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# A proposed regulation on drafting (Lao PDR)

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<https://hdl.handle.net/2144/29953>

*Boston University*

March 15, 1996

## **A PROPOSED REGULATION ON DRAFTING**

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### **CHAPTER ONE. GENERAL PROVISIONS**

1. These Regulations define the procedures for preparing a bill, decree or regulation that requires Cabinet approval.
2. In these Regulations, 'bill' means a bill, a draft decree, or a draft regulation that requires Cabinet approval.
3. These Regulations shall be construed to make easier and more certain the prompt and accurate drafting of bills that respond to the specific Lao circumstances.
4. Except as the Prime Minister may otherwise determine, for submission to Cabinet, its sponsor shall prepare a bill pursuant to the procedures set forth in these Regulations.

### **CHAPTER TWO. A BILL MENTIONED IN THE APPROVED PLAN OF LEGISLATION**

5. The procedures stated in this Chapter apply to a bill mentioned in the approved Plan of Legislation.<sup>1</sup>
6. In these Regulations: --
  - (1) 'originating ministry' means the ministry in whose portfolio the bill will fall after promulgation; and
  - (2) 'Minister' means the Minister of the originating ministry.
7. The Minister shall appoint a senior ministerial official as the Chair of the relevant drafting group, and at least one other official as a member of the drafting group.
8. Upon request of the Minister, the Minister of Justice shall appoint a ministerial official as a member of the drafting group.
9. Upon request of the Minister, the Minister of each ministry that has an interest in the subject-matter of the bill shall appoint an official as a member of the drafting group.<sup>2</sup>

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<sup>1</sup> These Regulations assume that the Lao P.D.R. has in force a Plan of Legislation, prioritizing bills for enactment.

10. The Minister shall by letter to the Chair of the drafting group state the drafting group's terms of reference, so far as possible stating the difficulty or difficulties that the proposed bill will address,<sup>3</sup> and any other material useful in defining those terms of reference

11. The drafting group shall forthwith prepare and submit to the Minister a Plan of Work, including --

- (1) a schedule of hearings, consultations, and Requests for Comments, by which the group proposes to obtain inputs relevant to the drafting of the bill from other governmental units and from members of the public,
- (2) a schedule of dates for First Draft and Final Draft of the bill and its Research Report, and
- (3) a statement of how the drafting group proposes to familiarize itself with the Lao circumstances and with the foreign law and experience relevant to the bill.<sup>4</sup>

12. The Minister may approve or amend the Plan of Work.

13. The drafting group shall undertake the Plan of Work as approved by the Minister.

14. The drafting group shall prepare a First Draft of the bill and of the Research Report.<sup>5</sup>

15. The Research Report shall consist of a justification for the bill, including the following sections:

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<sup>2</sup> For example, with respect to the Mining Bill, STENO certainly should have a member on the drafting group.

<sup>3</sup> Experience teaches that where the Ministry assigns a bill for drafting by name instead of by specification of the social difficulty to be addressed, too frequently confusion ensues, since the drafting team does not necessarily understand what aspect of the general area the Minister wishes it to address.

<sup>4</sup> As suggested in the memorandum accompanying this proposed regulation, it is hoped that funding can be found to provide for foreign consultants and for study tours abroad for at least the major priority bills.

<sup>5</sup> It is believed that without a research report, no person not an expert in the field can assess the bill. The Minister, the members of Cabinet and the members of the National Assembly, however, mostly are not experts in the field. They cannot fulfill their constitutional duties to assess legislation presented to them without an adequate research report.

- (1) A statement of the social problem or difficulty or difficulties that the bill aims to resolve, including a statement of whose and what social behaviors constitute those difficulties, and the evidence on which that statement rests;
- (2) a statement of the explanations for the specified behaviors, and the evidence on which that statement rests;
- (3) a description of the solution set out in the bill, together with alternative solutions considered and rejected, the implementing machinery upon which the bill relies, and social cost-benefit analysis of the bill;
- (4) a statement of the anticipated social impact of the bill on women, children, the poor, minorities, women and the environment; and
- (5) a statement of the proposed means for monitoring and evaluating the impact of the bill after enactment.

16. Unless the Prime Minister otherwise determines, after approval by the Minister, the Minister shall give notice in a newspaper of general circulation in the Lao P.D.R. --

- (1) that the First Draft and Research Report are on file in the originating ministry for examination by any member of the public, and
- (2) that the drafting group will receive and consider written comments until a date not less than three months after the date of publication of the notice.<sup>6</sup>

17. After the close of the date allowed for written comments, the drafting group shall prepare and submit to the Minister for his approval, the following:

- (1) A Second Draft of the bill and the Research Report, taking into account the comments it accepts, and

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<sup>6</sup> The Notice and Comment procedure is drawn from United States practice in approving administrative regulations. It has proven very useful there. While Lao conditions are, of course, vastly dissimilar to those of the United States, it is believed that this provision, together with opportunities for input by stakeholders in the course of drafting, might prove beneficent.

- (2) an appendix to the Research Report that summarizes each comment received but not accepted, and the reasons for nonacceptance.<sup>7</sup>

### CHAPTER THREE. A BILL NOT MENTIONED IN THE APPROVED PLAN OF LEGISLATION

18. The procedures stated in this Chapter apply to a bill not mentioned in the approved Plan of Legislation.

19. A Minister who proposes to draft a bill not mentioned in the approved Plan of legislation shall submit a memorandum describing the proposed bill and the necessity for it to the Advisory Committee to the Building a National Legal Framework Project and to the Minister of Justice for their recommendations for the priority to be accorded the proposed bill in light of other demands upon drafting resources.<sup>8</sup>

20. The Advisory Committee and of the Minister of Justice shall forward copies of the memorandum and of their recommendations to the Prime Minister.

21. If the Prime Minister determines that the need for the bill is sufficiently pressing in light of other demands upon drafting resources, he shall add the bill to the approved Plan of Legislation.

### CHAPTER FOUR. REVIEW BY THE OFFICE OF SENIOR STATE COUNSEL IN THE MINISTRY OF JUSTICE

22. In these regulations, 'Director' means the Director of the drafting unit in the Ministry of Justice.

23. The Director shall review the Second Draft of a bill and its Research Report for conformity to these regulations, constitutionality, form, and consistency with other legislation,<sup>9</sup> and report its recommendations to the Minister of Justice within one month of receipt of the Second Draft and the Research Report.

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<sup>7</sup> No point to a Notice and Comment section exists unless the drafting group must respond to each comment.

<sup>8</sup> For the Lao P.D.R., these seemed the appropriate institutions to make the prioritization decision. A Cabinet Committee or even Cabinet itself suggest themselves as possible alternatives; in many countries, they do the work here suggested for the Advisory Committee and the Minister of Justice.

<sup>9</sup> Every competent drafting system must provide a central office to review legislation in these regards; in that sense, the central drafting office protects some of the central elements of the Rule of Law.

constitutionality, form, and consistency with other legislation,<sup>9</sup> and report its recommendations to the Minister of Justice within one month of receipt of the Second Draft and the Research Report.

24. The Minister of Justice shall forward that report with his comment to the drafting group within one month after receipt from the drafting unit in the Ministry of Justice.

25. If the Director recommends that the bill or the research report require amendment, the Director will endeavor to come to agreement with the Minister of the originating ministry on the Final Draft of the bill and Research Report.

26. If the Director and the Minister agree upon the Final Draft of the bill and the Research Report, the Minister shall submit the Final Draft to Cabinet.

27. If the Director and the Minister cannot agree upon a Final Draft of the bill and Research Report, the Minister shall submit the Minister's version of the Final Draft to Cabinet, and the Director shall submit the Director's comments to the Cabinet in a separate memorandum, with the comments of the Minister of Justice appended.

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<sup>9</sup> Every competent drafting system must provide a central office to review legislation in these regards; in that sense, the central drafting office protects some of the central elements of the Rule of Law.