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Institutionalizing experiential learning in the process of strengthening Lao PDR'S legal framework

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INSTITUTIONALIZING EXPERIENTIAL LEARNING IN THE PROCESS OF
STRENGTHENING LAO PDR'S LEGAL FRAMEWORK

I. Principles:

A. The on-going Lao learning process to strengthen Lao PDR's legal framework should contribute to formulating an overall long-term plan consisting of projects based on prioritization as decided upon by Lao to build Lao capacity in major functional problem areas.

B. Lao personnel should play a leading role in all steps of the process, from the original identification of needs, through the creation of program documents, to the implementation of the actual project.

C. Lao personnel, together with foreign consultants, should identify the institutional features of relevant problems in Lao's unique country circumstances, ensuring proposed projects address the causes of those problems validated by adequate evidence drawn from Lao experience.

D. The learning process should center on major functional problem areas related to strengthening Lao's legal framework at the national, provincial and local level. Previous discussions have identified four such areas:

1. The law-making process: This area consists of two major subdivisions: a) from the initial policy formulation to drafting the bills and regulations; and b) consideration and enactment of those drafts by the appropriate governmental authority;

2. Dispute settlement institutions: These include courts, arbitration, and customary forms of dispute settlement;

3. Law implementation and monitoring: This involves institutionalizing participatory mechanisms for evaluating and improving all aspects of the legal framework;

4. The legal profession: This includes the education and institutional organization of personnel to service the legal system.

E. The terms of reference for all foreign consultants associated with the project will include the following requirements:

1. The foreign consultants should see as a primary aspect of their task, not only completing their particular project in cooperation with Lao personnel, but also building self-reliant Lao capacity to undertake similar projects in the future;

2. As far as possible, the foreign consultants will work together with Lao counter-parts in utilizing a problem-solving methodology to aid in gathering and analyzing facts that:

a) identify the particular Lao characteristics of the problems their joint team's project addresses;

b) help to explain the causes of those problems;

c) contribute to assessing the social costs and benefits of measures logically likely to assist in overcoming those causes; and

d) derive from (as participatory as possible) feedback mechanism designed to expose the social impact of measures introduced.

II. Organizing the needs assessment process:

A. The Ministry of Justice, working with the Advisory Committee already established to strengthen the legal framework,

should assume primary responsibility for working with the UNDP to implement the proposed needs assessment process

1. The MOJ has already taken important steps:

a. It has appointed Project personnel and provided an office;

b. It has organized a successful one month workshop to begin assisting ministry personnel to learn legislative theory and methodology in the course of drafting three bills and accompanying research reports;

c. It has assigned four staff members to go for four months study of legislative theory and methodology with a view, on their return, of institutionalizing an experiential learning process to further strengthen the capacity of Lao legal personnel.

2. The MOJ and its Advisory Committee should work with the UNDP and foreign donors to develop programs in each of the four major functional problem areas by:

a. Appointing interministerial and National Assembly teams to work with foreign donors to review available evidence as to the relevant problems and their causes in Lao PDR; and drafting programs to address them;

b. Providing for an adequate process by which the Lao personnel in institutions affected by proposed programs have an adequate opportunity to participate in reviewing, revising, and adopting them; and

c. Ensuring the assignment of Lao personnel to work with and learn from foreign consultants in the course of implementing the programs adopted.

III. The Ministry of Justice and its Advisory Committee, with the assistance of the UNDP, should invite the donor agencies to assist in the development of programs for each of the major functional problem areas by:

A. Identifying and providing qualified appropriate foreign consultants to work with the needs assessment teams appointed by the MOJ in designing programs appropriate to the Lao circumstances;

B. Providing training personnel to work with and build the capacity of Lao personnel to implement programs designed;

C. Assisting the Lao PDR government agencies acquire essential equipment for implementing the programs.

IV. Examples of possible coordinated activities initiated by the MOJ and the Advisory Committee already under way:

A. Land legislation:

1. In the context of the UNDP-financed legislative drafting workshop under the MOJ, two Australian consultants financed by the World Bank have agreed to work with members of the team working on the Land Bill in the area of titling land.

2. Hopefully, they will continue to work with the team after the workshop ends conducting the necessary research for the research report and completing the draft bill; and, if the MOJ agrees, could submit their results to the January workshop for a critical review by the four Lao personnel who will have completed their studies as a basis for institutionalizing the experiential learning process.

3. Presumably, once the appropriate authorities have reviewed, revised and adopted the draft bill and research report, the World Bank will finance the next steps of implementing it.

B. Civil aviation:

1. The two UNDP-financed consultants here to work on regional civil aviation legislation have agreed to consider working at the January MOJ workshop with an interministerial team appointed by the responsible Lao institutions. They will provide their own interpreter and identify and finance the foreign consultant.

2. The bill and research report when completed will have identified the necessary personnel and equipment for training which, once the Lao authorities accept them, the civil aviation project will presumably then finance.

C. Environment:

1. A Norwegian consultant has completed a review of the existing legislation and institutions currently in place to enable STENO to deal with Lao's environmental problems. What now seems necessary is further research to explain the causes of the apparently widespread failure of existing institutions to implement the law-makers' intent, and design a project to overcome those causes.

2. The Norwegian report suggests a joint Lao-Norwegian team should design and undertake the necessary research for providing a program to improve the nation's environmental law and strengthen STENO's capacity to provide the leadership required to implement it. If the Norwegians and MOJ agree, that team could participate in the January workshop, learning to use legislative theory to guide the research essential to translate the proposed environmental policy into law; and the Norwegian participants would provide the foreign consultancy component.

3. Presumably, once the team had formulated a preliminary draft bill and research report, they would then work with the Norwegian consultants to implement the research essential to finalize the bill and report.

4. If the Norwegians and the Lao government authorities agreed, then, once the Lao government had enacted it, the Norwegians would finance the necessary training and equipment STENO required to ensure the bill's implementation.