Legislative drafting learning process in Mozambique

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ADDITIONAL COMMENTS: The 3 bills will likely include legislative process, administrative regulations and the budget (we hope); will let you know. Dates tentatively are Jan 8-19 - ACL

P.S. We've mentioned possibility of SA participation, response is favorable, but needs final decision...

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AN OUTLINE FOR A TEN DAY WORKSHOP IN LEGISLATIVE DRAFTING

PART I. THE CONTEXT OF THE WORKSHOP

DAY ONE

1. Introduction

a. Workshop objectives:

   i. To help drafters to draft three selected bills, and to prepare research reports justifying them.

   ii. In the course of that, to enable drafters to strengthen their capacities --

      (1) to prepare legislative programs likely to further the transformation from a dependent, colonial economy to a self-sufficient, independent economy, and from a more or less 'command' economy to one mainly powered by market mechanisms; and

      (2) to draft unambiguous and well-written bills.

b. This workshop will use a learning-by-doing teaching methodology:

   i. At specific points, the workshop participants will divide into small groups to deal with issues relating to their particular research reports and bills and, taking turns, report on their conclusions (including their questions for their consultants) to whole workshop for general comments.

   ii. In their small groups, the workshop participants will fill in an outline for their research reports which will explain and justify the measures their

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1 We did not intend the allocation of subject-matter by days to become a strait-jacket. We had no very useful basis for deciding how fast a workshop in Mozambique would want to go. The day's work indicated, therefore, serves only as a very rough guide to time allocations.
bills will contain; and, in the last days of the workshop, will begin drafting the actual language of important parts of their bills.

2. **Two principal problems of development:** Most third world countries face two over-arching difficulties: Dependency, and the growth of the bureaucratic bourgeoisie; drafters will learn to design legislation to reduce tendencies in these directions.

**PART II. THE FUNCTIONS OF LAW IN SOCIAL CHANGE**

3. As an instrument for social change and development, governments can only try to change existing institutions by using law to change people's behaviors

   a. Law can only change allocations of resources by changing institutions. By definition, these consist of repetitive patterns of behaviors.

   b. Laws can only seek overcome the social problems that reflect and foster dependency and bureaucratic bourgeoisie by changing existing institutional relationships.

**DAY TWO**

**PART III. METHODOLOGIES FOR DEVELOPING LEGISLATIVE PROGRAMS**\(^2\); THE FORM OF THE RESEARCH REPORT

4. General strategies for developing a legal framework for social, political and economic transformation

   a. **Note:** The 'Law of Non-Transferability of Law': A law that leads to one kind of behavior in one time or place will only accidentally lead to the same behavior in different circumstances.

5. Methodologies (or agendas) for drafting transformatory bills specifically designed to fit the Mozambican circumstances

   a. If Mozambique wants to transform itself (since it cannot copy transformatory law from some other 'developed' country, or from some idealized amalgam labelled 'international standards') it must develop laws that suit its own circumstances.

   b. The four steps in the problem-solving agenda as the basic methodology for formulating and justifying effectively

\(^2\) 'Legislative program' means the detailed outline of the elements that the completed bill should include.
implementable legislation: (i) identifying the social problem; (iv) explaining its causes; (iii) formulating a solution (bill) that logically addresses the causes; (iv) monitoring and evaluating implementation of law to ensure timely revision if necessary.

6. The research report, essential for competent legislative drafting: Ensures drafters conduct research essential to drafting effective legislation; and provides evidence to justify the measures in their bills to law-makers and the public.

7. Legislative theory and the research report:
   a. Purpose: To guide the formulation of hypotheses about the real world; then use those hypotheses to guide research for data warranting or dis warranting the hypotheses.
   b. 3 criteria for assessing theory:
      i. Uses reason informed by experience;
      ii. Facilitates popular participation;
      iii. Has capacity for self-correction.
   c. Three elements of an adequate legislative theory: methodology (already discussed), perspectives and categories of possible relevant explanations.

8. The uses of foreign law and experience in a research report:

DAY THREE

PART IV. THE SUBSTANTIVE CONTENT OF THE RESEARCH REPORT: DIFFICULTY, EXPLANATIONS, PERSPECTIVES.

9. The content of the research report structured by problem-solving methodology's four steps.
   a. Note: drafters must translate social problem from one of misallocated resources (as it typically first appears) into a question of problematic behaviors which the proposed law can change.

10. An agenda for research, derived from legislative theory, for formulating explanatory hypotheses as to causes of problematic behaviors; these in turn serve to guide gathering of evidence to prove them.

11. Perspectives: The functions and kinds of Grand Theory (eg neoclassical/liberal theory; basic needs-structuralist theory; transforming institutionalism/historical materialism) in developing explanations as to social problems' causes.
DAY FOUR

12. Explaining implementing agencies' behaviors.
   a. Rule: Never draft a bill without simultaneously drafting appropriate provisions likely to ensure the law's implementation.
   b. Explanations for 'behaviors' of implementing agencies as complex decision-making agencies.

PART V. SOCIAL SCIENCE RESEARCH METHODS FOR DRAFTERS

13. Social science research techniques: the importance of using evidence to prove hypotheses that purport to explain causes of problematic behaviors.

14. Social science research techniques:
   a. Gathering the facts
   b. Methods of gathering facts and ensuring their reliability.

DAYS FIVE AND SIX

PART VI. PROPOSALS FOR SOLUTION

15. Proposals for solutions (drafting actual bills):
   a. Preliminary strategic choices: ensuring the bill addresses a clearly specified social problem
   b. Criteria for possible legislative solutions:

16. Alternative possible legislative solutions:
   a. Sources of alternative possible solutions.

17. Making a social cost/benefit analysis of alternative possible solutions as basis for selecting measures to include in your preferred solution.

18. Checking your proposed bill to show it will work:
   a. Ensure research report shows the bill includes measures likely to eliminate each cause of role occupants' problematic behavior

19. Conformity-inducing measures ('sanctions') which implementing
agencies might introduce: direct; roundabout; educative (explain reasons for measures proposed in the bill in research report).

20. Choosing and structuring an implementing agency: research report should explain why choose existing or creating a new agency; a proactive or reactive agency;

DAY SEVEN

PART VIII. DRAFTING FOR THE RULE OF LAW AND TO AVOID CORRUPTION

21. Drafting for the rule of law: Controlling official behavior (including the control of corruption): nature of corruptions; causes; range of possible solutions.
   a. Note importance of controlling discretion, openness and accountability, as well as citizen involvement in monitoring and evaluating officials' performance.

DAY EIGHT

22. Drafting the bill: form
   a. Guides to interpretation
   b. Parts, chapters and sections: grouping and ordering
   c. Rules for clarity and elegance

23. Drafting critical sections of your bill

DAY NINE

24. Drafting the bill: Establishing the specific features of the implementing agency:

25. Write monitoring and evaluation provisions in the bill

26. Amendments; consequential provisions; transitional provisions.

DAY TEN

27. Recapitulation and evaluation