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Proposal for preparing the Lao legal framework Plan 2000

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Boston University

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PROPOSAL FOR PREPARING THE LAO LEGAL FRAMEWORK PLAN 2000
Submitted by Professors Ann Seidman and Robert B. Seidman

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I. INTRODUCTION

1. This paper comprises a proposal for a Mission composed of two Consultants, Professor Ann Seidman and Professor Robert B. Seidman¹, to go to the Lao PDR for one month to assist the Lao Government to prepare a medium-term Plan, 1998-2000, for strengthening the national legal framework (hereinafter, 'Plan 2000'). The Proposal contains the following elements:

- (1) The Mission's general strategy.
- (2) Ensuring Lao participation at every stage in formulating the draft plan.
- (3) Prioritizing Plan proposals for activities to be undertaken and legislation to be prepared during the two year Plan period.
- (4) Making it likely that, to the extent of available resources, Government implements the Plan.
- (5) Organizing the Mission's work.
- (6) Timing of the Mission's work (from 28 November to December 23, including a schedule for completion of the draft plan).
- (7) Budget

II. GENERAL STRATEGY

2. The proposed Mission will build on foundations laid by previous studies and processes which, over the last several years, have begun the task of building the Lao PDR's legal framework to facilitate the implementation of the New Economic Mechanism. Together with responsible Lao officials, the Mission will seek to identify the areas to which, in the next two years, the Lao Government will devote human and financial resources to further strengthen that framework.

3. Perhaps the greatest threat to Plan 2000 lies in the

¹ See their curriculum vitae attached.

possibility that, like so many proposals expatriate consultants have made concerning the legal order (not only in the Lao PDR, but the world around), it will lie on a shelf, neatly bound, gathering dust. To avoid that danger, this Proposal contains detailed provisions to make it likely that the responsible Lao government officials 'own' the Plan -- that it comprises, not some expatriate consultants' Plan 2000, but the Lao PDR's Plan 2000, to implement which the government remains committed.

4. This Proposal contains detailed provisions for Lao participation at every stage in the development of the draft Plan 2000. No matter how knowledgeable, expatriate consultants alone can never adequately identify the full nature and causes of the problems that plague the legal order in the Lao PDR's unique circumstances. Based on other country's experiences, and their relatively superficial and Lao officials' profound knowledge about the Lao reality, however, consultants can work together with Lao officials to identify and propose effective measures to eliminate the main trouble spots in the present legal system.

5. Plan 2000 must deal with several areas of work relating to strengthening Lao PDR's legal framework, including:

- (1) legislation: inventorying existing laws, and, in light of Government medium-term policies and strategies, proposing priority legislation;
- (2) law-making: describing and assessing the drafting, prioritizing, law-harmonizing and law-making processes, including the drafting and promulgation of implementation decrees; and, in light of Government medium-term policies and strategies, proposing projects to build these processes' capacity;
- (3) implementation: describing and assessing the institutions for implementing legislation, and, in light of Government medium-term policies and strategies, proposing to build these institutions' capacity;
- (4) judicial system: describing and assessing the judicial system, and, in light of Government's medium-term policies and strategies, proposing projects to restructure and develop those institutions; and
- (5) legal education: describing and proposing projects to improve and expand academic legal institutions and legal training programs; assessing the processes for the dissemination of laws and related information;
- (6) legal bar and private sector legal profession: describing and assessing the present status of the private bar and private sector legal professions, and

proposing projects for their development;

- (7) financing: assessing the basic elements and financing requirements for implementing Plan 2000;
- (8) donor aid: describing the present status of donor aid for legal framework development, and proposing ways of channelling future donor assistance and coordinating donor-financed projects.

6. To enable donor agencies to contribute to financing those aspects of Plan 2000 in which they have a particular interest, Plan 2000 will analyze and separately package the measures proposed for each area specified.

III. ENSURING LAO PARTICIPATION AT EVERY STAGE OF THE PROCESS OF PREPARING THE DRAFT PLAN TO GROUND THE PLAN IN LAO CIRCUMSTANCES.

7. To ensure that the Plan 2000 rests securely on knowledge of Lao circumstances, and the likelihood of the Plan's effective implementation, the Consultants will work closely with relevant Laotian personnel in every aspect of its formulation.

8. The Consultants will cooperate with the Advisory Committee² that assists the Ministry in implementing the present Project for Building A National Legal Framework. In the early days of the Mission, at the Committee's convenience, the Consultants will meet with a representative group from the Advisory Committee for a half-day workshop to discuss the present status of the National Legal Framework Project, and the measures the Advisory Committee considers important to include in the Plan.

9. We assume that Government will again appoint an Advisory Committee for Plan 2000.³ Towards the end of the one month mission, the Consultants will meet with that Advisory Committee for a two day workshop to review, critique and, as necessary, revise the draft Plan.

10. The Minister of Justice will appoint at least one senior official and, if possible, one well-qualified junior official⁴ as counterparts to work with the Consultants in all aspects of formulating Plan 2000. Both to ensure accuracy in terms of the Lao

² Sometimes called the 'ad hoc' or "Supervisory" Committee.

³ The present Advisory Committee was appointed in connection with Project Lao/95/002. We assume that Government will again want to appoint an Advisory Committee to supervise Plan 2000.

⁴ We would, of course, prefer that MoJ appoint two senior officials as counterparts; but we recognize that that may prove impossible.

condition, to begin to build Lao capacity for similar planning in future, and, if possible, to help with translation, the Counterparts seem essential. They will participate every stage of Plan formulation: Interviewing, analysis, actually drafting the Plan.

11. Translation during the interviews and in preparation of the Plan document comprises an essential requirement for the Mission. To ensure adequate translation, the Lao Government may adopt one of two options, or a combination of both: (1) Both of the officials appointed as Counterparts may also serve as translators; (2) a suitable sum -- we assume about \$5000 -- might be added to the Mission budget for translation; or (3) one or both of the Counterparts may translate for the interviews and outlines of the Plan document for discussion, and the Mission budget may include the sum necessary for the critical translation of the final Plan document.

12. Before the Consultants arrive, MoJ will gather together all the available documents and studies (including at least those mentioned in Annex 1) relevant to each aspect of the proposed Plan. If possible, it will send those translated into English or French to the Consultants a week before the Mission begins.

13. During the first two weeks of the Mission, together with their Lao counterparts, as arranged by the Counterparts in advance, the Consultants will conduct interviews with selected Lao officials and private sector actors involved in and knowledgeable about all aspects of the Lao legal system (see Annex 2 for proposed interviews). In the fourth week, on the basis of the available documents, the interviews, and the Advisory Committee's recommendations, the Consultants and Counterparts will prepare the draft Plan for review by the Advisory Committee at the proposed two day workshop (paragraph 9 above).

III. PRIORITIZING PLAN PROPOSALS

14. Prioritization constitutes perhaps the Plan's chief contribution to Government decision-making about the National Legal Framework. Anybody can easily sit down and write a wish-list of desirable projects to build the Lao legal system, or of desirable laws for the legislature to enact. Limited time and resources, however, require prioritization. Prioritization constitutes one of the most important aspects of government's power over change. Drawing up Plan 2000 creates an occasion for responsible officials to focus upon their National Legal Framework priorities. Resting on informed dialogue, Plan 2000 as finally promulgated by government will identify those priorities.

15. Plan 2000 requires prioritizing in two dimensions:

(1) Prioritizing the order in which activities will take place in the next two years (for example, should money first be spent on legal education or on in-service training for officials? Should acquiring computers for legislative drafters or building the drafters' capacity come first?); and

(2) prioritizing legislation to be prepared and adopted under the Plan (see item (n) in the Terms of Reference).

16. Competent prioritizing requires that the decision-makers have before them an overview of all the projects that compete for priority. The preliminary draft Plan 2000 will supply the Minister and the Advisory Committee with a list of the problem areas, the proposed activities, and the proposed bills identified during the process described in Part II, together with recommendations as to the appropriate order of priority and reasons for that prioritization.

17. *Prioritizing activities.* The recommended prioritization of Plan 2000 activities will reflect the factors suggested by the available documents and studies, the opinions of the Lao personnel interviewed, and the available human and financial resources, all considered in light of Government's proposed medium-term policies and strategies for further developing the legal framework.

18. *Prioritizing legislation.* Prioritization of legislation requires: (1) an inventory of existing legislation, and (2) an inventory of the legislation that knowledgeable people -- especially, the Ministers and ministerial officials -- consider priorities for enactment by the year 2000. Prior to the Mission's arrival in Vientiane, the Counterparts will prepare the inventory of existing legislation. They will also circulate a request to the other ministries to submit lists of specific social problems that the ministries believe that, by year 2000, new legislation should address. From the replies to that request they will prepare the inventory of proposed priority legislation. The Consultants may add to those lists possible legislation suggested in the course of interviews with Lao personnel or by international experience. After consultations with the Minister, responsible officials and the Lao Counterparts, the consultants will in the preliminary draft of Plan 2000 suggest for discussion a possible priority list.

IV. IMPLEMENTATION: MAKING IT LIKELY THAT, TO THE EXTENT OF AVAILABLE RESOURCES, GOVERNMENT FULFILLS PLAN 2000.

19. Once incorporated in a Decree, the Plan will become, in effect, a norm for governmental behavior. To make implementation of the Plan likely, the Plan will incorporate a strategy consisting of four elements.

(1) *The Plan 2000 Advisory Committee.* We assume that, following past practice, the Government will appoint a

National Advisory Committee as the Plan 2000 Advisory Committee⁵ with the general task of supervising and monitoring Plan implementation. The Plan will provide criteria for Advisory Committee decisions, and procedures for its operations.

- (2) *Staff.* The Ministry of Justice will assign a permanent staff for Plan 2000 implementation. As funds permit, and where appropriate in cooperation with other Ministries, MoJ will assign staff to carry out specific projects.
- (3) *Reports.* The Advisory Committee will submit semi-annual reports to the National Assembly about Plan progress.
- (4) *Project details.* Insofar as possible, Plan 2000 itself will specify sufficient details and clarity for the direct implementation of the projects it contains. Where it does not, Plan 2000 will contain procedures for Ministry programs and consultancies to develop more detailed project proposals.

V. ORGANIZATION OF THE MISSION'S WORK, NOVEMBER 25, 1997 TO
DECEMBER 23, 1997.

20. The consultancy will undertake the following tasks:

21. *Prior to the beginning of the consultancy* (presently proposed for Friday, 28 November)

- (1) Lao counterpart officials: MoJ will appoint two officials⁶ to participate in the work of the consultancy; MoJ to relieve them of other duties for duration of the consultancy.
- (2) Scheduling interviews: MoJ will schedule interviews with Lao informants (officials and non-officials) as per Annex 2. All interviews will take place in first two weeks of consultancy: With the Minister, as much time as he can conveniently make available; with Dr. Houy and the Chief Justice, at least one morning or afternoon each; with focus groups, two hours each; with others, as indicated in Annex 2.
- (3) Collecting documents: MoJ will collect documents as indicated in Annex 1; forward them as collected to us to arrive in Boston prior to 24 November.

⁵ See above, n. 3.

⁶ See above, para. 9.

- (4) Collecting lists of desirable legislation from ministries. MoJ will solicit from all ministries and other organizations lists of bills they wish to see enacted by year 2000; the MoJ will request that those lists be presented not later than Friday, 12 December.
 - (5) Appointing an Advisory Committee. MoJ will appoint an Advisory Committee to supervise plan preparation and implementation.⁷
22. *28 November*
- (1) Half day workshop with Advisory Committee.
 - (2) Interviews with Dr Houy; Minister of Justice.
23. *From 28 November through Friday 12 December:*
- (1) Interviews: Conduct other interviews as scheduled (see Annex 2)
 - (2) Reading documents: Read documents collected by MoJ.
24. *Saturday 12 December through Tuesday 17 December:*
- (1) Preparing Preliminary Draft Plan 2000. Consultants and Lao counterparts will prepare preliminary draft Plan 2000, with at least a detailed outline translated into the Lao language.
25. *Wednesday, 18 December-Thursday 19 December*
- (1) Two Day Workshop. Two day workshop with Advisory Commission and other officials as determined by Minister of Justice.
26. *Friday 20 December through Sunday 22 December*
- (1) Preparing Draft Plan 2000. Consultants and Lao counterparts prepare Draft Plan 2000, with a full translation into Lao language.
27. *Monday 23 December*
- (1) Two-Half-Day Workshops with High Officials. Workshop on the draft plan with Ministers, and other high dignitaries.

⁷ See above, n. 3.

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ANNEX 1
DATA COLLECTION: DOCUMENTS

- A. A list by title of enacted legislation, with a notation of the status of its implementing decree.
- B. Descriptions, reports and assessments of the judicial system, including descriptions, reports and assessments of the recruitment, training and capacity of judges, prosecutors and administrative personnel;
- C. Descriptions, reports and assessment of the systems for developing and drafting legislation, prioritizing legislation, harmonizing legislation, and enacting legislation.
- D. Descriptions, reports and assessments of the systems for drafting and promulgating implementing decrees.
- E. Descriptions, reports and assessments of the system for making ministerial regulations.
- F. Descriptions, reports and assessments concerning the status of the bar and private sector lawyers;
- G. Documents describing Government policies for developing the legal framework;
- H. Documents describing the status of present assistance from bilateral and multilateral donors;
- I. Lists of desired priority legislation for inclusion in Plan 2000 from each Ministry and major government department;
- J. Descriptions reports and assessments of academic legal education (especially, the Swedish report of a few years ago)
- K. Dean David Smith's Needs Assessment completed for UNDP in 1997;
- L. Professor Smit's evaluation of Phase One of the legislative drafting project [the Harvard Project].

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**ANNEX 2
INTERVIEW SCHEDULE**

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If possible, it would be helpful if the Ministry of Justice could arrange for the following interviews before the Mission arrives.

Note: In each case, the Mission will request the interviewee, drawing on his or her current knowledge of the relevant subject matter, to provide information about how the present system functions, any problems that may hinder it from functioning at optimal levels and their probable causes, and proposals for projects that seem likely to overcome those causes. We believe that all topics fall within the parameters of the Terms of Reference.¹

1. Minister of Justice; as much time as the Minister which he considers necessary and can spare; to discuss:

(1) All issues with which Plan 2000 must deal, especially relating to present government policies and strategies for further strengthening and developing the legal framework, for example:

1. The bill-creating, bill-prioritizing, bill-harmonizing and law-enacting system;
2. improvement of implementing agencies;
3. present status of plans for judicial system restructuring;
4. improvement of institutional capacities for drafting, adopting and implementing legislation;
5. improving and expanding academic legal training institutions and legal training programs; and
6. priority legislation for enactment during Plan 2000.

(2) Any other issues which the Minister considers essential in relation to the formulation of Plan 2000.

¹ Schedule A to Annex to Letter of Agreement Dated February September 18, 1997, Between the Lao People's Democratic Republic and the International Bank for Reconstruction and Development for an IDF Grant for Legal Framework Development.

2. Dr Houy (at least a morning or an afternoon):

- (1) Suggestions for revising and improving this Schedule of Interviews.
- (2) Present government policies (i.e., the issues discussed with the Minister);
- (3) the bill-creating, bill-prioritizing, and law-harmonizing systems (including what groups and units can and usually do make inputs into the bill-creating and bill-prioritizing systems);
- (4) the system for creating implementing decrees;
- (5) the system by which government learns about how well a particular law is functioning (i.e., the monitoring and evaluation system);
- (6) the judicial system (including the relationship between MoJ and the judicial system);
- (7) the systems of academic legal education and of law-dissemination;
- (8) the bar and private lawyers;
- (9) status of present assistance from bilateral and multilateral donors for legal framework development, and proposed channelling of future assistance from such donors;
- (10) priority legislation to be prepared and adopted during Plan 2000;
- (11) overall coordination arrangements and procedures for the effective use of donor aid, including effective safeguards against duplication and overlapping of donor aid activities;
- (12) problems relating to corruption;
- (13) problems relating to the law school's training program.

3. Chair, National Assembly Standing Committee and (if possible) the President of the National Assembly

- (1) General policy issues (the issues discussed with the Minister);
- (2) the organization of the National Assembly;

- (3) the formal and informal processes by which a bill proceeds from its presentation to the National Assembly to enactment and promulgation (i.e., how a bill becomes a law); with special attention to --
 1. the quality of questions asked by committee members of governmental officials;
 2. the sorts of documentation (memoranda, research reports, etc.) that accompany bills put before the National Assembly;
 3. the quality of the discussion in the National Assembly concerning the merits of a bill, and the sorts of arguments advanced (if possible, with concrete examples);
 - (4) the composition of the National Assembly, by the following categories:
 1. age;
 2. male and female;
 3. ethnic background;
 4. highest educational level attained; and
 5. occupation;
 - (5) the capacity of members of the National Assembly to assess a bill;
 - (6) the system by which the National Assembly fulfills its function of oversight of governmental activities, including the implementation of laws, decrees and administrative regulations.
4. Chief Justice (a morning or afternoon).
- (1) All aspects of the judicial system, such as:
 1. commercial and business law cases;
 2. criminal law cases;
 3. small claims cases;
 4. family law cases;
 5. juvenile cases

6. court delay;
 7. availability of counsel
- (2) Settling disputes in the Lao P.D.R.
1. Who brings civil cases in the Lao courts? (foreign businessmen? Lao businessmen? Ordinary Lao citizens in the cities? In rural areas?)
 2. Who are frequently defendants in civil cases in the Lao courts?
 3. What sorts of civil cases are most frequently brought in the Lao courts?
 4. To the extent that various groups do not bring their disputes to the Lao courts, what institutions resolve those cases? (for example: local Party leaders? village headmen? traditional rulers?)
 5. appointment and training of judges and prosecutors, in particular relating to disputes likely to arise under commercial law;
 6. judicial independence;
 7. corruption.
 8. recommendations for improving the law school's training to meet the needs of the court system.
5. A senior civil servant, President's Office
- (1) The system for prioritization of proposals for legislation;
 - (2) the process of developing an idea for a proposed bill into the final draft presented to Cabinet;
 - (3) Cabinet procedures for assessing a bill;
 - (4) present government policies and strategies for further strengthening and developing the legal framework (the issues discussed with the Minister of Justice);
 - (5) issues of accountability and transparency in the ministries;
 - (6) the system for developing, drafting and promulgating implementing decrees;

- (7) the system for developing, drafting, and promulgating administrative regulations.
- (7) the system by which government learns about how well a particular law, decree, or regulation is functioning (i.e., the monitoring and evaluation system);
- (8) priority legislation for Plan 2000;
- (9) overall coordination arrangements and procedures for the effective use of donor aid, including effective safeguards against duplication and overlapping of donor aid activities.
- (10) problems relating to corruption.
- (11) recommendations for improving the law school training in relationship to administrative law.

6. Dean, the School of Law

- (1) The existing curriculum and syllabi for academic legal education;
- (2) Any specific relationships that now exist between the law school and its curriculum (in general and in particular courses) and specific legal institutions: ministries, judiciary, National Assembly.
- (3) Qualifications of students admitted to law school, and the employment categories law school graduates enter.

7. Focus group: Selected members of the Advisory Committee

- (1) The drafting process, that is, the process by which a bill moves from somebody's vague idea to a concrete bill for presentation to Cabinet (including processes within the line ministries as well as within MoJ).
- (2) The system for prioritization of proposals for legislation;
- (3) Advisory Committee procedures for assessing a bill;

8. Focus group: 6 or more Legislative drafters

- (1) The drafting process, including the process by which a bill moves from somebody's vague idea to a concrete bill for presentation to Cabinet.

9. Focus group: four to six leading members of the National Assembly.

- (1) the quality of questions asked by committee members of governmental officials;
- (2) the sorts of documentation (memoranda, research reports, etc.) that accompany bills put before the National Assembly;
- (3) the quality of the discussion in the National Assembly concerning the merits of a bill, and the sorts of arguments advanced (if possible, with concrete examples);
- (4) the capacity of members of the National Assembly to assess a bill;
- (5) the system by which the National Assembly fulfills its function of oversight of governmental activities;
- (6) an assessment of the tasks that the National Assembly staff performs for the Members, and the actual level of performance of those tasks;
- (7) constituency contacts by Members (how often do Members return to their home constituencies; do they have offices in their home constituencies; do they have regular office hours in their constituencies; whom they see when they return to their constituencies; how well publicized are their constituency visits).

10. Focus group: Members of the staff of the National Assembly

- (1) Number, size, qualifications, tasks and size of workload of the staff;
- (2) system by which Members of the National Assembly may obtain staff assistance in (a) assessing a bill and (b) drafting a bill.

11. Focus group: A senior civil servant from each of the ministries that deal primarily with problems related to improving the New Economic Mechanism, e.g. Finance, Commerce and Industry, Agriculture and Forestry, Labour, and Education.

- (1) The process by which the perception of a social, political or economic problem moves to the development of a memorandum proposing a legislative solution for the perceived problem.
- (2) the system in their ministry for prioritizing legislative proposals;
- (3) the system for prioritizing legislation as between

ministerial proposals;

- (4) the system by which their ministry learns about how well a particular law is functioning (i.e., the monitoring and evaluation system;
- (5) problems relating to corruption.

12. 6 to 8 Lao women, including representatives of Lao women's organizations; senior officials from the ministries, National Assembly, judiciary, and legal education, institutions; and members of private law firms.

- (1) Do they perceive any social problems with respect to women which the existing institutions that comprise the Lao legal system do not adequately address (for example, discrimination in employment; inheritance on death of a husband; divorce laws; education; etc.)?
- (3) Do they perceive any difficulties in the way the courts and criminal justice system deal with problems that affect the lives of women and their children?
- (2) What proposals would they recommend for improving the performance of the nation's legal institutions in resolving the problems women confront?

13. Focus group: four to six trial-level judges and prosecutors.

- (1) All aspects of the judicial system, such as:
 - 1. commercial and business law cases;
 - 2. criminal law cases;
 - 3. small claims cases;
 - 4. family law cases;
 - 5. juvenile cases
 - 6. court delay;
 - 7. availability of counsel
 - 8. appointment and training of judges and prosecutors;
 - 9. judicial independence;
 - 10. corruption.

14. Focus group: six to eight private sector lawyers, including at least two members of the Bar Association.

- (1) The judicial system (the same issues as discussed with the Chief Justice);
- (2) the availability of legal representation for the poor;
- (3) problems relating to corruption;
- (4) the number of private lawyers, their educational levels and capacity;
- (5) the organization of the bar.
- (6) Settling disputes in the Lao P.D.R.
 1. Who brings civil cases in the Lao courts? (foreign businessmen? Lao businessmen? Ordinary Lao citizens in the cities? In rural areas?)
 2. Who are frequently defendants in civil cases in the Lao courts?
 3. What sorts of civil cases are most frequently brought in the Lao courts?
 4. To the extent that various groups do not bring their disputes to the Lao courts, what institutions resolve those cases? (for example: local Party leaders? village headmen? traditional rulers?)
 5. How do they assess the education they received in the Lao Law School in terms of its preparation for their present employment? What improvements would they suggest?

15. Focus group: 6 to 8 foreign businessmen and their lawyers or other representatives.

- (1) Have they had any cases that they brought to the Lao courts for resolution? If they had a dispute with a foreign businessman, would they bring it to the Lao courts for resolution? With a Lao businessman? If not, how would they go about settling the dispute?
- (2) Do they, as businessmen, perceive any particular problems with the Lao court system?
- (3) Do they, as businessmen, perceive any particular problems with Lao substantive law (for example, the

need for better land titling systems, clearer or more modern commercial law, better bankruptcy laws, better laws for collecting overdue bills, etc.)?

16. Focus group: 6 to 8 Lao businessmen.

- (1) Have they had any cases that they brought to the Lao courts for resolution? If they had a dispute with a foreign businessman, would they bring it to the Lao courts for resolution? With a Lao businessman? If not, how would they go about settling the dispute?
- (2) As businessmen, do they perceive any particular problems with the Lao court system?
- (3) As businessmen, do they perceive any problems with Lao substantive law (for example, the need for better land titling systems, clearer or more modern commercial law, better bankruptcy laws, better laws for collecting overdue bills, etc.)?
- (4) Any general recommendations for improving the Lao PDR's legal order.

17. Focus group: 6 to 8 law school students

- (1) Academic legal education as it relates to the Lao PDR's needs and the New Economic Mechanism;
- (2) How do they assess the curriculum, the course syllabi and readings, and the teachers' performance.
- (3) What improvements would they recommend?

18. Focus group: three or more teachers at the law school

- (1) Academic legal education as it relates to the Lao PDR's needs and the New Economic Mechanism.
- (2) How do they assess the curriculum, the course syllabi and readings, and the students' performance;
- (3) What improvements would they recommend?