Laos Legislative Drafting Programme

Seidman, Robert B.

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Boston University
RE BU LEGISLATIVE DRAFTING PROGRAM AND THE PROBLEMS OF INSTITUTIONALIZING LAOTIAN LEGISLATIVE DRAFTING CAPACITY AND PRODUCING QUALITY TRANSFORMATIONAL LEGISLATION

I. Introduction:

A. Agree with Minister's four steps in the legislative process = aim of the UNDP Project as we view it is 2-fold:

1. To institutionalize an on-going process of strengthening Lao drafting capacity; and

2. To produce high-quality bills in timely fashion to build a national legal framework to facilitate implementation of Lao PDR's New Economic Mechanism

B. The problem with the Project to date (as per our evaluation):

1. Significant progress in institutionalizing strengthening of Lao legislative drafting capacity:

   a. Two workshops introduced some MOJ and other Ministry personnel to legislative theory and its use in guiding the research necessary to design bills relating to Lao circumstances;

   b. Seminars for National Legal Framework Advisory Committee aimed to help them understand:

      (1) legislative theory and the kinds of facts required to ensure bills relate to Lao circumstances, plus

      (2) what could be learned from relevant foreign law and experience (since can't copy)

   c. Most important: 4 Lao officials, 2 MOJ, 1 NA, and Deputy Dean of Law School, spent four months in BU program

      (1) Deepened knowledge of theory and methodology so could teach others = 4 courses in brochure (did not spend much time on specific bills, since main task was to help institutionalize learning process to strengthen drafting capacity.

      (2) Prepared draft handbook in Lao language as to assist Lao drafters in preparing bills and research reports based on Lao circumstances;
we assume MOJ will ensure its improvement to overcome difficulties identified in course of using it.

(3) Drafted curriculum for teaching in ministries, national assembly, and the law school

(a) content:

   i) how to use facts and logic in research reports to assess bills;

   ii) how to draft research reports and bills of Lao's unique conditions.

(b) Successfully organized and taught March workshop,

2. Weaknesses: Did not produce quality bills and research reports necessary for building National Legal Framework; and further steps remain to complete the institutionalization process

   a. Apparently Ministries did not view workshops as one (important) step in long (6 months to a year) process of drafting bills and research reports

   (1) Assigned junior officials without responsibility for completing bills and research, so their work, and the efforts of foreign consultants seems not to have been utilized effectively;

   b. The bills and reports produced apparently remained uncompleted, throwing the burden of completing them on members of the Project Advisory Committee, and minimizing the middle level officials' learning experience in completing them.

   c. for the next two or three years, of the four officials who came to BU, only two (perhaps only one) will be available to continue training other drafters and institutionalize the learning process.
C. Project experience to date suggests need for improvement:

1. We understand at least two more people will come to BU this fall, and will be assigned on their return to continue to institutionalize the learning process required to strengthen Lao drafting capacity;

   a. Note that since the draft handbook now exists, and curricula have been introduced for ministerial drafting workshops and the law school, these might be assigned to work on specific legislation:

      (1) eg when you visit library tomorrow, you will get some idea of the vast amount of information available about foreign law and experience relating to commercial law required to facilitate regional trade and investment

         (a) Prof. Mark Petitt will be able to discuss only a tiny fraction of that information; but one of those who come next fall might take on the task of preparing draft legislation backed by a research report on that subject.

      (2) We note that the Lao Government proposes to prepare four more bills, on local administration, urban planning, special economic commercial zones; and agree that if more officials came in the fall, they might prepare additional drafts of bills and research reports on these topics

         (a) Perhaps the World Bank or the Asian Development Bank would help to fund two more to work on laws they deem important?

2. A second very important aspect of improving and institutionalizing the work initiated by the Project, however, might include drafting a bill and research report to institutionalize the legislative procedures implied by the Minister's four steps:

   a. Involving the Laotian people in deciding what problems bills should address, and helping to identify their causes which the bill must overcome;

   b. Engaging Laotian drafting teams in formulating draft bills and research reports designed to overcome the causes identified;

   c. Once the law is enacted, educating the Laotian people to understand it and ensure its adequate
- implementation; and

d. Involving the Laotian people in monitoring and evaluation the social consequences, and, if necessary, in proposing revisions.

D. Other countries' governments have found it necessary, as part of strengthening the rule of law, to formulate regulations to institutionalize appropriate legislative procedures

1. No government can copy another's laws in this or any other area; but may learn a lot from their experience about what procedures may prove useful for ensuing open, accountable, and democratic for formulating, enacting, implementing and evaluating transformatory laws.

2. We thought you might find it useful for Bob to discuss other countries' experiences, in order to consider whether perhaps a second law on which one of the Lao officials who comes to BU in the fall might work.