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Draft report: Workshop On Legislative Drafting For Democratic Social Change, Kabul, December 2-12, 2004

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DRAFT REPORT

**WORKSHOP ON LEGISLATIVE DRAFTING
FOR DEMOCRATIC SOCIAL CHANGE
KABUL, DECEMBER 2-12, 2004**

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Introduction:

Coinciding with the inauguration of Afghanistan's first elected President, Hamid Kharzai, a two week workshop in Kabul initiated an on-going learning process designed to strengthen Afghanistan legislative drafting capacity and law-making institutions. At the workshop, 40 Ministry of Justice staff members began learning legislative theory, methodology and techniques by engaging in drafting seven bills, accompanied by research reports, to help resolve serious social problems confronting the new government. Presenting logically organized facts as to relevant Afghan realities, the reports aimed to demonstrate the likelihood that the bills, once enacted, would prove effectively implemented. In the coming two months, the drafters will continue working on improving their draft bills and reports, leading to a second workshop designed to deepen their understanding of the possibilities – as well as limits – on the use of law for good government and development. That should lay a sound basis for extending the learning process to train the many more drafters the ministries and Parliament will require in the coming years to draft legislation for consideration by elected legislators to facilitate effective democratic social change.

The workshop organization:

A team of consultants, provided by the International Consortium on Law and Development (ICLAD), conducted the workshop. It included Professors Ann Seidman and Robert B. Seidman, Co-Presidents of ICLAD, and Professor April Powell-Willingham, Treasurer, as well as Mr. Glenn Sarka who also served as a consultant for the Asian Foundation. As indicated in the draft schedule of the workshop (see attached), in turn, every day during the first week, the professors presented aspects of legislative theory and its methodology for an hour or an hour and a half after lunch. Working in teams, the participants then used that information in organizing the available relevant evidence as to Afghan circumstances into a structured research report, laying the basis for

conceptualizing their proposed bills' detailed provisions. In the mornings, the groups took turns reporting back to the plenary sessions on their progress. This gave all the participants an opportunity for assessing legislative theory's utility as a guide for logically organizing available facts to conceptualize not only their own proposed bills' detailed provisions, but also those of bills dealing with quite different kinds of social problems.

In the second week, the participants began the process of grouping and ordering, and then drafting the actual sentences for their bills' detailed provisions to ensure clarity and usability for their readers. Unfortunately, due to scarcity of time, they were unable to complete their bills' first drafts. In the coming weeks, however, each team will have more time to work on the techniques required to ensure their bill's form contributes to effective implementation of its substantive provisions.

In preparation for the workshop, Glenn Sarka had worked for several weeks to provide initial training for seven carefully-selected MoJ staff members with the skills they needed to serve as facilitators for the seven participating teams. The facilitators had studied translated chapters of "Legislative Drafting for Democratic Social Change - A Manual for Drafters" (Kluwer, 2000), written by the Seidmans, together with Nalin Abeysekera (Chief Drafter, Sri Lanka, retired). At the workshop, quipped with an initial understanding of legislative theory and methodology, the facilitators guided the participating teams in drafting and redrafting their bills and reports in light of the lectures provided by the ICLAD team, and the comments and suggestions of other workshop participants at the regular plenary report back sessions.

On the workshop's final day, each team submitted its report and bill for systematic comments and

The seven social problems the participants targeted:

The workshop participants had chosen to draft bills to help resolve seven social problems. A brief review demonstrates that, together, their choice of problems reflected the scope of the Afghan people's daily struggle to overcome the obstacles to good government and development aggravated by a quarter of a century of military and civil conflict:

Traffic congestion: Traffic congestion plagues all developing countries. In Afghanistan's capitol city, Kabul – its population swollen by rural refugees, returnees and aid agencies -- dusty, unpaved roads, lack of road signs and traffic lights, piles of construction materials and heavy trucks, unlicensed drivers and overloaded bicycles – all contribute gridlock, unparalleled delays,

and life-threatening accidents.

Garbage collection: Another problem experienced in all developing countries, in overcrowded Afghan city streets, piles of garbage, business and construction wastes, and general litter add to the general environmental pollution that – unless systematically tackled and eliminated – further endangers urban health and safety.

Corruption of judicial proceedings in property disputes: On their return to Afghanistan, many of the 6 million refugees who fled foreign invasions and wars have discovered others have acted illegally to seize their homes and properties. Despite extensive proof, apparently in response to corrupt pressures exerted by the more powerful and wealthy, some judges have rejected their appeals for restitution.

Forced marriages: Under the combined pressures of poverty and tradition, parents have resorted to forcing their daughters – not infrequently young children – to marry in exchange for bridal payments. Too often, the tragic results not only violate the ‘wives’ health and human rights, but distort their own offspring’s lives and well-being.

Limited school attendance, especially among girls: The new government, with strong UNICEF support, encourages increased school attendance. By the end of 2002, more than 3 million out of 4.8 million school aged children had returned to some form of education, about 30 percent of them girls – a higher percent in urban areas, and far less in rural areas. Nevertheless, lack of buildings, trained teachers, books, and materials hindered effective education. In addition, lack of security threatened school children, especially girls, in the rural areas.

Child abduction: An unknown number of children have been abducted and smuggled to other countries for cheap labor and prostitution, and rumored forced organ extraction. This compounds the dangers of lack of security in rural areas. In some cases, poverty has forced families to ‘sell’ their children into this trade.

Poppy cultivation: Afghanistan reportedly supplies some 80 percent of the world’s drug market, producing about half of the new nation’s GDP. Rural poverty, aggravated by military destruction of age-old irrigation systems required for most marketable crops, has forced many impoverished rural families, including widowed women, to cultivate poppy crops. They sell these for cash to wealthier land owners and warlords who provide credit and essential marketing links to international narcotic rings.

Narrowing the bills’ scope:

Legislative theory required the participants to tackle two seemingly contradictory tasks: On the one hand, each team had to draft research reports that, in their Introductions, located these specific social problems in the larger context of Afghanistan’s current post-conflict realities. On the other, each team had to narrow its chosen problem down to the specific ‘behaviors’ of relevant social actors, both Afghan citizens and government officials – persistent dysfunctional

institutions¹ – that seemed to comprise a ‘do-able’ aspect of that problem. Only at that level of detail could the participants, using legislative theory’s problem-solving methodology, gather and structure the available Afghan evidence to demonstrate logically that their proposed bills’ provisions would: a) likely overcome the causes of those problematic behaviors; and b) induce the more appropriate new behaviors needed to facilitate the seven problems’ resolution.

For example, the workshop team members working on the complex problem of poppy cultivation found that their chosen social problem actually comprised several closely interrelated aspects: (1) the behaviors of agents who provided cash and market access to poor farmers to grow poppies, and smuggled the crops to buyers on the international markets; (2) the behaviors of poor peasants who grew poppies because the decades of war had destroyed irrigation canals essential to grow legitimate crops, and they had little or no source of credit, seed, or technologies, or the market access they required to cultivate them; and (3) Afghan medical requirements for a small amount of drugs seemed to necessitate a regulated exception to a general prohibition against poppy cultivation. The team had to decide which of these they should seek to help resolve by drafting a bill, accompanied by a well-structured research report grounded on facts and logic, to demonstrate the likelihood that the bill’s detailed provisions would prove effectively implemented and contribute significantly to reducing poppy cultivation for international drug markets. In their report’s Introduction, they would have to explain that the bill comprised only a part of a broader legislative program necessary to deal with the overall narcotics problems, leaving the other aspects for the further research essential to ensure effective legislative action.

Follow-up:

From the outset, the plans for the workshop provided that Glenn Sarka, together with the facilitators, would work with the participants in the coming weeks to gather further relevant available country-specific evidence and improve their draft research reports and bills. A follow-up workshop will provide an opportunity for a more in-depth review by the ICLAD consultants and all the workshop teams.

In addition, at the final day of the workshop, the participants exhibited strong support for institutionalizing an on-going, self-reliant process to further strengthen Afghan legislative drafting capacity and law-making institutions, not only for government ministry officials, but also for members of the Parliamentary staff, and civil society organizations.

*Send five to ten Afghans to participate in the Boston University four month residential training-for-trainers’ program. These should include leadership personnel from the Ministry of Justice, the Parliamentary staff,

¹ Legislative theory defines *institutions* as repetitive patterns of behaviors (see Drafters’ Manual, Box 1.5, p. 11).

and non-government organizations. On their return, these could play a leading role in institutionalizing an on-going training program in each of these institutions to equip their members with the tools for assessing and, when necessary, drafting legislation to facilitate essential change and development.

* Introduction of an interdisciplinary legislative drafting program at the law school to equip university students with legislative drafting skills by engaging them in preparing municipal and district level bills and research reports would serve a two-fold purpose: (1) It would equip future generations of drafters and law-makers with the necessary theory, methodology and techniques to draft the vast amount of legislation Afghanistan will require to ensure the exercise of state power to foster people-oriented development through law in ways consistent with good governance; and (2) produce immediately needed legislation to help resolve local problems like garbage collection and traffic control.

*Build the university's research capacity to work together with government and non-government organizations to contribute to the development of interdisciplinary research needed to further strengthen legislative theory, methodology and techniques as tools for democratic social change.