Workshop on legal drafting skills from July 29 - August 9, 2002 in Hanoi, Vietnam

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Evaluation report
Legal Drafting Workshop 2002

Introduction
At present, Vietnam is implementing a comprehensive legal reform as a part of the Renovation (Doi Moi) program aiming at the transition from a centrally planned economy to a socialist oriented market economy.

As a part of the Danida sponsored Legal Reform Project, a workshop in Legal Drafting Skills has been carried out from 29. July-9. August 2002. The objective of the workshop was to train a number of government officials in transformatory law making relevant to the Vietnamese circumstances.

The workshop was a second element of an intended three year program, as it is deemed that it will take three years to institutionalize a process by which drafters learn to design bills likely to induce effective democratic social change consonantly with good governance and in writing out bills in a clear, unambiguous, understandable and convenient usable form.

The workshop was preceded by a long distance legal drafting course. As an element of the institutionalization, a number of the participants in the long distance course in legal drafting also participated in the workshop, where several of them worked as key persons.

The Danida funded Legal Reform Project supports the Office of the National Assembly, the Supreme People’s Court and the Supreme People’s Procuracy. In addition to officials appointed by these three institutions, officials appointed by the Danida Water Sector Program, SUMA and USAID, Star Office, also participated in the Legal Drafting Workshop.

The who, what and where
As chief facilitators of the workshop the Legal Reform Project contracted with Professor Ann Seidman and Professor Bob Seidman, who has extensive professional background in teaching and working in developing countries undergoing social change.

The participants in the workshop were prior to the workshop provided with a textbook by Seidman, Seidman and Aneysekere “Legislative Drafting for Democratic Social Change: A Manual for Drafters”, which had been translated into Vietnamese.

As a part on the three year program on legislative drafting, it was the intention that the participants in the workshop should work in groups each focusing on a bill that in the near future would need to be revised or drafted.
The workshop had participation of 9 groups who in total worked within 8 areas of legislation. The actual social problems to be addressed (see below) were decided by most of the groups in the beginning of the workshop.

The nine groups and their areas of law were as following:

1. Public construction: Law on Construction License
2. Environment: Air pollution caused by discharge of emission by ground transportation means in urban areas
3. State Budget: Law on the amendment and supplement of some articles of the State Budget Law
4. Bankruptcy: Amendment and supplement Law on Business Bankruptcy
5. Criminal Procedure: Criminal Appellate Court Fee and Enforcement Measures
6. Criminal Procedure: Simplified Procedures
7. Coastal Management: Government Decree regarding the management and exploitation of the coastal fisheries resources of Vietnam
8. Water: Regulation on Protection against Pollution on Surface Water caused by Industrial Wastes.
9. Law on law: Law on the collection of People's comments in developing Legal Normative Documents of People's Councils and People's Committees

Each group was supported by one or two international consultants with expertise within the subject matter of that specific group. The international consultants were recruited from Denmark, Australia, United States and the Philippines.

To secure that the whole group had full benefit of the international consultants, each group was permanently assisted by an interpreter. The discussions in the group were facilitated by a member of the group who was appointed to act as a key person. Prior to the workshop, a two day preparatory workshop was held which introduced the international consultants and the key persons to the methodology applied in the workshop. The preparatory workshop was also a forum for the international consultants and the key persons to interact to establish a common understanding of the support they could provide to their group.

The total number of participants in the workshop was 90 including international consultants and interpreters. The number of participants in each group varied depending on the number of participants appointed to each group by the sending institution. The list of participants divided into groups is annexed for further reference.

Especially with regard to the wish to institutionalize the drafting skills in Vietnam, a number of academic institutions were invited to send participants to the workshop. These participants participated in groups according to their personal and professional interests. The list of represented academic institutions is annexed for further reference.

Originally, it was the intention to have a two day workshop for 60 members of parliament on how to assess a bill presented to parliament. However, due to the fact that the newly
elected National Assembly was in session at the same time as the workshop was conducted, it was unfortunately not possible to arrange the said workshop.

In order to increase the feeling of responsibility for the workshop between the participants and obtain daily improvement an evaluation meeting was conducted every day after the closing of the workshop. The chief facilitators, JOPSO, the international consultants and the key persons of each group took part in evaluation of the days’ work and discussion of possible changes for the following days.

The workshop was organized in Press Club in the Ballroom, which during group discussion sessions were divided in three separate chambers. The location was chosen in order for the Joint Project Support Office (JOPSO) to be able to provide the best possible support. JOPSO is located on the sixth floor in Press Club. All secretariat functions for the workshop were carried out through JOPSO.

**Methodology**

**Drafting theory**

The drafting theory takes a starting point in the statement that transformatory law can not successfully be implemented unless it works to transform the patterns and behavior of the existing institutions which often are the proponents for the social problems that the transformatory law wishes to address.

In Vietnam today only few drafters have the skills to draft transformatory laws.

In many countries officials and drafters too often design and draft laws by one of four inappropriate methods: They either merely declare broad and very vague principles, copy foreign law, criminalize unwanted behavior or compromise between competing interests. None of these methodologies for designing legislation require the bills authors to make a detailed study of the specific circumstances in which the new law will operate. As a result the new laws only coincidently induce their prescribed behavior.

The first part of the workshop focused on drafting a research report, while the second part focused on drafting the resulting bill. It is the assumption that if the research report is properly made, the bill will materialize itself from the research report.

Issues to be addressed in the research report were the following:

- Law addresses social problems. It does so by attempting to change repetitive patterns of social behaviors, i.e. institutions. To change behaviors, a law must specify who does what. The key practical and theoretical question that a drafter must answer is: why do people do as they do in the face of the rule of law.
- Importance of explanations of causes of relevant role occupant's problematic behaviors as logical basis for designing a bills detailed provisions. The use of ROCCIPI\(^1\) agenda to identify possible causes of problematic behaviors.
- Special importance of explaining causes of implementing agency officials' problematic behaviors, often the key to understand why existing laws remain unimplemented.
- Having used reason informed by experience – logic and facts – to specify the causes of role occupant's problematic behaviors, how to devise solutions likely to induce primary role occupants to behave in ways necessary to resolve the difficulty. Focus on logically designing bills detailed measures to alter or eliminate causes of implementing agency officials’ problematic behaviors.

The drafting of the bills are structured as a continued process from the research report, and divided into the following elements/sessions.

- The proposed solutions from the research report are translated into bills detailed provisions. The specific measures that seem likely to contribute to the desired changes in primary role occupants' and implementing agencies behaviors are listed. The provisions are then grouped logically into the bill's Parts and Chapters, and ordered logically within the Part and Chapter.
- Importance of organizing a bill in terms of its usability for the likely users. The bill must prove easily understandable and accessible for each of the sets of actors whose actions, together, comprise the system that will likely tend to resolve the social problem addressed.
- Use of clear and precise sentences and words to prescribe appropriate behaviors for each set of actors that the bill addresses.

The third and last part of the workshop was designed as feedback sessions where each group received feedback from two other groups on their final draft research report and bill.

**Learning by doing**

The learning method used throughout the workshop was learning by doing.

Firstly, each separate issue highlighted in the bullets above was introduced to the participants in a plenary session of an hour and a half. The session was supported by chapters in the textbook, which the participants were expected to have read in advance.

Secondly, following the plenary introduction to the subject, each group applied the theory to their particular social problem (bill).

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\(^1\) ROCCIPI – Rule, Opportunity and Capacity, Communication, Interest, Process and Ideology. Agenda to Design Legislative Measures to Change Primary Role Occupants' Problematic Behaviors.
Thirdly, the group would present their work orally supported by prepared transparencies to two other groups, who would provide feedback and critique of the work done. The group hereinafter had the opportunity to adjust their chapters in the research report according to the feedback and critique they found relevant.

Each group had a laptop at their availability, and the research report and the bill was during the group sessions typed out in Vietnamese and English.

The groups would draw upon the international consultants as appropriate.

The feedback sessions by the end of the workshop aimed not only at providing the drafting group with useful comments and suggestions on their work, but also to allow the feeding back group to apply the theory on a totally different subject matter.

**Evaluation from participants**

Upon the completion of the workshop each participant and consultant were asked to fill in an evaluation form about the workshop. The evaluation form contained both empirical and material responses. The empirical and the material results of the evaluation is annexed for further reference, and only the main point of the evaluation will be highlighted here.

Out of approximately 70 participants, 57 completed the survey.

In general the methodology, theory and techniques seem to sit very well with Vietnamese participants. On a scale ranging from excellent, very good, good, poor and very poor almost all questions got the highest score in very good, the next highest in good, and the third highest in excellent. Only very few questions got a score below good.

As a workshop operating on a learning-by-doing process is quite an uncommon feature in Vietnam, the evaluation of this process is very interesting. On the overall question on how the participants rated the learning-by-doing process, 12 rated it excellent, 31 rated it very good and 14 good. In addition to the quantitative responses, several participants expressed their enthusiasm by wishing to join in more workshops applying learning-by-doing as learning methodology.

The participants were in general very happy to draw from the experiences of the international consultants and the rating of their knowledge and ability to apply the problem solving methodology in general was divided almost equally between excellent, very good and good, with no hits below good.

The textbook which had been translated into Vietnamese was criticized for not being accurate, and for the language not being “Vietnamized”. As for the degree of preparation, all the participants read part of or the entire book before or during the workshop. It should in this regard be mentioned, that a revised translation was not available till the first day of the workshop.
The participants had several suggestions of how to improve the effect of the evaluation meetings, which were carried out every day after the ordinary sessions. The suggestions all aim at increasing the involvement of all participants and not just focus on the key person.

With regard to the organization of the workshop it generally got a very positive feedback. However, few comment occurred repetitively; Instead of morning sessions running from 9 – 12 am, they should run from 8.30 – 11.30. The lectures should be in the morning, and there should be more time for exercises.

The comments and recommendations made by the consultant do to some extent resemble the evaluations made by the participants. In addition thereto, only one common trend can be seen from the nine evaluation forms handed in by the consultants; regarding their own participation the consultants would have liked to be better informed prior to the workshop about the subjects of their groups, the relevant existing legislation, the legal framework in Vietnam and their role in the group.

**Evaluation from JOPSO**

The JOPSO evaluation is not based solely on the evaluation form, but on the experiences gathered by JOPSO throughout the two weeks. As JOPSO provided all the secretariat functions for the workshop, the responsible staff got a good insight into the strengths and weaknesses of the organization of the workshop.

It is the overall evaluation of JOPSO, that the workshop went very well and that the outcome was very satisfactory and in full lived up to the aim of the workshop.

The participants were very committed to their work, and there was a very eager involvement in all the groups during the group sessions. The groups also demonstrated a good ability to assist in finding solutions to the problems that occurred underway, as for example time pressure of finalizing draft research report and bill, and translation of those documents into English.

With regard to the material output the nine groups all produced a research report and a draft bill in the Vietnamese and English language. The quality of the work varies of course, but the essential part is the demonstration in those drafts of the participants' ability to apply a whole new theory as a basis for legal drafting. It has to be stressed that the drafts should not be considered as answers to the awaiting drafting of the actual laws in Vietnam, but they are very satisfactory first drafts based on a new knowledge. It is the expectation that all participants will bring to their home institutions the material and the thinking from the workshop, and that this over time will assist in institutionalizing a new way of thinking when drafting laws in Vietnam, based upon Vietnamese and not foreign experience and expertise. It also has to be stressed that institutionalization of legal drafting, in Vietnamese conditions, has to be considered an ongoing process and this workshop is only the very first step.
The system with key persons appointed from the regular members of the group was very efficient, as those key persons participated in the workshop eagerly and responsibly with a commitment that reached beyond office hours.

The international consultants brought a lot of knowledge and initiatives to the group. In a few of the groups senior consultants were brought in for the second week only. However, extra international assistance in the second week is not recommended in the future. The real work is primarily done in the first week of the workshop, and consultants should be available to assist the group for the duration of the workshop. The opportunity for the consultants and the key persons to meet before the actual workshop was very beneficial for their ability to function as a team in the workshop.

During the group discussion sessions, the groups were divided in three panels of three groups. As there was only two chief facilitators, this meant, that one panel was on their own to organize their work and presentations to the other groups. This did on several occasions cause some confusion in the panel that was to operate on its own. As a division in two panels was inoperable due to a too large number of groups in each panel, it is deemed that it would be more satisfactory for the participants if the number of groups in the workshop was kept at a maximum of six, and the numbers of participants according lower.

The decision to conduct the workshop in Press Club proved to be very essential to a smooth organization of the workshop. The degree to which the secretariat assistance and facilities was needed was - due to the participatory set up of the whole workshop - overwhelming. On several occasions the facilities available at JOPSO was so overworked that it caused constraint on the staff and delays in the assistance to the workshop. Facilities in this context are in particular computers, xerox, translation and - to a certain extent - manpower.

However, had the workshop been organized outside Press Club, the assistance that JOPSO could have provided for the workshop would have been considerably less, which could seriously have influenced the overall smooth running of the workshop.

The inclusion of three outside institution in the workshop worked out satisfactorily in the end, but did result in a quite significant extra workload for JOPSO in administration both prior to, and during the workshop. As one of the lessons learned in the workshop was that the number of groups and participants was too high, it is obvious, that any inclusion in future similar workshops of outside institutions should be kept to an absolute minimum if not avoided totally. Both in administration and organization of the workshop, it could be argued that inclusion of outside institutions were at the cost of the groups from the Legal Reform Project.

The need for interpretation and translation for the workshop continuously escalated throughout the workshop, both in regard to translation of the groups' documents, but also in preparation of material for plenary sessions, for handouts and material that the international consultants wished for their group to be able to benefit from. The
identification of suitable interpreters and translators does have room for improvement, and the way to go about this should be thoroughly considered before a new workshop, in particular with regard to the amount budgeted with for interpretation/translation, and with regard to preparation of material prior to the workshop.

**Recommendation**

It is recommended that the legal drafting activity continues.

However, based on the lessons learned from this workshop and the preceding long distance course, a few alterations are recommended.

The number of groups participating in the workshop should be kept at a maximum of 6, and the number of participants to a maximum of 45.

The key persons should not be professional facilitators as was in fact the case for two of the groups. The commitment from the key person is more sincere when the person is participating in the workshop for his or her own professional benefit. In future workshop, the key person should be a person who already participated in this year workshop. The key person will then be capable of delivering an enhanced performance for the group, and also for the organization as such.

As it appears from the annexed evaluation forms, there are separate questions for those participants in the workshop who also participated in the long distance course. With due regard to the IT-infrastructure in Vietnam, and the time constraints that all participants in the long distance course experienced, it is not recommended to continue this activity. It is too costly an activity with almost no output. The teaching of legal drafting skills should instead be focused on a conduction of workshops to meet the needs in Vietnam.

As far as the organization of the workshop is concerned, it could be considered to arrange the next workshop outside Hanoi. This would increase the concentration of the participants but would of cause also be costlier, and more time constraining for the participants.

The textbook by Seidman, Seidman and Aneysekere “Legislative Drafting for Democratic Social Change: A Manual for Drafters”, which had been translated into Vietnamese, should be amended in order for it to become more “vietnamized” and published formally for other interested parties to benefit from.

Unfortunately a workshop for members of Parliament was not possible due to the fact that the National Assembly was in session for the duration of the workshop. However, in order for the institutionalization process to be complete, it is deemed to be of significant importance that also MPs are trained in assessing legal documents. It is therefore strongly recommended that such workshops are conducted in the future.

It has been recommended both by leading politicians and in the Legal Needs Assessment that the legal drafting should be improved. It has been widely recognized that legal
drafting in Vietnam in general is of poor quality and that the need for staff able to do
good legal drafting is very high.

Thus, it is imperative to look upon the legal drafting activity in The Legal Reform Project
in a wider perspective. For this purpose the Seidmans have committed the annexed
strategy for a continuance of strengthening legal drafting capacity in Vietnam. The
proposal is a full scale suggestion, of which JOPSO can recommend the following next
steps as being the more imminent ones within the framework of the Legal Reform
Project.

Next steps

Firstly, the four most committed and qualified participants in the legal drafting workshop
2002 should complete a 4 month training course at Boston University. The funds required
per person for a course are approximately $16,500. These funds could be mobilized from
alternative sources outside the Legal Reform Project. The purpose of this training is to
initiate an ongoing process which focuses on institutionalizing the legal drafting skills.
These four persons must therefore be well positioned officials within their institution,
who upon their return has the support from their institution to conduct in-house training
in legislative drafting.

Secondly, it is not sufficient just to run one workshop a year. The training is not thorough
enough – it is merely an appetizer and a start of an ongoing process. Therefore, it is
deemed necessary to conduct two two-week workshops per year. Like the 2002 workshop
an entry-level workshop should be conducted every year, exposing a new group of
participants to the methodology of legislative drafting. The advanced workshop should be
only for participants who have already been exposed to the material. The advanced
workshop should primarily be conducted by the participants themselves, supported only,
by the Seidmans and perhaps other consultants on substantive law matters.

Thirdly, it should be considered to conduct separate training for the National Assembly,
and the Office of the National Assembly. Lawmaking and assessment of proposed law
are a two string process, which in order to succeed also requires that the MPs have some
concurrent knowledge of how to assess a law. With a view to institutionalization it was
suggested by the ONA participants in the 2002 workshop, that it would be very helpful to
run a workshop with participants (staff and deputies) from each of the 7 Committees of
the National Assembly. This should be closely coordinated with UNDP that runs a
similar activity with ONA.

It is recognized that the need for training is different speaking of staff and deputies of the
National Assembly. The workshop is tailor-made to address these different needs.

It could also be considered to run a workshop for law schools of SPP and SPC, possibly
also including other law schools.
Financial report

The costs for the workshop are according to annex 9 shared between the Legal Reform Project (Office of the National Assembly, Supreme People’s Court and Supreme People’s Procuracy), SUMA, WAterSPS and USAID – Staroffice.

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