GM provided by the Law and guiding documents. Grassroots mediation, in reality, should be performed in a natural and tactful manner, based on mutual understanding and law respect from the involved parties. However, the Law and guiding documents which regulate the procedures are sometimes too rigid, having led to the fact that many disputers neither wanted to inform their issues nor to have the disputes mediated.
- Although the provisions of mediation principles provided in the Law on Grassroots Mediation are right, they are so not easy to for mediators to understand and remember because in each principle includes too many points. As so, most grassroots mediators do not follow those principles when doing their mediation work.

- It is not easy to comprehend the scope of mediation. Decree 15 is concrete, but it refers to many provisions in the Criminal Code and the Criminal Procedure Code despite the fact that these Codes have been amended, supplemented and are now not exact as referenced. Almost grassroots mediators do not know about specific scopes of mediation, for example, in which situation they can mediate and which they cannot.
- The regulations on mediation minutes, financial support as per case, keeping logbook of case acceptance, and monitoring successfully mediated cases are still rigid and have not reflected the reality of GM activities. That led to the fact that mediators (i) have not been fully supported or received adequate allowance from successfully mediated cases, and (ii) have not effectively monitored and handled serious and complex cases where the parties have not fulfilled their commitments, putting the disadvantaged groups, especially women and children, at risk.



The implementation of the Law on Grassroots Mediation also has several limitations:

- The election process of mediation team under the current law is democratic in principle; but in fact, it has not been effectively applied. Local authorities have often rationalized voting procedures by adopting a list of mediators at the community meetings. In the field, less than half of the local interviewees answered that either they or their family voted for mediators.
- It is very useful that mediators proactively do their work when they know about or witness a dispute. However, grassroots mediators have encountered difficulties in the process of playing their role proactively.



Source: Trinh Thong Hai - Oxfam

The obstacles mainly come from within the family clan/kinship and the disputers.

- Due to lack of personnel and fund shortage, most mediators who have been appointed or elected in a token procedure are from mass organisations. There are frequent changes of mediators as these people are working on a term basis or they are rotated. The successors are often new to this kind of work and do not have enough knowledge and experience to conduct GM.
- Gender balance, diversity and democracy in the mediation team are not fully ensured. Members of a mediation team mainly are leaders or key members from the units under socio-political/mass organisations; and they usually are male. This imbalance has caused incomplete mediation of cases which are related to gender violence and domestic violence. The operation of mediation teams is often loose and fragmented, lacking discussions and experience exchange; and they only meet for a very short time when dealing directly with the dispute cases.
- In addition to the participation of GM teams at the village level, GM work is much related to the participation and guidance of commune officials. However, capacity of those commune-level officials is still limited; as they do not comprehend the importance and nature of GM nor the law regulations and provisions. This has resulted in low effectiveness and tokenism in grassroots mediation.
- Capacity building activities are often too short (about one day per training) and are not provided to all grassroots mediators. After trainings, grassroots mediators are still confused, do not comprehend the principles, scopes, process and skills to perform mediation.
- Training materials on legal knowledge and professional skills for mediators are too many, complex and include jargons, which is not suitable for the capacity of grassroots mediators.



Major barriers among the community and local people are:

- Applying traditional customs, practices, community conventions, and kinships in the locality in GM is very important. However, in some circumstances, those conventions may have gone against the law provisions, thus hindering law enforcement in localities.
- The fact that people are not aware, do not care about, or have limited knowledge about GM makes it difficult for mediation. The involved parties tend to avoid confrontations and are not willing to disclose their disagreements. Therefore, many disputes, when being recognised, often escalated beyond the scope of GM.

In the project areas supported by the JIFF, diverse social organisations have participated in collaboration with community based organisations; such as the legal support network in Le Thuy district, the family and law clubs in Minh Hoa district, Quang Binh province; the core community groups in Lac Son district, the inter-family groups in Mai Chau, Hoa Binh and so on. These networks have actively supported communications and law dissemination tailored to people's needs and become actors in mediation, preventing and resolving many conflicts and small disputes, contributing to protecting civil rights for disadvantaged groups in the community. Those experiences have also contributed positively to the work of GM in the locality and the process of improving the laws to be closer to reality.

Based on the experiences from numerous projects, the research team would like to propose recommendations to supplement the policies and to support GM in practice for it to become more effective, contributing to raising legal awareness of the people and building capacity building for grassroots mediators to protect civil rights, as follows:

- To review and adjust the cumbersome and complicated provisions in the law and guiding documents (for example, principles and scope of mediation,...) which discourage local people from having their cases mediated and render it incomprehensible for grassroots mediators to follow properly.
- To revise the provisions of the law on organizational structure which lead to tokenism in practices, to adjust appropriately the role of the Vietnamese Fatherland Front, socio-political/mass organizations and other social organizations in the process of establishing GM teams, in order to diversify its structure and encourage more stakeholders to participate in mediation.
- To modify and simplify the process (minutes of mediation, case acceptance registration, etc...) so as to make it more feasible in reality, easy for practices, assurance of incentives and financial support for mediators, and at the same time rendering it possible to monitor the result of serious cases after GM.
- To develop a simple set of guidelines and training materials as well as training methods for mediators that are relevant to their capacity. It is good to organize training courses at commune level.



Regarding the implementation of GM:

- To reorganize mediation work in the locality by strengthening democracy in setting up mediation teams, promoting women's participation in GM. Greater attention should be paid to supporting disadvantaged groups like the elderly, women and children for them to express their opinions in GM.



Source: Trinh Thong Hai - Oxfam

- To encourage inclusion of local people, community-based groups and social organizations to in mediation teams and make it possible for them to become the subject/actor of mediation. This can be done by (i) diversifying members of the mediation team; and (ii) diversifying the form and structure of the mediation team, actively bringing together community groups (for example, community-based family clubs, community-based legal support and legal advice network, etc.) to perform the mediation work or to be associated with the mediation group if these members are elected by the community and are capable of mediation, thereby supporting the protection of civil rights for those especially in remote and extremely difficult areas.
 - To promote activities of exchanges, sharing experiences among mediation teams on how to apply the laws into specific cases; to coordinate with stakeholders to share knowledge and necessary skills through reality cases.
 - To provide the grassroots mediators with trainings and coaching in various forms that are suitable with their level, especially in remote areas where the qualifications and capacities of mediation team members remain limited. During the training process, it is necessary to simplify materials to suit the level of mediators. The content of the training should be divided into two areas: (i) training and awareness raising for mediators about GM process and mediation skills; and (ii) improve legal knowledge relevant to the scope and field of mediation.
 - To diversify communication methods to disseminate legal policies that are close to reality and suitable to local people, particularly focusing on group activities and communication activities through the systems of social organisations and socio-political/mass organizations.
- The social organisations also need to actively participate in different ways to improve the quality of GM, to enable local people to access to justice, especially for disadvantaged groups in the society. They can contribute to diversifying the methodologies, such as (i) implementing diverse initiatives, organising process of mediation and conflict resolutions based on reality; (ii) improving mediators' capacities; (iii) raising awareness for local people and communities to help them live and work in accordance with the laws; (iv) networking for sharing experiences; and (v) supporting and contributing to the development or amendment of law policies.

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