Laos legislative drafting programme

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EVALUATION OF FOUR LAO VISITING SCHOLARS' PARTICIPATION IN THE 1996 BU PROGRAM ON DRAFTING LEGISLATION FOR DEMOCRATIC SOCIAL CHANGE

This evaluation reviews and assesses the four Lao Visiting Scholars' participation in the four month BU legislative drafting program. It first outlines the assignments they brought with them from Vientiane as together we interpreted them in light of time constraints; second, it describes the mode of work we adopted, given the language problem; third, it summarizes the assessment that, together with our Lao colleagues, we made of the four months' work; and finally, it briefly summarizes the proposal for the next steps in institutionalizing the Project's learning process in Lao PDR. 1

I. THE ASSIGNMENTS

The four Lao Visiting Scholars arrived a week after term began, bringing with them nine major assignments to complete while learning legislative theory and drafting techniques. Following discussion, we agreed that we would work together to help the drafters fulfil their individual and collective assignments. These assignments constituted the following nine tasks:

1. **Primary bills:** Each drafter had responsibility for completing a research report and proposing improvements in an assigned bill: 2

   **Duong:** Electricity bill, focusing on criteria and procedures likely to attract foreign investors in Lao's hydroelectric production and sales, and to ensure safe, reliable and environmentally-friendly electric power for domestic use and export.

   **Ket:** Mining bill, focusing on criteria and procedures to foster investment in Lao's mineral production and sale while safeguarding environmental, safety and employment concerns.

   **Lom:** Transportation bill, designed to enhance in-country transportation networks, and dealing with licensing drivers, registering vehicles, providing adequate support

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1 We FAXed this earlier, and will mail it with another copy of this evaluation and the appendix, noted below.

2 To facilitate this presentation easier, we here use the names for our four colleagues that we used throughout the term.
infrastructure (other than roads) for expanded vehicle transport, and developing public automotive transport.

**Pom:** Check bill, to clarify and facilitate the use of checks as one way to improve Lao's payments system to foster market expansion.

2. **Secondary bills:** For another bill, each drafter also had responsibility to complete an outline of a research report, planning how that drafter would help the responsible Lao drafting team to complete the report and bill, as follows:

**Pom:** Commercial law, a complex bill covering a variety of substantive areas such as sales, contracts, secured transactions, and commercial paper.

**Lom:** Urban planning bill, to ensure the orderly growth of major Lao cities, taking into account land use requirements and infrastructural needs of their growing populations.

**Ket:** Special economic zones bill, to establish criteria and procedures for identifying and developing zones to attract foreign investment in industries likely to contribute to Lao economic development.

**Duong:** Local authorities bill, to specify the responsibilities and modes of operation of local authorities to facilitate improved local services and increased local participation in governance.

3. **Improve the Lao legislative drafting handbook:**

All four colleagues agreed to work together on the draft handbook in the Lao language prepared by the four Lao drafters who took part in the 1995 BU program. This year, they sought to deepen its content and improve its use of Lao language to make it more useful as a tool for teaching legislative theory and techniques. Because he could use the computer, Pom took responsibility for typing up their proposed revisions and additions.

In addition, the four participants worked together in planning the next steps for institutionalizing the Project learning process (see III. below).

II. **STYLE OF WORK**

Given the language difficulty, including the difficulty in
reading the available relevant literature in English, the participants worked out with us several ways to enable our Lao colleagues to complete their assignments. These involved focusing their regular course work on their specific assignments; tutorials; holding meetings with experts dealing with their assigned fields of work; and their own cooperative work together.

A. Regular course work

All four colleagues took the BU Program's regular legislative drafting courses, using the occasion to work on their assignments individually and collectively. When necessary, Pom acted as translator, but, as the others' English improved, this necessity arose less frequently. They attended four courses:

**Law and Development:** The four participants studied legislative theory and methodology with a class of BU students. Two of these students gathered evidence and drafted the equivalent of a research report on another country's experience in using law to deal with problems similar to those addressed by two of the Lao bills.4

**Legislative Techniques:** Working with Bob, the four participants studied legislative techniques, in part by critically examining and proposing revisions in the handbook, in part by critiquing the technical competence of the existing drafts of the four primary bills.

**Social Science Research Methods:** Working with Ann, the four studied the use of various social science research techniques. In that study they considered the utility of these techniques, both for gathering evidence concerning the Lao circumstances as they related to the four primary bills, and for assessing the research findings concerning

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3 The BU Law School library staff held a formal session to introduce them to the extensive law materials available, as well as to Lexis as a source of English-language information on foreign law and experience. Among our law colleagues, only Pom could make much use of these, but most did have an opportunity to work with research assistants to obtain relevant materials. That experience underscored the potential benefits if the Ministry of Justice could provide ministerial drafters with continuing their training in English, access to, and training in the use of computers, and access to Internet and perhaps Lexis.

4 The BU students discussed their findings with our Lao colleagues, and each presented their report to the whole class for the members to critique and suggest improvements in light of legislative theory and techniques. On completion in January, we will send copies of these reports to Lao PDR.
other countries' experiences with using law to resolve analogous problems. To practice interview techniques, they conducted focus group interviews with experts in fields relevant to specific bills. For these interviews, they prepared questions and together reviewed the implications of the answers for their individual research reports.

Educational Methods: Working with Ann, the four studied methods of enabling adults in non-formal educational settings to learn legislative drafting and techniques by 'doing' them. In that context, as case studies, they critically assessed the materials and learning methods used in the BU Program and those used in past Lao workshops.

B. Meetings with experts

A series of meetings with experts on the BU staff and elsewhere provided the drafters with opportunities to learn more about foreign law and experience relevant to their research reports and bills. These meetings also enabled them to consider methods of work with foreign experts, and how, in terms of its utility for drafting Lao legislation, to assess the kind of information those experts provide. Unfortunately, time constraints limited the possibility of holding many meetings of this type. The experts they met included:

Two experts on transport law from the Massachusetts Department of Transportation; the Registrar of Motor Vehicles of Massachusetts and members of his staff; an expert on mining law; two experts on electricity law from the Kennedy School; and one of the Massachusetts Institute of Technology team that prepared the report for a proposed revision of Bangkok's urban planning law.

In addition, the four met with several BU professors with relevant areas of specialization. These included experts on electricity law; commercial law and checks; the US Administrative Procedures Act; commercial law; and international arbitration.

C. Tutorials

Because of their difficulties in reading and speaking English, we spent a considerable amount of time working with each individual. At least weekly, each of the four met with one of us to discuss their research reports and bills. In an evening
session, each presented their research report on their primary bill⁵ for general group discussion of possible improvements. Bob also met separately with each to discuss improvements in the form of his or her primary bill. Because of the language problems, to help in the redrafting of the bills by providing some examples of what might be done, Bob prepared a rough, partial redraft for the Electricity Bill, the Mining Bill and the Check Bill. Our Lao colleagues must translate these into Lao. Hopefully, that process will help to deepen their understanding of legislative techniques. Their discussion of these drafts with the MOJ Project's Advisory Committee will undoubtedly lead to further improvements.

D. Living Together:

In many ways, that our four colleagues lived and worked together facilitated their learning. Frequently they taped their discussions and interviews. We understand that in the evenings they reviewed them together -- in Lao -- to strengthen their understanding. They also discussed troublesome words, concepts, and issues that came up in their courses. If between them they could not satisfactorily explain these, they brought them to us for clarification.

In all this, Pom carried a triple load: He helped to translate for many of our group and individual meetings with the other three colleagues; he used the computer to help them type up their outlines in English; and he took on the main task of writing up the team's revisions for the handbook in Lao.⁶

We would like to express special appreciation for Paul Samrane's contribution to the work of our four colleagues. He met with them frequently to help them review and explain the materials on the tapes and English-language documents, and prepare English outlines to facilitate our discussions with them. In addition, he came to our house after work for the four evening sessions in which he helped our colleagues translate their Lao research reports into English for us so we could discuss the details.⁷

⁵ Written in Lao and, to facilitate our participation, translated by Paul Samrane.

⁶ Since we could not ourselves read these, we had to rely on their verbal summaries. We assume that Boumkham and Thanou will also read and make useful contributions to the revision process. In addition, of course, they should all continue to critically review and revise the handbook as they use it for teaching purposes.

⁷ Paul Samrane is now in Lao PDR. We suggest that the MOJ discuss with him the possibility that, on completion of his BA, he might take the BU MA program in legislative drafting and return to Lao PDR to play a further role in institutionalizing the learning
III. ASSESSING THE PROGRAM

We used several methods to engage our Lao colleagues in evaluating the Program, both to give them an opportunity to consider various ways of conducting assessments as part of the process of institutionalizing the learning process in Lao PDR, and to provide feedback for ourselves. The methods used included on-going assessments and suggestions; a formal review and assessment of the Program as the basis of the proposed institutionalization of the learning process in Lao PDR; and a written questionnaire.

A. On-going assessment

Throughout the four months, we repeatedly asked our colleagues to assess and suggest ways of improving our work together. Based on their discussions of their on-going experience, they made many thoughtful comments and suggestions. In that respect, they played an active role in planning and developing the Program to suit their perceived needs.

B. Formal evaluation session

At the end of the Education course, we held a formal session to evaluate, not only that course, but the entire Program. We explicitly emphasized that, as its educational purpose, the evaluation should not only help us improve the BU Program, but also constituted an important technique for use in institutionalizing an effective learning process in Lao PDR. That formalized discussion provided the basis for the proposed next steps outlined in section IV.

C. Written questionnaire

We asked each of our four colleagues to complete a written questionnaire, grading specific aspects of the Program on a scale of 1 to 5 (5 constituting the highest grade). Apparently, they translated it together, and, instead of turning in their individual responses, presented a combined report.8 Again, we discussed their response with them, and gained some useful insights.

Among these insights, we recognized the benefits of increased use of visual aids (including writing out key words and concepts on the blackboard, as well as continuing as we had been doing: writing on the board the specific wording for parts of research reports and bills). We agreed that the first part of the Law and Development

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8 See attached appendix A, coming by mail, for the questionnaire and their combined response.
seminar, in which BU students debated alternative approaches to legislative theory and methods, had been too abstract, and outlined our own plans to specify more carefully the terms of reference for future classes. At their suggestion, we also agreed to review the English language handbook to simplify the language used, and to include a glossary of technical terms in the back.

As for the translation problem, we noted that we had tried without success to find another Lao interpreter. Unfortunately, this imposed extra burdens on Pom and made all of them more dependent on Paul Samrane's invaluable assistance.

We discussed their suggestion that in the future visiting scholars might live in a BU dormitory, in part in order to practice their English. We pointed out that: a) their application would have had to arrive in June to make that possible; b) it would have cost them more; c) they would then have to eat American food; and d) it would have reduced their opportunity of working together to overcome the language barriers they faced.

Overall, we evaluate our four Lao colleagues' work in the BU Program very positively. All four of them took their assignments seriously and worked very hard. Given the language difficulties, we think they did exceptionally well.

The major weakness in the program, we think, consisted in our inability to work closely with them on the actual drafting of bills. That had two causes. The first consisted of time constraints. We spent a great deal of time working on the research reports, as the principal device for teaching legislative theory and methodology. We do not believe that, given the language barrier, we could have accomplished much in any less time. The work on the research reports left insufficient time to work on the actual drafting. The second explanation consisted of the language barrier. We can, and did, work with our colleagues to provide opportunities for them to learn the important body of legislative techniques that are not intimately tied up with a specific language: For example, how to draft an amendment; grouping and ordering; the control of discretion; drafting defensively against corruption; tabulations; computing time intervals; avoiding long sentences; and the use of headings for particular sections. Legislative techniques, however, always include as well a body of language-specific rules -- for example, in English, the uses of 'and' and 'or'; placing the most important concept at the end of a sentence (and therefore putting dependent clauses, adjectival clauses, etc., early on in the sentence); the tense in which to draft; the uses of singular and plural in drafting; the avoidance of 'legalese'; and so forth. The Lao language no doubt has its own rules; so does every language. Self-evidently, these we could not teach our Lao colleagues. Developing those rules will constitute an important (and highly creative) part of writing the Lao legislative handbook.
Obviously, the proof is in the pudding: The final evaluation of the drafters' work at BU will come as a result of assessing their contribution in helping to institutionalize the learning process in Lao PDR and producing adequate research reports and effectively implementable bills.