A UNDP project to strengthen Kazakhstan's parliamentary democracy

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PREFACE

This book has been long in the making. Like the character Topsy in Harriet Beecher Stowe's *Uncle Tom's Cabin*, it just growed. Starting in 1974, Bob taught a seminar on sociology of law -- a subject on nobody's Bar Examination, and to which most law students give the amount of time and attention that one might expect (that is, very little). Casting about for some sector of the legal profession where sociology of law counts not as a 'cultural' but as a professional subject, he discovered legislative drafting. A principle problematic for sociology of law lies in the question, Why do people behave as they do in the face of a rule of law? To draft an effective law, a drafter must answer the same question. For twenty-odd years, Bob taught a clinical legislative drafting course at Boston University, in which law students draft bills at the request of Massachusetts state legislators. For that course, he developed teaching materials; this Manual had its genesis in those materials. This Manual began almost a quarter of a century ago.

Ann and Bob had rather earlier developed an interest in the problems of development. Since 1962 they taught for a total of eleven years in six African countries, and, for one year, in China. Increasingly Ann, an economist, became convinced that without discussing how to bring about institutional change in developing countries, all her study of resource allocation issues would have no practical consequences. From their first adventure of teaching at the University of Ghana in 1962-66, Bob had become intrigued by the problems of law and development. Their interests ultimately focused on the problems of drafting laws for development and change -
that is, on the problems involved in using law as an instrument in transformation. Since 1980, they have conducted workshops in legislative drafting in the course of several projects designed to strengthen national law-making capacity in a variety of different countries in the developing and transitional worlds, and, since 1966, in courses in law and development. In that period, for the use of third world drafters, they incrementally but continuously developed teaching materials based upon the materials that, for B.U. students, Bob had developed in Boston.

In 1998, Nalin Abeysekere, with twenty-odd years of drafting experience, then as now The Legal Draftsman of Sri Lanka, sought UNDP's help in developing drafting capacity in Sri Lanka's nine provinces. In time, that led to a mission by the Seidmans as consultants to Sri Lanka. They invited Nalin to join them in rewriting the accumulated teaching materials for publication as a Manual.

No book springs complete, as legend says Athene, fully clothed and armed, sprang from the brain of Zeus, from the brains of its authors. In this case particularly, the ideas that this Manual contains developed over the year from the books and articles on drafting, development and sociology of law that its authors read, and from the various experiences they had in drafting practice. The authors have tried conscientiously to attribute ideas discussed here to their proper authors. They remain conscious that, because of the Manual's unusually long gestation and its constant revision over close to a quarter of a century, that they may well have failed to attribute

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1 Since 1980, when they taught legislative drafting for SAADC officials at the University of Zimbabwe, the Seidmans have served as consultants on legislative drafting programs in China, Lao PDR, Sri Lanka, Bhutan, Nepal, Kazakhstan, and South Africa and in Gauteng Province, South Africa. In Mozambique they conducted two workshops to equip the newly-elected national legislators to assess and, when necessary, initiate needed legislation.
some of these ideas to their proper originators. That failure lies not in their intent, but in the way this Manual evolved. Part III of this Manual especially derives from the previous work of many authors and scholars. Over the years, the notes attributing the ideas to the place where we found them have disappeared. We apologize for that.

This volume constitutes a Manual. It aims to guide practice. As explained in Part I, because one cannot divorce practice from theory -- or vice versa -- the Manual contains a dollop of theory. This remains, however, a practice Manual. It aims at practitioners, not at academics, and specifically practitioners in the developing and transitional worlds. As a practice Manual, we have believed it unnecessary to burden it with much of the baggage of academia.

Over the years, so many people have made contributions of so many different kinds to this Manual's form and content that it proves impossible adequately to thank them all: The BU law students and research assistants who, for decades have raised searching questions and frequently planted the seeds of ideas that, sometimes unacknowledged, flowered in this Manual; the friends and colleagues who have repeatedly criticised weak formulations and insufficiently justified propositions; and, above all, the many drafters who, in trying to use the Manual to write bills to fit their own countries' unique realities² challenged and strengthened the proposed legislative theory's basic precepts, and working together with us in rethinking the use of drafting techniques as tools for ensuring a law's effective implementation in the context of non-arbitrary, accountable, transparent and participatory governance.

We would especially like to express our appreciation to Mia Adamidis and Earl Battle,

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² These encompassed not only widely differing geographical areas and historically-shaped cultures, but also languages, which added translation difficulties.
who provided invaluable day-to-day assistance in the on-going struggle with computers, xerox machines, and the global communication networks required to bring together all the ideas and experiences reflected in the pages of this Manual. Bob particularly wants to thank Bill Chambliss, who in the course of writing a book together, long ago introduced Bob to the sociology of law. Jan Mattson, Stefan Priesner, Jordan Ryan, Yvonne Heller, Henning Karschner, [Sri Lanka], Andrea Wolfe, and and other officials in the United Nations Development Programme and other agencies made Bob's and Ann's trips to the countries in which they worked unbelievably rewarding. In various countries, so did Zhou Qingpei, Hu ..., Dr Huey ..., Sampath ..., Jayesundra ..., [Bhutan], Deo Uate, [Guateng], Anil K.C., and many, many others. Since 1993, some seventy-odd participants from various countries attended the Boston University Program in Legislative Drafting for Democratic Social Change. They read, used, argued over and contributed immeasurably to this Manual. The Seidmans also want to record their gratitude to academic colleagues on three continents and nine universities, too many by half for enumeration, for the constant interchange of ideas that make universities places of wonder and excitement. Finally, the Seidmans express their gratitude for their four internes on missions to Lao, Mozambique, Sri Lanka and Kazakhstan, Ann Parsons, Semane Parsons, Nika Seidman and Tumi Maketla (who happen to be their grandchildren), for the joy these internes gave their grandparents.

Ann Seidman and Robert B. Seidman, Co-Directors, Boston University Program on Legislative Drafting for Democratic Social Change, Boston, Massachusetts, USA

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2 William J. Chambliss and Robert B. Seidman, LAW, ORDER AND POWER (1968).
Nalin Abeyesekera,
The Legal Draftman, The Government of Sri Lanka, Colombo

January 1, 2000
LEGISLATIVE DRAFTING TECHNIQUES FOR DEMOCRATIC SOCIAL CHANGE: A MANUAL FOR DRAFTERS

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