Laos Legislative Drafting Programme

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Minister Boppa's Visit to BU

Pre comm'l law in Lao PDR

1. Int'l trade
2. Dom std
3. Cross border w/in region

Usually BV prof teaching #1, #2= diff. from dom. law.

- Can get Dan Partan
- Pettit/Miller= dom. std. // Fri P.M.

If poss. will like to learn lessons & exp/regional
& cross border (eg Canada, Mex, etc.)

Land law -> adopted Sept 1996
Forest law
Water

Cheste - Sparrowge
Transport/Comm
Mining/Smith
Electricity

Local administrative
Urban plng
Special economic zones
Com'l law

Research= conducting seminars in Lao PDR.
Mini: 4 steps/log process/Lao:

1. People express opinion → reflect people's concerns
2. Craft law → law, ≠ people's implementation
   → advs, cls advs → eval'd = reply, inspection
3. If exp. write law, reflects my fair models
4. Last step → must serve people's needs.

B86: IBRD agreed to try people/implementation res: if true, drafters', maybe old get IBRD to fund 2 people/impl. res.
June 6, 1996

Minister:

Thanks/advice - esp. fact that you old eval. strengths & weaknesses of PRCX — basis of impmt. I apprec. concern, attn/leg, efforts in Lao; + contrib/trng. last yr, since returned — have gone furthur upgraded indiv. capac./special reasons, esp. force polis. on strng mkt syst. to each goal, want law — effective, implementable // Lao; specially local personnel will assess contr. rea/specialties; those who fin. leg. trng. now = knowledgeable, but prob in getting facts due to lack of exp. to solve prob. use tech. you taught = outline for draft leg; also = gather of officials/knowledgeable/final = mk realistic bills; some confusion re 4 who fin’d if put knowledge into pract, not lug resp to Advis. Bd; for laws = realistic, poss. sent legislator to local constituents to gather their opinions/ins. then after gathering facts, still need further adj. / approv. leg./most people then bill goes to cabinet — approval — go to NA; little prep because — based on local evidence of villagers; after law adopted, cabinet (Pres.) — issue state decree // promulgate it; then goes to min — implementing decree — inform Public re how — implemented.

MoJ’s role = ex. pl., org. seminars, educate population = 8 steps = ways to implement dm. process in Lao, but -> 4 steps to implement laws @ qualified people come to trng. eg if want laws/1996-8 (exc. 3/Sept 1996) = 8 laws: involve 4 steps — eg: in area of Comm + Fin: Urban plan + transport = 2; 2 in admin areas, local admin + spec. ec. zones; 2/environment; fund + elect min. resources. Need more than
Introduction to Administrative Law Outline
Professor Jack Beermann
Boston University School of Law

Administrative Law is about the delegation of authority from the legislative branch to the executive branch and how that discretion is controlled to combat capture, corruption and incompetence.

Capture by interest groups
Corruption of Agencies, Congress, President
Incompetence of Agencies, Congress, President

Democracy, Freedom and Agencies, stories that are told to justify administrative control, including Congress's agent, expertise, pluralism and accountability through executive branch.

Government and Agency Structure:

Legislature makes basic policy decisions and then delegates administrative authority to:
   Agencies within Cabinet Departments
   Agencies within Executive Branch but not within Departments
   Agencies independent of Executive Branch--more responsive to legislative control

Different Ways that policy is made after delegation of discretion  Administrative Procedure Act and particular agency statutes.
   Rule making--Notice and Comment  Example of what labels should appear on food packages.

   Informally--granting or denying permission, license etc.  Example of how much timber may be cut on national forest land.

   Adjudication--general rules announced in course of litigation--example of whether a labor election was fair--Labor Board announces general rule in the course of rule.

Different ways that discretion is controlled

   Direct and indirect legislative supervision--Precise statutory language, re-writing statutes, making funding decisions; committé hearings, agency jobs
   Appeal within the agency--formal and informal decisions
   Appeal to the courts--judicial review,
constitutional and statutory constraints
   Control within agency and centralized executive control

Method of Appeal

Adjudications
   One level of "independent" decisionmaker-ALJ
   Appeal to higher level within agency on the record
   Appeal to appeals court (not trial court) on the record

Rulemaking
   Expert decisionmakers formulate proposal
   Notice to public and receipt of comment
   Require agency to explain its decision and evaluate comments
   Appeal to appeals court (not trial court) on the record

Informal decisions, decisions in the field
   No record (or very little) created at initial decision level
   Appeal to expert, non-political decisionmakers
   where record is made
   Appeal within agency (more centralized) where review is on the record
   Appeal to appeals court if agency has made a record otherwise to trial court for a trial de novo where agency does not make sufficient record

Substance of Appeals

   Procedural appeals are favored--not adequate notice, not time for comment, agency did not give person adequate opportunity to present or prepare case

   Substantive appeals disfavored--substitutes non-expert (political) judgment for expert in the field. Agency discretion is more legitimate than judicial discretion.

   Standards on appeal--substantial evidence, not clearly contrary to law, not arbitrary and capricious.
   Review is on record before the agency.

   The greater the discretion the less likely an appeal is successful, because appeals levels (here usually courts) defer to expertise of those most familiar with the process.

Greatest Challenges of Administrative Law

   Effective review without paralysis, political meddling and agency capture.
Will be better if $C = \frac{\text{natural}}{d} = \frac{1}{\text{area}}$

AWS: 2 pts:
1. Ensure minimum responsibility/law + impl. decree
2. Estimate cases for minimum/NA/draft procedures

- minimum law + implementation decree in 4 steps:
  1. inspect + eval.; in local = agreed procedures;
  2. New EC mech. = 3 steps:
     1. draw up:
  2.imits; 3. people \rightarrow 4 diff. structures of NEM:
     - forestry, ag, ind., services
     - eq/eq.; must decide what = best sol./pot.
     - draft bills/land, use; in local forests = family eqs/guests
     - role = in proud, fin.

eg if govt limits fam to 5 ha, ask people: if = emerf/surviv;
     people must, committed to do what = nec/eq;
     (nothing else) \rightarrow ask people's opinion if agree =
     OK then \rightarrow incl. facts in report/bill

eg if people want to grow trees, forestry, go/n't permits, but must pay 'tax'= rent...
     ask people's opinion growing trees = 30 yr nec?

in sum: before submit leg bill, require
     people's opinion > meld trends, culture w.

law \rightarrow combine 2 systems = we together;

Cultural + trad practices affect health, well-being

= try to 'meld' law to protect well-being
  eg, in case of terminal, contagious disease
  the sick = live together, must use law to
  sep/well-being i.e. those not affected
  eq. bad trends = help people to help eachother

cont. w/o new law
Mark Pellet: Commercial Law:

A. 3 parts = foundation of US comm law:
   1. Unless = specific rule, can buy or sell anything?
   2. Breaches of contract = enforced by its coercive power.
   3. Contract law provides scheme of rules when 2 contracting parties don’t specify rules.

B. On that foundation = special laws -> easy for ps. to txd:
   1. Many = "Uniform comm law" = law in each st. = 50 st.
   2. To promote ease of txd = negotiability = 4 device\law:
      a. If I have contract to buy from you, but don’t have enough $ to pay all now, you want to sell me goods. I promise to pay you given goods, sell "promise" to banks which pays you for promise. I pay back (6%) mk % = "profit.
      b. Letters of credit = you want to sell to me, I don’t have $ now, you don’t know me. I go to bank which promises to pay you, pic $5\% credit risk.
      c. You want to sell to me, but we’re far apart, third truck owner given receipt to seller when he puts goods on truck, whoever has receipt has title to goods. Seller can mail receipt to buyer who gives it to truck on delivery.
      d. Seller takes security in items sold or other property of buyer = rules abt filing security interest/collateral in a public office. I don’t use same property as collateral for 2 lending since record shows already used. But used eg., in place to supervise implementation filing system; lenders need to know where to find info.

3. Some laws = to ensure txd = fair to Ps involved:
   eq. in Uniform Comm code; requires "gd faith" = honesty; if Ct finds don’t act in gd faith, ct’d reflect to super contract or if txd = so unfair, ct’d refuse to enforce it.
"Fairness" laws: byp. or trad bet = cos, or ingr. co + corp. indiv. 

- Contracts: bet. cos + corp. indivs. = 'cons. contractum' = more laws to protect corp. indivs. (than to protect ingr. cos) = 2 gen't ways:
  1. require cos. provide info. to cons. = wt. only if cons. can understand info & do something abt it
  2. prohibit certain contracts - eg. v. loans at 'high' int. rt.;

  ie use com'l law to

2. really a framework of laws/mkt ec. + laws to facilitate

- mkt. ec. 2. Put = details 3. no one law/mkt. + many kinds, dep on mkt. desired + circumstances/try. - ie didn't know if a given bill = gd, unless knew aoe circes so cd tell how details fit Lao circes = res. rept.

Q#1: How Commercial Code -> devel'd? A: many diff. laws, some early US, some Eng.; many people (lawyers, law teachers, judges) work on laws, hearings, etc; people in various fields/probs to solve.

Q#2: Do you specialize/partic. laws/partic. fields, or st. w. gen'l law w. all dealings - Dr. H. ie Main law w. subdiv'n/area? A = Contract

law = most gen'l; Union / Nat = Com'l law; Labor law, 13 leg. law's; All items desc'd here = Sales under Com'l law; cd have sales w. diff. sales under each.

2. issues = research:

1. Law v. reg = legislative procedures law + admin. prac. law = research

2. Whettn to divide in 3 pt's.