Laos Legislative Drafting Programme

Seidman, Robert B.

http://hdl.handle.net/2144/22398

Boston University
Table of Contents

I. INTRODUCTION ................................................................. 1

II. PARTICIPANTS, STRUCTURE AND AGENDA ............................... 1

III. REPORTS TO THE PROJECT'S ADVISORY COMMITTEE ................. 6
   A. CTA'S REPORT ON WORKSHOP'S THEORY AND METHODOLOGY .... 7
      1. Land Law ........................................................................ 8
      2. Government procurement law ......................................... 11
      3. Cheque law ................................................................. 15
   B. CONSULTANTS REPORTS ON DRAFTING TEAMS' WORK .......... 7

IV. AN ASSESSMENT OF THE WORKSHOP AS THE FIRST STEP IN THE PROJECT TO STRENGTHEN LAO PDR'S LEGAL FRAMEWORK .......... 17
   A. THE WORKSHOP AS A LEARNING PROCESS ......................... 17
   B. THE PRIORITIZATION OF BILLS FOR DRAFTING ................. 18
      1. Lao's proposed transition ............................................ 18
      2. Posing the problems ................................................... 19
      4. The full range of problems .......................................... 20
      5. Canvass the Lao social spectrum .................................. 20
      6. Distributive effects as well as efficiency ..................... 20
      7. 'Bottlenecks' ............................................................ 21
      8. Avoid 'stuffing' bills ................................................ 21
      9. Coordinate ministerial priorities .................................. 22
   C. WORKING WITH FOREIGN CONSULTANTS ............................ 23
   D. WORKING WITH LAO RESEARCH INSTITUTIONS .................... 27
   E. THE TRANSLATION PROBLEM ........................................... 28
I. INTRODUCTION

In July, 1995, as part of the Ministry of Justice (MOJ)'s efforts to strengthen Lao PDR's legal framework for the New Economic Mechanism, its Project staff organized a workshop to accomplish two aims: (1) To draft research reports and bills relating to land, government procurement and cheques, and (2) in that process, to build the capacity of Lao officials to draft bills.

This report first describes the participants and the workshop's structure, designed to facilitate experiential learning; second, outlines the role of the Project Advisory Committee and the summaries of the drafting teams' work that the foreign consultants presented to its members; and, finally, suggests some lessons from the workshop experience.

II. PARTICIPANTS, STRUCTURE AND AGENDA

Using offices provided by the MOJ and computers financed by the UNDP, the Project Director, Mr. Ketsana Phommachane, and his assistant,¹ together with the Project staff, successfully arranged for participation by twenty-two Lao officials. Most of the members of the drafting teams comprised middle level officials; they also

¹ Her salary is financed by the UNDP as part of its contribution to assisting the Project achieve efficient self-reliant status.
included two judges. Few had previous drafting experience. Most came from relevant ministries or government departments concerned with the problems their bills aimed to address (see appendix I for a list of participants in each team). Several came from MOJ.

Four individuals, selected by the Project Advisory Committee to become facilitators to institutionalize the learning process in Lao PDR, played an important role in the workshop. They included two officials from the Ministry of Justice, one of whom, Mr. Sanapatomok Souvanno, participated in the team working on the Land bill, and the other, Mr. Boupha Bounsavad in the team working on the Government Procurement bill. A member of the National Assembly Standing Committee, Ms. Ngaophasiri Bounkham, participated in the team working on the cheque bill, along with Mr. Thanu Voraavong, the deputy director of the Vientiane Law School. A month after the workshop, these four will attend Boston University Law School for four months. There they will deepen their understanding of legislative theory and research methods. They will bear the major burden of institutionalizing a learning process for drafters in Lao PDR.

The CTAs (Chief Technical Advisors) conducted the first two weeks of the workshop (see appendix II for a detailed outline of the schedule in English). In that time, the drafting team members began to learn legislative theory and methodology, using it to structure preliminary outlines of their draft research reports and bills. In that process, the four facilitators played an important role. They helped to structure the workshop, facilitated communication between the foreign consultants and the drafting team.
members, and worked with the teams in drafting the bills and research reports. With the foreign consultants and the Project staff, they assessed the workshop and considered how best to improve and institutionalize the learning process.

The workshop participants had only limited teaching materials available in Lao. These consisted of (1) an article on the structure of the Memorandum of Law (the Research Report), and (2) several brief summaries and diagrams. Considerable use was made of newsprint paper, taped to the walls, with summaries of major points made in the discussion; but unfortunately these were not always in Lao.

During the first two weeks, on the principle that people learn most effectively when they actually use the materials they are studying, the learning process took place on three levels. First, usually in the mornings, the CTAs gave brief lectures in English (translated by Mr. Souvanou and Mr. Siwad) on aspects of legislative theory and methodology. For example, they would focus on the four stages of problem-solving as a guide for using facts and theory to translate policy into law; or illustrate the use of the ROCCIPI categories as a check list for considering possible causes of social actors' problematic social behaviors which the

2 As a result of from a suggestion at one of the regular evaluation meetings held in course of the workshop, the teaching team together with the Project staff prepared these in the course of the workshop.

3 By analogy, one could lecture about how to ride a bicycle for a month, but until students gets on bicycles they cannot really understand how it works.

4 Mr. Siwad had to leave half way through the workshop.
draft bills aimed to change; or discuss the reasons for using transitive as compared to intransitive bills. Then, the members of each drafting team would meet together for an hour or so, and, assisted by the facilitators, use the theory to guide them in preparing outlines of their research reports and bills. Later, usually in the afternoon, but sometimes carrying over into next morning, each drafting team reported back to whole workshop. Specific members of another team received assignments to comment on the reports and make suggestions for improving them. Then, in discussing specific features of each team's reports, the CTAs reiterated the underlying theoretical and methodological concepts.

A French consultant, Mr. Jean Bissot, who had been working in Lao PDR for several months, volunteered to give the workshop participants a brief review of the French approach to drafting, enacting and implementing legislation. He observed that the basic approach used at the workshop was similar to what he had learned as a drafter in France. He stressed the importance of looking at the history of the existing laws relating to the social problem the draft bills sought to address, as well as how the proposed bill would fit into and contribute to a coherent legal framework for the country. His contribution helped the participants to understand that any seeming differences between the French approach and what they learned in the workshop reflected only a difference in form,

---
5 As a result of a suggestion at the afternoon teaching team's evaluations, a facilitator would give the second team's members a slip of paper with their assignment on it in advance to give them a little time to think through their comments.
not substance. 6

By the end of two weeks, each team had drafted outlines of its research report and bill, mostly in Lao, but partially translated into English.

During the second two weeks of the workshop, the three teams met separately with their respective foreign consultants to begin drafting their research reports and bills. One of the team members (usually a facilitator presented to the foreign consultant the Lao problem the team’s bill sought to address. Each team also explained to the consultant the preliminary outlines of the research report and bill. Drawing on foreign law and experience and Lao circumstances, the consultants then suggested possible additional problems; explanations of causes of the problematic behaviors that comprised them; and measures addressed to those causes which they might include in the bills. The team members sought to include in their research reports summaries of the discussions with the consultants as to reasons for alternative measures they proposed to incorporate in their draft bills.

Subdivided in small groups of two or three, members of the teams also sought to draft the wording of specific articles for their bills. Within the limited time available, the consultants then reviewed the reasons for using specific words for particular articles.

6 As a former French colony, Lao PDR still uses the French system of drafting. It usually enacts a general bill, and then drafts and enacts a decree to implement it. The CTAs and M. Bissot agreed, however, that, whichever system they used, drafters should always decide on the implementation processes as the same time as they draft the bill.
By the end of the four weeks, none of the teams had fully completed their draft bills and research reports. They had, however, identified the major problem areas and the relevant social actors whose behaviors the bill must address; attempted to formulate hypotheses to explain their behaviors; and proposed specific measures for changing those behaviors. In preparing the draft research report, they had assessed the available facts about the Lao circumstances, recognizing that in some cases further investigations were required. They also included in their draft research reports the comparative foreign evidence they had learned from the foreign consultants.

After the workshop, but before they came to Boston, the facilitators agreed to try to complete the drafts more fully, along with an English translation.  

III. REPORTS TO THE PROJECT’S ADVISORY COMMITTEE

The National Advisory Committee for the Project played an important role in trying to understand and assess the workshop’s progress. The Committee consists of leading members of the National Assembly, the Prime Minister’s office, the Supreme Court and some of the ministries. Its members gave welcomed close attention to the workshop learning process, underscoring their serious concern that the Project succeed in attaining its objectives.

At the beginning of the third week, while the teams were meeting with their consultants, the CTAs spent a day explaining

---

7 The Ministry of Justice’s English teacher said he would work with them on this aspect as part of helping them to improve their English in preparation for their work in Boston.
the underlying legislative theory and methodology to members of the Committee. They described the workshop’s aim to create a learning process that could build Lao drafting capacity in the course of preparing priority draft bills. They emphasized the reasons for accompanying the bills by research reports which would use reason informed by experience to justify proposed legislation. Adequately structured by the four steps of problem-solving, they pointed out, the research reports should facilitate the National Assembly’s assessment of the quality of draft bills.

The CTAs reminded the Advisory Committee members that, as a pilot project, the workshop constituted only a first step in what the Project planned as an on-going learning process. For this purpose, the four facilitators comprise an essential part of the teaching team. After they complete their four months in Boston University, they will assume major responsibility for institutionalizing the learning process. They will take a leading role in training the drafters and producing the bills required to strengthen Lao PDR’s legal framework for the NEM.

During the last two days of the workshop, the other foreign consultants presented to members of the Advisory Committee summaries and their own assessments of the work done by the drafting teams, along with their own recommendations. The following paragraphs summarize their presentations and their responses to the Advisory Committee members’ questions, and indicate the status of the draft bills and research reports at the

---

8 Those present included the National Assembly’s President, two Vice-Presidents (from ethnic minorities), and the chairpersons of the Legal and Economic Committees.
1. Land Law

Drawing on other countries' experiences and Lao circumstances, Professor Jacque Chonchol\(^9\) described six primary problem areas identified by the drafting team members as ones with which a Lao land law or land laws must deal:

a. The limited land available for agricultural production in Lao PDR (about 9% of national land area), requires careful protection and development to improve its productivity. Already, with Lao's rapid growing population, the available land shows signs of increasing degradation which its proposed land law must guard against.

b. Lao's land law must ensure the drawing of a national map showing soil types and existing and potential land uses, especially identifying the areas still available for agriculture. The law must also structure institutions to encourage increased agricultural yields. In particular, it must defend existing cultivated (particularly, irrigated) agricultural land against urban expansion.

c. Unless the proposed land law provides adequate controls as market expansion proceeds, Lao, like other third world countries, will likely experience a growing inequality of land distribution. Elsewhere, this has led to intensified rural-urban migration and growing poverty, squalor, and social disequilibrium in the cities. In Lao, these tendencies may also aggravate problems confronting the ethnic minorities, who comprise

\(^9\) see his resume, Appendix III.
some 40 percent of the population. To devise legal measures to avoid this danger will require careful study of existing customary laws and practices relating to land use.

d. Many government agencies in Lao deal with aspects of land policy, including the Ministries of Finance, Agriculture and Forestry, Industry and Handicrafts, Commerce; and in cities, municipal administrations. Experience elsewhere suggests the Lao land law should provide for some form of coordination among these agencies at the highest level to avoid contradictory measures that otherwise may worsen existing land problems.

e. Like many third world countries, Lao has inherited a pattern of uneven development which has spurred growth of relatively 'modern' enclaves around a few cities and commercial farms where markets already have fostered overcrowding, land speculation, problems of zoning, and so forth. Previously neglected forestry and agricultural land in the hinterlands and the varied populations inhabiting them require protection to improve productivity and quality of life even as the NEM integrates them into the market economy. This underscores the necessity of providing for differentiated policies and institutions in Lao's proposed land law as it relates to the cities and the country-side.

f. With its extensive forest areas already diminished by logging concessions and giant hydro-electric projects producing lakes that have inundated many square miles, the proposed land law must establish and protect national parks. Particularly in watershed areas, such parks can help to ensure retention of
adequate forest cover to prevent floods and erosion that otherwise may lead to serious losses of potentially fertile land areas.

Following Professor Chonchol's report, the Australian team, financed by a World Bank loan,\textsuperscript{10} reported to the Advisory Committee on its mandate to "title 100\% of Lao land"\textsuperscript{11} -- an important subject related to the proposed land law. During the drafting team sessions,\textsuperscript{12} the Australians had expressed their appreciation of the work already completed by the drafting team on the Land Law. They told the Advisory Committee they would like to build on the foundations the drafting team had laid,\textsuperscript{13} and to continue working with the team's members as they proceeded with their project.

Following the introductory report on the drafting team's progress, several Advisory Committee members raised questions concerning three principal issues:

(1) The proposed titling process and land ownership: Professor Chonchol emphasized that foreign law and experience underscored the importance of further research relating to the nature and extent of the proposed titling process, especially in

\textsuperscript{10} A decision apparently reached without consulting the Ministry of Justice or the National Advisory Committee.

\textsuperscript{11} So stated by Mr. Len Hawthorne, the senior Australian team member.

\textsuperscript{12} On discovering that the MOF had just recently signed the contract and that the Australians were in town, the Project staff arranged with the head of the MOF Lands Department for them to attend the drafting team's sessions in order to facilitate on-going cooperation.

\textsuperscript{13} They expressed their opinion that the drafting team had saved them six weeks of work.
the country-side. In particular, further research was necessary relating to the many regimes of customary law that provide various forms of community control over land in the mountain regions.

(2) Information concerning other countries' zoning practices relating to different categories of land in comparison with Lao PDR's circumstances: Here, Professor Chonchol pointed out that most countries zoned urban areas for various uses: residential, industrial, recreational, etc.

(3) Concessions of land to foreign investors: Professor R.B. Seidman described three kinds of foreign investor laws and, in response to the Committee members request, agreed that he would send them an article concerning these.

2. Government procurement law

Professor Clay Gillette\textsuperscript{14} gave an initial brief report on the work of the drafting team which covered the following main points:

a. The team's draft bill aims to create a competitive atmosphere to ensure Lao gets quality goods and services at fair price. The team's discussions, however, underscored the need for increased expertise at every stage of the procurement process to ensure adequate implementation and monitoring of the law.

b. The Lao government, like others in today's world, requires many different kinds of contracts to purchase the many different sorts of goods and services it requires. No single law can embrace the details required for all of these, so the draft bill must provide a process for producing appropriate regulations for each ministry. That will require a significant increase in Lao

\textsuperscript{14} See Appendix III for his resume.
drafting expertise.

c. Furthermore, in industrialized countries, government procurement laws usually presume an adequate pre-existing contract law. Lao's recently adopted contract law seems to need additional details, so the proposed procurement law will require clauses to remedy these deficiencies.

d. The drafting team had neither time nor facilities to canvass potential contractors for their inputs, but this would seem useful to ensure adequate attention to their concerns, as well as those of Lao PDR's government.

e. Foreign donors who provide loans or grants to the Lao government introduce a special problem relating to its procurement law. Not infrequently, they require that the Lao government adopt their national practice when it uses the funds they provide to procure goods or services. The drafting team proposed that the Lao law give the government the option of doing so when it deemed it necessary.

Several Advisory Committee members asked questions to which Professor Gillette responded:

a. The principles of government procurement law remain "pretty universal." For example, except in emergencies, contracts should be made following competitive bidding; and the contractor selected should be the lowest 'responsible' bidder, defined so as to ensure the contractor has the capacity to complete the contract at the price set.

b. On the question of establishing a separate judiciary system to handle government procurement cases: It might prove
necessary to provide judges with special expertise; for example, the United States, a big country, has established a special court (the Board of Contract Appeals) that deals only with claims on government procurement. A smaller country like Lao PDR, with scarce high level personnel, might assign a panel of highly qualified judges to handle such cases.

c. On training for implementing and monitoring the proposed government procurement law (which inevitably will prove expensive): Foreigners might come to Lao to provide on-the-job training; or Lao citizens might go abroad. The Lao government will have to analyse Lao circumstances to determine which seems preferable. Perhaps the government could finance part of the necessary training program with the US$400,000 loan agreed to by the Asian Development Bank for improving government procurement.

d. One difficult choice the team had to make in drafting the proposed law related to what the government should do if a particular government agency agreed to an illegal contract. No correct answer exists, so, given Lao circumstances, the team explained the reasons for its choice in the research report.

e. To avoid the danger of corruption, the team sought to create an open public process for determining whom should receive a contract, and to require the government agency to publish the reasons for its decisions. (Professor R.B. Seidman suggested a number of devices for controlling corruption and agreed, on the Committee's request, to prepare a memorandum on these.)

f. How to control the quality of goods and services obtained under a contract? That requires the use of highly-
qualified experts -- engineers, accountants, etc. -- to monitor the contract's implementation. Until Lao schools and university can provide these, the government may need to employ foreign experts. If it does, the terms of reference should require the foreign expert to train Lao counterparts who, over time, can take over the monitoring role.

g. The draft bill makes no specific provisions to deal with a possible conspiracy among bidders. It does provide that, if convinced that grounds exist, the government may reject all bids; conspiracy might constitute such a ground.

h. The drafting team had discussed the issues of centralized vs decentralized government procurement activities. Those concern how best to provide the required appropriate detailed regulations and qualified enforcement personnel. (Professor R. B. Seidman noted the advantages and disadvantages of individual ministerial procurement committees, supervised by a Ministry -- perhaps the MOF -- compared to the establishment of a Ministry of Procurement with a few highly skilled experts)

i. When the discussion brought out the fact that a higher level drafting team had already begun working on a government procurement law, Professor Ann Seidman suggested that the foreign consultant could better help the drafting team if, before coming, he or she received a full history and all the documents relating to the proposed bill.

3. Cheque law:

Professor Tom Cashel\textsuperscript{15} explained that, in light of Lao

\textsuperscript{15} See Appendix III for his resume.
circumstances, the drafting group had reformulated the issue from concerning the use of cheques to one of creating an appropriate payments system for Lao PDR’s internal and external trade. In this connection, he made several major points:

a. To prepare the proposed draft cheque bill, the drafting team had had to understand banking system, and learn a whole set of new concepts. Inevitably, this slowed up the process of drafting the proposed bill.

b. In reality, Lao PDR needed to improve its entire system of payments. In the Lao PDR, many large payments still consist of cash. To facilitate expanded markets, savings and investment, some convenient substitute seems necessary. The proposed cheque law constituted only one possible alternative payment method.

c. A well-defined set of laws and regulations governing cheques might help increase confidence in cheques, but to achieve that goal it should mesh into a legal framework that structured a payments system appropriate to Lao PDR’s circumstances. In the industrialized countries, that kind of a legal framework had emerged over centuries to meet their changing needs. Today, with the introduction of electronic payments, the legal framework for their payments system is still evolving. Lao’s system, too, will necessarily evolve as its market economy expands and becomes increasingly engaged in the world’s market economy.

d. To increase confidence in Lao PDR’s payments system, the government might consider introducing a post office saving system and deposit insurance.
The Advisory Committee members' questions and comments illustrated the importance of increased understanding of how the evolving Lao system had to develop to facilitate internal specialization and market growth, as well as to take account of the international financial system. (Those questions also suggested the importance of the drafting team preparing a full, carefully documented research report). In particular, the members focused attention on issues like the relationship of cheques to the control of the money supply and inflation; how negotiable instruments function in foreign trade; and the potential advantages of electronics funds transfers and whether and how Lao’s payments system might introduce them. (That raised the whole issue of the possible replacement of the internal use of cheques and international use of traditional negotiable instruments by new technologies.)

IV. AN ASSESSMENT OF THE WORKSHOP AS THE FIRST STEP IN THE PROJECT TO STRENGTHEN LAO PDR’S LEGAL FRAMEWORK

This Part comprises an initial assessment, in turn, of the workshop as a learning process; its lessons with respect of prioritization; issues related to working with foreign consultants; the importance of establishing and developing relations between drafters and Lao research institutions; and the problems of translation.

A. THE WORKSHOP AS A LEARNING PROCESS

The workshop had a dual aim: To undertake the drafting of three bills and their associated research reports, and in the process to improve the capacity of Lao drafters. To do that required a kind of teaching and learning markedly different from
that common in 'formal' educational surroundings. It required what one of the Australian consultants on land titling called 'experiential learning'.

To facilitate that kind of learning required three elements: A small number of didactic lectures to provide the participants with specific essential information; the work performed by the drafting teams and their individual members on preliminary outlines and drafts of their bills and reports; and feedback sessions when other members of the drafting teams and the workshop leaders could comment on the group's work.

B. THE PRIORITIZATION OF BILLS FOR DRAFTING

The workshop participants' experience in working on three quite different sorts of bills and their accompanying research reports suggested certain criteria for prioritizing the laws the Project should seek to draft. A few principles may facilitate consideration of this important question:

1. As in drafting, in prioritizing laws Lao authorities can learn from but cannot copy other countries' experiences. Like Russia and other Eastern European countries, the Lao PDR faces problems of the transition to a more market-driven economic mechanism. Unlike those countries, however, Lao PDR faces the additional task of transforming its inherited colonial economy. To do that requires a different set of priorities than countries engaged primarily in implementing a transition from a planned to a market-driven economy. For example, in making a transition from

---

16 Especially because almost no relevant materials exist in the Lao language, the teaching team had no choice but to present them through lectures.
planned, collective agriculture to market-driven agriculture with private ownership of productive units, 100% titling of land may seem appropriate. In the Lao PDR’s circumstances, however, where communities hold a great deal of land under customary tenures, experience elsewhere suggests titling might prove disastrous.

2. In prioritizing, the Lao PDR ought to look not to ideal-typical ‘desired’ laws, but to the country-specific social problems that require solutions. The team drafting a cheque law would have saved a good deal of time if the problem had been posed as one of overcoming obstacles imposed by Lao’s limited payments system.

3. In any event, bills proposed should not reflect the law that outsiders, focusing on an ideal-typical market model, think Lao needs. In prioritizing, Lao PDR ought to take the whole range of problem areas into account, not only those that affect businessmen (that is, not only issues of contract and property in all their manifold forms, but all the problems that the Lao PDR confronts in building the NEM). Expanding Lao market activities depends on a host of institutions besides those of contract and property. Unless more farmers grow more crops for sale, for example, the market in agricultural produce must remain limited. An agricultural extension service law, designed to teach farmers

---

17 For example, Kenya introduced land titling in former customary land tenured regions with several counter-productive consequences, including: 1) growing numbers of landless as those unable to prove claims to land became pushed off the land; 2) at least some women, who in most of Africa do two thirds of food farming, found themselves without access to land because their husbands who received the title either rented or sold it for ready cash.
about new technologies, might do more to advance the NEM than a new contract law.

4. Prioritization by definition involves decisions that laws should be drafted for one problem area before others. Presented by only a single problem area, nobody can make that kind of decision. Nobody can say whether the problem area centered on land use deserves priority in designing a legislative solution unless in making that decision the decision-maker takes into account the other problem areas clamoring for legislation. Competent prioritization requires a listing of all the areas of problems that Lao PDR needs to resolve through some form of legislation over the next period of time -- say, five years -- and prioritizing among them in light of available drafting resources.

5. Not everyone perceives the same situations as comprising as social problems that require some form of legislative action to resolve them. Different groups identify different problems as important. To create an adequate list of problem areas for purposes of prioritization, therefore, requires canvassing, not only the Ministries, but as broad a spectrum of Lao society as possible.

6. World-wide, those who superintend the drive towards market economies tend to think exclusively in terms of productive efficiency. Yet, if we understand the NEM correctly, the Lao PDR government also has a concern for distributive effects. In prioritizing problem areas, that underscores the importance of taking into consideration the questions as to the distribution of goods, services, and power. Workers' safety, for example, may have
a prior claim for drafting legislation than insurance for those wealthy enough to own private property. Or preventing speculation in land may assume an importance equal to titling.

7. Prioritizing should focus, not on theoretically important problem areas, but those which, in Lao circumstances, seem most likely to prove 'bottlenecks' that restrict Lao development. To illustrate: On the theory that every market economy must have a securities market, some consultants may urge that Lao draft a securities law immediately. In reality, however, Lao's need for a securities market may prove far less problematic than, say, the current too-rapid depletion Lao forests. Lao PDR should give priority to drafting legislation in areas where the problems will likely seriously hamper Lao's self-sustainable development.

8. For purposes of drafting legislation, identification of global problem areas remains too broad; drafters need to break those broad areas down into their component parts. To identify as the problem area, 'land,' stretches too wide; a law addressed to it would have to deal with too many issues all at once, including all six of the sub-problems that Professor Chonchol described (pp.8-10 above) -- and more. This procedure -- what some call "stuffing the bill" -- invites two dangers: (1) The supporters of one provision may oppose another, so that, in the end, it proves impossible to get a majority of votes for the entire bill, thus delaying its passage interminably; whereas if they had separated the issues, the law-makers could decided them one by one, beginning with those least likely to prove least controversial. (2) The drafters may find it impossible to undertake all the in-depth
research required to obtain adequate facts to warrant explanations of the causes of all the behaviors the bill must change to solve the problem; hence the bill's provisions may either prove unimplementable or fail to produce the desired behavior changes. In these cases, law-makers may adopt one of two alternatives. (a) They may separate the legislation into discrete bills dealing with different aspects of the problem area to ensure adequate research and discussion to arrive at a satisfactory conclusion on each. (b) Where the area of problems proves constantly changing and too complex to deal with through relatively fixed law, they may enact an 'intransitive' law that establishes an agency with carefully-defined powers and procedures to conduct research and draft regulations as required by changing circumstances.

9. The Lao PDR Government requires some method of coordinating the ministries' efforts to determine drafting priorities. The workshop experienced the consequences of two instances of ministries' failure to coordinate their plans for drafting laws. Either could have proved expensive to both the Lao government and people in terms of time, money and duplicated efforts. First, only by accident did the CTAs and the Project Director learn that the Australian team, financed under a contract between the World Bank and the Ministry of Finance, had come to Vientiane to draft a titling law -- quite by coincidence while the workshop was in session. Given the clear overlap between the proposed titling bill and the land law, the Project staff invited the Australian team to meet with Project drafting team. Fortunately, in the event, it turned out that the Australians
welcomed and planned to cooperate with the drafting team to build on the foundations its members had laid. It would have been preferable, however, had the two ministries coordinated their efforts to deal with the land question from the outset. Hopefully, future cooperation will ensure adequate attention to the drafting team’s research report and its recommendation to involve the rural ethnic peoples, themselves, in a participatory process to determine the land use rights appropriate in their regions.

The Project staff learned of the second case of uncoordinated efforts when the UNDP office informed them that the Asian Development Bank (ADB) had contracted to lend the Ministry of Finance US$400,000 to work on a government procurement law. At the Advisory Committee meeting, the Vice Minister noted that the Ministry of Justice still had not been informed officially of the loan. Again, fortunately, when the UNDP office explained that the Project drafting team had been working on a draft bill, the ADB office in the Philippines welcomed its contribution. At the UNDP’s request, the foreign consultant agreed to send a report of the result; and the ADB seemed willing to support the extensive training program an adequate government procurement program would require.

C. WORKING WITH FOREIGN CONSULTANTS

In many foreign-assisted projects on legislation, the issue of how third world country personnel should work with the foreign consultants to learn about foreign law and experience but not to copy other countries’ laws has often proven problematic. Most foreign consultants perceive themselves, as ‘experts’; they ‘know’
the answers. Too often, without strong host-country leaders who continually emphasize the necessity for foreign consultants to work as colleagues with the host country personnel in a mutually-beneficial learning process, they may simply seek to provide model 'answers' to what they see as problems, often even drafting bills themselves based on their experiences elsewhere. As a result, too often the bills do not address the real causes that have arisen in the host country circumstances, and hence fail to achieve the desired effect.

To deal with this common problem, the Project designed at least two workshops dealing with up to three bills each, to which three consultants would come and, working with the facilitators as a teaching team, explicitly develop the learning process outlined above. The regular evaluation meetings by the facilitators with the foreign consultants provided an opportunity to reiterate the importance of working together. The foreign consultants, themselves, remarked that, because they had come at the same time and stayed together at the Hotel Parasol Blanc, they found the opportunity to discuss the drafting teams' progress with each other and the CTAs helped them to think the process through.

At the CTAs' first meeting with the Advisory Committee, however, the MOJ's Vice Minister indicated that the MOJ and other ministries found it very difficult to release 22 government officials to attend the workshop for a month. He proposed looking for an alternative form of training drafting team members. The original intention had been to hold at least one more workshop to draft three bills, this time led by the facilitators (presenting
the theory and methodology in Lao) with the CTAs playing an advisory role. That would give the facilitators an important further opportunity to strengthen their capacity to create an effective learning process. Among other aspects, before taking over full responsibility for the entire learning process, this would give them an opportunity to think through and provide guidance to another set of foreign consultants as to their appropriate role.

For as one essential task, the facilitators will have to help other foreign consultants understand their role. Working with the CTAs in at least during one full scale workshop could help them acquire the knowledge and skills required for this task. If that is not possible, the CTAs, the Advisory Committee and the Project Staff must look for other ways to ensure the foreign consultants serve as resource persons, not drafters.18

18 Unfortunately, this issue remained unresolved, but as soon as possible the Committee must decide whether and how it wishes to hold the January workshop.

Three possible formats have been suggested for the January workshop:

(1) a repetition of the one-month format used in July, led by the facilitators working with the CTAs, who will teach the first two weeks in theory and methodology; and foreign consultants coming in the second half to work with the teams to produce drafts of three more priority bills and research reports selected by the MOJ;

(2) a two week workshop in theory and methodology, led by the facilitators working with the CTAs as advisors, in which one or more teams would draft preliminary bills and research reports for problem areas selected by the MOJ. The foreign consultants might then come at different times at a later date to work with the teams under the facilitators' guidance to draft more finished bills and research reports; or

(3) the facilitators, with the CTAs as advisers, could run a
Whatever the future format, as an important aspect of assisting foreign consultants to play an appropriate role, the Project staff should provide them in advance with all the background documents, including existing relevant laws or draft laws, relating to the particular social problem the draft bills must address. It proved disconcerting to the consultant on government procurement, for example, to learn from Advisory Committee members that procurement problems had a relatively long history, stemming back to the introduction of the NEM; and that a higher-level drafting team had been assigned to work on the issue.

The more information -- documents, reports, etc -- foreign consultants have in advance, the more effective they can become in finding relevant comparative laws and experience. If, as in the procurement case, a higher-level drafting committee has begun work, it would seem sensible to arrange for the foreign consultant to meet with them to plan the most effective way to utilize the LP drafting team's work.¹⁹

E. WORKING WITH LAO RESEARCH INSTITUTIONS

full month workshop, but only one team, assisted by a single foreign consultant, would work on a bill and research report on a topic chosen by the MOJ; two other teams, selected by other ministries, would work on other bills and research reports for which other foreign donors would select the consultants and provide translators. (Possible laws that already have been identified by other ministries include a civil aviation bill to Lao ensure Lao’s civil aviation practices correspond to those throughout the region (funded under another UNDP project; the Canadian-Australian team working on this has shown interest in this possibility); and a bill on an aspect of the environment, for which the Norwegians might provide funding and a consultant).

¹⁹ In the similar legislative drafting project in China, several ministries have invited the foreign consultants to speak with their staff on relevant issues as a way of broadening their staff’s knowledge.
The workshop participants’ experience underlined the absolute necessity of conducting adequate research on Lao PDR’s unique circumstances as a sound foundation for enacting effectively implementable legislation. This implies that the Project should undertake an assessment of existing Lao research capabilities for that purpose. One prong of the Project strategy might assist in strengthening the National Assembly members’ and its Standing Committee staff’s capacity to supervise and gather information relating to implementation of legislation enacted. The leadership could seek ways to work together with and help to strengthen institutions that can help to conduct participatory investigations.

Donors might well fund a special project to collect studies made in the colonial or post colonial era of rural Lao, especially relating to ethnic minorities. Perhaps a French institution would be interested in providing assistance in uncovering these sources which could provide useful background materials.

Given the importance of gathering information concerning Lao circumstances, university social science and secondary school teachers might be encouraged to assign their students to gather relevant data. Funds might be sought from donor agencies to finance university students during their long vacations to engage in structuring participatory research in ethnic minority communities concerning such issues as customary land use rights. In the process, they would learn a great deal about the potential of social science research tools as well as local inhabitants’ participation as means of gaining insights into Lao circumstances.
F. THE TRANSLATION PROBLEM

Translation difficulties constituted a major obstacle to the Lao workshop participants’ opportunities to learn about foreign law and experience from the consultants. Only one of the teams, working on land law, consistently for four weeks had the same translator. For two of the groups, the Project director had to pinch-hit as translator at various times, and at times neither group had an effective translator.

The problem of translation goes deeper. The law school has almost no books, and none relating to either Lao or foreign law and experience, in the Lao language; so students wishing to study law must learn a foreign language. Examination of the English translation of the Contract Law shows that its meaning differs substantially from the French version, suggesting the need for careful translation of laws and legal materials for all purposes.

Given Lao’s relatively small population, its citizens who wish to study world experience in any field need to learn another language. Economies of scale prohibit translation and publication of many books into Lao. Lexis, the US based international legal electronic network, provides extensive coverage on laws and related materials from many countries — primarily in English. As we understand it, for all these reasons, the Law School requires all its students to study English.

However, it might be useful for a donor to provide funds to enable two to four law school students with a talent for language to take an intensive English course so they can become official translators to facilitate the work of the Project, the MOJ, and
the National Advisory Committee in improving Lao's legal framework.

* * *

In sum, the workshop served as a learning process to strengthen the capacity of middle-level Lao officials to contribute to drafting priority legislation designed to help build the legal framework Lao requires to implement its New Economic Mechanism. The process had several implications for the Project's future work. It underscored that the Lao government should formulate its own legislative program, not in response to external pressures, but to address the priority social problems that have and are emerging as Lao carries through its transition to the NEM. For this purpose, the Project might provide a mechanism to more closely coordinate ministerial efforts to conduct the necessary research and draft the relevant laws. At the same time, the Project must find ways to ensure that foreign consultants play the role, not experts who themselves draft legislation, but as resource persons who will help to build Lao capacity to conduct the necessary research and draft laws suitable to their country's unique circumstances. This implies a need for the Project to work with and help build the Lao research institutions' capacity, especially in the realm of social sciences directed to explaining the causes of the problematic behaviors that may block Lao's proposed institutional transformation. Finally, since communication still remains a major obstacle to the Project's efforts to enable Lao law-makers learn potential lessons from foreign law and experience, the Project may find it helpful to identify two to four very able Lao Law School students to study English intensively and become official
translators for the Ministry of Justice and the Project.