



NATIONAL LEGISLATIVE DEVELOPMENT PROJECT

DỰ ÁN PHÁT TRIỂN LẬP PHÁP QUỐC GIA (NLD)

Summary of Phase 1 of the NLD tabled at the PSC meeting of the 27th of March 2015

Origins of the NLD Project

The NLD project is the fourth major legal-judicial reform project in Vietnam funded by the Government of Canada in recent years. The first, from 1996-2013, was the Policy Implementation Assistance Project (PIAP) which focused on supporting policies and reforms that promoted transparent and accountable governance in Vietnam. The PIAP project aimed to improve the capacities of key Vietnamese government bodies within the National Assembly to guide and enable Vietnam's ongoing socio-economic reform process particularly on policy-making and legislative issues. The project worked, in particular, with the Law Committee on legislative competences of the NA and with the Social Affairs Committee with respect to gender mainstreaming. The next key project, which ran from 2003-2008, was the Legal Reform Assistance Project (LERAP). The LERAP project was to assist the Government of Vietnam in reforming legal and governance systems by achieving greater efficiency, equity, coherence and transparency in the Vietnamese legal system. The project aimed to obtain greater coherence in the system of legal normative documents and harmonization of the legal system with international trade commitments. LERAP worked primarily with Vietnam's Ministry of Justice (MOJ) focused on the development of the legislative agenda for the purpose of accession to the World Trade Organization (WTO). The third project, the Judicial Education and Grassroots Engagement (JUDGE) Project supported the development of legal and judicial training programs and improved court administration processes. Both the PIAP and LERAP projects in particular, laid the foundation for a better understanding of the policy and law-making processes in Vietnam, but also highlighted some of the key issues and challenges in the policy and law-making sector of Vietnam.

The NLD Project was first conceived of and designed in November 2007, following submission of a proposal by the MOJ and Government of Vietnam on legislative development reform in January of that year. In particular, the MOJ requested support for building capacity to deal with the problems of quality and consistency in the law-making process. The MOJ submission coincided with Vietnam's accession to the WTO. WTO membership caused the government to put greater focus on the harmonization of its laws with Vietnam's international commitments and on strengthening its legal system to promote economic reforms and international economic integration. It also became apparent that Vietnam would be required to develop a significant number of new regulations in order to implement

the many laws that were adopted as required by Vietnam's membership in the WTO. Issues of conformity and capacity to ensure proper implementation, and particularly adequate and reliable enforcement of LNDs, quickly arose.

While Vietnam has made substantial progress in regulatory and legal reforms required to provide appropriate incentives for sustainable enterprise development and growth, the efficiency and effectiveness of the legal system remains a significant challenge. The large number of laws and regulations produced by central and local governments – often made in response to the economic reforms – do not ensure a coherent or harmonized legal system. Underlying this is the fundamental orientation of the centralized planning regime, which encourages a vast number of legal documents (laws, ordinances, decrees, etc.) to be issued by national and local governments in Vietnam. These are often developed with limited research, consultation, and analysis, leading to inconsistency, contradiction and ineffectiveness.

The Government of Vietnam acknowledges that sustaining equitable economic growth requires a transparent, clear, consistent and effective legal system. This is the essential foundation for stimulating entrepreneurship, enabling private sector innovation, supporting functioning financial and other markets, and encouraging socially and environmentally sustainable practices. Lack of legal clarity hampers effective planning and management of macro-economic and social policies and programs, which are critical to respond to the challenges of an economy in transition, as well as to navigate through the international economic downturn. Improving the transparency of the legal system also benefits the most vulnerable in society including women and ethnic minorities, as a more open and consistent process can better respond to the needs of individuals.

The NLD Project purpose

The NLD project was designed, in collaboration with the Vietnamese government, to address the issues of quality, consistency and transparency within the law-making process and to make legislation more enforceable and effective. In particular, the project examined four core components of the law-making process: (1) Planning; (2) Policy Development; (3) Legislative Drafting; and (4) Legal System Coherence (referred to in this report as the “pillars” of the law-making process). In recognition of the fundamental value of a transparent, consistent and effective legal system to sustainable economic development, the project was designed as follows:

- (i) **Project Goal** – to support more equitable economic growth through more transparent and accountable governance;
- (ii) **Project Purpose** – to support an integrated program of reform of the Vietnamese law-making process and improve the quality of economic legislation; and
- (iii) **Ultimate Outcome** – a strengthened, effective, transparent legal framework, reflecting the needs of Vietnamese citizens and supporting equitable economic growth.

The NLD project is being implemented by a Canadian Executing Agency (CEA) composed of the Canadian Bar Association (CBA), the Ministry of the Attorney General for Ontario (MAG) and Stikeman Elliot LLP, in cooperation with the NLD Project Partners: Ministry of Justice (lead partner); the Law Committee of the National Assembly (LC); the Office of Government (OOG); Ministry of Finance (MOF); Ministry of Agriculture and Rural Development (MARD); and, the Ministry of Industry and Trade (MOIT).

More so than the previous Canadian projects, the NLD Project is deliberately taking a broader systemic approach by examining the entire law-making process. It is set to provide the required cross technical assistance of the various institutions that come into play and for the components. NLD is attempting to address the transparency, quality and effectiveness of enacted law and the processes and procedures of law-making, but also the state machinery and institutions that produce that legislation and implementing documents. It is an ambitious project and notwithstanding the willingness and commitment of Vietnam to undertake legal system reforms, the constraints and limits inherent in the legal culture must be recognized. These are reforms that will take some time, and more importantly, if they are to be sustained long after the project has concluded, these changes must occur at the institutional level and across government.

When the NLD project officially commenced in 2013 in Vietnam, there were existing reports about various aspects of the law-making system, but no comprehensive studies about the process as a whole. There was no systemic analysis of the challenges from the donor side, as most reports concentrated on specific sectors or particular issues. There was limited research available and although a number of key issues had been acknowledged, many of them had not been validated and proposed solutions did not take into account a systemic perspective, so many challenges and questions remained unresolved. The NLD project identified several fundamental issues to be considered and examined within the four pillars of the law-making process. The project was designed in such a way that the Phase 1 of the project would enable the NLD to undertake a thorough review of keys issues related to law-making in Vietnam in order to set what would constitute the Phase 2 of the project by defining carefully and precisely what needed to be addressed in legislative reform both to support the on-going effort and reforms but also to stimulate and induce best practices that could lead to durable change. During the first phase of the project, the CEA was both expected to focus its work on developing the capacities of the MOJ, assisting it in developing its strategic planning and management capacities (including planning practices, improved decision-making methods, and data collection and management) and developing baseline information on the extent of specific problems in the lawmaking process, this is described as the CEA Assessment Report (Assessment). The NLD was confronted with some of the following questions that directly related to the core four components and essential aspects of law-making.

Planning

A key question for the project was the degree to which the government of Vietnam utilizes strategic planning in the identification of priorities and the development of the legislative agenda. For example, whether the rationale for proposed legislation is articulated and aligned with government priorities; whether sufficient time and resources are allocated to

development of policy and law; whether policy changes are monitored, measured and reported; and whether enacted laws are feasible and practical and adequately address their stated objectives.

Policy Development

It was understood that Vietnam did not have a formal policy development phase apart from the law drafting process, but a key question for the project was the degree to which Vietnam nevertheless conducted policy analyses in the development of law. For example, whether there is research or analysis to identify the problem to be addressed and a range of options developed, including implementation options; whether options are informed by public consultation, utilizing a range of methods; whether policy development is transparent, including the degree to which research or other background documents are made available to inform the public or the National Assembly; and whether implementation mechanisms and resources are considered during policy formulation and performance indicators developed to measure the impact of the proposed legislation.

Legislative Drafting

There is a long-standing regulated process for drafting legislation, so some of the key questions for the project included the following: whether there is a professional corps of drafters and the skill and capacity of drafters generally; whether there are standardised drafting techniques, language or interpretation rules; the level of coordination between different sectors and substantive areas in the drafting process and whether roles and responsibilities are clearly assigned; and the general quality of drafts produced.

Legal System Coherence

The issues considered under this pillar have to do with the extent to which the laws of Vietnam can be said to form a coherent system or body of law. For example, whether the inter-relationship and hierarchy among laws is clearly defined; whether there are rules governing delegated power and the extent to which subordinate legislation is *ultra vires* the enabling legislation, the Constitution or the legal framework; whether there are established interpretation rules or a mechanism for interpretation; whether there is adequate capacity and tools for officials to exercise quality control over and NA deputies to scrutinize draft legislation; and whether the laws are implementable, accessible and enforceable.

The lack of consistency and effectiveness in the legal system is one of the main problems to be addressed by Vietnam's current legal reform program. Inconsistency is found between laws and regulations issued by different agencies and by different levels of government, making interpretation, implementation, and enforcement difficult and sometimes impossible. Improvements are needed throughout the legislative development process, to ensure that good policy and analysis underlie proposed legislation; to introduce greater transparency and consultation in the lawmaking process; and ultimately to promote the passage of higher quality laws. Some of the core issues to address and induce transparency, efficiency and coherence of LNDs are closely related to needed improvement and improve coordination of

work and various agencies when the engage examination, review, systematization, consolidation and codification processes during law making and after adoption.

CEA Assessment

Objectives and Methodology

As part of the initial activities of the NLD Project, the CEA conducted this assessment of Vietnam's current law-making process, the Assessment. The objectives of the Assessment were:

- (i) To ensure that the CEA and the NLD Project team have a thorough understanding of the law-making process, including:
 - a. How the process should work as prescribed by the existing legal framework and how it actually works in practice;
 - b. The roles played by the MOJ and other government bodies; and
 - c. The challenges that need to be addressed within the law-making process;
- (ii) To develop a better understanding of the capacity of the NLD Project Partners to fulfill their roles in the law-making process; and
- (iii) To provide a strong foundation for the development of a longer term plan for the NLD Project to address the challenges within the Vietnamese law-making process.

The Assessment was carried out within the context of the four pillars [ie. Planning; Policy Development; Legislative Drafting; and Legal System Coherence] and covers the full legislative development process, from the planning stage through to implementation and enforcement, including a review of how legislation is identified, drafted, discussed, adopted, published, communicated, evaluated and enforced.

In carrying out the Assessment, the NLD Project was able to build a significant document library and compendium of information related to law-making in Vietnam and plans to share this material through a fully searchable and accessible website.

When the project commenced in Vietnam, the government had already identified as a key initiative the need for the consolidation of the 2004 and 2008 Laws into a single new law on the promulgation of legal normative documents (now known as the Law on Promulgation of Legal Normative Documents or LPLD). The proposal was listed in the legislative agenda; however, its content was yet to be defined. This provided a valuable opportunity for the NLD Project to work closely with the Drafting Committee and the Editorial Board and support the MOJ in the design and drafting of the draft LPLD.

The direct involvement of the NLD Project in developing the draft LPLD has been a significant benefit not only in preparing the Assessment, but also in creating a means to deliver the Project. The draft law now includes elements from all four pillars of the law-making process and clearly aligns with some with the objectives and outcomes of the NLD Project. However,

the adoption of the draft law in its current form remains a challenge as some parts need political decisions and functional that are not easy to finalise in the current context. Support to the government for the development of the detailing documents and implementation of the new law will be a key initiative for the Project over the coming years. This will nourish the activities set out in the Work Breakdown Structure that can be found in annex 1. Some activities focused on supporting development of the LPLD as such some activities were directly related to the Assessment. NLD considered all of Phase 1 an information gathering process with the intention of incorporating our learning into the assessment and the planning for Phase 2.

Activities

Using the four pillars as the framework for analysis, the CEA assessment was conducted through a variety of different activities in three broad areas:

- a) Document Review – a comprehensive review of existing reports, assessments, tools, past projects, donor initiatives, analyses, academic articles, etc. related to the process for legislative development in Vietnam as well as all relevant LNDs;
- b) Comparative Analysis – comparison of the current process with international and regional principles, standards and best practices, including a comparison with the Canadian and other foreign models; followed by identifying and implementing strategies for gathering required information on the gaps (additional research, surveys, questionnaires, key informant interviews, etc.); and
- c) Capacity and Skills Analysis - an assessment of the capacity and skills (i.e. training provided, skill level relative to international standards based on identified core competencies for each area) of the key actors in the law-making process in Vietnam (both institutional and individual) conducted through observation, interviews, document reviews and specialized skills assessments.

A brief description of some of the critical CEA assessment activities is set out below. A complete list of activities is attached in Table 1 for activities that directly related to research link to the Assessment and Table 2 report for activities directly link to the making of the LPLD.

Activities that helped to set in place a better understanding of internal practice and needs for Vietnam’s legislative making reform as The NLD project commissioned or conducted a number of studies, surveys and reports to support the CEA assessment during Phase 1:

Legal Information Management System (LIMS)

To meet the first objective of the CEA Assessment – ensuring a thorough understanding of the law-making process – the CEA agreed to support the development of a basic IT system, the Legal information Monitoring System (LIMS) to monitor the progress of the drafting of laws on the legislative agenda and the development and adoption of subordinate legislation. By

working with MOJ directly, the CEA had access to critical information about the process including, the parties involved in each step of the drafting process, key decision points and their impacts on the legislation, areas of the process generating the most delays, the kinds of problems that arise during drafting and how they are resolved, and how different actors in the process influence and impact the draft law. Importantly, in reviewing the comparison issues and developing a potential model IT system for law drafting within ministries and agencies, the CEA was able to map not only the legislated procedures for law-making, but also the law-making process as it occurs in practice within the Ministries as they engage in actual development of legislation.

Canadian Study Mission on the Law-Making Process

A delegation led by Vice-Minister Dinh Trung Tung of the MOJ and including legal experts from the MOJ, NA and OOG visited Canada in September/October 2013. The purpose of the mission was to learn how the Canadian legislative development process works in practice, from the initial planning and policy development stages, through approval of Cabinet submissions and the legislative drafting stage to passage by legislature.

The delegation members reported being particularly impressed by the centralized legislative drafting service provided by the Department of Justice at the federal level and the Ministry of the Attorney General at the provincial level. They also were impressed by the extensive policy development work done for new laws and regulation, particularly the diversified and tailor made regulatory impact assessment processes and the opportunity for non-governmental organizations to consult with the government on draft laws. The Ministry of Justice delegates commented that they would apply some of what they had learned to the development of the new consolidated LPLD and all of the delegates indicated that they would attempt to apply some of the policy development approaches discussed to their legislative development work.

Workshop on Current Legislative Process and Directions for Improvement of the Law on Laws

A two-day workshop was held in Hanoi in November 2013, with participants from key central ministries and agencies and nine provinces. The purpose of the workshop was to provide an opportunity for key members of the Drafting Committee of the new law to engage in a consultative forum with government officials directly engaged in the legislative process at the central and provincial levels. The first study tour report to Canada and its findings were presented to the participants, who were asked to comment on the best practices to be imbedded in the future revised law.

Canadian Study Mission on Policy Development and Legislative Drafting

A second study mission to Canada took place in March 2014. The delegation consisted of senior officials and legal experts from the Supreme People's Court, Ministry of Justice, Ministry of Finance and Ministry of Agriculture and Rural Development. Most of the delegation members were also members of the Editing Board for the new law. The objective of the study mission was to provide an opportunity for a more in depth review of policy

development issues and to examine how policy is turned into legislation through various tools and instruments

The delegation members were particularly impressed by the detailed and distinctive policy development phase that precedes the commencement of the drafting of a law. They also reported being particularly impressed with the regulatory impact assessment process and the clear rules related to delegation of law making authority. Gender mainstreaming into legislation was also examined extensively, in particular tools and instruments for policy makers and legislative drafters.

MOJ survey to assess the implementation of the 2004 and 2008 Laws (Depocen Report)

In accordance with its mandate to develop the draft LPLD, the MOJ planned to conduct a survey on the implementation of the 2004 and 2008 Laws. After consulting the NLD Project about how it might best support the survey, the MOJ contracted a consulting firm to assist with its design and implementation. The NLD Project worked closely with the MOJ to procure and select a consulting firm, in accordance with Vietnamese and DFATD procurement policies. The Development Policies Research Center (Depocen) was selected to implement the survey in February 2014. The objectives of the survey were:

- (i) to assess the impact of the 2004 and 2008 Laws and their guiding documents on the development, completion and implementation of laws in Vietnam;
- (ii) to assess the impact of the two laws the on socio-economic development of the country and the implementation of international treaties;
- (iii) to assess the drafting and promulgation process for LNDs; and
- (iv) to analyze the weaknesses and obstacles in the current legal framework, including the reasons for the identified weaknesses and obstacles.

The resulting report (the Depocen report) also had a significant influence on the drafting of the LPLD. The GALD, Editing Board and Drafting Committee used it extensively for supporting decisions as evidence base to the type and scope of reforms to include in the draft law and the development of provisions to remedy some of the shortcomings identified. The Minister of Justice requested that the Depocen report be included in the dossier that accompanied the draft LPLD when it was tabled before the NA as it provides evidence-based research to support the choices made in the law. The detailed dossier was forwarded to all NA members with the support of the NLD Project.

The Depocen report validated many of the findings and observations of the CEA and references to the Depocen survey are made throughout this report.

A Study on the Present State of Policy Analysis in the Law-Making Process in Vietnam, Institute of Legal Science, MOJ (ILS Report)

To assist the assessment, the ILS was retained to conduct research and evaluate policy and consultation capacity in the development of law. The ILS selected five LNDs to comprehensively evaluate.

The general objective of the research was to collect and provide practical evidence on how the policy development was conducted for the five selected LNDS in order to identify the shortcomings, gaps and challenges of the policy development process and to propose amendments to the new draft LPLD to improve the quality of policy analysis.

This study was conducted from November, 2013 to September, 2014 with the participation of several specialists working in and out of the Ministry of Justice. Main activities carried out included: collecting documents, reproducing documents and materials of the selected laws, conducting in-depth reviews and consultations with experts and members of the drafting committees and editing teams. The analysis conducted permitted to have a clear view of the strength and weaknesses on the policy making process in Vietnam during the drafting of key legislation, it also informed the Project on the capacity and skills of the policy makers and legislative drafters.

Review of the 2013 Constitution and its Impact on the Law-Making Process

Professor Vu Cong Giao of the Institute of Policy and Law and Dr. Dang Minh Tuan of the Faculty of Law, Hanoi National University, were hired to prepare a report analyzing the recent amendments to the Constitution and how they will impact the legislative development process in Vietnam, as well as the responsibilities of the key government entities involved in the process. This work is particularly important as the amendments to the Constitution included an emphasis on the separation of the legislative, executive and judicial powers in Vietnam. Many laws related to the roles and responsibilities of different government organizations will have to be revised in the wake of these amendments. However, there is no clear consensus among academics, government officials and legal experts on their real future impact. Clarification of the role of the NLD Partners in the legislative development process will be important for understanding how the new LPLD will be implemented. The review also highlighted the need for building common standards and terminology for accompanying the drafting or review of over 89 laws that are expected to be affected by the Constitutional reform of 2013.

Review of Consultative Processes in the Law-Making Process

Four consultants from the Institute on Policy, Law and Development (PLD) headed by Dr. Hoang Ngoc Giao were retained to prepare a report on the current practices used for public consultation throughout the different phases of the legislative development process. The report identified the key challenges and concerns related to these phases and makes recommendations for how to improve the scope and quality of consultative processes and public consultation in Vietnam. The final report is expected in January 2015. Key findings illustrate the need for a pluralistic approach to public consultation and the need for a well targeted consultation of key stakeholders who will be impacted or affected by LNDs. The need to build capacity of the State to engage with stakeholders, using proper methodology and to report back in a transparent manner has also emerged as an important issue to examine and be addressed in the future LPLD.

Capacity and Skills Assessment of Policy Makers and Legislative Drafters

NLD Project experts prepared an assessment tool for use in conducting a series of interviews to assess the capacity and skill level of policy makers and legislative drafters in NLD Partners. The interviews also documented any relevant training that Vietnamese officials have and what tools are available to them in the course of their work.

The assessment was conducted in the last two weeks of September 2014, using a Rapid Assessment Process (RAP). The RAP approach used intensive team interaction in both the collection and analysis of data to quickly develop a preliminary understanding of policy development capacity and skills. The NLD Project experts met with policy makers and legislative drafters from the Ministry of Justice, MOF, MOIT and MARD. Those interviewed were identified based on a set of criteria that would enable the NLD Project team to meet with key experts in policy and legislative drafting from each NLD Partner. The results of the interviews are highlighted in several chapters of this report and inform recommendations regarding the development of tools and capacity to improve policy-making and drafting in Vietnam.

Activities that supported Vietnamese institutions to review and develop the draft LPLD:

Workshop on Definition of LNDs

One of the key issues that emerged as needing further research, analysis, and discussion is how the term “legal normative document” should be defined in the new law. A workshop on the Definition of LNDs was held in March 2014 in Hanoi with participants from the MOJ, provincial legal departments, the Ministry of Planning and Investment (MPI), Ministry of Finance (MOF) and Ministry of Industry and Trade (MOIT). The workshop examined the definitions of “legal norm” and “legal normative document” and explored comparative models in Japan and Canada.

Workshop on Delegation of Law Making Powers

Another key issue that emerged in discussions regarding the development of the LPLD relates to the appropriate scope of delegation of law-making authority to different government entities and levels of government. Accordingly, at the request of MOJ and in alignment with building the capacity of MOJ and the GOV to strengthen legislative planning processes as a whole, a workshop on the delegation of law-making powers was held in March 2014 in Hanoi. Participants included legal experts from the MOJ, MPI, Ministry of Foreign Affairs and provincial legal departments. The workshop examined the evolution of law making powers in Vietnam under earlier versions of the Constitution and the impact of the recent constitutional amendments. Comparative approaches from Germany, Japan, Canada and the U.S. were also explored.

Support for Drafting the New Consolidated Law on Laws and Mentoring of Drafters

One of the most significant activities undertaken during the Assessment period was the direct support provided in the design and drafting of the new law.

On March 18, 2014, a few days after the second study mission to Canada, MOJ submitted a “Report on Major Directions on Developing the Law on Promulgation of Legal Normative Documents” (now the LPLD) to the government. The report set out the following recommendations related to the new law:

- the scope of the new law should be broader than the two current laws to comply with the revisions to the Constitution in 2013 and to address the challenges identified with the current laws;
- The terms “legal norms” and “legal normative documents” should be defined in the new law in order to differentiate between documents containing legal norms that are to be subject to the new law and those that are not;
- The issues to be governed by laws passed by the NA and those that the NA can delegate to other bodies should be defined;
- The regulatory making power of the government and local authorities should be clarified;
- The types of LNDs and the number of bodies which have the authority to issue them should be reduced;
- Responsibilities related to policy development and analysis prior to drafting of legislation should be clarified, including ensuring that proposed policies are formally approved before the related LNDs are drafted.

The Prime Minister responded with Resolution 22/NQ-P dated March 22, 2014, which confirmed that the new law should be drafted in accordance with the report submitted by MOJ and an outline for the new consolidated law was drafted by the MOJ in early April. At the same time, recognizing the demands on the Editing Board, the MOJ made a request to the NLD project to support the hiring of a team of external legislative drafters to undertake the drafting work for the new law under the direction of the Editing Board and the Drafting Committee. A team of five drafters was proposed, with each drafter having responsibility for different sections of the new law. The NLD project team worked closely with the drafters, the Drafting Committee, and the Editorial Board. The NLD established a process for review and feedback of drafts and developed a form of specialised drafting instructions for each drafter that contained instructions for drafting each part, policy and drafting issues to consider in the development of each part, and mechanisms to ensure consistency among all of the parts being drafted. This was a practical illustration of a common drafting practice in other jurisdictions and the benefit of drafting instructions was immediately apparent to the drafting team – even though the instructions were not as detailed as they would be if based on approved policy direction.

Throughout the drafting process, NLD project experts provided ongoing feedback to questions posed by the MOJ and the drafters, with reference to best practices in Canada and elsewhere, and have offered solutions to problematic policy, legal and drafting issues. Some of the input provided by NLD experts to directly support the drafting of the draft LPLD included the following: (1) a detailed package of resources on best practices in policy development and analysis utilized by MAG policy counsel that has been shared with the MOJ and the drafters - these materials are not publicly available and were shared on the understanding that they would be used for the purposes of the project only; (2) a paper on

delegation of powers; (3) a background paper on the definition of an LND; (4) comments and suggestions on proposed provisions on establishing a separate policy development path; (5) comments on the proposed monitoring, implementation and enforcement provisions and fast track procedures for LNDs; and (5) a paper on the interpretation of laws and comments on the provisions addressing this issue in the draft law.

In preparation for the October session of the NA, the Minister of Justice expressed concerns about a number of issues related to the new law and a series of questions were circulated to the NLD project experts for feedback. Detailed responses, with reference to best practices in Canada were prepared by the NLD experts and submitted to the Minister of Justice in September 2014. In October, the NLD provided expert advice relating to the presentation of the law by the Minister in the NA and supported the development of communications plans and materials to inform the NA deputies, the media and the public about the new law.

The project team was able to observe first-hand relevant skills and capacities in policy analysis and legislative drafting and was able to assist the MOJ in experimenting with different approaches that align with international best practices, such as preparation of drafting instructions and communications plans. The NLD project team was also able to assess capacity for conducting gender analyses and developing performance indicators during this period.

During this time, the CEA also supported or participated in a series of workshops held to share drafts of the new law and obtain feedback from participants. Brief descriptions of these workshops are set out below.

Workshop on Process of Policy Development, Assessment and Approval

A workshop was held in May 2014 to: introduce two options for the new policy development, assessment and approval process to be set out in the new law; obtain comments on the proposed processes; and hear about Canadian policy development processes and their relationship with the legislative drafting process. Participants included representatives of the committees and agencies under the NA, the OOG, the legal departments of various ministries and government agencies, the Central Committee for Internal Affairs and the Steering Committee for Judicial Reform, mass organizations such as the Women's Union, the Trade Union, the Vietnam Bar Federation, Vietnam Lawyers Association and VCCI, as well as law faculties and institutes.

Overall the participants supported the notion of a separate policy development and approval process but expressed concern about several issues: whether the MOJ should be the gatekeeper for all ministries' proposals or an inter-ministerial committee would be better; the need to modify the RIA process and ensure it is conducted at the policy development stage; the importance of considering implementation and enforcement issues during policy development; the need to use different modes of communication for consultation purposes; the necessity of two advisory committees; whether the Office of Government would do the work of the Government in this process and whether it has the required capacity; the expected content of policy proposals; the need to address how conflict between the

Government and the NA would be addressed; the question of who would draft the legislation once the policy was approved; the need for the one-year legislative agenda to be flexible.

On the second day of the workshop, a similar discussion was held with respect to how policy analysis for lower level and provincial level LNDs should be conducted. After the workshop, the NLD experts drafted written comments on the proposed processes that were presented for consideration at the workshop. The comments were then shared with the MOJ drafting team for further consideration.

Workshop on the Powers and Procedures to Promulgate LNDs

This workshop was held in June 2014 in Hanoi, with participants from the Committees under the NA, legal departments of NLD partners and other ministries, including the Ministry of Home Affairs, the OOG, socio-political organizations, academics and provincial departments of justice from 17 provinces. Issues discussed related to which ministries, agencies and levels of government should have the power to promulgate LNDs, including the proposal that the LND-making power of commune and district level governments should be eliminated. While there was support for reducing the number of LNDs further as well as reducing the number of entities that can issue LNDs, differing views were voiced on the issue of whether commune and district level governments should have the power to promulgate LNDs.

Workshop on the Implementation and Enforcement of LNDs and Fast Track Procedures for LNDs in the Draft LPLD

This workshop was also held in June 2014, with participants from the legal departments of partner ministries and agencies, relevant socio-political organizations, NA committees and the OOG. The workshop reviewed the options presented in the draft LPLD to address the processes for implementing and enforcing LNDs as well as for drafting certain high priority laws under fast track procedures. In general, the participants recognized the need to reform the relevant provisions of the 2008 Law on Laws but struggled to identify solutions to the current implementation and enforcement challenges.

Workshop on a Specialized Management Model for the Post-Review of LNDs

A workshop was held in September 2014 in Hanoi to develop an initiative to renew and develop a Specialized Management Model for the Post-Review of LNDs. During the workshop the MOJ reviewed the current process and responsibilities within the ministry for post-review of LNDs. The challenges of reviewing approximately 3,000 LNDs per year by the Bureau for Post-Review were outlined, particularly when some LNDs require a complex and detailed analysis. The time for conducting a post-review of an LND is limited to two to four days given the limited human resources available to conduct the work and high volume of LNDs needing review. As a result, the MOJ recognizes the need to assign a team of legal experts to review the current process and propose a new model that will ensure coordination within and across ministries in conducting the review process.

Workshop on Criteria to Monitor and Evaluate the Implementation and Quality of Codification

A workshop on establishing criteria for monitoring the implementation of the codification process and system was held in September 2014 in Ninh Binh province, with representatives from the Project Management Unit (PMU), representatives of the Bureau of Post-Review and representatives of other agencies and departments of MOJ. The purpose of the workshop was to: present a plan to develop criteria for monitoring and evaluating the implementation of the codification process currently being undertaken by government ministries and agencies under the Ordinance on Codification and its implementing documents; and solicit comments on the criteria and the procedures to monitor and evaluate the work of agencies engaged in the codification process.

Workshop on Draft Law on Promulgation of Legal Documents

The workshop took place in October 2014 in Ninh Thuan province, organized by the Law Committee of NA. The purpose of the workshop was to get comments from members of the NA, legal experts, scientists and those applying laws at the central and local level, on the draft law to develop a review report and to revise and finalize the draft law. The participants came from Office of the National Assembly (ONA), NA Committees, NA delegations of Central and Southern provinces, Provincial People's Committees and People's Councils, and the VCCI.

Workshop on Governing Scope, Promulgation Powers and Types of Legal Documents in Draft Law on Promulgation of Legal Documents (LPLD)

The workshop was held in November 2014 to collect information and comments from experts on 3 issues: (1) scope of the draft law; (2) powers to promulgate and forms of legal documents; and (3) procedures to develop proposals for developing laws and ordinances. Other opinions focused on the name of the draft law, the policy approval process before drafting and the close connection between policy and implementation. Canadian experience on these issues was also shared.

Workshop on Application and Effect of Legal Documents in Draft Law on Promulgation of Legal Documents (LPLD)

The workshop was held in November 2014 to discuss the application and effect of legal documents. Most of the discussion focused on: the necessity of publication in official gazettes, current regulations and practices in applying retroactive provisions in Vietnam, principles of application in implementing documents and the role of international treaties in national legal systems, with reference to Canadian practices and experiences on these topics.

Workshop on Ensuring the Participation of People, Socio-political Organisations, and Socio-occupational Organisations in Legislative Development and Implementation

The workshop took place in January 2015 in Haiphong City to discuss how to improve consultation processes in the development of policy and law at both central and local levels, with reference to Canadian and international best practices. This included discussion on Access to information and regulation and monitoring of lobbying activities during policy and law making. Participants explored the first initial conclusions on the report how to improve Consultative processes in Vietnam. They also discuss how to set in place more inclusive and early mechanisms to reach those susceptible to be affected by a given LND.

Overall Conclusions, Recommendations and Priorities

Vietnam has been working for more than two decades on making improvements to its law-making system. Many of the often documented shortcomings of the system are well known to the government of Vietnam and it has taken a series of steps over the years to try to address them. The draft LPLD has the potential to create a strong foundation for improved law-making in Vietnam, and in particular, the requirement for a separate policy development and approval phase in advance of legislative drafting is a fundamental change that is likely to yield one of the most significant benefits to the law-making system.

However, the complexity of this system – with its embedded presumption that everything must be regulated by written law – has a number of implications for the CEA assessment of the law-making process and the resulting recommendations are set out in the Assessment report key findings, recommendations and particularly in the detailed WBS of the NLD project. The current Vietnamese system contains many of the steps necessary to produce sound legislation, even if the sequence and emphasis differ from that in many developed countries, however there are continuing systemic issues that impede Vietnam's ability and capacity to deliver quality legislation and regulations, notwithstanding the formal framework. For example, there persists in Vietnam, the idea that if the law-making process is clearly defined in legislation, including the roles and responsibilities of each actor, and if there is strict compliance with this process, the quality of the enacted law will be improved. While there is some validity to this view, there are also opportunities to improve both the law-making process and the quality of law that go beyond strict adherence to legislated procedures. For example, ensuring appropriate resources, well-managed public administration, strong institutional mechanisms and rigorous quality controls are fundamental. The Assessment findings and recommendations and WBS respect this context, but also recognize that past efforts to effect fundamental change through framework legislation have not been fully successful; efforts must also be centred on instigating and defining best practices, setting place or inducing processes to build the tools, instruments and capacity of people and institutions for delivering legislation. Therefore, the focus in many of the recommendations is on mechanisms, practices, capacity-building, tools and standards to support the effective implementation of the LPLD across government in order to create sustainable results.

Annex 1: WBS Structure – simplified version

Priority/Ultimate outcomes		Develop a strengthened, effective and transparent legal framework Vietnam's system of law reflects the needs of the Vietnamese people and supports equitable economic growth								
Intermediate outcomes		Intermediate outcome 1: Strategic planning and management processes being applied by the MOJ and line ministries in the law making process Intermediate outcome 2: Increased participation in legislative development by citizens and the private sector Intermediate outcome 3: Enhance coherence and standardization in the Vietnamese law-making process Intermediate outcome 4: Improved quality of economic legislation developed through pilot programs								
Strategic Objective [Component] 1 Enhance strategic planning and performance management capacity		Strategic Objective [Component] 2 Implement an effective policy development and approval process			Strategic Objective [Component] 3 Improve quality and efficiency of legislative drafting		Strategic Objective [Component] 4 Enhance consistency and coherence of system of law		Component 5 Project Management	
WBS 1000 Capacity building for strategic needs assessment and performance management of law making sector		WBS 2000 Development of policy research, impact assessment and consultation capacities.			WBS 3000 Development of technical skills for standardized legislative drafting		WBS 4000 Development of capacities to ensure the consistency and organization of legislation		WBS 5000 Project Management	
Immediate Outcomes		Immediate Outcomes			Immediate Outcomes		Immediate Outcomes		Immediate Outcomes	
LNDs are drafted in accordance with the strategic policy and legislative agenda of the National Assembly	Capacity of NLD partners to engage in strategic planning processes, to apply gender sensitive analysis, to monitor performance and report on results has been improved	Laws are drafted based on approved policy direction	Capacity of line ministries to conduct policy research and analysis, consultations, and impact assessments has been improved	Capacity of MOJ and line ministries to conduct consultations with citizens and the private sector throughout the law making process has been improved	Gender analyses and assessments are incorporated into policy and legislative processes	Laws are drafted in accordance with established and consistent standards	Capacity of drafters to use recognized drafting standards and techniques, including use of gender neutral language is improved	Laws are consistent, coherent, organized and accessible	Increased capacity within MOJ and line ministries to engage in legislative systematization	NLD Project (CEA and Project Office) is effectively and efficiently organized, managed and operates to contribute to successful coordination and implementation of overall NLD Project.
WBS [Output] 1100 Support for the full development of the new consolidated Law on Promulgation of Legal Documents (LPLD) has been provided	WBS [Output] 1200 Conduct of CEA Assessment has been accomplished	WBS [Output] 1300 Assistance to institutions and NLD Partners to implement the new Law on Promulgation of Legal Documents (LPLD) has been provided	WBS [Output] 1400 Support to engage NLD partners in strategic planning and result-based management has been provided	WBS [Output] 2100 Support for the conception of Deskbook/guidebook and methodology materials for policies development has been provided to NLD partners	WBS [Output] 2200 Support for enhancement of NLD partners capacity to engage in policy analysis and development has been provided	WBS [Output] 2300 Support for enhancement of NLD partners capacity to engage in policy impact assessments and policy evaluation has been provided	WBS [Output] 2400 Support to NLD partners for improvement of and engage in consultative processes has been provided	WBS [Output] 2500 Support for mainstreaming of Gender Equality into policy development and law making has been provided	WBS [Output] 2600 Support for standardization of Policy formulation/ Legislation Initiation, requests for legislation/law proposals has been provided	WBS [Output] 2700 Support for development of regulatory and administrative framework to promote access to information and monitoring of lobbying activities in the law making process has been provided
WBS [Output] 3100 Support to NLD partners for improvement of legislative drafting processes has been provided	WBS [Output] 3200 Support for development and harmonization of skills, tasks and responsibilities of drafters has been provided	WBS [Output] 3300 Support for development of new drafting standards has been provided (linked to Output 4600)	WBS [Output] 3400 Support for improvement of coordination and harmonization of policies and LDs between local and central levels has been provided (on a selective basis)	WBS [Output] 3500 Support for establishment of Inter-ministerial collaboration between drafters has been provided	WBS [Output] 3600 Support for establishment of the process and methods to ensure that approved policy directions are incorporated in draft legislation and detailing documents has been provided	WBS [Output] 3700 Support for development of regulatory and administrative framework to promote access to information and monitoring of lobbying activities in the law making process has been provided	WBS [Output] 3800 Support for improvement of policy review and approval by the executive and the legislative branches has been provided	WBS [Output] 3900 Support for establishment of lines of communications and operational rules between policy makers and legislative drafters has been provided	WBS [Output] 4100 Support has been provided to enable codification as defined by Vietnam	WBS [Output] 4200 Support for conduct of post adoption review based on common standards has been provided
WBS [Output] 4300 Support for conduct of periodical reviews and monitoring and evaluation of the performance of LDs based on common standards has been provided	WBS [Output] 4400 Support has been provided for development of IT tools for policy and legislation making/codification and reviews	WBS [Output] 4500 A professional support network for policy developers and legislative drafters has been set in place	WBS [Output] 4600 Support has been provided to develop standards and national rules for legislative drafting, official drafting terminology, and quality control procedures	WBS [Output] 4700 Support for effective dissemination and channels of laws, regulations and related information has been provided	WBS [Output] 4800 Support for developing national Indicators including KPIs/PIs for monitoring the implementation and enforcement of LDs has been provided (linked with 1530)	WBS [Output] 4900 Pilot initiatives supported by NLD have served to modelize the processes, standards and tools for law making	WBS [Output] 5100 Project Management			

Annex 2: Table 1 - List of studies conducted

No.	No	Deliverables/Activities	Conducted by	Status	Activities proposed to follow-up or finalise
2	1	WBS 1210 Policy Research and Analysis Review of existing methodology in Vietnam	MOJ/ILS	Finalized	Ready for publication and for large dissemination
4	2	WBS 1220 Review of 2013 Constitution and impact on law-making process	Prof. Vu Cong Giao	Finalized on in March 2015	It will be prepared for large dissemination and official launching in early 2015. Findings were used and Executive summary was place as annex in CEA Assessment report
6	3	WBS 1230 Gender indicators, development of KPIs PIs for LPLD, Statistics and Result Based Management (PMF)	GSOV – Pham Thuy Chi – Ha Thi Thanh Van – Dang Thi Thu Quyen - Isabel Lloyd - Juliet Robin	The WBS, PMF and GEP have been finalised validated before presentation to PSC	<p>PFM first draft was shared at TAT and has undergone finalisation and validation with partners. Final PMF was produced on the 5th of March. Training and baseline will be completed during 2015 with partners.</p> <p>A PMF compendium has been built to provide chronology and needed explanation on preparation and validation of indicators of PMF, including gender indicators. These documents are to be tables at PSC meeting.</p> <p>The PMF package to be shared at PSC is comprised of all related documents prepared by NLD for defining the PMF.</p>
	4	WBS 1240 Review of LND reviewing methods (pre-review, post-review, periodic reviews,	Isabeau Vilandre, Lionel Levert	Finalised in the form of schematic charts	Content and substantive elements were integrated in the Final Draft of CEA assessment report and

		codification)			placed as annex to CEA Assessment report
9	5	WBS 1250 Policy and Legislative Drafting Capacity and Skills Assessment with NLD Partners	Lionel Levert John Gregory	Finalized	Report is being examined for determining next steps for Evaluation of capacity and skills and determination of best strategy for linking training strategy with local institutions and partners (i.e. Athabasca University). Executive summary was placed in the annex of the CEA Assessment report
	6	WBS 1260 Review on consultative process in Law-making	Dr. Hoang Ngoc Giao	First draft was completed on the 28 th of February 2015	First complete version of report was received, comments were provided to drafters by NLD and finalisation of the study is underway. The document with key findings and recommendations for improvements of consultative process for law making in Vietnam was included in the Validation session of CEA report with CSO and economic sector of the 20 th of March 2015. Executive summary of report placed in the CEA Assessment report.
	7	WBS 1270 Preparation of analytical report and validation of the CEA assessment findings in policy and law-making process [including mainstreaming of	CEA group	Draft is finalised for the global CEA assessment report. The detailed WBS is being finalised for every scope of activity (40 outputs and 140 work package units).	Validation of the final draft of CEA Assessment report done in first step on the 26th of January under the Chairmanship of Nguyen Si Dung with a report review made by high level Mandarins of the State of Vietnam linked to legal reforms. A validation session for the findings of the report will take place on the 20 th of March 2015 with civil society organisations, private sector, media and academics.

		Gender Equality Plan (GEP)		The GEP has been finalised validated with partners before presentation to PSC	The GEP have been validated with key stakeholders and NLD partners. All documents will be translated and tabled to the PSC meeting for official approval.
	8	Legal Information Management System (LIMS) in Vietnam for Policy and law making	David Tremblay	Finalized	Internal meeting with MOJ planned to discuss next steps by MOJ to push ahead in the making of a National Database and LIMS for monitoring and reporting on law making. Information was used in the preparation of the CEA Assessment report.
	9	Survey on implementation of Laws on Promulgation of LNDs 2004 and 2008	MOJ/Depocen	Finalized	Ready for publication and for large dissemination. Information was used in the preparation of the CEA Assessment report. Executive summary was placed in annex of the CEA assessment report.
	10	Gender Equality Plan (GEP)	Ha Thi Thanh Van – Dang Thi Thu Quyen, Isabel Lloyd	Finalised	Summary is completed and is provided as annex to the CEA Assessment report. NLD partners validated GEP on the 09 th of Feb. 2015. Trainings on the GEP will be done in 2015
	11	Comments & recommendations on interpretation rules to be set in Vietnam to support LPLD	Richard Tremblay	Finalised	Report shared with GALD and Editing Board. Information was used in the preparation of the CEA Assessment report.

Annex 2: Table 2 - List of NLD activities supporting the making of the LPLD during Phase 1

No.	Date	Name of activity
1.	15/08/2013	Workshop on Major directions for a new law on legal normative documents
2.	5/9/2013	Seminar on performance indicators and software for monitoring the implementation of laws
3.	27/9- 10/11/2013	The First Study Mission to Canada
4.	19-20/11/2013	Workshop on current legislative process and directions for improvement
5.	10-11/12/2013	Workshop on result-based management and performance indicators
6.	12/12/2013	Workshop on Software for monitoring the development of legal normative documents
7.	01/2014	CEA Assessment commencement
8.	5/3/-16/3/2014	The Second Mission to Canada
9.	24/03/2014	Workshop on Definition of a new legal normative document in the new Law on Laws
10.	25/03/2014	Workshop on legislative power, delegation of legislative power and regulation making power
11.	23/4/2014	Seminar on outline of the draft Law on LNDs at MOJ
12.	12-13/5/2014	Workshop on Process of Policy Development, Assessment and Approval in the draft of new Law on LNDs
13.	2/6/2014	The First Technical Advisory Team meeting
14.	4-5/6/2014	Workshop on Powers and Procedures to promulgate Legal Normative Documents
15.	17/6/2014	Workshop on Implementation of Legal Normative Documents in the draft Law on Promulgation of Legal Normative.

16.	14/08/2014	Seminar on LPLD including direct discussions with the Minister of Justice on outstanding issues in the draft LPLD. NLD provided written analysis and comments to a set of identified questions for the Minister with the purpose of completing comments to be provided to the Law Committee
17.	10/9/2014	Policy analysis in the current lawmaking process in Vietnam (ILS workshop)
18.	16/9/2014	Workshop on Outline of Project on specialized management model for the post review of LNDs
19.	18/9/2014	Workshop on Outline of a set of criteria to monitor and evaluate the implementation and quality of codification of legal norms system
20.	9-10/10/2014	Workshop on Draft Law on Promulgation of Legal Normative Documents (NA's Law Committee workshop)
21.	6/11/2014	Seminar for Introduction to consequences of the Constitution revision 2013 for member of the OOG
22.	14/11/2014	Workshop on Governing scope, promulgation powers and types of legal documents in the draft Law on promulgation of legal documents
23.	21/11/2014	Training session on international integration and impact on legislative agenda by OOG
24.	26/11/2014	Workshop on Application principles and effects of legal documents in the context of the draft Law on Promulgation of legal documents
25.	10-15/12/2014	Support the GALD to study and review relevant documents and recommend on 05 topics of the draft report on some key issues for revising draft Law on Promulgation of Legal Documents to be submitted to the Standing Committee of the NA on 22 Dec. 2014
26.	15-16/12/2014	The Second Technical Advisory Team meeting
27.	20/1/2015	PMF validation session
28.	26/1/2015	Seminar on the key finding of assessment report of CEA on the law making process in Viet Nam

29.	9/2/2015	GEP validation session
30.	29-30/1/2015	Workshop on ensuring the participation of citizens, socio-political, socio-occupational organizations in legislative development and implementation