Laos Legislative Drafting Programme

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UNITED NATIONS DEVELOPMENT PROGRAMME

PROJECT TO ASSIST THE GOVERNMENT OF LAO PDR IN IMPROVING ITS SYSTEM FOR EVALUATING THE IMPLEMENTATION OF EXISTING LAWS AS THE BASIS FOR STRENGTHENING ITS LEGAL FRAMEWORK

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A. CONTEXT

As an important aspect of its efforts to create an appropriate legal framework for its New Economic Mechanism (NEM), the Lao PDR has begun to establish a system for evaluating the implementation of existing laws and implementing decrees. This system aims to determine the social consequences of new laws, decrees and regulations, once implemented; and, if necessary, to lay the basis for drafting new laws, decrees or regulations to help resolve new social problems that may arise.

This section A of this Project Document describes: (1) the existing Lao PDR efforts to build a new legal framework within which this Project fits; (2) the host country strategy relating to the dissemination, monitoring and evaluation of law; (3) prior and on-going assistance to strengthen the Lao PDR legal framework; and (4) the existing institutional framework for conducting research required to monitor and evaluate existing law. The next section, (B) will review (1) the nature and causes of the difficulties with the present system of monitoring and evaluating implementation of
legislation as a basis for (2) the proposed Project strategy and institutional arrangements for improving Lao capacity to conduct that kind of research; (3) reasons for UNDP assistance; (4) special considerations included in the proposed Project; (5) arrangements for coordination between the Lao PDR agencies and donor agencies in the conduct of projects involving implementation research in the context of the overall Lao National Programme to strengthen the Lao legal framework; and (6) the Lao PDR capacity to provide counterpart support. The next sections will (C) describe the proposed Project's development objectives and (D) detail the specific outputs and activities required to attain them.

1. DESCRIPTION OF THE SUBSECTOR

The Lao People's Democratic Republic (Lao PDR) is one of the world's least developed countries, with an estimated annual per capita GNP of US$290 and a population of about 4.5 million. In 1975, Lao abandoned its ancient monarchical forms to reconstitutes itself as the Lao PDR. On taking office Lao's new government abolished all previously formally-existing law. For the next fourteen years, the legislature enacted a single law. The government ruled through governing party's policy pronouncements, implemented by decrees and resolutions of the Council of Ministers (roughly equivalent to the Cabinet in some other countries) and by ministerial, provincial and other decisions. In 1986, government proclaimed a new economic policy, the New Economic Mechanism (NEM). That called for developing a framework of law creating a market
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economy and supporting institutions, within which market actors could operate with a fair degree of predictability and certainty. Between 1989 and 1994, besides the Constitution (1991), the National Assembly enacted several laws, a number of them with the assistance of foreign experts. Some laws drafted with foreign experts' assistance remain unimplemented. Lao officials express their concern that neither they nor some of the laws that have been implemented adequately met the Lao PDR's new requirements.

Unwritten customs and norms, shaped by age old traditions and religion, have sometimes proven inadequate to stem the disturbing social consequences of the competitive search for more lucrative employment and access to the riches spurred by efforts to open Lao society to expanding national and global market forces. Without adequate research to ensure they fit appropriately into Lao circumstances, new laws may aggravate, rather than ameliorate the negative effects.

2. HOST COUNTRY STRATEGY

Lao officials have requested assistance in conducting the research necessary to formulate and implement new legislation more likely to facilitate the successful implementation of Lao's New Economic Mechanism. This proposed Project forms part of a larger Programme that aims to help Lao establish a legal framework for carrying out the Lao PDR's proposed transformation. For that transformation, an adequate legal framework requires several interrelated components: 1) Law-making, including bill-creation
and drafting; 2) law-implementation, including training lawyers, magistrates and judges, and the creation of adequate juridical structures; and 3) research directed to monitoring and evaluating the implementation of existing law.

3. PRIOR ON-GOING ASSISTANCE.

The Lao PDR has received aid with respect to legal education; training judges; the drafting of particular laws concerning some aspects of business, financial and commercial activity; and the training of practitioners and others in the subject-matter of the laws drafted. The Swedish International Development Agency (SIDA) helped establish and to finance the printing and dissemination of the Official Gazette. It also provided support to the Ministry of Justice in training magistrates and law students. The Government of France has provided assistance in training Lao judges. Several countries have provided fellowships for Lao lawyers to receive graduate training abroad. A United Nations Development Programme funded project, administered by the World Bank, provided aid in drafting economic laws; establishing a small law library and creating a basic lexicon of legal terms in Lao, French and English; the compilation and dissemination of laws, regulations and treaties in force; and informing officials and others about the

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1 For the purposes of this project document, the term 'law' refers to formally enacted laws, decrees, and ministerial regulations.

2 LAO/90/006 and LAO/92/004/B/01/42, here, the 'UNDP/World Bank Project;' see Annex
content of new draft legislation.

This Project constitutes only a part of the new larger Lao National Programme of Legal Reform aimed at a variety of aspects of transforming Lao legal institutions. The Australian Government (through AIDAB) has financed a mission looking to Australian aid to the Law School. In addition to continuing its present efforts, Sweden (through SIDA) proposes to contribute generally to institution- and capacity building, especially through the Law School. France will continue to assist in the development legal education generally, and especially in training judges and magistrates.

4. INSTITUTIONAL FRAMEWORK FOR THE SECTOR.

The Lao PDR has begun to establish a system for disseminating information relating to new laws and evaluating the implementation of existing laws and decrees to identify new problems that may arise. In this system, three departments of the Ministry of Justice, the members of the National Assembly and the National Assembly's Standing Committee on Legislation, the Central Planning Commission, and the Prime Minister's Office all play a role.

a. Ministry of Justice (MOJ):

Two MOJ departments, the Information and Publicity Department and the Department for Administration and Control, play a role in the dissemination and monitoring of laws and law enforcement. The Information and Publicity Department is responsible for
Disseminating information about important new laws in all the provinces through a variety of means, including the press and radio and provincial and district level seminars. The Department for Administration and Control primarily has responsibility for supervising the enforcement of laws through the police and the courts.

b. The National Assembly's Standing Committee on Legislation.

As a Committee of the nation's elected representative body, the Standing Committee on Legislation aims to assume an important role in the monitoring and evaluating the implementation of legislation. The National Assembly's rules require its members to hold meetings in their constituencies to discuss the social impact of existing legislation with civil servants, other officials, and citizens and, if necessary to propose revisions or new laws to overcome new difficulties that arise. The National Assembly's Standing Committee on Legislation includes six members responsible for implementation matters, four of whom have legal training, and two non-lawyers.

In each province, an office with an average of four civil servants exists to assist the members of the National Assembly gather information. Some studied law in the Vientiane Law School, but most constitute non-lawyers who formerly worked in the prosecutor's office or the courts and have received some short-term training in law. They are expected write
reports to the National Assembly relating to problems relating to implementation of the law.

iii) Implementing Agencies such as Courts, Police, and Ministries:

Every ministry, including the Ministry of Justice (responsible for courts) and the Ministry of the Interior (responsible for the police) should report any difficulties in the implementation of the Law to the National Council of Ministers (the equivalent of Cabinet in other countries). The Prime Minister's Office has the responsibility of checking on their reports. If a report indicates the necessity for a new law, the Prime Minister's Office may forward it to the Ministry of Justice's Department on Law to determine whether the existing law requires revision. Based on this information, the Ministry of Justice's Department of Law advises the Standing Committee of the National Assembly on the interpretation of the law.

As part of its review in preparation for submission of the next year's plan to the National Assembly, the Central Planning Committee (CPC) receives reports from the line ministries on the extent of attainment of last year's resource allocation targets. While not directly related to monitoring specific legislation's impact, these reports do reflect the extent to which the existing laws contribute to social actors' behaviours likely to achieve effective plan implementation.

B. PROJECT JUSTIFICATION
1. THE PROBLEM TO BE ADDRESSED: THE PRESENT SITUATION.

This section describes (a) the present difficulties that faces the Lao system for monitoring and evaluating the implementation of legislation; and (b) the explanations for those difficulties.

a. Difficulties confronting the Lao system of monitoring and evaluating the implementation of legislation:

Unfortunately, the Lao system of monitoring and evaluating the implementation of legislation does not work very well. Although National Assembly members do return to their constituencies, neither they nor the provincial office personnel who assist them have made adequate, indepth reports on the social impact of the implementation of existing laws by provincial and district level government officials. Nor do any of the responsible ministries or government agencies provide adequate detailed information about causes of the difficulties they may confront in implementing laws. The Ministry of Justice Administration and Control Department, for example, reports that it does not have accurate statistics on the numbers, sex and age of defendants who appear before the courts, or the consequences of the disposition of their cases. High court officials have expressed concern that they do not know about the impact of the law on the numbers or effects of court decisions on juvenile offenders whose numbers seem to be growing as the Lao market economy introduces new contradictory elements in their lives.
Ministry of Labour officials report they do not have sufficient information about the conditions of worker health and safety. Far less have they been able to investigate hazards to workers' health and safety that have occurred as the numbers of Lao factories and factory employment increase. This lack of information, compiled with government agencies' failure to investigate the nature and extent of difficulties arising in the context of existing law, and far less their likely causes, seems to plague almost every ministry and government agency. Yet without adequate information derived from systematic monitoring and evaluation of practice under existing law, Lao law-makers cannot enact the effective new legislation to overcome new social problems as they inevitably arise.

b. The explanations for the difficulties in monitoring and evaluating the causes of difficulties arising under existing laws:

i) The National Assembly members and government ministries and agencies lack clearly stated rules that stipulate the criteria and procedures to guide their collection and assessment of information relating to the implementation of laws' social impact. Without more detailed specifications of what they should look for in terms of the way existing laws affect the social behaviours of their addressees, their investigations can at most remain hit or miss. Without carefully formulated criteria and procedures for gathering and assessing their
findings as to the causes of relevant social actors' problematic behaviours, they will not likely identify critical causal factors which new measures might alter or eliminate.

ii) Few National Assembly members and the responsible government officials have either the opportunity or the capacity to assess the impact of existing law in the context of the turbulence and contradictory changes introduced by the national economy's exposure to market forces. The staff and resources of existing institutions responsible for conducting implementation research remain far too small. Only one or two members of the staff of the Ministry of Justice's Information and Publicity Department supposedly organize the process of disseminating information about new legislation; they have little time to assess its impact. The MOJ's Administrative and Control Department must focus the work of its tiny staff on ensuring the court system and police function; its members do not have either the time or resources to evaluate the consequences. The provincial offices responsible for assisting National Assembly members have neither the transport nor the research skills required to discover the law's impact on people working in Lao's new factories, far less those living in remote mountain villages.

Furthermore, to study the impact of these changing realities on Lao family and social life, not only in rapidly growing urban centres but also in distant mountains, requires social science research methodologies known by few government officials, whether
elected or appointed. Few have received education beyond the level of high schools where teaching tends to focus on memorization rather than research. Even the Vientiane Law School and EMAG’s curricula centre around memorizing the teachers’ lecture notes, rather than investigating the causes of social difficulties that laws should address.

iii) Lacking clearly formulated guidelines and the resources required, officials -- impressed by the imperatives of "modernization" -- may view it in their own and even the national interest to ignore the expanding market processes’ possible negative social consequences for the more vulnerable: women, children, the economically disadvantaged, minorities, the environment.

iv) The lack of clearly identified procedures for collecting and assessing relevant information often contributes to a failure to obtain inputs from those most negatively affected. Government officials commonly meet and talk with the more advantaged: In the cities, with leading businessmen, including the representatives of international companies whose investments and new technologies they seek, not the overworked women who work long hours in garment factories, or struggle to survive by selling a few trinkets or a little food in informal-sector markets; in remote rural hinterlands, with local village elders, mainly men, not the women who carry a triple burden of housework, child care, and backbreaking farm work. Unless
government officials understand the importance of and develop
research methods to obtain information about the causes of the
difficulties confronting those who remain vulnerable, they will
not likely understand their emerging new social problems. Far
less will they discover how to engage them in finding ways to
revise existing laws to prevent expanding market forces' potentially negative impact on their working and living conditions.

v) Finally, absent clearly specified criteria and procedures for their investigations, contradictory values and attitudes may impede government officials' efforts to investigate the causes of the social difficulties that may arise in the context of implementing existing law. The justified emphasis on the importance of encouraging entrepreneurial activities may cause some to close their eyes to poor working conditions that threaten the workers' safety and health. The necessity to earn foreign currency may lead some to ignore the dangers to the environment that may occur due to trucking some of the Lao PDR's most valuable timber across the border, or blasting deep into Lao hillsides in search of rich minerals.

Vague rules, inadequate capacity, unclearly specified public interest, processes that exclude the inputs of the vulnerable, and contradictory values and attitudes: All these combine to hinder responsible officials, both elected and appointed, from monitoring and evaluating the implementation of existing laws to
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lay a sound basis for revising them or creating new ones likely to ensure that the Lao people benefit from the Lao PDR's on-going transformation.

2. EXPECTED END OF PROJECT SITUATION.

When completed, the proposed three year Project anticipates the following outcomes: (a) introduction of a well-structured participatory mechanism, probably located in the National Assembly's Standing Committee on Legislation, with well-defined criteria and procedures for monitoring and evaluating the social impact of the implementation of important legislation; (b) two members of the National Assembly's Standing Committee on Legislation will (i) have taken part in a four to eight month training programme in a foreign university, (ii) drafted the regulations governing the mechanism for monitoring and assessing law's social impact, and (iii) introduced an in-service training programme for Lao civil servants; (c) all responsible staff personnel of the provincial offices for assisting National Assembly members and of the ministries will have taken part in an in-service training programme in the theory and techniques required for monitoring and assessing the social impact of legislation; (d) the Vientiane Law School and EMAG will have in place a course that focuses on the theory and methodology required for implementation research; (e) an effective documentation centre will exist which will include (i) access to a computerized data base for all Lao legislation, including
formally-enacted laws, Supreme Court decisions and commentary, and a growing body of customary law; and (ii) an accumulation of research findings relating to the consequences of the implementation of laws.

2. **PROJECT STRATEGY AND INSTITUTIONAL ARRANGEMENTS.**

**Institutionalize a More Effective Process**

The main solution is what kind of process can we set up?

i) they need to establish cooperation between the courts, prosecutor and the police (need a checkup on the implementing agencies). For example, according to the Lao PDR’s legal system relating to penal and civil processes, crime information must first go through the police, which will then set up a document of the case and send it to the prosecutor. If they think there’s enough evidence, they will send it to court. Hence, they need people to look behind that because they do not really know whether they do it.

ii) someone from the Standing Committee of the National Assembly for legal education to go to Boston University to learn how to set up a mechanism for evaluating and monitoring the implementation research. This person should possess the following capabilities:
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- a good command of the English language
- has contact with the implementation procedure
- preferably has some knowledge and background of law
- is enthusiastic to and dedicated to improve this field
- preferably with a teaching background
- the Standing Committee of the National Assembly is the department most likely to send someone to go to Boston University.

These four officials would also learn law and methodology so that they could come back and train others. The period of study would be three to four months, and would involve a maximum of six people.

These people would be also be responsible in setting up a documentation centre in the Lao PDR to keep a record of all the laws implemented, their effectiveness, a record of people's opinions on the law etc.

iii) thus, to train them so that they could have the necessary skills to come back to the Lao PDR and train others how to set up a teaching process, legislative theory and technology, social science program, techniques to gather information, foreign laws and expectation.
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iv) it might be possible to set up a computerized legal database such as Lexis. However, this depends on the funds available.

| Decision by NA |

Input from the members of the NA and reports from the Supreme Court, various Ministries, feedback the government etc.

6. REASONS FOR ASSISTANCE FROM UNDP

7. SPECIAL CONSIDERATIONS

8. CO-ORDINATION ARRANGEMENTS
MAIN ELEMENTS OF SUGGESTED DRAFT PROPOSAL FOR DRAFTING PRIORITY LEGISLATION AND STRENGTHENING LAW PDR DRAFTING CAPACITY
A three year project

1. As soon as possible, MOJ appoint drafting teams of 3 to 4 members for six priority bills for first year of project.

2. Team drafts outline of research report and proposed bill, and begin gathering relevant facts about Lao circumstances as to:
   a. whose and what behaviours comprise the difficulty;
   b. possible causes of those behaviors (as suggested by using ROCCIPI research agenda);
   c. social costs and benefits of proposed solution (that is, implementation of draft bill);
   d. the best way to monitor the bill.

3. Seidmans nominate list of 3 possible foreign consultants for each bill and send to MOJ which will select one, and retain the names and curriculum vitae of all those nominated as the beginnings of a file of possible future consultants.

4. MOJ send draft outlines of research report and bill to the foreign consultants so they can prepare relevant materials relating to foreign law and experience.

5. MOJ arrange a meeting place and accomodations for a one month workshop in Vientiane for all members of six drafting teams for July, 1995.

6. The one-month workshop will consist of:

   a. First 10 days: Working with the teams to improve the outlines of the six bills and accompanying research reports, the Seidmans will teach all the drafting team members the use of legislative theory and techniques;

   b. 11th through 20th day: The foreign consultants will work separately with each team to review relevant foreign law and experience as to the nature of the difficulties, explanations, actual legislation, and monitoring procedures;

   c. For one day, together with the relevant foreign consultant, each drafting team members will design a two-week study tour, identifying the countries to visit and the specific issues they will study relevant to their bill and research report;

   d. Last 2 days: Foreign consultants will conduct separate seminars for persons from government, the private sector, and mass organizations concerned with each bill.
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9. COUNTERPART SUPPORT CAPACITY
7. In six months following workshop, members of drafting teams will:

   a. go on study tours as planned;

   b. complete their draft bills and research reports for submission to MOJ and National Assembly Standing Committee on Legislation for further revision and passage by the end of 1995.

8. Committee on Law Reform will select four persons as instructors to go to Boston university for a course specially designed to enable them to study legislative theory and techniques in depth as well as to study foreign law and experience relevant to establishing an effective coherent legal framework. On their return, they will be responsible for working with drafting teams to strengthen Lao drafting procedures and the capacity of Lao drafters.

9. In September, 1995, 4 persons will go to Boston University to work as a team for 4 to 8 months to study and prepare a proposed programme for strengthening Lao procedures and the capacity of Lao legislative drafters:

   a. Each team member will study foreign law and experience related to one of the following specific topic as part of the overall programme and, in consultation with the others, prepare drafts of the following:

      i. regulations for Lao Government drafting procedures which will specify the criteria and processes of drafting;

      ii. a draft handbook in Lao language for Lao PDR legislative drafters to facilitate the drafters’ study of legislative drafting theory and methodology;

      iii. design of a process for monitoring and evaluating the implementation of existing legislation;

      iv. the syllabus for a course unit for the Law School teaching legislative theory and methodology to as the basis for developing a coherent legal framework.

   b. On their return to Laos, instructors will discuss their draft materials with the Committee on Law Reform and other government officials, and revise them as appropriate for use in a learning process to facilitate Lao drafters and other Lao citizens about how to create a coherent Lao legal framework.

10. In 1996, the MOJ will initiate the same process for six more bills, now under the guidance by the four Lao instructors who will have completed their overseas study and preparation of relevant
materials. The Seidmans will assist by nominating 3 foreign consultants for each bill and, in an advisory capacity, attending the summer workshop.

11. In 1997, the MOJ will initiate the same process for six more bills. At every level, the process will remain entirely under the guidance of Lao personnel; on request, the Seidmans will again assist the MOJ in obtaining foreign consultants with expertise in the relevant bills.