Legislative drafting learning process in Mozambique

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PROPOSAL FOR A LEGISLATIVE DRAFTING LEARNING PROCESS IN MOZAMBIQUE

This proposal focuses on the first phase of a learning process in Mozambique on legislative drafting theory and methodology. That process would aim to strengthen the capabilities of ministry personnel, potential drafters working for the National Assembly, university law school lecturers, and members of the National Assembly to participate in the process of translating policy into effective legislation. This first phase would consist of four stages:

**Stage I:** January 2-12: A two week workshop for about 20-25 Ministry of Justice personnel, potential drafters for the National Assembly, three University Law School lecturers, and perhaps some members of the National Assembly. These will study legislative theory and methodology in the process of drafting three priority bills and accompanying research reports. Subsequently, as many as possible of these will reinforce their learning by helping to prepare (approximately) ten draft bills and research reports to serve as the basis of the third stage workshop (in which they also may participate).

**Stage II:** February 5-9: A workshop for 250 members of the National Assembly to learn how to assess bills, participate in monitoring and evaluating the social impact of existing legislation, and, when necessary, to initiate drafting of bills. As presently envisaged, that workshop will have both plenary and small-group sessions. The persons who participated in the January workshop will serve as resource persons in the small groups (they should not exceed 25 legislators each). The small group participants will use the legislative theory and methodology they learn in plenary sessions to participate in reviewing and critiquing draft bills and research reports -- perhaps those prepared at the January workshop.

**Stage III:** July: A one month workshop for up to ten 5-8 member drafting teams appointed to draft up to ten priority bills and research reports. (We hope that these drafting teams will include some Law Faculty personnel.) In the first two weeks, the drafting team members will study legislative theory and methodology in the process of reviewing and improving the preliminary outlines of the proposed bills and research reports prepared between February and July by the teams led by participants in the first and second stage workshops. As an important component of the curriculum, in those two weeks the workshop will study what it means, not to copy foreign law, but to learn from foreign law and experience.

In the second two weeks, the workshop will divide into small groups, each composed of the members of a drafting team. A consultant with extensive knowledge of comparative law and
experience in the field of the bill under consideration will serve as a resource persons for a separate, in-depth workshop. Using the draft bill and research report as the basis for discussion, the workshop will study foreign law and experience in the area concerned. The small workshops will focus on what Mozambican drafters can learn from the failures and the successes of foreign law and experience that may help them in drafting their bill and research report.

Foreign law and experience constitutes a significant body of relevant experience for any drafter. Practically everyone agrees that one cannot copy foreign law, but one can learn from foreign law and experience. We denote the foreign consultants as resource people because in the small workshops they have the function of supplying information to the drafters about that foreign law and experience, sometimes impossible to garner from books without long (and expensive) overseas study. (We know of no other method of quickly bringing to bear on the Mozambican situation the relevant foreign law and experience.) Learning from that experience without copying foreign law becomes the task for the Mozambican participants.

The consultants will be selected on the basis not only of their knowledge of at least one foreign country's law and experience in the relevant field, but their teaching ability and their sense of the law-society relationship. In our experience, almost invariably, only academics -- not practitioners -- meet these requirements. Where available, of course the workshop should employ Mozambicans as consultants. On request, the Seidmans will supply short lists of at least three possible consultants for selection by the Mozambican authorities. Foreign consultants will not participate in the actual drafting; drafting is for Mozambicans only.

Stage IV. Four people will attend the Boston University Program in Drafting for Democratic Change, September-December, 1996. At least one person will come from the Law Faculty. The others should consist of people identified as potential drafters for the National Assembly. NOTE: The Ministry of Justice had earlier contacted Boston University about the possibility of sending four drafters to BU for this course. We suppose that these would come from the Ministry of Justice, in addition to those already mentioned).