



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

THE LAW-MAKING PROCESS IN LAO PDR
A Baseline Study
United Nations Development Programme

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Foreword

The Government of Lao PDR (the ‘Government’) places high priority in establishing a rule of law state to support the socio-economic development of the country. To help achieve this objective, the Government officially adopted the Legal Sector Master Plan (LSMP) in September 2009.

The LSMP represents a pivotal leverage for Lao PDR to meet the forthcoming critical challenges such as the Millennium Development Goals by 2015, the newly set Sustainable Development Goals and the graduation from the Least Developed Country (LDC) status by 2020. The Master Plan is a comprehensive statement of the current needs of the Lao legal and judicial system, and provides a series of guiding principles for developing a rule of law state, enhancing access to justice and enabling people’s legal empowerment. It signals the most pragmatic commitment to the rule of law since the Constitution and is the country’s first legal sector reform directed from the highest policy-making level.

The Master Plan will improve legislative development processes, including more effective stakeholder consultation and greater legal conformity with international standards. To further cement these efforts, the National Assembly adopted the Law on Laws in 2012, a law on making legislation. This law is an important landmark in the law reform process and has opened a new era of greater inclusivity in making laws.

In Lao PDR, despite many challenges we have never stopped being self-critical. In our own way we strive hard to always make improvements to our existing systems. It is in this premise a baseline study on law making was initiated with the intention of assessing to what extent we have progressed, following the Law on Laws in 2012.

This study is one of the very first in the field of law making and has provided us an excellent status quo of the current practices in law making. We intend to use these findings to fine tune our law making process, and explore options and find ways to further improve in areas related to public participation and in drafting pragmatic laws.

Further, the legal drafters undoubtedly are the prime beneficiaries of this publication. We intend to use this publication to inform our training approach towards building capacity of legal drafters. Towards this end, this publication will also play a pivotal role in designing our training manual on law making.

I would like to express my gratitude to the Support Project for implementation of the Legal Sector Master Plan executed by United Nations Development Programme with the support of the European Union, Government of France, and Government of the United States. I am thankful to

the Department of Legislation, the Ministry of Justice for taking the lead in this exercise. I am also thankful to Professor Theodore Parnall, from the University of New Mexico, USA, for his excellent contribution in making this publication technically sound.

It is my sincere hope that this study will be of benefit to all stakeholders directly and indirectly involved in the law making process.



Prof. Ket Kiettisack
Vice Minister of Justice, Lao PDR

Foreword

The fast pace of development of Lao PDR sets forth strong intentions of integration into regional and international trade and economic communities. The country has been a member of the World Trade Organization since 2013 and will be integrated into the common market when the ASEAN Economic Community enters into force at the end of 2015. Amongst other factors, the expansion of market and trade spheres requires a solid legislature in order to provide for new circumstances.

The Government of Lao PDR has adopted the *Legal Sector Master Plan* in 2009 in recognition of the necessity to build a transparent, clear and inclusive legal system. In 2012, the National Assembly adopted the *Law on Laws*, a law on making legislation, as an important step towards reforming the country's law-making. These significant milestones show the process of the country moving towards international best practices in the legal sector.

This study is one of the first comprehensive studies to examine current practices in the law-making process in Lao PDR. It provides useful findings and recommendations on key aspects of the law-making process including responsibilities of law-drafters to provide the public access to draft legislation via online publication, organize public consultations, and develop explanatory notes and impact assessment reports.

This study also serves as a baseline for a law-making manual, which will be published as the next publication of the UNDP-Government of Laos Rule of Law programme.

We stay committed to providing any necessary support to the Government in the legal sector. I would like to express my sincere appreciation to the Government of Lao PDR, especially the Law Department at the Ministry of Justice, for taking the lead in pursuing the initiative of publishing this study. My gratitude also extends to Professor Theodore Parnall, a well-respected professor of law at the University of New Mexico, USA, who with his technical input and thorough research has made a significant contribution to this study.

I hope that this study will further contribute to better access to justice for the citizen of Lao PDR.



Mme. Kaarina Immonen
Resident Representative, UNDP Lao PDR

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National Assembly: Prof. Davone Vangvichit Chairman, Law Committee.

Prof. Parnall worked with above mentioned Messrs. Vangvichit, Kiattisak and Phommachane during the original UNDP/Harvard Law School project on law reform (1991-92) and considers the outstanding contributions of these persons in the development of this report, as in all their work, to be an essential part of legal sector development in Laos.

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Executive Summary

Introduction

The Lao Authorities recognized the importance of strengthening the country's legal sector by adopting a Legal Sector Master Plan (LSMP) in 2009, which is now being implemented with the assistance of the UNDP Support Project for Implementation of the Legal Sector Master Plan (SPLSMP). The LSMP is based upon the four central "pillars" of any legal system: PILLAR ONE is the framework of laws, decrees and regulations, PILLAR TWO consists of the law-related institutions that implement that legal framework, PILLAR THREE, the means of educating and training in the use of the system, and PILLAR FOUR, the means of assuring that all the laws and regulations are widely disseminated and accessible to both state agencies and citizens.

An indication of the increasing significance the Lao authorities are placing on improving its written legal framework is its 2011-2015 plan for the National Assembly to adopt 47 new, and 45 amended, laws. Also, Lao P.D.R took another significant step in clarifying its legal framework with the adoption of the Law on Legislation (known as the "Law on Laws") in 2012. This was followed by the country joining the World Trade Organisation in 2013. While this may not be a strictly law-related event, it, and the joining of ASEAN in 1997, as well as the planned accession into the ASEAN Economic Community ("AEC") in 2015, represents the country's movement toward governance based upon a rule-based order, with an increased willingness to engage in transparent decision-making in both its domestic affairs and its international relations.

The information contained in this Baseline Report (the "Report") on the subject of how laws, regulations and decrees, at any level, are developed in Lao P.D.R. may be used to measure progress made from the date of the Report. This, in turn, may help determine the effectiveness of those various law-related initiatives taken by the Lao Government and State agencies, as well as by UNDP and other Development Partners interested in the Lao legal system. The methodology used in preparing the Report consisted of interviews of persons involved in, and affected by the law making process, attending meetings of law-drafting committees, analysis of laws, and "reverse engineering" the process in two case studies. The Report presents both objective data and statistics were available, as well as using descriptive means to provide an understanding of the current status of the broad law-making process.

Baseline Indicators for Project Progress and Progress in the Law-making Process

Among the indicators of progress made by the Project in the PILLAR ONE law-making Process are the following:

- Percentage of law-making officials demonstrating a sufficient general understanding of the requirements of the law-making process: Current estimates for the MOJ: there is a high percentage of understanding of the general requirements of the drafting process (approximately 80% judging from the persons interviewed. It should be noted, however, that only 7-8 persons (20%) of the

persons involved with law drafting on a regular basis who could be said to be specialized law drafters with a detailed knowledge of all technical and organizational requirements; for other line ministries, 10 to 20% have an understanding of the general requirements of the drafting process, and there are no specialized legal drafters.

- Number of National Assembly laws that can be certified by the MOJ as being fully in compliance with the requirements of the Law on Laws: Currently, none, as no drafts are posted on websites in compliance with Article 8 of the Law on Laws, and other requirements are also not being met. However, there has already been a significant opening up of the process, and the MOJ is working actively with line ministries and other organs to increase total compliance.
- Percentage of complete legal framework (i.e., no important laws missing) compared to laws in other ASEAN countries: Following completion of the 2011-2015 five year law-making plan of the National Assembly, and the completion of the Pillar One actions described in the LSMP, the Lao written legal framework could be said to be “complete”, with the understanding that much more work will need to be done in order to make such framework “law in action” as opposed to “law on the books”.

All legal normative documents are intended to be covered by the requirements of the Law on Laws

An individual "law" is within the meaning of a “legal normative document” which is a rule made by the State and intended to have general application and be implemented by State agencies. Article 4 of the Law on Laws that all levels of written legal normative documents by which officials of various levels of authority, from the National Assembly to ministries to provincial, district and village authorities direct the behavior of individuals or associations are laws of general application and are intended to be covered by the improved requirements and standards of the Law on Laws.

Important Reforms made by the Law on Laws

The Law on Laws establishes the following four important principles for the law making process:

Transparency

The Law on Laws requires publication of the majority of legal normative documents in the Official Gazette prior to the effectiveness or enforceability of such laws. Article 80 of that Law establishes a deadline of January 1, 2015 for publication of all pre-existing documents to assure their continuing enforceability and effectiveness. The foregoing requirements are essential to the transparency of the legal system. However, the Report suggests that the January 1, 2015 deadline should be postponed for a minimum of one year. Failure to do so may cause questions as to the effectiveness of hundreds of Lao legal normative documents that were adopted in the past.

Because of the almost total non-compliance with the new mandate to post drafts on websites, any improvement would be a substantial achievement. The SPLSMP should support one or more websites exclusively reserved for the posting of drafts of legal normative documents.

Participation and Consultation

The Consultation process now being carried out by the law drafting committees, as is evident from the Case Study on the Juvenile Criminal Procedure Law, has significantly opened up the Lao law making process so that comments from non-state and state actors is far greater than in the past. In addition, a standard format for consultation meetings appears to have become organising a minimum of three meetings “in the North, South and Centre” of the country, at which the primary audience consists of local officials and state authorities, with at least some representation of the private sector. Such meetings are by invitation only, and notice to the public at large to request invitations to attend has not been done. Comments gathered at such consultations and submitted afterwards have been incorporated into the revised drafts, and most Lao officials interviewed spoke in positive terms of the value of such participation. With respect to lower level LNDs, however, there is no strong implementation of the specific participation and consultation requirements yet.

Impact Assessment (The Effectiveness Principle)

There has been no compliance with the requirement of posting draft laws for 60 days, together with an explanatory note and an assessment of the draft’s likely impact. The Impact Assessment regulation was only issued in July, 2014, however, and there has been no compliance with the explanatory note or regulatory impact assessment requirement.

A key recommendation of the Report is that expedited compliance with the impact assessment requirement should be encouraged in order to avoid delays caused by what may become a lengthy, cumbersome bureaucratic process. Posting the draft with a short statement of its intended impact will provide the public with an opportunity to give the law drafters information on the draft law’s potential impact.

Systemization

There has been progress in this regard, from the Constitution to the Law on Laws. For example, the latter continues to clarify the hierarchy of normative legal documents, and provides a general format for the content of laws. The Law on Laws also makes a distinction between laws of general application and those of special application and a distinction between decisions, instructions and orders.

An indication of the continuing difficulty in this area, however, is the manner in which many ministries and agencies have attempted to comply with the January 2015 deadline for posting all normative legal documents on the Official Gazette: many of the documents being sent to the

Gazette are not in any clear order, and many are documents of special application instead of general application that could be understood as appropriately part of “the law”.

A “legal unit” within each line ministry is assumed to exist in the Law on Laws. However, while there are an increased number of law trained persons available to assist with drafting and commenting on drafts, specialized skills in law drafting remain very scarce, and the law-trained staff frequently are not an integral part of a ministry’s law-making efforts. Well-defined legal units should be established at each line ministry, and have direct responsibilities for that ministry’s law-making activities.

Two case studies on law-making, from the highest to the lowest law-making levels

The Report describes and comments upon a law adopted by the National Assembly (the highest level) as well as one adopted by village authorities (lowest level).

Case Study No. 1: The Juvenile Criminal Procedure Law (adopted by the National Assembly)

Even though there was no 100% compliance with the requirements of the Law on Laws (e.g. no publication of drafts by either the Drafting Committee or the NA, no explanatory note or impact assessment accompanying the draft, no truly “public” consultation in the sense of openness to the general public), the process of “reverse engineering” this law revealed a significant advance in the Lao law-making process. It was open to international comments, national and international non-state actors had advance copies of the draft as it went through various stages, drafts were broadly distributed as a result of both the working group meetings and the six “public consultations”, and the law as adopted was posted on the Official Gazette, accessible to anyone with internet service relatively soon after its signing by the President. If all NA laws followed this procedure, it would mark an advance in Lao law making.

Case Study No. 2: A Village Ordinance on Confinement of Livestock

When the Village of Phonemee, Viengkham District in Vientiane Province adopted an ordinance requiring that livestock not be allowed to wander freely throughout the village, several of the Law on Law’s technical requirements were not met: There was no preparation of a draft of the regulation in advance, no posting of the draft on a public billboard, and no availability of the regulation following adoption. Having said that, however, one is forced to note that those requirements appear to be woefully inconsistent with the reality of village life. Although this village is only two hours from Vientiane, the divergence between formal legal requirements and practical reality is too great to expect sudden compliance within the period covered by the LSMP. However, the principles of both transparency and participation were in fact being met, albeit in a form very different and much less formal than envisioned by the Law on Laws. One key recommendation of the Report is to encourage compilation of Village Regulations and making such compilation available to the public.

Conclusions

Recent laws adopted by the National Assembly have followed a process that is both more transparent and open to greater participation than earlier laws. This is an encouraging trend, and has allowed for improved quality in the written legal framework.

Lower level LNDs remain difficult to find, drafted by persons unfamiliar with modern law-drafting techniques, and drafted without significant input from either specialised agencies or members of the public that are likely to be affected by the LND. While several ministries are exceptions to these conditions, there appears to be no effective system for either assuring compliance with modern procedures at all levels, or any standardization and organisation of all levels of LNDs.

The 2012 Law on Laws sets forth a comprehensive set of requirements that will increase both transparency and public participation in the Lao written legal framework, if it is implemented in accordance with its terms. There is a concern, however, that failure to meet the mandatory transparency requirements of the law by the deadline of January 1, 2015 may result in the technical invalidation of many LNDs.

Suggested Action Plan

The Report recommends the following actions relating to transparency, public participation and standardization:

A. Actions on Transparency

1. Monitor efforts to delay the application of Law on Laws Article 80.
2. Develop two pilot projects, one with a line ministry and one with a Provincial Government, with the objective of assisting them establish websites for posting draft normative legal documents in compliance with Article 8 of the Law on Laws.
3. Assist local authorities in the compiling of a publically-available file of Village or municipal regulations.

B. Actions on participation

1. Assist the MOJ and lead law-making authority on any draft law in organizing a public consultation meeting of approximately 50 persons by arranging for a public advertisement of the consultation meeting, with a notice that interested persons may request an invitation to the meeting for a discussion of the draft law. .

2. Assist the Standing Committee of the National Assembly in organising an Article 53 public consultation on a draft law, following the posting of the draft law on the NA website.

C. Actions on standardization and organization

1. The Project should identify those individuals who form the “legal unit” of each line ministry. Where no such distinct legal unit exists, the Project should encourage its formation by organizing training sessions on the law-making process, using the Legislative Drafting Manual.
2. The Project should encourage the presentation of a series of at least six small group meetings for teaching the Lao legislative process and basic principles of law drafting (best practices) at the law faculty and law school.

Abbreviations

ASEAN	Association of Southeast Asian Nations
AEC	ASEAN Economic Community
DP	Development Partner
EU	European Union
LND	Legal Normative Document
LSMP	Legal Sector Master Plan
SPLSMP	Support Project for the Legal Sector Master Plan
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
MOHA	Ministry of Home Affairs
MPS	Ministry of Public Security
MoAF	Ministry of Agriculture and Forests
NA	National Assembly
OSPP	Office of the Supreme People's Prosecutor
PSC	People's Supreme Court
NPC	National People's Congress [China]
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
WTO	World Trade Organisation

I. Introduction

A. General Considerations

Between Independence in 1975 and August 1991, there was no Lao Constitution, and very few laws adopted by the National Assembly (then called the People's Assembly). There were a number of decrees, orders and other labels for normative legal documents that were issued by various authorities, but no established hierarchy of laws. A People's Assembly "law" might be contradicted or repealed by a Prime Ministerial decree, and the authority of a ministerial order over the decree of a Provincial Governor was not capable of determination by any standard means. There was no Bar Association, and few, if any private lawyers, other than less than a half-dozen persons who held themselves out as "legal advisors".

The 1991 Constitution began the movement of the country to a "rule of law state" and was followed by a Prime Ministerial Decree in 1992 that clarified the hierarchy of normative legal documents. This decree in turn was strengthened by a Presidential Ordinance in 2003. Supported by a number of activities and projects assisted by UNDP and others, the Lao legal framework made gradual progress as a greater number of people became more familiar with the need for a stronger legal system, and the number of law-trained persons in the country's legal and judicial institutions slowly increased.

The Lao Authorities recognised the importance of the effort by adopting a Legal Sector Master Plan (LSMP) in 2009, and the LSMP is now being implemented with the assistance of the Support Project for Implementation of the Legal Sector Master Plan (SPLSMP). The LSMP, consistent with the guidance of the political report to the 8th Party congress, is based upon the four central "pillars" of any legal system: PILLAR ONE is the framework of laws, decrees and regulations, PILLAR TWO consists of the law-related institutions that implement that legal framework, PILLAR THREE, the means of educating and training in the use of the system, and PILLAR FOUR, the means of assuring that all the laws and regulations are accessible to both state agencies and the citizens.

As Lao P.D.R seeks to improve its written legal framework (PILLAR ONE) it is trying to establish a comprehensive rule-based system instead of continuing what could be described as an ad hoc, piecemeal assortment of legislation, decrees and rulings. This effort will require coordinated efforts by many agencies and ministries cooperating on a sustained basis, and cannot be accomplished without the attention of the best of Lao legal specialists, of which there are unfortunately very few, working with each other and drawing upon the best of comparative legal materials and expertise from regional and international sources.

B. Major Recent Steps

An indication of the increasing significance the Lao authorities are placing on improving its written legal framework is its 2011-2015 plan for the National Assembly to adopt 47 new, and 45 amended, laws. Also, Lao P.D.R took another significant step in clarifying its legal framework

with the adoption of the Law on Legislation (known as the “Law on Laws”) in 2012. This was followed by the country’s joining the World Trade Organization in 2013. While this may not be a strictly law-related event, it, and the joining of ASEAN in 1997, as well as the planned accession into the ASEAN Economic Community (“AEC”) in 2015, represents the country’s movement toward governance based upon a rule-based order, with an increased willingness to engage in transparent decision-making in both its domestic affairs and its international relations.

This Baseline Report deals primarily with PILLAR ONE: the Legal framework and the Law-Making Process. It is also related to PILLAR FOUR, because it relates to the role played by the Official Gazette and other public sources of the laws that add to the general availability and dissemination of law. This Report is intended to establish a realistic baseline for the existing process of drafting, reviewing and promulgating laws and regulations and other normative legal documents. By knowing exactly how laws and other regulations now come into force, it will be possible to better identify the strengths and weaknesses of the process in order to make any necessary improvements. Following the information gained in the preparation of this report, it will now also be possible to draft and finalise a law/decreedrafting manual that can be a practical and realistic guide future law makers at all levels.

C. Purpose of the Baseline Report

The information contained in this Baseline Report (the “Report”) on the subject of how laws, regulations and decrees, at any level, are developed in Lao P.D.R. May be used to measure progress made from the date of the Report. This, in turn, may help determine the effectiveness of those various law-related initiatives taken by the Lao Government and State agencies, as well as by UNDP and other Development Partners interested in the Lao legal system. The Report, prepared by Professor Theodore Parnall (the “Consultant”) presents both objective data and statistics were available, as well as using descriptive means to provide an understanding of the current status of the broad law-making process. As set forth under “Methodology” below, certain of the statistics used in this report are set forth in Annex E. It should be noted that the numbers and dates presented in the Report were obtained from a broad variety of sources, but chiefly through interviews with the persons and agencies listed in Annex B. While certain aspects of the material provided by those interviews were sometimes contradictory, the Consultant attempted to confirm the information from interviewees from different ministries and agencies. Any inconsistencies, however, should not be material, nor should they affect the general validity of the baseline information or the conclusions and recommendations of this report.

II. Methodology

A. General Considerations

The Consultant began preparing the Report by a home-based desk review of the documents listed in Annex A. During his visit to Vientiane on September 7-26, 2014, the Consultant reviewed additional documents also listed in Annex A, and prepared an analysis of the

strengths and weaknesses of Lao P.D.R. 2012 Law on Laws. A matrix showing the main requirements of the Law is set forth as Figure 1 (See page 7).

B. Statistical Background

The Consultant participated in meetings, in law-drafting workshops on two separate law drafts, and conducted interviews in accordance with the schedule set forth as Annex B. While not all requested interviews were possible to arrange, the Project was successful in securing appointments with key MOJ technical staff, law-making officials from the highest to the lowest levels. Interviews were also conducted of persons from Non Profit Associations, Development Partners and others that, in the opinion of the Consultant, were a sufficient basis for a reasonably accurate baseline. The form of questionnaire used at the interviews is attached as Annex C, and the information obtained as a result of the interviews assisted in establishing the baseline for the law-making process. The statistical information solicited by the Consultant was a component of the questionnaire (Annex C), and was completed by him following the conclusion of each interview. While certain of the interviews were conducted with interviewees who were responding to the questions asked without notes or records before them, the Consultant considered the information provided as adequate for the conclusions made in this report, and the information provided in Figure 2 (Performance Indicators). A composite record of such statistical information is presented in ANNEX E to this report. Given that most of the interviews were consulted with interpretation, the Consultant may have misunderstood the intended meaning. All errors remain the responsibility of the Consultant, but should not be of a magnitude that materially affects this Report.

C. “Reverse Engineering” Legal Documents

As a key part of the basis of the baseline, the Consultant identified two sample model legal normative documents to be used for the purpose of “reverse engineering” them in order to determine the strengths and weaknesses of the processes by which they were adopted. Persons significantly involved in the adoption of the samples were interviewed to establish the processes by which the models were adopted. A flow chart illustrating the process used in the adoption of a legal normative document at the highest level (other than the Constitution), a National Assembly Law, is set forth in Annex D.

FIGURE 1 - LAO P.D.R. LAW ON LAWS - REQUIREMENTS MATRIX

Type of Document	Publication of Draft	Publication before Effectiveness	Public Input before Effectiveness	Explanatory Note & Impact Assessment	Subject to Specific Time Schedule
National Assembly Law	Yes (Art. 8 ¹)	Yes (Art. 80 ²)	Yes (Arts. 29 ³ , 32 ⁴ , 36 ⁵ , 52 ⁷ and 53 ⁸)	Yes (Art. 38 and 39 ⁶)	Yes
National Assembly Resolution	No (Art. 60)	Yes	No	No	No
Standing Committee Resolution	No (Art. 62)	Yes	No	No	No
Presidential Ordinance	Yes (Art. 65 ⁹)	Yes	Yes (Arts. 29, 32, 36, are in Chap. 2 of Part III)	Yes (Art. 39)	No ⁹
Government Decree	Yes (Art. 68)	Yes	Yes	No (Art. 68) ¹⁵	No
Government Resolution	No (Art. 70)	Yes	No	No	No
Prime Minister Order/Decision	Yes (Art. 75) ¹¹	Yes	Yes ¹¹	Yes (Art. 75)	No
Minister Order/ Decision/Instruction	Yes (Art. 76) ¹²	Yes	Yes ¹²	Yes (Art. 76)	No
Provincial Governor/ Capitol Order/Decision	Yes (Art. 77) ¹³	Yes	Yes ¹³	Yes (Art. 77)	No
District/Municipality Order/Village Regulations	Yes (Art. 78 and 79) ¹⁴	Yes ¹⁴	Yes ¹⁴	No ¹⁴	No

¹ Art. 8 seeks public comments on draft legislation and requires that the law-making authority post a draft of the legal normative document on a website or printed media or otherwise for comments for a period of at least 60 days, except for “necessary cases or emergencies.”

² Art. 80, **a key provision**, provides that Constitutional changes, Laws, Presidential Ordinances and all legislation except that at the District and Village level is effective only 15 days AFTER publication in the Official Gazette. For District and Village level legislation, it must be published in local media or posted in a way that most people can “access it easily”. Exceptions are few, as noted in this Matrix.

³ Art. 29 requires the law making authority to “conduct public consultations”;

⁴ Art. 32: law drafting committee must publish drafts, organize workshops and seek comments.

⁵ Art. 36: public consultations on draft laws and encouragement of written comments, in addition to public workshops on drafts—posted for 60 days on government website.

⁶ Art. 38 requires an explanatory report describing the objectives, background and expected outcome of the law. In addition, Art. 39 requires an impact assessment note on regulatory and budgetary impact of a draft law (to be determined by specific legislation).

⁷ Art. 52 requires NA to organize an “Open Law Consultation” workshop for NA members and members of each constituency office.

⁸ Art. 53 requires Standing Comm. of NA to organize public consultation on a draft law, but IF it “relates to many sectors or relates directly to the common rights and benefits of the people...”

⁹ Art. 65 provides that drafting a Presidential Ordinance follows same procedures as that of a Law, except for procedures in Part III, Chapters 1, 5, and 6. Thus, all requirements of Chapter 2 would seem to apply). The specific time requirements of Art.40-48 do not appear to be relevant, however.

¹⁰ Arts. 40-48 provide a time schedule targeting presentation of a draft law to the National Assembly no later than 60 days ahead of the session.

¹¹ Art. 75 provides that Orders are free from requirement that drafts be published, with impact assessment; Decisions, however are subject to the requirements.

¹² Art. 76 provides that Orders and Instructions are free from requirement that drafts be published, with impact assessment, but Decisions are subject to the requirements.

¹³ Id.

¹⁴ Arts. 78 and 79 requires district and municipality orders and village regulations to be submitted to the public by local media means for comments for improvements, but do not require posting on internet or official gazette or any impact assessment report.

¹⁵ Art. 68 provides that where government decrees are used to govern socio-economic relations, an impact assessment is required.

III. Baseline Indicators for Project Progress and Progress in the Law-Making Process

The SPLSMP is offering significant support to the Lao legal system. Among the indicators of progress made by the Project in the PILLAR ONE law Making Process are the following:

- Percentage of law-making officials demonstrating a sufficient¹ general understanding of the requirements of the law-making process [Current estimates for the MOJ: there is a high percentage of understanding of the general requirements of the drafting process (approximately 80% judging from the persons interviewed. It should be noted, however, that only 7-8 persons (20%) of the persons involved with law drafting on a regular basis who could be said to be specialised law drafters with a detailed knowledge of all technical and organisational requirements ; for other line ministries, 10 to 20% have an understanding of the general requirements of the drafting process, and there are no specialised legal drafters; for the Women’s’ Union, 100% general understanding of the process by the two persons interviewed, but no specialised legal drafters; for the President’s Office, 12 law-trained persons with a good general understanding of the requirements, but no specialised legal drafters as they leave drafting to others; in the Law Department and Law Committee of the National Assembly, 15 generalists with an understanding of the requirements, with only 2 or 3 legal drafting specialists (10%)².]
- Number of National Assembly laws that can be certified by the MOJ as being *fully* in compliance with the requirements of the Law on Laws [Current: none, as no drafts are posted on websites in compliance with Article 8 of the Law on Laws, and other requirements are also not being met. However, there has already been a significant opening up of the process, and the MOJ is working actively with line ministries and other organs to increase total compliance. The increasing usefulness of the Official Gazette is an important indicator of progress, because more and more normative legal documents are being submitted to it for posting and free availability. Moreover, It will be especially important to monitor the January 2015 deadline discussed below: if there is no high level-action taken to delay this deadline, which the Consultant’s opinion will be necessary, and the deadline comes and goes without attention, this will amount to an indicator of non-compliance that will seriously weaken the credibility of the Lao written legal framework.];

¹ While the term “sufficient” may be understood in different ways, the Consultant arrived at the percentages as follows: for “understanding the requirements of the drafting process” persons who demonstrated an awareness of the requirements of the Law on Laws, including the requirements for (i) posting draft LNDs, (ii) preparing impact assessment reports, and (iii) holding public consultations were deemed to meet this standard.

² These percentages are estimates made by the Consultant according to responses to questions during the interview process: if the person being interviewed was clearly aware of the transparency and participation requirements of the 2012 Law on Laws, their responses as to the skills and information level of persons within their organization was accepted as generally accurate. The variable range of the percentages was arrived at by the Consultant by comparing the numbers so provided with an allowance for error.

- Percentage of complete legal framework (= no important laws missing) compared to laws in other ASEAN countries [Following completion of the 2011-2015 Five Year law-making plan of the National Assembly, and the completion of the Pillar One actions described in the LSMP, the Lao written legal framework could be said to be “complete”, with the understanding that much more work will need to be done in order to make such framework “law in action” as opposed to “law on the books”]. This indicator is a general indicator of the LSMP as a whole, not that of the SPLSMP. If it is regarded as a very general indicator of the growing written legal framework of Lao P.D.R., it may be helpful to show progress. However, as is well understood by observers of any legal system, the quantity and quality of written laws, in and of themselves, may either understate or overstate the health of a country’s legal sector. The other indicators suggested below, along with others dealing with the actual practice of the country’s legal institutions (PILLAR TWO of the LSMP) may offer additional understanding of the movement toward the Rule of Law.

Other indicators that are instructive as to progress in strengthening the law-making sector that the Project may monitor include:

- Number of legal units established by the line ministries (other than the MOJ) [Current: approximately 30%, based upon sampling of the interviews at the Ministry of Agriculture and Forests, MPS, MOHA and MOFA. Note that even in those ministries at which “legal units” can be said to exist, the role played by many of these units in law drafting is ad hoc and not required as a regular part of the drafting of any particular legal normative document. The MPS law department, established in 2013, is a good example of beginning compliance, as it is directly involved in law-making of the ministry, as others should be. This percentage could be clarified by an MOJ –directed survey requesting that each line ministry provide a listing of the persons within its legal unit, together with all law-related training of such persons.];
- Number of Provinces and Districts relying on Provincial and District level departments of justice to review and assist with law-making [Current: none at Vientiane Province or any of its districts³];
- Number of “Article 53 Public Consultations” organized by the Standing Committee of the National Assembly [2013: none⁴];
- Number of Drafting Committee meetings or workshops for which notice is publically given inviting public at large to request an invitation to participate [Current: none⁵]
- Number of cases in which the courts *used* the law, specifically, cases in which the Supreme Court declared that the written law was unclear in a certain area, and exercised

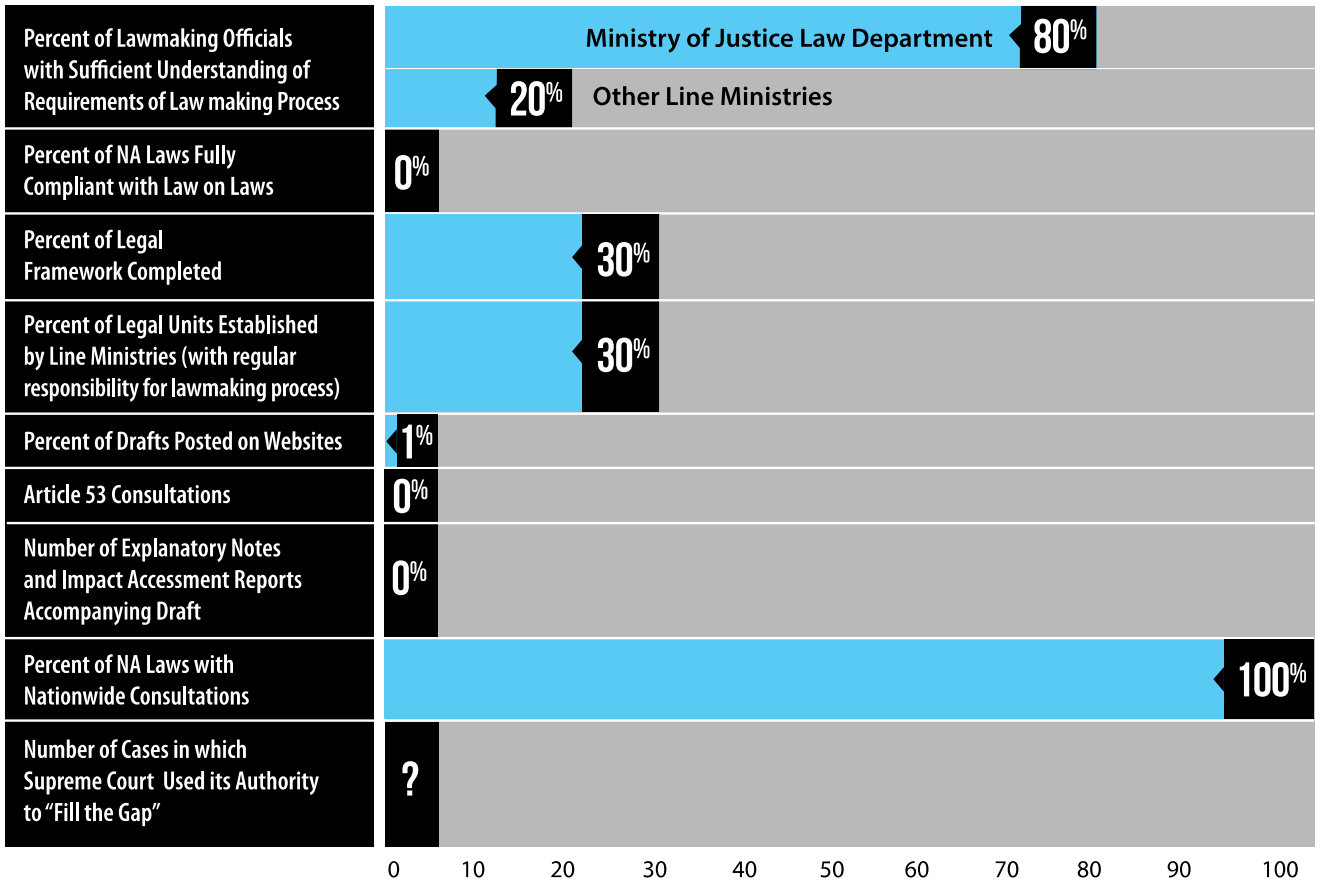
³ Information from interviews in Vientiane Province

⁴ Information from interviews with National Assembly officials

⁵ Information from interviews with ministry officials involved with law making

its authority to clarify the area with a judicial decision that could be used by lower courts as guidance. [Current: difficult to ascertain, because decisions are not published on a regular, sustained basis. Once decisions are so published, this number, and the use of the laws more generally, may begin to be monitored.

FIGURE 2 - PERFORMANCE INDICATORS



IV. What Is Included by the Term “Laws”, Legislation or Legal Framework

A. The Written Legal Framework

An individual "law" is within the meaning of a “legal normative document” which is a rule made by the State and intended to have general application and be implemented by State agencies. Article 4 of the Law on Laws provides that ALL LEVELS OF WRITTEN NORMATIVE LEGAL DOCUMENTS BY WHICH OFFICIALS OF VARIOUS LEVELS OF AUTHORITY, FROM THE NATIONAL ASSEMBLY TO MINISTRIES TO PROVINCIAL, DISTRICT AND VILLAGE AUTHORITIES, DIRECT THE BEHAVIOR OF INDIVIDUALS OR ASSOCIATIONS OF INDIVIDUALS are laws of general application.

EXAMPLES: National Assembly Law (KHODMAI), Presidential Ordinance (Latabanyat), Government Regulation (Damlat) Ministerial Decision (Khamsan, Khotoklong, Khamneham), Provincial Regulation (Khotoklong) District Regulations (Village Regulations (Khodlabieb)

All these “laws of general application” are intended to be covered by the improved requirements and standards of the Law on Laws.

Laws of “specific” application are not included. Article 5 provides:

“Legislation that governs administrative activities that focus on a certain organisation or individual.”

Legislation of specific application includes a:

1. Presidential Decree on the Promulgation of a Law;
2. Presidential Decree, or Decision on the award or appointment of a certain person for a certain position or activity;
3. Notice

While such legislation includes individualised decisions as to personnel, it is not clear how many other items are intended. However, the Consultant was repeatedly told that Article 4 was intended to cover virtually ALL types of normative legal document that make up the legal framework. As time proceeds, it will be important to monitor compliance with the new standards to assure that the distinction between legislation of general and specific application is not used as a means to avoid the reform aspects of the Law on Laws.

B. The Uncertain Role of Treaties and Judicial Judgments

In addition to written normative legal documents at the various central and local levels, there are two other sources of law that are at least potentially part of the Pillar One legal framework: international treaties to which Laos is a party and judgments of the Supreme Peoples’ Court.

Presidential Ordinance No. 1 of 2009 (7 October 2009) provides that domestic laws may not prevail if they are contrary to the international obligations that the country has undertaken:

“In case any provision of domestic law conflicts or is inconsistent with international treaties on the same subject to which Lao P.D.R. is a party, that provision of International law shall prevail.”

This is consistent with the requirements in Articles 9 and 14 of the Law on Laws:

Article 9: “Legislation being developed shall be consistent with higher legislation. If the provisions of existing legislation and newly adopted legislation are inconsistent with the provisions of international conventions or treaties that Lao PDR is party to, the provisions of the international convention or treaty prevails and [the provisions of] existing legislation or newly adopted legislation shall be revised in due time.”

Article 14: The State promotes relations and cooperation with foreign countries and with regional and international organisations in relation to the development of legislation by exchanging experiences, sharing data and information, organising seminars, upgrading knowledge and technical capacity and assisting in the development of legislation and implementation of international conventions and treaties that Lao PDR is a party to.

While it is clear that it is the Standing Committee of the National Assembly that has the responsibility for determining when a “lower law” conflicts with higher laws, there is as yet no established procedure for anyone to assert a claim that requires such a determination. The Courts do not view it as within their jurisdiction to nullify existing laws when they identify conflicts between a lower law and a treaty (or other higher law) so, although treaties might be said to be a part of the written Lao legal framework, there is as yet no mechanism to put this concept into action.

Similarly, Article 12 of the Law on the People’s Court (Law No. 9, 2009) gives the Supreme People’s Court a significant power to “fill the gaps” when there is no existing written law dealing with a subject that requires a decision, or the law as written is unclear. In such cases, the Supreme Court is empowered to fashion a rule, which then becomes precedent and binding on other courts, at least until the appropriate law-making authority takes action on the matter. Such a power is not usually used, however, but its existence makes a strong case for the theoretical proposition that there is NEVER an occasion where Lao lacks law on a subject, since the court make fill any gap until the law-makers act:

Article 12:”Judgments of the Supreme Court on any matter in criminal cases, if the law is not clearly defined, civil cases, commercial or family law cases where the law does not define or the definition is not clear, the decision of the Supreme Court shall be precedent that all lower courts have to follow until there is a law clarifying the area.”

In current practice, however, the Supreme Court does not regularly publish its decisions, so even if this power should be exercised, there is a low likelihood that it could be useful means of further developing the country’s written legal framework.

KEY RECOMMENDATIONS ON THE WRITTEN LAWS: (1) ESTABLISH CLEAR PROCESS FOR CHALLENGING LOWER LAWS THAT ARE IN CONFLICT WITH HIGHER LAWS OR TREATIES and (2) PUBLISH SUPREME COURT DECISIONS SO THAT THEY MAY CLARIFY THE LEGAL FRAMEWORK ON AN ONGOING BASIS

V. Important Reforms Made by the Law on Laws

The Law on Laws establishes the following four important principles for the law making process:

- Transparency
- Participation
- Impact Assessment
- Systemization or Organization

These principles are interconnected and reinforce each other. For example, if draft laws are made available on websites (under the transparency principle) then the public will be more able to comment on the drafts (under the participation principle). Also, to the extent that the public is able to comment on the drafts, letting the law-making authorities understand how the proposed law will impact their lives, the impacts of those laws may be more clearly understood (the impact assessment principle). Finally, if the first three principles are fulfilled, then the law-making authorities may have a greater opportunity to organise the laws at every level because of both the increased time for deliberation and the greater likelihood that related normative legal documents will be identified and grouped by subject matter.

A. The Principle of Transparency

1. Article 80 requires publication prior to effectiveness: Article 80 is the strongest of the country's new transparency requirements. In order for ANY normative legal document to be effective, it must first be published in the Official Gazette. For example, if a line ministry decision or instruction is not in the Official Gazette, it is not effective. If a Provincial decision is not in the Official Gazette, it is not effective. If a law adopted by the National Assembly is not in the Official Gazette, it is not effective.

2. Article 80 has a deadline for existing laws.

There is a rapidly approaching deadline for Central and Provincial law-making authorities to make sure that their normative legal documents are posted on the Official Gazette. That date is January 1, 2015. If the normative legal documents are not on the website by that date, they are no longer effective. This is a valuable, strong enforcement mechanism to assure that laws are more transparent. As noted earlier, it will be important to monitor compliance with this deadline, as failure to address it would have a serious negative effect on the entire Lao legal framework. As noted later in this Report, a delay, authorised at the appropriate law-making level, would be both realistic and in keeping with basic concepts of legal order.

3. Articles 8, 65, 68, 75, 76, 77, 79 require that DRAFTS of most, but not all, normative legal documents be made available to the public before they are adopted.

Drafts of most forms of normative legal documents at the central level are required to be posted on a website for 60 days in order to allow the public to know about the proposed law or decree as well as to make comments on it. This is also true for normative legal documents at the level of Provincial authorities. [See Figure 1]

For laws at the District or Village level, the process for informing the public about a proposed normative legal document is much less formal: instead of posting the draft on a website, the law-making authority must use posting on bulletin boards or other local media to make the public aware of what is being proposed

1. Baseline for Compliance -Transparency Requirements

Article 80 (Effective Laws)

The mandatory nature of the requirement is beginning to be understood, at least by the law-making authorities at the central level, such as line ministries. Many, however, were unaware of the January 1, 2015 deadline, and have only recently been attempting to comply in order to avoid its severe impact. The Official Gazette are at present being sent “hundreds” of documents, most of which is not organized in any format, and some of which is not even under the category of “general” legislation, but are instead specific internal documents on personnel, daily operations, etc.

Article 8

The requirement of posting drafts of normative legal documents on diverse websites is not being implemented in any significant degree at present. The Consultant was able to identify only ONE instance of a draft normative legal document being posted on a website for comment prior to adoption: The MOJ Decision on Impact Assessment Reports was posted on the MOJ website, but no comments were submitted⁶. The line ministries interviewed by the Consultant were only vaguely aware of the requirement, and the Provincial authorities had no awareness of it at all. There did not appear to be any hostility to the requirement in principle, but there was a great deal of concern about their ability to begin posting the drafts because of either a lack of any website of their own, or lack of technical capacity to meet the requirements. A recent ad hoc example of the slow implementation of the 60 day posting requirement for draft Government normative legal documents is the recent adoption on September 16, 2014, of a document limiting what can be said using internet media. While it is said on the Government’s Office website that this document will be posted, as required, on the Official Gazette to assure effectiveness, the Consultant was not made aware of anyone who had seen a draft of the document before it was adopted, or any public consultation in the process. It remains, however, a good example of progress.

⁶ It is unclear whether the draft of this Decision was posted for the full 60 day period.

2. Recommendations as to Transparency

KEY RECOMMENDATION: THE JANUARY 1, 2015 DEADLINE SHOULD BE POSTPONED FOR A MINIMUM OF A YEAR. FAILURE TO DO SO MAY CAUSE HUNDREDS OF LEGAL NORMATIVE DOCUMENTS TO BE INEFFECTIVE AS A MATTER OF LAW. THIS WOULD BRING GREAT DISCREDIT TO THE LAO LEGAL FRAMEWORK, AND JEOPARDISE THE LEGITIMACY OF ITS LAWS BOTH DOMESTICALLY AND INTERNATIONALLY.

Delaying the effectiveness of the deadline is now being considered by the MOJ, and it is likely that action at the highest levels could avoid any potential crisis, if timely action is taken.

RECOMENDATION AS TO POSTING DRAFTS

The SPLSMP is in a good position to make a significant contribution to the transparency of the law making process. Because of the almost total non-compliance with the new mandate to post drafts on websites, any improvement would be a substantial achievement. THE SPLSMP SHOULD SUPPORT ONE OR MORE WEBSITES EXCLUSIVELY RESERVED FOR THE POSTING OF DRAFTS OF NORMATIVE LEGAL DOCUMENTS. THIS COULD CONSIST OF EITHER A SINGLE WEBSITE AT THE CENTRAL LEVEL DONE IN COOPERATION WITH THE MINISTRY OF JUSTICE, OR ONE OR TWO PILOT WEBSITES, FOR A SELECTED LINE MINISTRY (i.e. Ministry of Agriculture or .Ministry of Home Affairs) AND A PROVINCE (i.e., Vientiane Province)

ENCOURAGE BROADER AWARENESS OF THE NEW REQUIREMENTS THROUGH TRAINING AT LINE MINISTRIES AND PROVINCES ON A PILOT PROJECT BASIS AND POSSIBLE FURNISHING OF BASIC EQUIPMENT INCLUDING SCANNERS

B. Public Participation

1. The value of Public Participation

Public participation in the law making process serves at least three purposes: (i) legitimization of the laws that the legislature adopts, because a broad group within the society considers that it has been consulted or at least is aware of the law making process, (ii) improvement in the laws' quality and consistency because a broad cross section of public comment and the specialized opinions of members of the public have been included before the law was adopted. This increases the likelihood that the true impacts of the proposed law or other LND will be better understood, because the persons who will be affected by it will be able to inform the law-makers of its practical consequences; and, finally, (iii) consultations and other forms of public participation raise the awareness of the public about the proposed LND and ease the government's burden in disseminating it.

2. The Lao PDR Written Law on Public Participation

The right to public participation in law-making is set forth in the Lao written law, and has been increasing in actual practice. Participation in drafting committees, attending public consultation meetings or hearings, the right to read draft normative legal documents on a public website and make submissions prior to decision making, the right to have such submissions taken into account when the final decision is made, are important mechanisms to increase public participation. These possibilities for participation exist in the Lao Law on Laws on the local, regional and central levels. (See Matrix in Figure 1, page 4)

It is important to point out that Laos' neighbors are increasing public participation. For example, China has for more than a decade, recognized the great value in receiving input from a broader cross section of the public before laws are adopted. To seek public opinions, the National People's Congress published the full texts of the draft property law, the draft employment promotion law, the draft labor contract law and the draft amendment to the Law on Prevention and Control of Water Pollution.

China's NPC figures show the Labor Contract Law elicited a record 191,849 suggestions in 30 days. Also notable is the fact that for one of the first times in its history, the NPC held a legislative public hearing on the proposed lifting of the individual income tax threshold in 2005.

The Lao National Assembly has operated a telephone "hotline" since at least 2008, allowing members of the public to call and ask questions about National Assembly actions during periods when it is in session, and also has televised certain National Assembly sessions. There are a variety of other mechanisms now available, such as the process for complaints and petitions, and holding public hearings on policy as it tries to obtain broader public participation in legislative activities. These mechanisms have not yet included opening up the law making process itself by means of organizing public hearings or consultations for a discussion of specific draft legislation (as opposed to hearings on general policy) or putting draft laws on its website.

3. Current Methods Being Used for Public Consultation on Draft Laws to Be Adopted by the National Assembly.

At present, public input on specific draft laws takes place before the drafts are submitted to the National Assembly.⁷ Organising the meetings to gather public input is left to the responsibility of

⁷ The written laws, including the Constitution, the Law on the National Assembly, and the Law on Laws, make it clear that the National Assembly is the highest law-making authority in the country. In practice, however, the law-making role played by this body at present is relatively passive, and more reactive than active, despite its increased activities in general policy inquiry and investigation. However, the difference between a "law" adopted by the National Assembly and another form of normative legal document adopted by a more limited agency or ministry is that the "law" is adopted by the people's representatives, and has the greater potential of reflecting the values, goals and conditions of the society as a whole. This is why the National Assembly's active participation in the law-making process itself is to be encouraged. Moreover, the role of the legislature in assuring the quality and consistency of the

the organisation or line ministry that is taking the lead role in the law-drafting process, and is not viewed as a responsibility of the National Assembly. Individual National Assembly members, especially from the Law Committee, are usually a part of the law drafting process from the time it begins with the formation of a law drafting committee. However, the responsibility for complying with the posting of drafts of the law or the public consultation requirements of the Law on Laws rests with the lead law-making authority dealing with the draft. For example, with the draft Juvenile Criminal Procedure Law, it was the Supreme People's Court, with the MOJ in an advisory role, and with the Amendment to the Law on National Roads, it is the Ministry of Public Works, working with the MOJ having approval rights of compliance with the Law on Laws requirements.

One basic reality of the Lao law-making process should be understood at this point: The notion of a "separation of powers", with distinct roles and actors in legislative, executive and judicial branches, is not deeply rooted in the current reality of the Lao law-making process. Instead, a collaborative system, with actors from the Ministry of Justice on the executive side, engaged in law drafting efforts with individual members of the National Assembly, results in draft laws taking their shape in the most part before they are finally submitted to the plenary session. Even after the plenary session of the National Assembly holds its debates and suggests revisions, the draft law may return to the original drafters who come from a mix of different line ministries, as well as from the other agencies with the right of legislative initiative. While the role of the National Assembly as a forum for policy discussion has increased, once the actual law drafting process begins, while its members are a part of the collaborative process, its institutional role becomes one of general approval rather than active deliberative participation. Given the very limited number of persons who are knowledgeable and skilled in Lao legislative drafting, the intermixing of the legislative and executive in the law-making process may be inevitable at this point.

The Consultation process now being carried out by the law drafting committees, as is evident from the Case Study on the Juvenile Criminal Procedure Law set out in section VI of this Report, has significantly opened up the Lao law making process so that comments from non-state and state actors is far greater than in the past. In addition, a standard format for consultation meetings appears to have become organising a minimum of three meetings "in the North, South and Centre" of the country, at which the primary audience consists of local officials and state authorities, with at least some representation of the private sector. Such meetings are by invitation only, and notice to the public at large to request invitations to attend has not been done. One reason for limiting the number of public consultations, as well as the number of participants, is said to be the cost of arranging refreshments and sometimes lodging for the participants. In the case of the new Juvenile Criminal Procedure Law, certain of these costs were supported by a DP, and there was a much greater participation for at least certain selected non-state actors, including foreign experts, in both working meetings of the drafting committees as well as the public consultations. Comments

legal framework extends beyond the drafting and adoption of laws. In many countries, for example, it is the legislative branch that reviews the budget that will be necessary to implement the law, and oversees the behavior of those executive ministries and agencies that have responsibilities for enforcement of the laws. The increased activities of the Lao National Assembly in these areas are important measures of progress in the governance area.

gathered at such consultations and submitted afterwards have been incorporated into the revised drafts, and most Lao officials interviewed spoke in positive terms of the value of such participation.

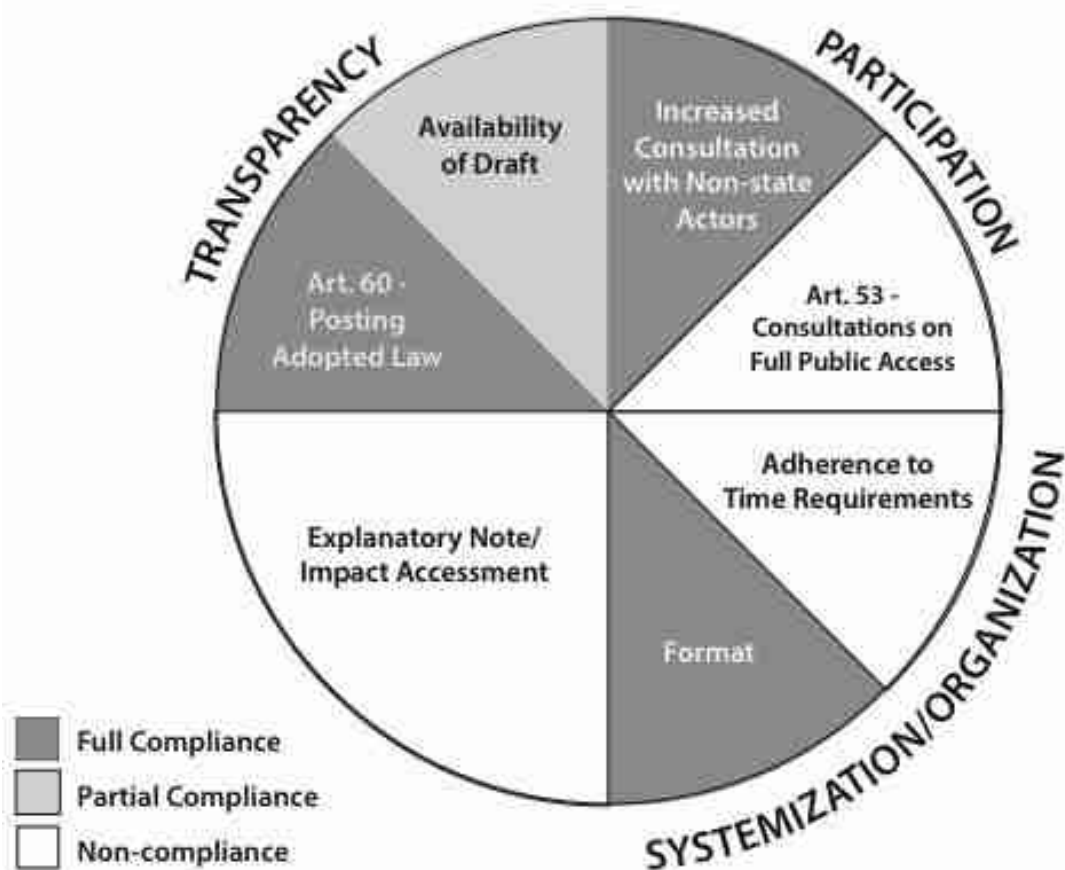
4. Baseline for Compliance - Participation and Consultation Requirements

In addition to the transparency requirements referred to above, requiring the posting of draft normative legal documents for 60 days to provide an opportunity for the public to make comments, The Law on Laws sets forth the following specific articles requiring adequate public consultation and opportunity for participation Articles 29, 32, 36, 52 and 53. (See Figure 1)

Public participation and consultation is increasing, at least with respect to National Assembly draft laws. Both the general standard of a minimum of three meetings, (“Central, North and South”) for law that will be submitted to the National Assembly, and in particular the meetings arranged in the case of the Juvenile Criminal Procedure Law, have begun to increase public awareness of the proposed laws and opportunities to provide input. With respect to lower level LNDs, however, there is not yet strong implementation of the specific requirements of these articles. The Consultant was not able to determine the degree to which any lower level LNDs could be said to be in technical compliance with the requirements. Despite this, many of the officials interviewed were extremely supportive of the value of such participation and consultations, and had been involved in *ad hoc* efforts to gather comments from a variety of sources.⁸

⁸ An example of this is the 2010 Regulation on the Control of Pesticides of the Ministry of Agriculture and Forests (No. 2860 MAF June 11, 2010). Although this regulation was adopted well before the effective date of the Law on Laws, the MAF arranged meetings at which representatives of the private sector and environmental groups attended and made comments on the draft, several of which resulted in changes to the draft.

Figure 3 - Case Study No. 1 (Juvenile Criminal Procedure Law)
Compliance with Law on Laws



5. Recommendations as to Participation and Consultation

KEY RECOMMENDATION: ENCOURAGE MUCH GREATER COMPLIANCE WITH THE TRANSPARENCY REQUIREMENTS FOR DRAFT DOCUMENTS, WHICH WILL PROVIDE AN OPPORTUNITY FOR INTERESTED MEMBERS OF THE LAO PUBLIC TO SEND IN COMMENTS. ALSO, KEEP A RECORD OF SUCH COMMENTS. THERE IS NO NEED TO RESPOND TO EACH ONE, BUT A RECORD WOULD BE HELPFUL AND WOULD ALLOW THE LAW-MAKING AUTHORITY TO DESCRIBE THE COMMENTS IN ACCORDANCE WITH THE REQUIREMENTS IN THE LAW ON LAWS (See e.g., Articles 32 and 36).

Law-Making authorities responsible for drafting should organise at least one meeting for which a written notice is published in a newspaper, describing the subject of the draft law, and asking

interested persons to request an invitation to attend the drafting session or explanatory meeting about the draft law. Not everyone need be invited, but a limited number of members of the public could attend, and even be given a limited time to make comments and ask questions.

6. Suggested Additional Formats for Public Consultations at Central and Local Levels

A. Legislative Initiative

In many legislative systems, initiation of legislation is either formally or informally reserved to the executive government, so that individual members of the legislature may play a more passive role in law-making, as is the case in Lao P.D.R. For example, in the UK, even though individual members of the House of Commons may bring “Private Bills”, most of the laws originate with the Cabinet. Even in the US system, where individual members of the legislature have the power to introduce new draft laws, the majority of significant laws are in fact introduced by the executive, demonstrating the difficulty of maintaining the legislature, with its potential for broad based public participation, as the centre of law making.

Annex F is a short note providing comparative information on law-making in several countries.

Note that the Consultant is preparing a Law-Drafting Guide as an adjunct to this Baseline Report. There is a section of the Guide that describes in more detail how public consultations may be held.

B. Hearings

Using the system used in a relatively small US state (New Mexico) as an example, public hearings on both draft laws and on oversight or supervision matters are widely used to encourage greater public access and participation in the law making process. US legislatures originally did not allow televised hearings, but by the mid -1970s, a greater concern for reform and a desire for increased transparency and accountability in government provided the foundation for televising many proceedings. The US House of Representatives, for example, now funds its own television system which presents regular live broadcasts of floor debates, hearings and other proceedings, and a consortium of cable television stations present the widely-viewed C-Span network.

a. Hearings on Draft Laws

A significant mechanism used especially by legislative committees to obtain a broad degree of public participation and opinion prior to drafting or adopting laws, is for legislators to organise public hearings on a draft law. In many legislative systems, both written and oral testimony of members of the public, including ordinary citizens as well as experts in the subject being examined, is taken down and recorded. The Consultant will prepare and submit guidelines for organising such hearings in the Legislative Drafting Guide. This will include a formal procedure and time limits for making comments.

b. Hearings on Oversight or Supervision of Law Implementation

One of the most important mechanisms used by legislatures to supervise the implementation of the laws that they have adopted is the legislative committee hearing. In the US system, it is important to note that when one party dominated the legislature in the early 2000s, very few legislative hearings were held. Following a change of control in 2006, however, the number of legislative hearings increased, leading many commentators to observe a greater amount of legislative oversight and supervision of executive agencies. The growing ability of the Lao National Assembly to conduct such hearings is another indicator of the country's increased openness.

C. Impact Assessment (The Effectiveness Principle)

1. Explanatory Notes and Impact Assessment Reports Are Required for Many Forms of Normative Legal Document

As indicated in Figure 1, the Law on Laws requires that many of the forms of normative legal document be accompanied by a note explaining the expected results and objectives of the proposed document as well as a report describing its budgetary and regulatory impact. There has been very little, if any, compliance with these requirements, owing in part to the lack of a specific implementing regulation (referred to in the law as a necessity). The Ministry of Justice, with the support of ADB, issued such a regulation in Decision No. 517 on July 7, 2014.

The procedures set forth in the regulation offer assistance to law-making authorities at several levels, including those preparing a draft of a National Assembly law, a Presidential Ordinance, a Government or Prime Minister normative legal document and Provincial, District and Municipal normative legal documents. All of the foregoing law making authorities are directed to a new Centre for Regulatory Impact Assessment within the MOJ for assistance in compliance.

If the MOJ is taking on the responsibility for assisting all law-making authorities of all levels of LNDs, and not simply the line ministries involved in drafting laws intended for adoption by the National Assembly⁹, it will be important to support it in this very large (and unfamiliar) task, in close cooperation with other DPs such as ADB. It will be important for the Centre to suggest an uncomplicated and short format for lower impact assessment reports and explanatory notes for lower level LNDs, containing simplified checklists such as that set forth in Annex G to this Report.

2. The Baseline for Compliance

There has been no compliance with the requirement of posting draft laws for 60 days, together with an explanatory note. Since the Impact Assessment regulation was only issued in July, 2014, there has been no compliance with the regulatory impact assessment requirement.

⁹ According to the Decision, the MOJ and the Provincial Departments of Justice, and District Justice Offices will be involved in assisting law-making authorities at all levels in this task.

3. Key Recommendation

KEY RECOMMENDATION — for the effectiveness principle: ENCOURAGE EXPEDITED COMPLIANCE BY LAW-MAKING AUTHORITIES TO AVOID DELAYS BY WHAT MAY BECOME. POSTING THE DRAFT WITH A SHORT STATEMENT OF ITS INTENDED IMPACT FOR 60 DAYS WILL PROVIDE THE PUBLIC WITH AN OPPORTUNITY TO GIVE THE LAW DRAFTERS INFORMATION ON ITS POTENTIAL IMPACT.

Once the Drafting Manual is completed, training in its use could accompany training in how to use the services of the MOJ Centre for Regulatory Impact Assessment, and how to prepare explanatory notes and impact assessment reports. A simplified format for information, and a checklist, such as that set forth in Annex G, could be a part of such training.

D. The Systemization or Organization Principle

1. The Purpose of Systemization

The single most important aspect of a legal system is that it be useful to the people. At present, while there are indications that law is slowly becoming a mechanism that is relevant to such matters as making commercial contracts and resolving disputes especially those involving land, much of the legal system remains purely descriptive rather than function: the various laws that have been adopted describe the roles of State organisations and serve as a very general guide for the rights of the citizens, but there is little use being made of these documents. There are multiple reasons for this lack of use, such as the traditional use of alternatives available through personal contacts, lack of familiarity with the court system, and the slow responsiveness of the formal system. Also important, however, is the current lack of systemization or organisation of the legal framework. Finding clear rules that are easily understood and a sufficient common understanding of the legal framework to provide useful guidance for everyday life has been elusive. As more laws are adopted, it will be necessary to make sure that they are assembled in a coherent, clear structure.

2. Progress

There has been progress in this regard, from the Constitution to the Law on Laws. For example, the latter continues to clarify the hierarchy of normative legal documents, and provides a general format for the content of laws. The Law on Laws also makes a distinction between laws of general application from those of special application and the distinction between decision, instructions and orders.

An indication of the continuing difficulty in this area, however, is the manner in which many ministries and agencies have attempted to comply with the January 2015 deadline for posting all normative legal documents on the Official Gazette: many of the documents being sent to the Gazette are not in any clear order, and many are documents of special

application instead of general application that could be understood as appropriately part of “the law”.

3. The Baseline

The LSMP presents an ambitious law-making agenda for the years up to 2020. The National Assembly’s 2011 to 2015 Five year law-making Plan moves toward this agenda by proposing to adopt 92 laws, of which 45 are amendments. Thirty three have been adopted so far, according to persons interviewed (See Annex E). Also, because Article 12 of the Law on the People’s Court (Law No. 9, 2009) gives the Supreme People’s Court the power to “fill the gaps” (as discussed earlier in this Report) when there is no existing written law dealing with a subject, the Supreme Court is empowered to fashion a rule, which then becomes precedent and binding on other courts.

While no legal framework can ever be said to be “complete”, the above actions, especially when taken together with the current efforts to draft both a Civil Code and Criminal Code, will go a long way in establishing Lao P.D.R. as “Rule of Law State” from the standpoint of Pillar One---the Legal Framework.

4. Recommendations as to Systemization

A “legal unit” within each line ministry is assumed to exist in the Law on Laws. However, while there are an increased number of law trained persons available to assist with drafting and commenting on drafts, specialised skills in law drafting remain very scarce, and the law-trained staff frequently are not an integral part of a ministry’s law-making efforts. Well-defined legal units should be established at each line ministry, and have direct responsibilities for that ministry’s law-making activities. Attention to training persons in these units should follow the revision of the law-drafting manual.

The establishment of courses on legislative drafting, or at least legislation, at the MOJ law school and the University’s Law Faculty should be encouraged. The courses should include both practical drafting exercises as well as methods for compiling and organising legislation.

VI. Two Case Studies on Law Making, From the Highest to the Lowest Law Making Levels

A. A Case Study in Law-Making at the Highest Level—The National Assembly Law on Juvenile Procedure (National Assembly Law No.41 (December 20, 2013)).

The Law on Juvenile Criminal Procedure (JCPL) was selected because it was adopted after the effectiveness of the Law on Laws. Also, it had the support of a key development partner (UNICEF) and was led by the Supreme Court during the drafting process. This enabled the examination of how law-making authorities with the power of legislative initiative other than the Executive engage

in working with the National Assembly to adopt legislation. For a graphic depiction of the process, see Figure 3.

Origins

Examining the origins of the JCPL was instructive as to the process by which draft laws find their way onto the National Assembly (NA) agenda: in this case, while Lao P.D.R had been a member of the International Convention on the Rights of Children since the 1990s, the 2006 legal normative document on the Protection of Children had only six articles describing in general terms how a court should conduct a juvenile case. For many years, UNICEF, the Women's Union, the MOJ and the Supreme Court engaged in informal discussions and working meetings on children's issues, and support for a more modern law on the subject grew.

UNICEF Support

While individual members of the NA may have been involved in this general discussion, there was no institutional decision made by the National Assembly until the point at which the Ministry of Justice put the JCPL into the proposed NA law-making plan. This is in accord with what the Consultant was told by departments and members of the NA: i.e. That individual laws are proposed by the Executive and other law-makers with the power of legislative initiative, but that the NA (including the Standing Committee and the Law Committee) does not ordinarily initiate the law drafting process except by means of accepting proposals of others to put the subject into either the annual or five year law-drafting plan. In this case, the Consultant was advised that the JCPL was in the 2011-2015 plan. UNICEF agreed to support the drafting of a new JCPL in 2010, and the National Assembly (Standing Committee, through the Law Committee) asked the Supreme Court to take responsibility for drafting the law.

Supreme Court and the Drafting Committee formation

The Supreme Court judge who was appointed as Chair of the Drafting Committee examined the existing 2006 law to determine which agencies and ministries were most relevant to the subject, and selected participants that included the MOJ, OSPP, MPS, Min of Labor, and the Women's Union

Information gathering and fact-finding

Beginning in 2010, following UNICEF agreement of support, there was a two year process of information gathering on the subject. Visits were made to all the provinces by members of the drafting committee, during which they visited detention facilities where children were kept, schools, and youth organisations. They also attended meetings with ethnic groups and local officials, and hired Youth Volunteers to obtain input from children as to their lives and reactions to various proposed solutions. Members of the drafting committee also did comparative research on the laws of e.g., Thailand, Indonesia, Philippines, and Malaysia with UNICEF providing translations of those laws and sponsoring working meetings.

Drafting begins

By early 2013, actual drafting of the law began. The lead draftsman was a judge on the Supreme Court who had participated in other law drafting committees, but was otherwise not a legislative drafting specialist. His first task was to prepare an outline of the draft law, which in its first draft had 140 articles. He (and the Chair of the Drafting Committee, distributed drafts of the outline to members of the committee at the first Drafting Committee meeting in January, 2013. Their original plan was to submit the draft law to the NA by June, 2013, but this proved to be overly optimistic. After several meetings of the Committee on the Outline, the lead drafter working individually completed the first full draft of the JCPL.

Working and Revising the Draft Law

There were approximately twenty (20) working meetings of the Drafting Committee during which the draft was continually revised. UNICEF was invited to participate at all these meetings, but there was no other invitations offered to other non-state actors to attend. There was also no publication of any of the drafts beyond the people at the Drafting Committee meetings, nor any posting on any website. While UNICEF had copies of the drafts, it did not think it was free to distribute them beyond its own organisation.

Consultations around the country

After the Drafting Committee was satisfied with the draft, the Supreme Court organised six consultation meetings around the country, in the North, South and Central regions. Using the local courts for logistical assistance, the Drafting Committee issued invitations to Provincial, District and Village leaders, school teachers, police (local offices of MPS), OSPP and its local branches. NA members, including NA Law Committee members were also invited to these consultations.

Participants at the consultations had been provided with copies of the draft law, and were encouraged to ask questions and make comments. The Chair of the drafting committee said that many of the comments were positive, and certain of them resulted in changes being made to improve the draft. One example he referred to was a comment concerning the issue of juveniles who were multiple offenders. The draft had not dealt with that, but as a result of the comments, the Drafting Committee added a section dealing with the treatment of multiple offenders, including alternative punishments and establishing a monitoring system.

High Level consultations

Following the meetings around the country, the Drafting Committee had further discussions with “higher authorities” at the Supreme Court, the OSPP and the MPS. Private lawyers were also a part of these discussions.

Delivery to NA Standing Committee

After the approval by the higher level authorities, who made minor changes, the Supreme Court delivered the draft law to the NA Standing Committee through the Law Committee in September, 2013.

The Law Committee organised at least one meeting on the draft law, inviting national and international experts to make comments, and then returned the draft to the NA Standing Committee.

Submission to the National Assembly members

The NA Standing Committee delivered the draft law to the NA members for plenary session discussions. After this point, there were no Article 52 or 53 Consultations organised by the NA. The NA plenary session did debate the draft, and comments and questions were recorded. The plenary session then voted on the draft law and it was adopted.

Revision following NA vote

After the NA vote, the Law Committee continued to work on the draft together with members of the original Drafting Committee, examining certain of the comments made during the plenary session, and sometimes incorporating such comments into the revised draft.

Signing by President of the NA

After the Law Committee was satisfied with the revised draft, the President of the NA signed the law on December 20, 2013, and submitted the law to the President of the Republic. This was approximately one month after the plenary session had voted on the law. It is the signature of the National Assembly President that assures that the intentions of the NA have been respected.

Signing by the President of the Republic

The President signed the law as of January 28, 2014

Posting of the Law on the Official Gazette

The Law was posted on the Official Gazette in May, 2014, and is now effective.

CONSULTANT’S COMMENT ON THE PROCESS

Even through there was not 100% compliance with the requirements of the Law on Laws (e.g., no publication of drafts by either the Drafting Committee or the NA, No explanatory note or impact assessment accompanying the draft, no truly “public” consultation (in the sense of an openness to the general public), the JCPL represents a significant advance in the Lao law-making process. It was open to international comment, national and international non-state actors had advance copies of the draft as it went through various stages, drafts were broadly distributed as a result of the working group meetings and the six “public consultations”, and the law as adopted was posted on the Official Gazette and accessible to anyone with internet service relatively soon after its signing

by the President. If all NA laws followed this procedure, it would mark an advance for Lao law making.

KEY RECOMMENDATION: PUBLISH OR POST DRAFTS AND ENCOURAGE NATIONAL ASSEMBLY TO TAKE GREATER RESPONSIBILITY ON DRAFT LAWS, POSTING DRAFTS ON TH NA WEBSITE AND HAVING ARTICLE 53 PUBLIC CONSULTATIONS AT LEAST ON MAJOR LAWS.

B. A Case Study of Law-Making at the Lowest Level - the Village Ordinance on Confinement of Livestock

Origins of the regulation

The Consultant visited the Village of Phonemee, Viengkham District in Vientiane Province. The objective was to examine the Village's law-making process and determine if it was consistent with centrally-mandated requirements. When the Village chief was asked to describe his understanding of how regulations were adopted, he suggested an example, which related to the new requirement that Villagers constrain their livestock. He said that too many animals were roaming free throughout the village, and that property and gardens were being destroyed, and that sanitation issues were increasing. It was both his own idea, but it had also been raised as a problem by a number of people living in the village.

Transparency and Consultations

The Village authorities called a meeting for the purpose of discussing the problem. No notices were posted, and there was no draft regulation prepared before the meeting. The meeting was called by word of mouth, and a fair number of village residents attended. There are not quorum requirements or attendance records.

The village head described the problem and suggested that there be a 50,000 kip fine if livestock was allowed to roam freely through the village. He said there was a lively discussion with people who owned livestock opposed to the regulation, while people without livestock being in favor. He said that he and other village leaders discussed the reasons for the regulation, and that after some discussion, there was a consensus on adopting the regulation.

Warning for a first offender

The Consultant was told that there is no compilation of village regulations available to the public (including the villagers) but there are isolated copies of regulations in random files in the village office. The regulations are known primarily by word of mouth. When asked if he thought it was fair for a villager to be fined 50,000 kip if he was not aware of the regulation, the village chief

looked puzzled and said that if an offender did not know of the regulation, he would only receive a warning for his first offense

CONSULTANT’S COMMENT ON THE PROCESS

The Law on Law’s requirements were not met in this case: there was no preparation of a draft of the regulation in advance, no posting of the draft on a public billboard, and no availability of the regulation following adoption. Having said that, however, one is forced to note that those requirements appear to be woefully inconsistent with the reality of village life. Although this village is only two hours from Vientiane, the divergence between formal legal requirements and practical reality is too great to expect sudden compliance within the period covered by the LSMP. However, the principles of both transparency and participation were in fact being met, albeit in a form very different and much less formal than envisioned by the Law on Laws.

KEY RECOMMENDATION: Encourage compilation of Village Regulations and making such compilation available to the public.

VII. Conclusions

Since the adoption of its first post-1975 Constitution in 1991, Lao P.D.R. has made progress in building a written legal framework and becoming a rule of law state in compliance with the international commitments that it has undertaken. The former absence of any established hierarchy for classifying diverse types and levels of legal normative documents has been addressed, and modern procedures for initiating and enacting improved legislation have been formally adopted.

Recent laws adopted by the National Assembly have followed a process that is both more transparent and open to greater participation than earlier laws. This is an encouraging trend, and has allowed for improved quality in the written legal framework.

Lower level LNDs remain difficult to find, drafted by persons unfamiliar with modern law-drafting techniques, and drafted without significant input from either specialised agencies or members of the public that are likely to be affected by the LND. While several ministries are exceptions to these conditions, there appears to be no effective system for either assuring compliance with modern procedures at all levels, or any standardization and organisation of all levels of LNDs.

The 2012 Law on Laws sets forth a comprehensive set of requirements that will increase both transparency and public participation in the Lao written legal framework, if it is implemented in accordance with its terms. There is a concern, however, that failure to meet the mandatory transparency requirements of the law by the deadline of January 1, 2015 may result in the technical invalidation of many LNDs.

The SPLSMP Project is well-placed to offer important support to the law-making process at a crucial point in the efforts of Lao PDR to implement its Legal Sector Master Plan (LSMP).

VIII. Suggested Action Plan

This section provides a plan by which the SPLSMP may assist in addressing the recommendations made in this Report. While many of the recommendations made by the Consultant within the main body of this Report may only be accomplished by the relevant State agencies and Ministries, and are not within the Project's power to accomplish, the following Action Plan suggests the manner in which the Project might take actions to help address several of the recommendations.

A. Actions on Transparency

1. Monitor efforts to delay the application of Law on Laws Article 80. The Project should consider assisting the organisation of a workshop, scheduled in late November/ early December, 2014 at which the MOJ describes efforts to delay the effectiveness of the Article 80 deadline of January, 2015.
2. Develop two pilot projects, one with a line ministry (Ministry of Agriculture and Forests?) and one with a Provincial Government (Vientiane Province?), with the objective of assisting them establish websites for posting draft normative legal documents in compliance with Article 8 of the Law on Laws. These pilot projects would include (i) training in how to post draft documents, how to distinguish a document of general application from one of specific application, and (ii) a scanner and a computer dedicated to posting Article 8 drafts for public comment.
3. Assist local authorities in the compiling of a publically-available file of Village or municipal regulations for one village in Vientiane province, or in the municipality of Vientiane.

B. Actions on Participation

1. Assist MOJ and lead law-making authority on any draft law in organising a public consultation meeting of approximately 50 persons by arranging for a public advertisement of the consultation meeting, with a notice that interested persons may request an invitation to the meeting for a discussion of the draft law. (at least 25 members of the general public to be invited).
2. Assist the Standing Committee of the National Assembly in organising an Article 53 public consultation on a draft law, following the posting of the draft law on the NA website. Persons commenting on the posted draft could be among those invited to participate in the consultation, which could be conducted in accordance with the public hearing guidelines that will be contained in the Legislative Drafting Manual.

C. Actions on Standardization and Organization

1. The Project should identify those individuals who form the “legal unit” of each line ministry. Where no such distinct legal unit exists, the Project should encourage its formation by organising training sessions on the law-making process, using the Legislative Drafting Manual.
2. The Project should encourage the presentation of a series of at least six small group meetings for teaching the Lao legislative process and basic principles of law drafting (best practices) at the law faculty and law school. Project staff could be a part of the teaching resources for these meetings. Consideration of adding legislation as a component of the new Judicial Training Institute might also be encouraged by Project staff.

ANNEX A

List of items reviewed

A. For Desk Review Prior to In-Country Visit

- SPLSMP Project Document
- Law-drafting handbook developed by the National Assembly
- Constitution of Lao PDR
- Law on Laws
- Flowchart of law-making process in Lao PDR
- List of all laws in Lao PDR as of 2013
- Presidential Ordinance on Treaty Accession
- 7th National Socio-Economic Development Plan
- Legal Sector Master Plan
- Terminal Report of LSMP Transitory Project including Annexes 1&2
- Terminal report for ILP Phase III
- Terminal Report and Evaluation Report for SELNA
- Law on Laws and RIA on Law on Laws from Vietnam
- People's Perspective on Access to Justice Survey in Four Provinces of Lao PDR (2011)
- Customary Law and Practice in Lao PDR (2011)
- 5 years Law-making Plan as at March 26 2012
- Law on Juvenile Criminal Procedure
- April 2014 Legislation Paper

“PRELIMINARY ASSESSMENT OF THE LEGISLATIVE PROCESS
IN THE KYRGYZ REPUBLIC” (at www.legislationline.org)

B. Following Arrival

- MOJ Decision on Impact Assessment

- MOJ Decision on the Official Gazette
- Min of Agriculture and Forests Decision on Pesticides
- Law on People's Courts (Law No. 9 2009)
- Presidential Ordinance No. 1 (7 October 2009)
- Draft Law on Violence Against Women (including UNICEF proposed inputs)

Annex B: Country Mission Schedule of Prof. Ted Parnall from 8 to 26 September 2014

<p>8 September 2014</p> <ul style="list-style-type: none"> - Drafting committee Amendment to Law on National Roads at MOJ - Lunch with Prof. Ket - Debriefing with SPLSMP Secretariat (14-16) - Ms. Azusa Kubota, Deputy Resident Representative at 4pm at UNDP 	<p>9 September 2014</p> <ul style="list-style-type: none"> - Meet with Mr. Ketsana Phommachane, DG, Law Research Institute at 9-11am - Working lunch with JICA (Mr. Kenichi Nakamura, Team Leader and Mr. Osamu Ishioka) at 12:30pm - Discussion at MoJ at 3pm: continuation of Drafting Committee discussion - Mr. Sounthorn, Vice President, LBA at 4pm
<p>Wednesday, 10 September 2014</p> <ul style="list-style-type: none"> - Pillar 1 at 8:15am - Mr. Amphay, DG Law Department, National Assembly at 11am - Dr. Bounthay Nounnoannavong, Vice Permanent Secretary, Ministry of Agriculture and Forest at 2pm - Mr. Ketsanome, DG, Law Department, President's Office at 3:10pm - Debriefing with SPLSMP team at 4:30pm 	<p>Thursday, 11 September 2014</p> <ul style="list-style-type: none"> - Pillar 1 at 8am - Mr. Vilay Sengphouthai, DG, Center of Statistics and Information, National Assembly at 2pm - Mr. Phoukhong Sisoulath, DG, Department of Treaties and Law, MOFA at 3:30pm - Skype call with Mr. Frank Boulin, CTA, LUNA II at 8pm
<p>Friday, 12 September 2014</p> <ul style="list-style-type: none"> - Meeting with Lao NPAs (Village Focus International – Thip, VYDA – Phannaly, GDA – Boutsady, ADWELE – Inthana, EDF - Khamhiane) at 9am, UNDP Conference room - Meeting with the drafting committee of the Juvenile Criminal Procedure Law (Mr. Chanthaly Douangvilay, Head of the committee) at 2pm, Supreme Court office 	<p>Saturday, 13 September 2014</p>
<p>Sunday, 14 September 2014</p>	<p>Monday, 15 September 2014</p> <ul style="list-style-type: none"> - Attend a public consultation workshop on the draft Law on Violence against Women and Children at Rathsamee Hotel (Half day in the morning) - Mr. Ampha, DG, Department of Local Administration at 3:00pm - Study and analysis in the afternoon

	- Debriefing with SPLSMP
Tuesday, 16 September 2014 <ul style="list-style-type: none"> - Mr. Langsy, Vice General Prosecutor, OSPP at 9:30 am - Mr. Sengdeuane, National Programme Officer, UNODC at 11 am at UNODC Office - Mr. Khoun Pasouk, Judge, PSC at 2:00 pm - Mr. Bounpheng Sinavongphone, Director General of Dissemination, MOJ at 3:15 pm 	Wednesday, 17 September 2014 <ul style="list-style-type: none"> - Ms. Audrey Maillot, Attache Cooperation, EU at 9:30am, at EU Office to Laos. - Ms. Kirsten Di Martino, Head of Child Protection Unit, UNICEF at 2:00 pm - Mr. Somboune, Vice President, PSC at 2pm
Thursday, 18 September 2014 <ul style="list-style-type: none"> - Mr. Benoit Bonaimé, Cooperation Attaché, at 3:00pm at Embassy of France - Mr Curtis Borden, USAID - Debriefing with SPLSMP and Vietnam study tour - LUNA II ---Mr. Franck Boulin (skype 7:30 PM) 	Friday, 19 September 2014 <ul style="list-style-type: none"> - Meeting with provincial authorities (Vientiane Province) - Meeting with district authorities - Meeting with village authorities - Preparation meeting for the debriefing workshop at 4:30pm
Saturday, 20 September 2014	Sunday, 21 September 2014
Monday, 22 September 2014 <ul style="list-style-type: none"> - Prof. Davone, Chairman, Law Committee, National Assembly - Mr. Ketsana P. (MOJ Law Research Institute) 	Tuesday, 23 September 2014 <ul style="list-style-type: none"> - Debriefing workshop with key stakeholders at 9am - Taking stock in the afternoon; report drafting
Wednesday, 24 September 2014 <ul style="list-style-type: none"> - Internal debriefing with UNDP/SPLSMP at 9am - Report drafting - Ms. Chompheng Phoumpanya, DG Personal Organization (Legal Division), Lao's Women Union at ICTC, Noon time, 12: 00 h 	Thursday, 25 September 2014 <ul style="list-style-type: none"> - Report drafting
Friday, 26 September 2014 <ul style="list-style-type: none"> - Leaving VTE at 1pm 	

Annex B
Flowchart of Law-Making Process in Lao PDR
In Compliance with Law on Laws

STEP 1: Origination – Developing 5-Year Plan [Art. 25 permits annual amendment]

Internal 5-Year Plan

President, Standing Committee of NA, Government, People's Supreme Prosecutor, People's Supreme Court, and Lao National Front for National Construction and National Mass Organizations to develop a 5-year law-making/ amendment plan.

Submit to MOJ before September of the NA's 4th year

Review by MOJ and Government

MOJ to review the plan and submit to the Government; the Government to consider and review the draft plan.

Government to propose the plan to NA's Standing Committee before January of the NA's 5th year

Review by NA

Upon receiving the plan, the Standing Committee to review the plan together with other committees.

Submit to National Assembly

Adoption by NA

Standing Committee to propose the plan to the first session of each new NA term for adoption.

Annex B
Flowchart of Law-Making Process in Lao PDR
In Compliance with Law on Laws

STEP 2: Developing a Draft Law

This step needs to be completed at least **120 days before the NA session starts [Art. 40]**

Appointment of a Law-Drafting Committee

1. Vice Min. or Deputy Head as Committee Chair
 2. Head of Legal Dept/Unit and Technical Officials as Members
 3. Legal Dept/Unit as Secretariat
- Note: the Committee is to cooperate with MOJ on preliminary structure/content of the draft

Determination of Structure

- The draft is divided into parts, chapters, and articles, consisting of:
1. General provisions to define objectives, policies and principals;
 2. Framework to manage, resolve and promote important matters
 3. Final provisions to define who to implement the law and its effectiveness

Information Collection and Analysis

1. Policies and legislation relevant to the draft law
2. Conditions regarding implementation of other laws related to the draft law
3. Facts on current socio-economic situations and social relationships related to the draft law
4. International agreements/treaties that Lao PDR is a party to

Developing a Draft Law

- The Committee to develop a draft law in accordance with:
1. the structure agreed with MOJ
 2. the content that is precise, clear, accurate, and complete
 3. consistent terminology
- Once finalized, the committee to propose the draft to the head of the authority

Upon approval of the head, the committee to present the draft for consultation

Consultation with Relevant Stakeholders

1. Relevant sectors, local administrations, and other concerned parties
 2. MOF and MOHA to ensure financial and organizational matters;
- Note: relevant stakeholders to provide written comments to the committee **within 15 days** of receiving the draft.

Public Consultation

- The Committee to organize public consultation workshops and post all contents of the draft with explanatory note and impact assessment on a government website or its own website for at least **60 days** to allow citizens to give comments on the content of the draft.

Annex B

Flowchart of Law-Making Process in Lao PDR In Compliance with Law on Laws

STEP 3: Review by Government and Submission to NA

Review by MOJ

Authority to submit the draft to MOJ **no later than 120 days before the NA session**; MOJ to accept a draft only when the explanatory note and impact assessment are attached.

MOJ to conduct comprehensive research and review of the draft **within 15 days** of receiving the draft; MOJ to send written comments to committee for any clarification and the committee to send their response **within 15 days** of receiving the comments

NA's Law Committee and other relevant committees to monitor this process

Basically this process can go up to 30 days

Consensus Confirmation

MOJ to invite the committee and relevant sectors to ensure consensus

Submission to Government

MOJ to send the draft, with a report on the preparedness of the draft, unresolved matters, issues requiring recommendations and alternatives together with an explanatory note and impact assessment to the Government at least **90 days before the NA session starts**

Review by Government

Government office to consider the policies, non-consensus matters and matters requiring recommendations, and put them on the agenda of the Cabinet meeting; Government Office to submit the draft law and related documents to the Cabinet members and relevant parties **no later than 7 days before** the Cabinet meeting starts

Cabinet Meeting

Head of the authority in charge of the draft law to present it to the Cabinet meeting for consideration (this meeting could give comments and send it back to the authority who needs to respond to their comments in cooperation with MOJ); if agreed, the Government to submit the draft law to NA's Standing Committee

Submission to NA

Government to present the draft law to NA's Standing Committee **no later than 60 days before the NA session starts**
[NB. Government and MOJ cooperation and commentary, but not "approvals" are necessary for drafts initiated by non-executive law-making authorities]

Law Defending Committee

Prime Minister to appoint a law defending committee when presenting the draft law at the NA session

1. Minister, VM, or equivalent officials as committee head
2. VM of Justice as deputy head
3. Deputy Head of Government Office as a member
4. Drafting Committee as a secretariat

Annex B

Flowchart of Law-Making Process in Lao PDR In Compliance with Law on Laws

STEP 4: Review and Adoption by National Assembly; Promulgation by President

Review by NA

Upon receiving the draft from the Government, NA's Standing Committee to assign Law Committee and other relevant committees to conduct a comprehensive review before returning it to Standing Committee for submission to NA

Review should be conducted in the following criteria:

1. Necessity, purpose, objective and scope of the draft law
2. Consistency with Government guidelines and policies
3. Consistency with Constitution, other laws and int'l treaties
4. Compliance with law-making procedures **INCLUDING POSTING DRAFT FOR 60 DAYS FOR PUBLIC COMMENT [Art. 8]**
5. Matters proposed by Government (non-consensus matters, new principles, etc.) and comments made by them for recommendations to Standing Committee as well as a report on the comprehensive review for Standing Committees approval prior to presentation to the NA session
6. Capacity to implement the draft law. Note: Concerned NA Committees to produce a report on the results of the preliminary review, non-consensus matters, etc.

Art. 53 Public Consultation

(2nd one in the process)

Standing Committee to organize a public consultation forum IF it is considered that the draft law is related to many sectors or directly related to coming rights and benefits of the citizens; Standing Committee to supervise the implementation and compilation of comments from the public before submitting to the NA session

Art. 52 Internal Consultation

Standing Committee to organize a consultation workshop for NA members and members of each constituency office to give comments on the draft law; Standing Committee to compile the comments and improve the content before submitting to the NA session

Consideration at NA Session

NA to consider the draft law in one session in the following steps:

1. Head of the drafting committee to present the draft law
2. NA Chairperson to advise the session on how to give comments on the draft
3. NA members to give comments or ask questions
4. Defending committees to clarify and answer questions
5. Voting on difficult matters if no consensus
6. NA Chairperson to summarize and recommend the defending committee to improve the draft law based on the comments
7. NA session to vote on adoption of the draft law (simple majority rule for adoption)

Promulgation by President

Standing Committee to propose the adopted law to the President **within 20 days of adoption** for promulgation; President to consider the issuance of a Presidential Decree on Promulgation of the law **no later than 10 days of receiving the law from NA**

****LAW IS EFFECTIVE ONLY AFTER POSTING WITH OFFICIAL GAZETTE [Art. 80]****

President is eligible to propose to the NA for reconsideration of the law; If NA confirms the original version, the President to promulgate the law within 15 days of receiving the confirmation from NA

Annex C

INTERVIEW QUESTIONNAIRE

[These questions are intended only as a guide for the interviews, and will be modified depending upon the actual person being interviewed. They are intended to solicit information from relatively knowledgeable people with some familiarity to their agency's process for drafting legal normative documents]

I. QUESTIONS RELATING TO GENERAL AWARENESS OF LAW-MAKING PRINCIPLES

A. AWARENESS OF LSMP:

- i. Are you aware of the LSMP? That is, are you aware of why and how it was adopted? What its basic principles are? What it may accomplish if implemented?]
- ii. Are you aware of Pillar One and how it tries to strengthen the law making process?
- iii. Are Governmental and ministerial decrees "laws" (i.e. normative legal documents) that should be made according to a fixed process, or are only laws of the National Assembly part of such a process?

B. NEED FOR ORGANIZATION AND SYSTEMIZATION OF THE LAW

- i. How do you, personally, find legislation on any subject?
- ii. How do you find the legislation that your agency has adopted?
- iii. Is legislation adopted by your organization amended frequently? What do you think were the reasons for this?
- iv. Do you use a computer to find all levels of legislation that might affect the subject you are interested in?
- v. Is this method available to the public?
- vi. What is the method used to organize legislation so that it can be easily found, and thus more transparent?
- vii. For example, if a person wants to know if there are any village regulations or ministry orders dealing with starting a lumber mill in a small village, how do we begin to find all the legislation that might be relevant?
- viii. Is there any effort now taking place to systematize or otherwise organize Lao legislation at all levels?

ix. [Politely ask] could you show me now just how you find a legal normative document?

II. LAW ON LAWS

- A. Are you aware of the Law on Laws?
- B. Could you describe the basic steps stipulated in the Law on Laws? For example, what does it cover? How does it deal with normative legal documents other than National Assembly Laws? Does it require publication of all legal normative documents?
- C. Does it require publication of drafts so that interested persons may comment on the subject of the draft?
- D. China, Vietnam, and many other countries have now begun publishing all legal normative documents before they can be enforced because this is a requirement for full compliance with the WTO. Do you think that legal normative documents should be effective only AFTER publication?
- E. Why does the Law not include documents adopted by the Procuracy and the Supreme Court
- F. How does your agency begin developing a new or amended law?
- G. Does your agency have a “law drafting group” (as defined in the Law on Laws.

III. PUBLIC PARTICIPATION IN THE LAW MAKING PROCESS

Public Participation in the law-making process is encouraged by several provisions in the LSMP and the Law on Laws. Have you or you agency organized any efforts to do this? How do you incorporate comments from the public into the revised draft?

Do you see clear benefits in such consultations?

Because the consultations require resources, how is this managed? Do you have suggestions for different methods to make consultations more economical?

IV. QUESTIONS RELATING TO SAMPLE LEGISLATION (REVERSE ENGINEERING METHOD)

- A. **For National Assembly:** How did the National Assembly work with the Supreme Court in developing the final version of the Juvenile Criminal Procedure Law?

What steps could have improved the process? Were drafts of the law available in time for comments?

Were a sufficient number of meetings organized for discussion?
Did the National Assembly conduct hearings or meetings prior to adoption?
Were modifications made because of comments submitted?
What kind of resources could have benefitted the law making process – i.e. would a baseline report of the juvenile justice sector have been useful? Or assessments done in the sector?

B. For Standing Committee of National Assembly:

How was the model Resolution of the Standing Committee of the National Assembly drafted and adopted?
What steps were taken to encourage public participation? Were any drafts published for public comment?

C. For Ministry: How was the model Order or Decision of a Minister drafted and adopted?
What steps were taken to encourage public participation?
Were any drafts published for public comment?

D. For Village authority:

How was the model Village Regulation drafted and adopted?
Did you publish or otherwise notify people in the village about the regulation you wanted to adopt before you adopted it?
How did you make sure that many people knew what the regulation was about?
How many meetings did you have to discuss the regulation?
Did you allow everyone to talk at those meetings? For how long?

E. For Development Partner:

How did your agency assist in the development of the model law, such as the Juvenile Criminal Procedure Law?
What steps could have improved the process?
Were drafts of the law available in time for comments?
Were a sufficient number of meetings organized for discussion?
Did the National Assembly conduct hearings or meetings prior to adoption?
Were modifications made because of comments submitted?

What were the challenges?

The lessons learned?

Would you do it differently next time?

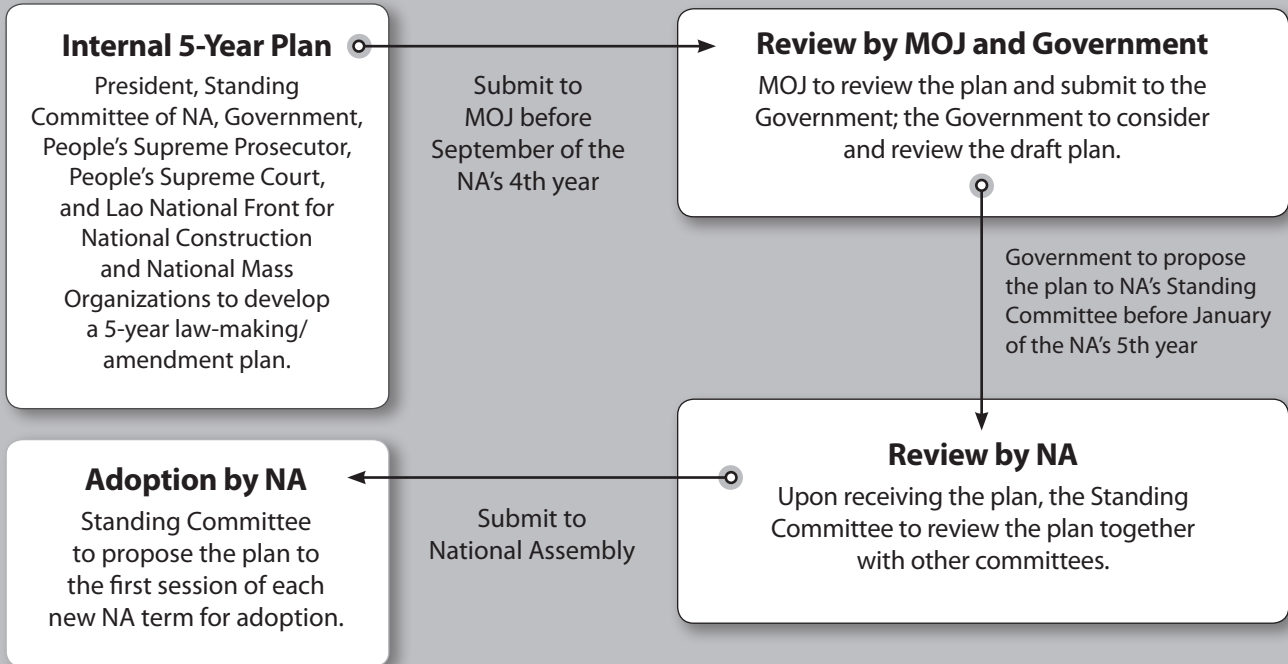
V. STATISTICAL INFORMATION

(The particular statistic will vary according to the type of each agency interviewed---I.E., National Assembly, Individual Ministry. Government representative and Village authority)

- i. Number of hearings open to public (in 2013)
- ii. Number of seminars with experts invited (in 2013)
- iii. Number of Law drafting plans actually presented
- iv. Number of drafts published
- v. Number of laws (or lower legislation) published
- vi. How many of each kind of document was adopted in 2013?
- vii. Were all in compliance with 2012 Law on Laws?
- viii. How many were published in draft form prior to adoption?
 - i. How many seminars of limited attendance for each document?
 - ii. How many public meetings, with open attendance?
 - iii. How many National Assembly hearings?
 - iv. How many Law Committee meetings?
 - v. How many were reviewed by MOJ prior to submission?
 - vi. How many people in your organization have legal counsel trained in law drafting?
 - vii. Does your organization require the first draft of legislation to be prepared with legal counsel advice?
 - viii. How many law graduates in each ministry's legal office?
 - ix. How many staff for NA and Law Committee with focus on law drafting?

Annex D (1)
Flowchart of Law-Making Process in Lao PDR
In Compliance with Law on Laws

STEP 1: Origination – Developing 5-Year Plan [Art. 25 permits annual amendment]



Annex D (1)

Flowchart of Law-Making Process in Lao PDR In Compliance with Law on Laws

STEP 2: Developing a Draft Law

This step needs to be completed at least **120 days before the NA session starts [Art. 40]**

Appointment of a Law-Drafting Committee

1. Vice Min. or Deputy Head as Committee Chair
 2. Head of Legal Dept/Unit and Technical Officials as Members
 3. Legal Dept/Unit as Secretariat
- Note: the Committee is to cooperate with MOJ on preliminary structure/content of the draft

Determination of Structure

- The draft is divided into parts, chapters, and articles, consisting of:
1. General provisions to define objectives, policies and principals;
 2. Framework to manage, resolve and promote important matters
 3. Final provisions to define who to implement the law and its effectiveness

Information Collection and Analysis

1. Policies and legislation relevant to the draft law
2. Conditions regarding implementation of other laws related to the draft law
3. Facts on current socio-economic situations and social relationships related to the draft law
4. International agreements/treaties that Lao PDR is a party to

Developing a Draft Law

- The Committee to develop a draft law in accordance with:
1. the structure agreed with MOJ
 2. the content that is precise, clear, accurate, and complete
 3. consistent terminology
- Once finalized, the committee to propose the draft to the head of the authority

Upon approval of the head, the committee to present the draft for consultation

Consultation with Relevant Stakeholders

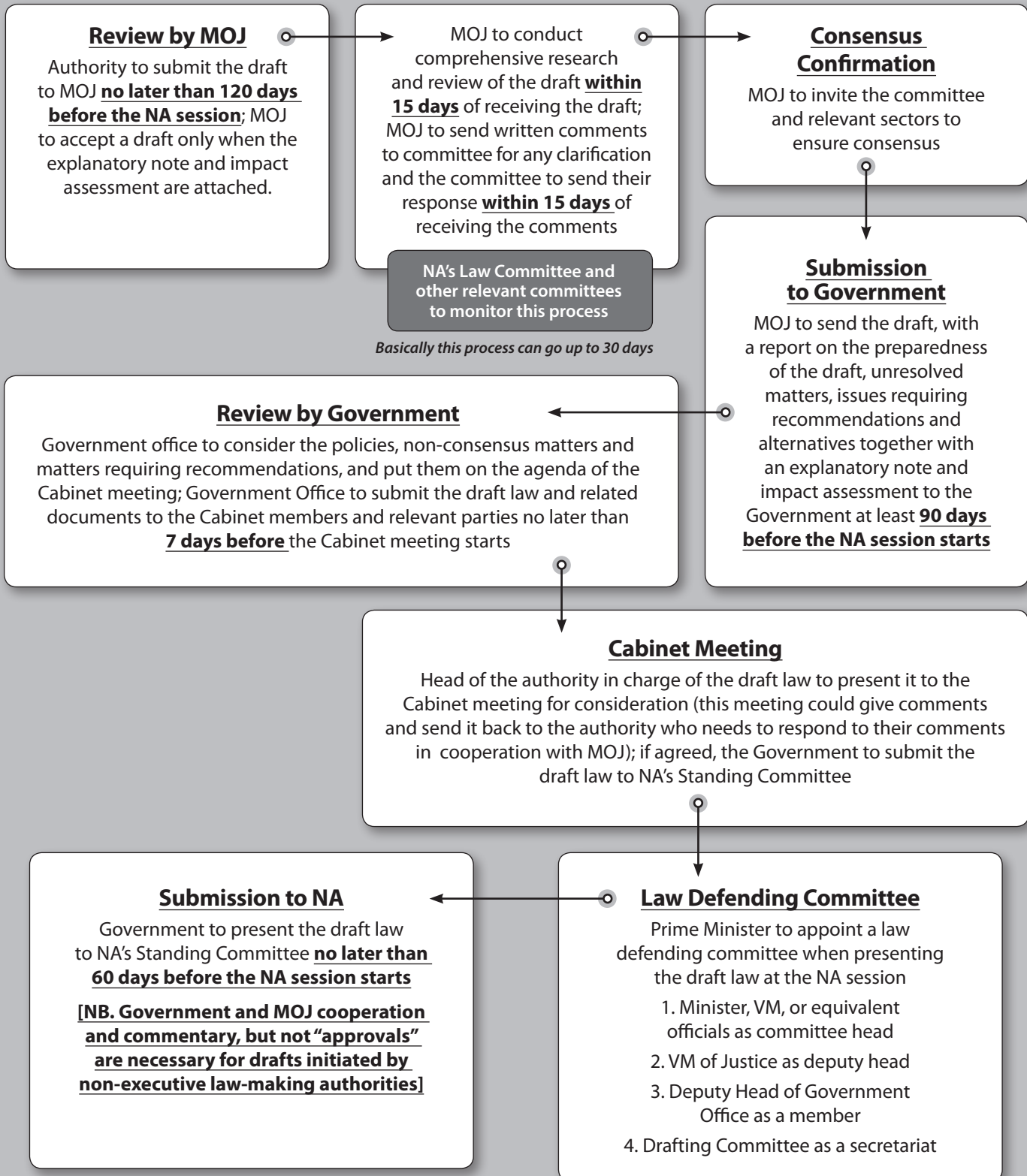
1. Relevant sectors, local administrations, and other concerned parties
 2. MOF and MOHA to ensure financial and organizational matters;
- Note: relevant stakeholders to provide written comments to the committee **within 15 days** of receiving the draft.

Public Consultation

- The Committee to organize public consultation workshops and post all contents of the draft with explanatory note and impact assessment on a government website or its own website for at least **60 days** to allow citizens to give comments on the content of the draft.

Annex D (1)
Flowchart of Law-Making Process in Lao PDR
In Compliance with Law on Laws

STEP 3: Review by Government and Submission to NA



Annex D (1)

Flowchart of Law-Making Process in Lao PDR In Compliance with Law on Laws

STEP 4: Review and Adoption by National Assembly; Promulgation by President

Review by NA

Upon receiving the draft from the Government, NA's Standing Committee to assign Law Committee and other relevant committees to conduct a comprehensive review before returning it to Standing Committee for submission to NA

Review should be conducted in the following criteria:

1. Necessity, purpose, objective and scope of the draft law
2. Consistency with Government guidelines and policies
3. Consistency with Constitution, other laws and int'l treaties
4. Compliance with law-making procedures **INCLUDING POSTING DRAFT FOR 60 DAYS FOR PUBLIC COMMENT [Art. 8]**
5. Matters proposed by Government (non-consensus matters, new principles, etc.) and comments made by them for recommendations to Standing Committee as well as a report on the comprehensive review for Standing Committees approval prior to presentation to the NA session
6. Capacity to implement the draft law. Note: Concerned NA Committees to produce a report on the results of the preliminary review, non-consensus matters, etc.

Art. 53 Public Consultation

(2nd one in the process)

Standing Committee to organize a public consultation forum IF it is considered that the draft law is related to many sectors or directly related to coming rights and benefits of the citizens; Standing Committee to supervise the implementation and compilation of comments from the public before submitting to the NA session

Art. 52 Internal Consultation

Standing Committee to organize a consultation workshop for NA members and members of each constituency office to give comments on the draft law; Standing Committee to compile the comments and improve the content before submitting to the NA session

Consideration at NA Session

NA to consider the draft law in one session in the following steps:

1. Head of the drafting committee to present the draft law
2. NA Chairperson to advise the session on how to give comments on the draft
3. NA members to give comments or ask questions
4. Defending committees to clarify and answer questions
5. Voting on difficult matters if no consensus
6. NA Chairperson to summarize and recommend the defending committee to improve the draft law based on the comments
7. NA session to vote on adoption of the draft law (simple majority rule for adoption)

Promulgation by President

Standing Committee to propose the adopted law to the President **within 20 days of adoption** for promulgation; President to consider the issuance of a Presidential Decree on Promulgation of the law **no later than 10 days of receiving the law from NA**

****LAW IS EFFECTIVE ONLY AFTER POSTING WITH OFFICIAL GAZETTE [Art. 80]****

President is eligible to propose to the NA for reconsideration of the law; If NA confirms the original version, the President to promulgate the law within 15 days of receiving the confirmation from NA

Annex D (2)
Flowchart of Lawmaking Process in Lao PDR
In Actual Practice – Juvenile Criminal Procedure Law

STEP 1: ORIGINATION

Inclusion into 5-Year Plan

Multi-year discussion process involving, e.g., Supreme Court, MOJ, Women's Union and Development Partner.

Review by MOJ and Government

MOJ recommendation for inclusion in 5-year lawmaking/ amendment plan.

Review by NA

Law Committee reviewed the plan together with other committees.

Inclusion in Plan

Standing Committee proposed the plan to the first session of the new NA term for adoption.

STEP 2: DEVELOPING A DRAFT LAW

Determination of Support (2010)

Prior to appointment of Drafting Committee, funding and technical support of the process was agreed upon with Development Partner.

Appointment of a Law Drafting Committee

Supreme Court appointed by Standing Comm. to take responsibility for the draft law.

Sup. Ct. Vice President selected as Committee Chair.

Other members selected with reference to 2006 provisions relating to protection of children, including, e.g. OSPP, MPS, Women's Union.

The Committee cooperated and consulted with MOJ and members of Law Committee.

Information Collection and Analysis (2010 to 2012)

Facts on current socio-economic situations and social relationships related to the draft law.

Examination of comparative material and International agreements/treaties that Lao PDR is a party to.

Discussions with youth leaders and local authorities from all ethnic groups.

Developing a Draft Law (beginning January 2013)

1. Chief Draftsperson (an individual judge) developed an outline of the draft law.
2. Two to three committee meetings on the outline (Development Partner invited to all meetings).
3. Chief draftsperson developed complete first draft, followed by approximately 20 meetings refining the draft.

Public Consultation, (BUT NO POSTING OF DRAFT FOR PUBLIC COMMENT)

The Committee organized at least six "public consultation" (invitation only) workshops at which hard copies of the draft were distributed. Participants made many comments, some of which resulted in changes to the draft. No explanatory note or impact assessment was prepared.

Annex D (2)
Flowchart of Lawmaking Process in Lao PDR
In Actual Practice – Juvenile Criminal Procedure Law

**STEP 3: REVIEW BY HIGH LEVEL AUTHORITIES AND DRAFTING EXPERTS
AND SUBMISSION TO STANDING COMMITTEE**

High Level Review

Drafting Committee submitted draft to high level members of the Sup. Ct., OSPP, MPS, MOJ and private lawyers.

MOJ Members of Law Committee skilled in law drafting have been consulted throughout the process.

Consensus Confirmation

Drafting Committee and high level authorities reached consensus on the final draft.

**Submission to NA
(Approximately September 2013)**

Supreme Court delivers draft law to NA's Standing Committee, through the Law Committee.

[NB. Government and MOJ cooperation and commentary, but not "approvals" are necessary for drafts initiated by non-executive lawmaking authorities]

**STEP 4: REVIEW AND ADOPTION BY NATIONAL ASSEMBLY;
PROMULGATION BY PRESIDENT**

No. Art. 53 Public Consultation

Standing Committee did not organize a public consultation forum (not necessary unless it is considered that the draft law is related to many sectors or directly related to coming rights and benefits of the citizens). There were no additional opportunities for public comment on the draft.

Consideration at NA Session

NA considered the draft law during its plenary session, with members making comments and asking questions. Following the discussion, the NA plenary session adopted the law in approximately end of November 2013.

Revision by Law Committee

The law committee made revisions to the draft law, incorporating certain of the comments made during the plenary session.

Promulgation by President

President of National Assembly signed the law December 20, 2013 and delivered it to the President for promulgation; President considered Promulgation of the law for approximately 2 months and then signed it, as of January 28, 2014.

****Law is Effective only after posting on Official Gazette (Posted May 2014)**

ANNEX E

STATISTICAL INFORMATION

(The particular statistic will vary according to the type of each agency interviewed-I.E., National Assembly, Individual Ministry. Government representative and Village authority)

The information presented is a composite based upon interviews of the persons and organizations listed in ANNEX B to the Baseline Report. Because the information was often provided by means of interviews conducted with multiple interviewees, and sometimes from responses gathered at more than one interview, it is not attributed to a particular person or organization.

- i. Number of hearings open to public (in 2013):
- ii. CENTRAL AND PROVINCIAL LEVEL= none

District and Village level have village meetings to discuss proposed new regulations, and then arrive at an adoption by consensus

- iii. Number of seminars with experts invited (in 2013)

See Juvenile Procedure Law Example in Main body of Report

- iv. Number of Law drafting plans actually presented.

Most persons interviewed discussed placing their proposed draft laws on the National Assembly annual or 5 year Plan. The formal existence of established “law drafting plans” within each agency was not established.

- v. Number of drafts published:

CENTRAL LEVEL = only one, the MOJ decision on Impact Assessment

PROVINCIAL LEVEL AND BELOW- none, but provincial authorities try to make people aware of proposed changes before they are made (through hardcopy and word of mouth)

- vi. Number of laws (or lower legislation) published

The National Assembly has adopted 107 laws, but its website only includes less than 96.

- vii. How many of each kind of document was adopted in 2013?

National Assembly laws - 33

Presidential Ordinances - only one in 2013 (Amendment to Ordinance on Tax and Tariffs)

MPS; 48 documents since the establishment of the Law Department in 2013, but only 10 of general application and hence subject to the Law on Laws.

Line ministries---since they have not yet placed the documents on the official gazette, the number is not known by any central source. As an example, MOHA says it has worked on FOUR decrees, but no drafts are posted yet.

Sup Ct initiated only one law in 2013, which was the Juvenile criminal procedure law. It initiated an amendment to the civil procedure law in 2012, and the Law on people's Courts in 2009.

The OSPP initiated no laws in 2013, but proposed the Law on the Procures in 2009, and the law on Criminal Procedure in 2012.

Vientiane Province: approximately 100 documents of general application

viii. Were all in compliance with 2012 Law on Laws?

Only one central level normative legal document met the requirement on posting of drafts on a website: The MOJ decision on Impact Assessment

MPS wants to post on its own website but is not able to yet.

xi. How many were published in draft form prior to adoption?

Only one (See iv)

i. How many seminars of limited attendance for each document?

Difficult to determine: as one example, there were more than twenty meetings for the draft of the Juvenile Criminal Procedure Law.

ii. How many public meetings, with open attendance? None

iii. How many National Assembly (Article 53) hearings on specific draft laws? None

iv. How many Law Committee meetings?

Unclear. Members of the law committee participate in many meetings of the various law drafting committees.

v. How many were reviewed by MOJ prior to submission?

All draft laws submitted by the Executive Government (for approval) and all those by other law-making authorities (e.g., the Supreme Court) for MOJ review and assistance.

vi. How many people in your organization have legal counsel trained in law drafting?

MOJ—23 in Law Department, 8 to 10 trained abroad, about 6-8 persons in MOJ overall who can be said to be trained law drafters (about 25% of Law Dept)

Law Department Office of Govt—3-4 law trained staff, none of which could be said to be trained legal drafters.

MPS—The Law Department has a staff of 23, but 10 of these are clerical or lower. Of the 13 persons, 3 are administrative, and 10 are engaged in substantive work. All are law graduates, with one having foreign law training (in Vietnam). There are only 3 persons in the drafts laws, and they have no specialized training in law drafting. All are very familiar with the law drafting process and the legal requirements

Office of the President---12 law graduates, none of whom could be said to be trained in legal drafting, but they are able to oversee the drafting by the MOJ.

Women's Union—5 persons in Law Division, 3 of whom are law-trained generalists.

Examples of line ministries (e.g., Min of Agriculture 6, MOHA: 7 or 8,) all of whom are generalists.

MOHA has 2 Legislation Divisions (not Departments) but only one deals with law, as the other is more archive -related and they are considering changing the name. MOHA hired 76 new recruits recently, but they still have only 7 or 8 law graduates, only one with foreign training (from France). They are aware that the MOJ has suggested that all line ministries have Legislation (or Law) Departments, but they do not consider this to be feasible yet.

Vientiane Province---3 or 4, all generalists. There are 3 private lawyers in the Province, who deal mainly with the MOJ Provincial office.

District and Village level---none. They rely on the local offices of the Procuracy, the Court and the MOJ for legal advice. There are no private lawyers in the Village or District.

vii. Does your organization require the first draft of legislation to be prepared with legal counsel advice? With the exception of the Ministry of Justice, No.

viii. How many law graduates in each ministry's legal office? See response to vi above.

ix. How many staff for NA and Law Committee with focus on law drafting?

Law Committee/Law Department of the NA—approximately 15 law-trained persons, only 2 or 3 could be said to be trained legal drafters

ANNEX F

SUMMARY NOTE PROVIDING COMPARATIVE INFORMATION ON LAW- MAKING IN SEVERAL COUNTRIES

I. INTRODUCTION

A. Generally

The purpose of this Annex is to present a comparative background for the subject of how parliaments, legislatures or national assemblies in a select group of countries try to assure the quality, consistency and implementation of “the laws” that are intended to govern their respective societies. The Annex, prepared by Professor Theodore Parnall (the “Consultant”) will use the term “legislature” or “legislative bodies” as including all elected assemblies with a law-making role.¹ It is taken substantially from a report prepared by the Consultant in 2008 for a UNDP/Hanoi project with Vietnam’s Office of the National Assembly.

The annex does little more than describe the formal processes for making and implementing laws for several countries. In view of this, it should be remembered that it is difficult to describe accurately the actual role of legislatures solely by reference to formal constitutional and statutory language isolated from cultural, political or social traditions and practices.² However, the differences between “law making” by legislatures and “decree making” by executive bodies, as well as the basic constitutional distinctions of the parliamentary, presidential, semi-presidential systems, and bicameral or unicameral structures will be discussed. Also, the Annex will deal with the increasing role played by committees, especially in recent times. The Annex will also present information on the increasing importance of public awareness of legislative action, and other issues.

¹ The term legislature is distinguished from “parliament” as including ALL elected assemblies responsible for passing legislation. A “parliament” typically combines this role of a legislature with providing the personnel of government in a cabinet, thus in certain ways combining the legislature and executive in a system of parliamentary government

² According to Maurice Duverger, *Duverger’s Law Thirty Years Later*” See Grofman and Lijphart, *ELECTORAL LAWS AND THEIR POLITICAL CONSEQUENCES* (1986)

“Although the constitution plays a certain part in the application of presidential powers, this role remains secondary compared to that of other parameters; the cases of France and Iceland show this in an undeniable way. In both cases, the constitutions are not violated, despite the fairly great differences which separate what is written in the constitution and actual practices.”

It is possible to begin at a very different starting point for comparing legislative bodies, as some scholars have suggested³ that a legislature, even if it had no decision making or law making power, could still be significant. Indeed, scholars have suggested that there are many separate functions that legislatures may serve in their respective societies in addition to significant policy input over law-making. Notice that this manner of analysis DEEMPHASISES the importance of the decisional and law-making functions.

The comparative research supporting this Annex leads, however, to expect that even though some legislatures may not have any decisive legislative power, recent global trends show an increase of ability of legislatures to affect policy change through their law-making roles. The focus of this Annex is therefore on comparing how legislatures contribute to law-making and implementation of the laws once they are adopted.

C. What the laws are

An individual "law" is within the meaning of a "normative legal document" which is a rule made by the State and intended to have general application and be implemented by State agencies. A "normative legal document" may take many forms, including: a written piece of legislation adopted by the legislature, a local decree, a government or ministerial decree. The difference between a "law" and a "decree" adopted by a more limited group, is that the "law" is adopted by the people's representative, and has the greater potential of reflecting the values, goals and conditions of the society as a whole.

The "Legal System" includes not only laws, but also the institutions that make and implement these laws (the legislature, ministries, the police, and courts). In all of the countries surveyed, the role of the legislature in assuring the quality and consistency of the laws went beyond the drafting and adoption of laws. In many countries, it is the legislature that reviews the budget that will be necessary to implement the law, and oversees the behavior of those executive ministries and agencies that have responsibilities for enforcement of the laws.

³ These functions may be grouped in three categories (1) LEGITIMIZATION, covering latent, manifest and cathartic/safety valve functions; (2) a broad category covering RECRUITMENT, SOCIALIZATION and TRAINING FUNCTIONS and (3) DECISIONAL/INFLUENCE, covering law-making, oversight and linkage functions. See, *The Emergence of East Central European Parliaments: The First Steps* pp. 29-31 (Edited by A. Agh, Hungarian Centre of Democracy Studies, 1994). See also, D. Olson, *The New Parliaments of New Democracies: The Experience of The Federal Assembly of the Czech and Slovak Federal Republics*, in "The First Steps" at pp.44-46.

D. Questions to be asked about the role of legislatures

With the discussion of each country's legislative system, the following questions might be taken as a guide:

- Who originates the idea for the law? Is there a mechanism to make sure that the best ideas are considered by the policy makers?
- Who drafts the first draft of the law? What resources are available to make sure that it is drafted professionally?
- Who participates in the discussion of the law? Is the draft available to the public and a subject of wide public debate and discussion? What mechanisms are used to obtain the best thinking of the best minds?
- Who adopts the law? Who has the practical ability to determine the final version of the law?
- Who makes sure the law is available through published or internet means? Who makes sure that it is well-indexed so that people can easily find it?
- Who assures that the law will be enforced?
- Who assures that the law is consistent with the society's values and its other laws or the Constitution?
- Who assures that the law remains current and does not become out of date?
- Does the legislature have sufficient human, technological and financial resources to perform its role effectively?

II. An Overview of the Basic law-making systems: Parliamentary, Presidential and semi presidential Systems Compared⁴

There is a certain superficial similarity among the law-making processes of states, even including those with very different political systems. The basic formula of initial draft to the legislature, first and second readings of the draft law, approval by the legislature, signature by the President (or Prime Minister), with certain veto and override rights in case

⁴ Certain of the information in this section was taken from online sources, including country-sponsored websites and Wikipedia.

of disagreement, are found in many systems. One interesting feature that has become more common is the widespread practice of allowing the public to view the legislature at work. At present almost 60 countries provide at least some television coverage of legislative bodies, with a few providing daily extensive coverage.

Key elements of real differences appear to be principally in (i) the availability of draft laws for public comment, (ii) the right of individual members of the legislature to introduce draft laws, (iii) the practical amount of staff support and resources available to the legislature, and (iv) the organizing of frequent public hearings designed to assist the legislature both as it shapes the general policies of the state, and the final wording of the laws. In looking through formalities to the actual practices of law making, however, one is once again reminded of Duverger's caution to look to the real conditions as opposed to the formal document.

A. The Presidential System

A presidential system is a system of government where the executive branch "presides" over the management of the state separately from the legislature. It is not directly accountable to the legislature, and cannot be dismissed except by unusual conditions such as impeachment and conviction. The system originated in the medieval monarchies of France and England in which executive power was in the Monarch and not in , meetings of the early "estates" which were the first origins of legislative bodies. (e.g., the Estates-General of France, the Parliament of England). The concept of separate power and authority for the executive and legislature was the model of the office of President of the United States. In England, however, the power of a separate executive was reduced to a ceremonial monarch with a new type of executive, answerable to a parliament, while the power of the United States' separated executive increased. This has given rise to criticism of the United States presidency as an "imperial presidency" though some analysts dispute the existence of an absolute separation, referring to the concept of separate institutions sharing power.

B. The Semi-Presidential System

The semi-presidential system is one in which there are both a prime minister and a president and both are active participants in the management of the state. It differs from a parliamentary system in that it has a popularly elected Head of State who is more than a purely ceremonial figure. It differs from the presidential system in that the cabinet, although it might be formally named by the president, is responsible to the legislature. The legislature may force the cabinet to resign by means of a vote of "no confidence".

How the powers are divided between president and prime minister can vary greatly between countries. In France the president is responsible for foreign policy and the prime minister for domestic policy. In this case, the division of powers between the prime minister and the president is not explicitly stated in the constitution, but has evolved as a tradition. In Finland, by contrast, this particular aspect of the separation of powers is explicitly stated in the constitution: "foreign policy is led by the president in cooperation with the cabinet".

Semi-presidential systems sometimes experience periods in which the prime minister and president are elected separately and from different, often opposing, political parties. This can create a tension between the executive and the legislature, depending on the attitudes of the two leaders, the ideologies of their parties, or the demands of their constituencies.

C. The Parliamentary System

The key feature of the parliamentary system (including those with ceremonial monarchs) is that the executive branch of government is directly dependant on the direct or indirect support of the parliament, often expressed through a vote of confidence. There is no clear separation of powers between the executive and the legislature, leading to a differing set of checks and balances compared to those found in presidential or semi-presidential systems. Parliamentary systems usually have a clear differentiation between the head of government and the head of state, with the head of government being the prime minister or premier, and the head of state often being an elected (either popularly or through parliament) president or hereditary monarch. Though in Parliamentary systems the prime minister and cabinet will exercise executive power on a day-to-day basis, some actual authority will usually be allocated in the head of state, giving them many codified or uncodified reserve powers, providing some balance to these systems.

The term parliamentary system does not necessarily mean that a country is ruled by different parties in coalition with each other. Such multi-party arrangements are usually the product of an electoral system known as proportional representation. Parliamentary countries that use "majority rules" voting, such as the United Kingdom, usually have governments composed of a single party, with other parties being "in opposition". However, certain parliamentary systems in other countries may use proportional representation, and may produce election results in which no single party has a majority of seats, requiring two or more parties to form a coalition government.

D. General Impact of the Type of System on Law making and Law Implementation

It is usually easier to pass laws within a parliamentary system. This is because the executive branch is dependent upon the support of the legislature and includes members of the

legislature. This means that the executive (as the majority party or coalition of parties in the legislature) controls more votes in order to adopt laws. In a presidential system, the executive is often chosen independently from the legislature. If the executive and legislature in such a system include members entirely or predominantly from different political parties, then deadlock can occur, with little action in either law-making or law implementing⁵. Accordingly, the executive within a presidential system might not be able to adopt the policies or laws that it would like, nor even implement laws that have already been adopted. Indeed, an executive in any system (parliamentary, presidential or semi-presidential) is mainly voted into office on the basis of his/ her party's policies. It could therefore be said that the “will of the people” is more easily brought from desired policy into laws and into action by a parliamentary system.

However, a criticism of the parliamentary system with respect to law-making and law-implementing also results from the close connection between the legislature and the executive. There is no independent body to oppose and veto laws passed by the parliament, and therefore no substantial check on legislative power. Also, because of the lack of a practical “separation of powers”, some think that a parliamentary system puts too much power in the executive, with the legislature (parliament) and the judiciary having little practical control over the executive. This may limit the diversity of opinions that go into making policy and adopting laws. However, since many parliamentary systems are bicameral, with an upper house designed to provide some balance to the power of the lower house, which is the source of the executive and the cabinet, such a bicameral legislature may reduce this lack of diversity.

Although it is possible to have a prime minister who traditionally occupies a strong position, as in the United Kingdom, or even a dominant party system, as Japan has, parliamentary systems are also sometimes unstable. Critics point to Israel, Italy, India, the French Fourth Republic, and Weimar Germany as examples of parliamentary systems where unstable coalitions, the conflicting demands of minority parties, votes of no confidence, and threats of such votes, make the adoption of important but controversial laws difficult, and effective implementation of laws that have been adopted also difficult.

E. Role of Court Review of Legislative Action

The question of court review of the law-making actions of the legislature originated in the US system as early as 1803, when the Supreme Court of the United States ruled that an action by the legislature was contrary to the Constitution and could not be enforced. In Europe, the idea of giving a court the power to “overrule” laws that had been adopted by

⁵ Examples of this are: in the US, when a president from the Democratic party was faced with a majority of legislators from the Republican party, or when many members even of the majority party disagree with the president from the same party.

the legislature, was accepted only much later. Before WWII, with the exception of Austria, most European countries did not allow any court to question the constitutionality of laws passed by parliaments. Today, the majority of democracies accept the need to protect the constitution from certain action by the legislature, with the introduction of special constitutional courts in France, (after 1958) Portugal (1982), Italy Germany Austria (1920) and Spain (1978). The regular Supreme Court performs this role in the USA, Canada, Australia, Switzerland and the Scandinavian countries.⁶

III. LEGISLATIVE POWERS

A. The Power to issue Decrees

There is a natural tension between the Executive's desire to issue decrees and the legislature's use of its laws to manage the society. It is generally thought that laws or LNDs that are adopted by the legislative process may reflect greater diversity of opinion and broader societal consensus than executive decrees that have been prepared and issued by a narrower group of policy makers.

In the US system, decrees are called "executive orders" and the courts have significantly limited the Executive's right to issue them without clear authorization in a law. Until the 1950s, there were no rules or guidelines outlining what the president could or could not do through an executive order. However, in 1952, the US Supreme Court ruled that the executive order from President Truman, placing all steel mills in the country under federal control, was invalid because it attempted to make law, rather than clarify or act to further a law put forth by the legislature. Presidents since this decision have generally been careful to cite which specific laws they are acting under when issuing new executive orders.

Critics fear that the president could make himself a de facto dictator by side-stepping the other branches of government and making autocratic laws. In particular there has been criticism of the use of executive orders or decrees by many Western democracies since WWII, declaring that this tends to create a permanent exception to the normal democratic role of legislatures. Representatives of executive governments, however, cite executive orders as often the only way to clarify laws passed through the Congress, laws which often require vague wording in order to please all political parties involved in their creation.

⁶ See T. Ban, "Parliaments and Constitutional Courts" in *The Emergence of East Central European Parliaments: The First Steps*, p. 176 (Hungarian Centre of Democracy Studies 1994) "It is important to note that the establishment of this institution introduced a radical change over the former French tradition of paying unconditional respect to the sovereign Parliament."

In Parliamentary Systems, where the executive (the cabinet led by a prime minister) emerges from the legislature (parliament), there is less likely to be as great a tension between “rule by decree” and “rule by law” because of the parliament’s role in supporting the executive. Where tensions do result, then other mechanisms, such as a “vote of no confidence” will be the method that is more useful to the legislature to use to assert itself and reclaim its dominance in making policy by adopting laws.

In France, in the Fifth Republic, the constitution formally allows the President to rule by decree in national emergencies, subject to limitations, but this power has been used only once, thus pointing out, once again, why culture, tradition and actual practices may be more descriptive of actual law-making and law-implementing than formal legal or constitutional provisions.

In Russia, the President may issue decrees in many policy areas, but these decrees cannot contradict existing laws, and become void if the legislature (the Duma) adopts a law on the subject. In a study discussing legislative power in Russia between 1994-2001, the author concluded that even though the president had considerable constitutional power to issue decrees, the legislature frequently challenged the president’s decree power by issuing federal laws that replaced those decrees and which limited the areas in which he could issue new decrees.⁷

In China, Decrees of the State Council⁸ have been used to establish policy and manage the State to a significant degree. They are also useful as a means to “test” new ideas, and so have played a role in the country’s development. The law-making process for laws adopted by the legislature, however, is increasingly being opened to public participation.

B. The Power of Legislative Initiative

The ability of members of the legislature to introduce draft laws is a significant legislative power. If the legislature must wait for the executive to introduce draft laws, its role in law making is reduced. While the flexibility permitted to individual members of legislatures to introduce draft laws ranges from low (e.g., France, Russia) to high (e.g., USA, UK) most

⁷ See Troxel, *Parliamentary Power in Russia, 1994-2001* at pp. 89-90 (Palgrave 2003)

⁸ The State Council, or the Central People's Government, is the executive body of the highest organ of State power and the highest organ of State administration. It is composed of the premier, vice premiers, state councilors, ministers in charge of ministries or commissions, the auditor-general and the secretary general. The premier of the State Council is nominated by the president, decided by the National Peoples Congress (NPC), and appointed and removed by the president. Other members of the State Council are nominated by the premier, decided by the NPC or its Standing Committee, and appointed and removed by the president. The term of office of the State Council is five years, and its members shall serve no more than two consecutive terms.

of the countries surveyed include, at least formally, the right for members of the legislature to submit draft laws without having them approved by either the executive or the leadership of the legislature. The research did not, however, disclose the number of draft laws that were actually introduced, or that were introduced and subsequently adopted.

In several of the countries, the executive had the right to submit draft laws, and in fact most of the draft laws that were ultimately adopted were introduced by the executive. In such cases, the role of the legislature in law making may be considered as diminished.

C. The Power to Veto versus the Power to Override the Veto

In most of the countries surveyed, the executive retained at least the formal right to veto laws that were adopted by the legislature. In the event an executive does veto a law, the legislature is in all cases in the survey, given the power to override the veto by a supra majority (e.g., two-thirds) vote. While there were exceptions, the power to veto has tended to be used sparingly, and, when used frequently, is evidence of executive/legislative tension. In the event the executive is given the right to a “partial veto” this may be evidence of a diminished role of the legislature in law-making because the executive is given the right to choose portions of a law that he/she finds favorable and reject the remainder. If a “full veto” is required, the executive must choose to reject the entire law, including those provisions which the executive might favor.

D. The Budgetary Power

Approving and having input over the annual budget process is sometimes not thought of as specifically being a function that relates to the legislatures role in making and implementing the laws. A budget, however, determines which laws and decrees will be funded, and, without funding, little can result from even the most artfully crafted legislation. Thus any legislature that has the power to draft, amend and oversee the budget will play a more significant role in assuring the quality and consistency than one that has little such power.

In Russia, for example, there is a constitutional provision that draft laws dealing with revenues and expenditures may be considered "only when the Government's findings are known". This has been considered by commentators to substantially limit the legislature's control of state finances. However, the legislature may alter finance legislation submitted by the executive at a later time, and this may provide a certain level of legislative control over state finances.

IV. LEGISLATIVE COMMITTEES

Legislative committees have developed a central role in law making and law implementing. While this has been historically true in the US presidential model, where legislative committees are sometimes used to seriously challenge behavior by the executive, it now appears to be increasingly true even in the “Mother of Parliaments”, as the British parliamentary system’s first significant committees appeared only in 1979. While the legislatures in all of the countries surveyed made at least some use of committees to increase the role of the legislature in making policy and law, the strength of the committees and their type (specialized, permanent, temporary etc), number and scope varied. It is clear that as societies become more and more complex, countries are increasing the use of committees as well as staff support to committees as a mechanism to allow their legislatures to keep up with these complexities.

Type

A distinguishing feature of legislative committees is whether they are permanent or temporary (ad hoc). Permanent (standing) committees can be established for e.g., law making, budget, supervision of executive agencies, as well as for organizing the administration of the legislature themselves. Some of the most powerful committees, such as the “Rules Committee” of the US House of Representatives⁹, have a tradition of significant power over legislation and general work of the legislature.

Committees may be organized as law making committees to draft laws, for example—criminal or civil laws, or may be further specialized to draft technology-related laws. Committees may also be organized for investigative purposes, or supervision and oversight.

Unlike many of the countries surveyed, the legislature in the United Kingdom (the “House of Commons”) organizes temporary or ad hoc committees to draft laws. The legislature also has established a number of committees to supervise certain aspects of government administration. “One such committee is the Public Accounts Committee, always chaired by a leading opposition Member of Parliament, which audits government expenditure and publicizes instances of waste and financial mismanagement”¹⁰

⁹ This committee is the “traffic policeman” of the legislature. It is one of the most powerful committees, because it decides when to permit the immediate consideration of a legislative measure, regardless of the usual order of business, and can establish other conditions for debate on a draft law.

¹⁰ See Longley and Davidson at p.31.

Gathering information

The role of committees in gathering information on which to base policy and to serve as a foundation for drafting laws is a key committee function. Moreover, specialized committees are able to increase their knowledge of specialized areas and therefore better able to organize public hearings and hearings at which experts offer their opinions. It is through committee hearings that much of the public participation discussed below can be achieved.

Number of Committees, numbers of members

Some scholars have suggested that the legislature is able to play a stronger role (compared to the executive) when there are a greater number of small committees and subcommittees, because these are harder for the executive to control than in situations where there are only a few large committees. Moreover, very large committees are not usually favored because of difficulty in taking effective action.

In France, the number of legislative committees is fixed by the Constitution, but in most countries, the legislature itself has the right to organize whatever number of committees and subcommittees that it considers appropriate. In western European countries, the number of permanent, specialized committees varies on the high side from 29 in the Netherlands (4/26 members), 22 in Denmark (17/21 members), 19 in Germany (13/37 members), to, on the low side, zero in the UK (16/25) and 6 in France (up to 145 members) and 6 in Greece (38/50 members).¹¹

V. PUBLIC PARTICIPATION

Public participation in the law making process serves at least two purposes in the countries surveyed: (i) legitimization of the laws that the legislature adopts, because a broad group within the society considers that it has been consulted or at least is aware of the law making process, and (ii) improvement in the laws' quality and consistency because a broad cross section of public comment and the specialized opinions of members of the public have been included before the law was adopted.

The right to public participation in law-making is not constitutionally recognized in most countries. Nevertheless, it is possible in many countries to find legislation and/or practices which in one way or another recognize the right to public participation. This right is exercised in many different ways: legislative initiative, referendum, participation in

¹¹ Longley and Davidson, at pp.32-33.

consultative bodies, public consultation at hearings, the right to make submissions prior to decision making, the right to have such submissions taken into account when the final decision is made, and so on. These possibilities for participation exist on the local, regional and central levels.

China has also recently recognized the great value in receiving input from a broader cross section of the public before laws are adopted. To seek public opinions, the NPC has published the full texts of the draft property law, the draft employment promotion law, the draft labor contract law and the draft amendment to the Law on Prevention and Control of Water Pollution in the past five years.

NPC figures show the Labor Contract Law elicited a record 191,849 suggestions in 30 days. Also notable is the fact that for one of the first times in its history, the NPC held a legislative public hearing on the proposed lifting of the individual income tax threshold in 2005.

A variety of mechanisms have been used by legislatures in trying to obtain broad public participation in the law making process. These mechanisms include opening up the law making process by means of allowing the public to attend legislative sessions, putting draft laws and legislative news on websites, televising legislative sessions and hearings, holding public hearings on draft laws, and, in rare instances, allowing individual citizens to introduce draft laws

Hearings

In the US system, public hearings on both draft laws and on oversight or supervision matters are widely used to encourage greater public access and participation in the law making process. The legislature originally did not allow televised hearings¹², but by the mid-1970s, a greater concern for reform and a desire for increased transparency and accountability in government provided the foundation for televising all proceedings. The US House now funds its own television system which presents regular live broadcasts of floor debates, hearings and other proceedings, and a consortium of cable tv stations present the widely-viewed C-Span network.

1. Hearings on draft laws

A significant mechanism, used especially by legislative committees, to obtain a broad degree of public participation and opinion prior to drafting or adopting laws is for legislators to organize public hearings on a draft law. In the US system, both written and

oral testimony of members of the public, including ordinary citizens as well as experts in the subject being examined, is taken down and recorded. Guidelines for organizing such hearings usually require a formal procedure and time limits for making comments.

2. Hearings on oversight or supervision of law implementation

One of the most important mechanisms used by legislatures to supervise the implementation of the laws that they have adopted is the legislative committee hearing. In the US system, it is important to note that when one party dominated the legislature in the early 2000s, very few legislative hearings were held. Following a change of control in 2006, however, the number of legislative hearings increased, leading many commentators to observe a greater amount of legislative oversight and supervision of executive agencies.

C. Referenda

Public participation in the legislative function may also be achieved directly through the instruments of referendum and legislative initiative. Both permit the public to intervene in the legislative process.

Austria, Germany, Greece, the Netherlands, Norway, Portugal, Spain, and Switzerland are among the countries that include the right to referendum in their systems. This instrument may be applicable at different levels (i.e. state, regional and/or local), depending on the country.

VI. Basic law making process of individual countries

A complete review of the practical and theoretical elements the law making process of a number of different countries is beyond the scope of this summary Annex. What follows are in some cases very basic observations of how the countries' legislatures participate in making law and supervising executive behavior, and how these processes help assure quality and consistency. The only detailed description is from the USA, which is the system with which the author of this Annex has both practical and academic experience as a practicing lawyer and professor.

A. CHINA¹³

State Structure

The primary organs of state power are (i) the National People's Congress (NPC), (ii) a Head of State who is the President (who is formally selected by the NPC), and (iii) the State Council. Members of the State Council (who are selected by the President) include the Prime Minister (Premier), a variable number of vice premiers, a number of state councilors and ministers and heads of State Council commissions.

Under the Chinese Constitution, the NPC is the highest organ of state power in China. It meets annually for about 2 weeks to review and approve major new policy directions, laws, the budget, and major personnel changes. Most national laws are adopted by the Standing Committee of the National People's Congress (NPCSC), and most initiatives are presented to the NPCSC for consideration by the State Council.

The "Law-making Law of the People's Republic of China" (or Legislative Law, hereinafter, "Law-making Law"), a law aimed at reorganizing China's legislative system, was promulgated by the third plenary meeting of the Ninth National People's Congress ("NPC") on March 15, 2000

The NPC has powers to amend the Constitution and to enact and amend basic laws governing criminal offences, civil affairs, the state organs and other matters. The Standing Committee of the NPC (the "NPCSC") has powers to enact and amend other laws and partially to supplement and amend laws enacted by the NPC when the latter is not in session. The definition and scope of the wording "basic laws" and "other laws" are somewhat general, which some commentators have said leads to confusion in legislative practice. For example, many basic laws such as the Laws on Demonstration, the Organic Law of the Villagers' Committee and the Organic Law of the Residents' Committee, were originally passed by the NPCSC.

The Lawmaking Law continued the division of the legislative powers between the NPC and the NPCSC. The potential issues as to ambiguity may, therefore, still remain. In

¹³ Yahong LI "The Law-making Law: A Solution to the Problems in the Chinese Legislative System?" (Perspectives, Vol. 2, No. 2). The article is the source of a substantial portion of this section of the report.

practice, any law that is a principal law in one specific area will be treated as a basic law to be enacted by the NPC. Examples include laws on defense, education, and labor unions.

Division of legislative powers between the NPC/NPCSC and the State Council

In recent years, administrative regulations have become a major component of China's legislation. They represent more than twice the number of laws enacted by the NPC and the NPCSC, while the legislative proposals by the State Council comprise more than seventy per cent of total proposals. The expansion of the legislative power of the administrative branches has been a driving force behind China's rapid economic growth but, in the meantime, has been said also to cause potential inconsistencies and conflicts between laws and regulations, and the overlapping of powers among numerous departments and agencies.

Under the Constitution, the State Council can only make administrative regulations to implement the existing national laws, which cannot contravene the Constitution and laws. This has been confirmed by Article 56 of the Law-making Law.

The Law-making Law also allows the NPC and the NPCSC to delegate to the State Council legislative powers on certain matters falling into their exclusive jurisdictions. Areas that cannot be delegated include crime and punishment, restriction and appropriation of citizens' political rights and personal freedoms, and the judicial system. The delegation has to be specific as for the purpose and scope, and has to be not transferable. The delegation expires upon the enactment of relevant national law on the same matter.

The law-making powers of the ministries, commissions, and departments of the State Council are more complicated. Under the Constitution, the ministries and commissions of the State Council may issue orders, directives and regulations within their jurisdictions. However, the Constitution does not comment on the rule making power of the Departments of the State Council. This has caused some questions on whether the Law-making Law should include the Departments. Some commentators annex that the NPC and the NPCSC were against the inclusion over concerns that the administrative powers may be overly expanded. The State Council argued that stronger legislative powers by the administrative departments would enable the governments to function more effectively. The Law-making Law as enacted confirmed the departments' power to issue regulations (LNDs) within their respective jurisdictions, so long as these regulations are for the purposes of implementing laws or administrative regulations, decisions and orders of the State Council.

Drafting committees, such as the State Council Legislative Affairs Bureau and the NPC Legislative Affairs Commission, organize workshops and meetings attended by officials

and academics for the purpose of providing informed comment. But the opinions and interests of ordinary citizens is only taken into consideration on limited occasions.

In recent years, greater openness has been promoted in China's legislation. Experts are invited to give their opinions at symposia organized on the draft of almost every bill. In some cases, the legislative organ may request a specialized research institution to draft the bills. For bills aiming at adjusting important social relations, the standing committees of local people's congresses often hold hearings to let parties with different interests voice their opinions. The Legislation Law of China has included provisions on legislative hearings. Since 1982, the NPC and its Standing Committee have published the drafts of a dozen important bills that are closely related to the immediate interests of the people, including the amendments to the Constitution, the draft for revision of the Marriage Law, the draft of the Contract Law, and the draft of the Property Law, to solicit public opinion during the process of formulation. The direct participation of the people in the formulation of laws has not only improved the quality of legislation and ensured that the laws fully represent the will and demands of the people, but has also enhanced the whole society's sense of law, so that the laws can be enforced in a smooth way after adoption.

Commentators have reported that there is still a tendency for opinion in the NPC to be fairly uniform, without a significant challenge to the executive¹⁴.

B. DENMARK

The Kingdom of Denmark is a constitutional monarchy, with a unicameral legislature. The monarch appoints and dismisses the Prime Minister and other ministers. Before being validated through royal assent, all draft laws and important government measures must be discussed in *Statsrådet*, a privy council headed by the monarch. While executive authority belongs to the monarch (as head of state), legislative authority is vested in the executive (Prime Minister) and the Danish parliament conjointly. Judicial authority lies with the courts of justice.

Executive authority is exercised on behalf of the monarch by the prime minister and other cabinet ministers who head departments. The cabinet, including the Prime Minister, and other ministers collectively make up the government. These ministers are responsible to

¹⁴ For example, the three votes from a session that received the highest numbers of 'no' votes or abstentions:
Budget: 2,532(Yes), 220 (No), 131 (Abstain)
Court Report: 2,395(Yes), 359 (No), 127 (Abstain)
Procurator Report: 2,414 (Yes), 342 (No), 128 (Abstain)

the Folketing (the Danish legislature or parliament), which is considered to be the supreme law making body.

Draft laws may be brought before the legislature by members but are predominantly brought by ministers in the executive government. This is because the Government is assisted by the resources of the Law Office of the Ministry of Justice. Instead of putting forward a private draft law, the opposition party in the legislature usually puts forward a proposal for parliamentary decision, i.e. a short resolution which addresses the subject and directs the relevant minister to propose a bill concerning it.

The *Folketing* is the national legislature. It has the ultimate legislative authority according to the doctrine of parliamentary sovereignty; however questions over sovereignty have been brought forward because of Denmark's entry into the European Union. In theory however, the doctrine prevails. The legislature consists of 179 members elected by proportional majority. Legislative elections are held at least every four years, but it is within the powers of the Prime Minister to call one at his discretion before this period has elapsed. On a vote of no confidence the legislature may force a single minister or the entire government to resign.

The Danish political system has traditionally generated coalitions. Most Danish post-war governments have been minority coalitions ruling with parliamentary support.

Irrespective of how an idea has occurred, a Minister may set up a committee or a commission to look into the need for legislation within a specific area. The work results in a Annex which does eventually include a draft law. Allowing experts as well as representatives of interest groups to take part in the meetings of the committee in question, is the means used to make sure that all problems are taken into consideration in the draft law.

The draft is read three times in the Folketing before it can be adopted. There must be time for careful consideration so that a draft law is not adopted due to a sudden emotional atmosphere. The thoroughness of legislation is safeguarded also by the committee work which comes between the first and second readings.

The first reading is a reading in principle only. The details are then examined by the committees, and during the second reading the individual sections are discussed and amendments are often made before eventually adopting the entire draft law at the third reading. Up to 300 draft laws are introduced in each year, of which approximately half are adopted into law.

C. FRANCE

The French Republic is a unitary semi-presidential republic, with a bicameral legislature and strong democratic traditions. The 1958 constitution of the Fifth Republic strengthened the authority of the executive in relation to the legislature. The executive branch has two leaders: the President of the Republic, who is elected directly by universal adult suffrage and is the Head of State, and the Government, led by the president-appointed Prime Minister.

The French parliament is a bicameral legislature comprising a National Assembly (*Assemblée Nationale*) and a Senate. The National Assembly deputies are considered to be full time and represent local constituencies and are directly elected for 5-year terms. The Assembly has the power to dismiss the cabinet, and thus the majority in the Assembly determines the choice of government. Senators are chosen by an electoral college for 6-year terms. The Senate's legislative powers are limited; in the event of disagreement between the two chambers, the National Assembly has the final say, except for constitutional laws and “organic laws” (*lois organiques*) (laws that are directly provided for by the constitution) in some cases. The executive government has a strong influence in shaping the agenda of Parliament.

“The fact that budget proposals by the assembly authorities must be submitted to personalities outside Parliament may have been perceived as a decline in Parliament’s financial autonomy.”¹⁵

Legislative Initiative

Under the Constitution, the Executive Government determines and conducts the policy of the Nation. As this policy is notably represented by the drawing-up of legal norms in the shape of draft laws, it follows that the Government must be able to submit such draft laws to the legislature at the time it considers appropriate. This explains the terms of article 48, paragraph 1, of the Constitution: “precedence shall be given on the agendas of the assemblies, and in the order determined by the Government, to the discussion of Government bills and of Members' bills accepted by the Government”.

According to the Constitution, the Government thus has the ability to decide on the Government and Members’ draft laws it wishes to see on the agenda and to set the order in which they will be examined. The legislature does not have any say on this list of draft laws.

¹⁵ See the website of the French national assembly :<http://www.assemblee-nationale.fr/english>

Supervision of the Executive

Questions put by legislators to representatives of the Executive are a significant means of monitoring law-implementing agency activity. The French legislature uses this method which is followed in the media.

The right to question the Executive Government during the legislative session was established by the 1958 Constitution and was strengthened by the constitutional revision of 1995. Article 48, paragraph 2 of the Constitution states that “at one sitting a week, at least, precedence shall be given to questions from Members of Parliament and to answers by the Government”.

The practice of asking oral questions, very often connected to a local issue in the constituency of the M.P, assists the legislature in following implementation of adopted laws. Oral questions are asked by an M.P. to a minister. The question must be drafted briefly and be limited to those elements absolutely essential for its understanding. The question is then presented to the President of the National Assembly who in turn notifies the Government.

A sitting is reserved every Tuesday morning for oral questions, except during the period of the budget debate, during extraordinary sessions or when priority is given one morning a month to an agenda set by the Assembly itself. During the ordinary session of 2005-2006, 16 question sittings were organized and 384 questions were asked.

Legislative committees were quite strong and active prior to the 1958 Constitution, and could accomplish events even beyond the strong committees of the USA. However, under the 1958 Constitution, the role of committees was significantly reduced. For example, Article 42 requires that any discussion of draft laws on the floor must take place using the Government’s text, instead of a committee text of the draft. Also, the number of committees was reduced and the number of members on each committee was increased, with the idea that having just a few, large committees would not be effective to challenge the executive law-making role.

The French Fifth Republic was expressly designed to avoid legislative deadlock, according special lawmaking powers to the government, headed by the prime minister. Article 38 of the Constitution enables the government to legislate by decree (ordonnance) and bypass regular lawmaking procedures with the consent of the National Assembly and counter-signature of the president. Article 44 bears more resemblance to an extreme form of the "restrictive rules" in the U.S. House of Representatives. Under the "blocked vote"

procedure, the government can decide the length of debate on bills and limit or decline amendments. Article 49 enables the government to attach its responsibility to bills: unless a motion of censure succeeds within a twenty-four-hour period, the bill is considered passed. Prime ministers who have faced recalcitrant factions in the National Assembly have resorted to the engagement de responsabilite to whip coalition partners into line. The prime minister can also circumvent delaying tactics by the legislative opposition by declaring a bill "urgent" under Article 45. The bill then requires only one reading before charging a bicameral conference committee with settling on final provisions. (10) Article 47 ensures the impossibility of government shutdowns like those that occurred under Presidents George H.W. Bush and Bill Clinton. The annual budget is accorded forty days of debate in the National Assembly and fifteen days in the Senate. In the case of protracted parliamentary conflict, the government can declare its budget passed by decree after a total of seventy days have passed.

When the French president enjoys a majority or majority coalition in the National Assembly, he can exercise a level of control of the legislative agenda that would be unusual in the US system, particularly because the French president can credibly threaten to discharge the prime minister. The prime minister's proposals and the government's agenda are first deliberated in the Council of Ministers (Conseil des Ministres), in which the president maintains an "effective veto" over the presentation of bill proposals to the National Assembly. Similarly, the president may intervene later in the legislative process to force the government to withdraw unpopular legislation.¹⁶ All told, neither the French president nor the prime minister needs to engage in the systematic lobbying of individual members to build support in the legislature that is common in the United States. The bargaining process involving incentives and threatened "punishments" (carrots, sticks, and horse trading) around specific draft laws among members in the individualist U.S. Congress scarcely apply in the French context. The legislative process might be considered as driven from "top-down".

The availability of adopted laws, draft laws and court decisions

France has modernized and opened the law making process to a significant degree. It is now possible to follow all of the steps in the examination of draft laws submitted by the Government and members, from their being tabled in the National Assembly or the Senate to their publication in the Journal Officiel. Various internet resources contain all the procedural information, as well as an indexed summary of the content of the Government or Members' bill. This software makes the coordination of work between

¹⁶ This is reported to have happened when the Socialists had a majority in the National Assembly and President Mitterrand did this with an education bill entitled "Project Savory".

various legislative departments possible and controls the productions of numerous publications for internal use and for the Journal Officiel. The data contained on this database is available to the public on the internet. Judicial opinions are also publically available to assure guidance as to the manner in which courts are applying the written law.

D. GERMANY

Germany is a federal bicameral parliamentary democracy. This means that power is shared between the national (or federal) government and state governments. The national government cannot abolish the state governments. The ministers of the government are members of the legislature, and need their support to stay in power.

There are four structural principles of government in Germany.¹⁷ Democracy, Bundesstaat (Federal-State) Rechtsstaat (Rule of Law) and Sozialstaat (Social State). The lower house of the German legislature (the Bundestag) is in one sense not as strong as e.g., that of the U.K. Parliament because of the need to coordinate with its co-legislature in many areas, the **Bundesrat** and the fact that a law adopted by the legislature may be challenged by the Constitutional Court. The Bundesrat is the "federal council" or "upper house of German parliament", which is the representation of the 16 Federal States (*Länder*). Nevertheless the legislature has played a key role in law and policy and has had a significant influence on legislative process in Europe.

Both individual members of the legislature (Bundestag) and parliamentary groups have the right of legislative initiative, as do the Bundesrat and the Federal Government. Most draft laws, however, are submitted by the executive government. It is in the legislature (Bundestag) that draft laws are debated, deliberated on and voted on in accordance with a very detailed precise procedure that is designed to try to assure that the draft laws are thoroughly researched and reflect the best thinking of the country as well as the legislature.

There are approximately 600 members of the lower house, and all are compensated and considered as full time representatives. According to a ruling delivered by the Federal Constitutional Court, the level of the level of compensation for members must be set by the members themselves. All outside interests – paid or unpaid – have to be declared to the President of the German Bundestag in order to ensure that the public is informed of any possible conflicts of interest. Activities that earn additional income are subject to strict rules of conduct.

¹⁷ A.J. Cygan, National Parliaments in an Integrated Europe; An Anglo-German Perspective pp.126-130 (Kluwer 2001)

The legislature makes extensive use of committees to accomplish their work. The Bundestag has recently set up 22 permanent committees, made up of Members from the various groups in according to their relative strengths in the legislature.

Committees are considered to be a place where members of the legislature can concentrate on a single, specialized area of policy. They deliberate on all draft laws that will have an impact in this field before any decision is taken and attempt to find a compromise at the committee stage that is capable of commanding majority support in the full legislature.

The committees obtain information from the government and expert witnesses in order to learn more about the background to the issues on which they have to deliberate.

An important feature behind the strength of the legislature in the German system is the attention paid to practical requirements for its theoretical functions. “The German parliamentary chambers faced similar problems [information resources] when it came to the flow of information on UU decision-making. To prevent a lack of information from rendering the substantive control powers ineffective, the 1992 constitutional reform package laid down wide-ranging normative obligations of the government...to take account of parliamentary complaints about an avalanche of documentation preventing effective oversight.”¹⁸

D. POLAND

Poland is a semi-presidential social democracy, with bicameral legislature and a President as a Head of State. The current constitution dates from 1997. The government structure centers on the Council of Ministers, led by a prime minister. The president appoints the cabinet according to the proposals of the prime minister, typically from the majority coalition in the bicameral lower house of the legislature (the *Sejm*). The president is elected by popular vote every five years.

Polish voters elect a bicameral legislature consisting of a 460-member lower house (Sejm) and a 100-member Senate (Senat). The Sejm is elected under proportional representation according to the d'Hondt method, a method similar to that used in many parliamentary political systems. The Senate, on the other hand, is elected under an unusual plurality bloc voting method where several candidates with the highest support are elected from each

¹⁸ Thym, “Parliamentary control of EU Decision-making in Germany” in *National Parliaments and European Democracy*, at p.54 (Europa Law Publishing 2007)

constituency. With the exception of ethnic minority parties, only candidates of political parties receiving at least 5% of the total national vote can enter the Sejm. When sitting in joint session, members of the Sejm and Senate form the National Assembly (the Zgromadzenie Narodowe). The National Assembly is formed on three occasions: when a new President takes the oath of office; when an indictment against the President of the Republic is brought to the State Tribunal (Trybunał Stanu); and when a President's permanent incapacity to exercise his duties due to the state of his health is declared.

The judicial branch plays an important role in decision-making. Its major institutions include the Supreme Court of Poland (Sąd Najwyższy); the Supreme Administrative Court of Poland (Naczelny Sąd Administracyjny); the Constitutional Tribunal of Poland (Trybunał Konstytucyjny); and the State Tribunal of Poland (Trybunał Stanu). On the approval of the Senate, the Sejm also appoints the Ombudsman or the Commissioner for Civil Rights Protection (Rzecznik Praw Obywatelskich) for a five-year term. The Ombudsman has the duty of guarding the observance and implementation of the rights and liberties of Polish citizens and residents, of the law and of principles of community life and social justice.

Commentators have noted that the committee system has taken on a central role in law making:

“Available data on the committees’ operations since 1989 also show a high degree of overall activity. During the tenth term [of the Sejm] the 23 full permanent committees held a total of 2,188 sessions. Their presides met 769 times and the subcommittees 1,052 times...The committee system involves a majority of deputies in specialized roles and affords them the opportunity to develop expertise.”¹⁹ This reliance on committees has enabled the legislature to act on a significantly higher number of draft laws than was historically the case.

Unlike the UK system, the Polish committee system runs in parallel to ministries so that law making issues concerning a ministry are referred to a legislative committee with the same area of expertise. One exception is the Committee on Legislation, which reviews draft laws of a number of different subjects. The Polish committees average between 25 and 40 members and in size and number resemble other European legislatures. Many of the committees are very active, and have been the main force in drafting and reviewing draft laws. Even with a shortage of lawyers, economists and other staff support, the Legislative Committee Annexed to having met 456 times in 18 months, examining 225 draft laws of which 122 were adopted by the full legislature. The Economic Policy, Budget and Finance Committee is said to have met 231 times and examined 77 draft laws. However, not all

¹⁹ The New Parliaments of Central and Eastern Europe, p. 74.

committees have been as active. Resource shortages, especially with respect to support staff, have been especially noted in the preparation of draft laws²⁰

E. RUSSIA²¹

According to several parliamentary/presidential scholars, the 1993 Russian Constitution created a presidential republic with a strong executive power, at least in part resembling the French Fifth Republic.²² Russia follows the presidential system with a strong executive who has significant power to issue decrees. The State Duma (the lower chamber of the Russian legislature) elected on 12 December, 1993 was the only parliament to that date that had a duration greater than its first term²³.

A presidential regime types has been categorized as one:

“Based on the ideal of maximum separation of powers and full and exclusive responsibility of the cabinet to the president. We define premier-presidentialism as a type in which the president has certain significant powers, but the cabinet is responsible only to the assembly. The third type is presidential-parliamentary, a common type with shared—or confused—responsibility over cabinets between president and assembly.”²⁴

The Russian legislature

The legislature is the Federal Assembly, which is made up of two chambers: the State Duma (lower house) and the Council of the Federation (upper house). The Duma is the principal decision-making entity, and the Council serves on a part time basis.

Dumas deputies are full time, and elected to four year terms. Both houses elect their own officers and decide on their rules.

All federal laws must first be submitted to the Dumas prior to adoption by majority vote, and then they go to the Council and the President for their consideration. Individual deputies or the Duma as a whole may introduce draft laws, as may the President, the

²⁰ The New Roles of Parliamentary Committees, pp. 105-07, 115.

²¹ “The breadth and depth of change in Russian politics in recent years rule out tidy explanations of the development of Russia’s legislative institutions.” See Remington and Smith, “The Early Legislative Process in the Russian Federal Assembly” in “The new Parliaments of Central and Eastern Europe” at p. 163.

²² Trowel, p. 34

²³ Troxel, PARLIAMENTARY POWER IN RUSSIA, 1991-2001, p.2 (2003)

²⁴ Troxel, supra, at p. 7., citing Shugart and Carey.....

Government, certain legislative bodies within the federation and the Constitutional and Supreme Courts.

The Duma may also appoint and dismiss the Chairman of the Central Bank, a Human Rights Commissioner and the Chairman of the Accounting Office. It has the power to approve the President's nomination of Prime Minister, but the President may dissolve the Duma and call new elections, if the Duma rejects his choices three times.

The Duma may impeach the President, and may vote "no confidence" in the Government by majority vote. If the Duma votes "no confidence" twice in three months, the President may either dismiss the Government or dissolve the Duma and call for new elections.

Action on Draft Laws

The Duma approves laws by majority vote and sends them to the Council, and the Council has 14 days to approve it by majority vote. If the Council refuses to approve, the Duma may override by a two-thirds vote. (Deputies do not need to be present to vote).

After the Duma and the Council act, the President has 14 days to act. If the President vetoes a law, the Duma and the Council may override with a two thirds vote.

Some scholars expect that certain features of the law-making process of the former Supreme Soviet of the Soviet Union will be carried forward to the legislature. These features include multiple readings of draft laws, reliance on working groups and commissions to draft laws, and trying to obtain approval of draft laws from a broad range of persons expected to be affected by the draft law. The most important similarity with past practice is the use of working groups and expert commissions for drafting the details of draft laws. Certain of these are formed to draft a law on a particular subject where the committee would like to introduce legislation. The majority, however, are by expert groups which study draft laws prepared by others (e.g., the President, government of an individual member of the legislature) in order to reach a consensus on the final draft.²⁵

Structural (non-constitutional) factors

Non constitutional factors, such as committee structure, duration of sessions, and length of term in office are among the structural factors that affect the role of the legislature in the law-making process. The Duma decided in 1993 to have 23 permanent standing committees, from 10 to 43 members each. These committees, whose membership and

²⁵ See Remington and Smith, *supra* note 32, at p. 179

Chairs can significantly affect the policy outcome, debate draft laws prior to submission to the entire house, and any amendments are studied by the committee prior to

Submission as well. This gives the Duma the ability to decide on policies or to delay decisions by referrals to more committees prior to the full house's vote.

While the Supreme Soviet of the former Soviet Union met infrequently (twice a year for a two day session), the Duma is a full time body and met more than six times per month between 1996-98. The Duma deputies were expected to be in the Duma during the second and fourth weeks of the month, and to be at their home constituencies during the first week.

Although the President and Government have the power to submit draft laws, it is the Duma that decides which committee to submit the draft to. The committee then decides when to submit to the plenary session, which then requires that the draft go through three readings. Thus the Duma has significant power to establish the legislative agenda.

The President may, however, issue decrees in many policy areas. These decrees cannot contradict existing laws, and become void if the Duma adopts a law on the subject

.F. United Kingdom (U.K.)

The U.K. is an example of a unitary parliamentary system with a ceremonial monarch. There is a bicameral legislature, consisting of a lower house (the House of Commons) and an upper house (the House of Lords). The U.K. originated what some refer to as the "Westminster system", which is the name of the way legislatures operate in a number of countries, all of which at one time or another were part of the British Empire.²⁶ A form of this system is now used in India, Australia, Canada, as well as Jamaica, Singapore, South Africa and Malaysia. These countries all have bicameral legislatures, meaning they have a lower house (in which the Prime Minister must be able to hold a majority of the votes) and an upper house. The composition of the two houses varies from country to country, but they all make laws in similar ways.

There are generally two legislative assemblies under the Westminster System, an Upper and a Lower House. In the U.K. these are known as the House of Lords and the House of Commons respectively. Draft laws may be proposed in either house, and the majority of them are introduced by members of the executive government (the "Cabinet") who are themselves elected representatives who sit in the legislature²⁷. but some time is also

²⁶ Noun, How a bill becomes law in the Westminster System (everything2.com)

²⁷ As opposed to the American "Cabinet", who are appointed by the President and approved by the Senate but not allowed to be members of the legislature.

devoted to draft laws introduced by members of the legislature individually. This time is limited because in historical times, it was common to block effective government action with a long list of private member's drafts that consumed all of the legislature's time.

The draft law is first read in the house it was introduced into, which is usually the lower house. The first reading of the bill is only a formality, and is the occasion of the publication of the government's explanation of and case for the draft law. It is then the job of the members of the legislature to consider the problem the bill is designed to solve and how effective a job it does.

Their first opportunity to debate the draft law comes at the second reading of the draft, where a vote on its general principles is taken after a debate. If the government is beaten on this vote then it is considered a major setback. In the Lower House, such a defeat would represent a failure to carry its own party (or in rare cases coalition parties) with it. To avoid this in cases where it is considered likely to happen, the executive government may notify legislators that members of the party are expected to act a certain way when voting on a particular draft law. Such notifications are called "whips", with one line" whips indicate they may vote as they wish, whereas "two line" whips allow them to absent themselves if they cannot bring themselves to vote positively. The "three line" whip compels them to vote positively, although a large scale revolt by legislators who object to the executive's position might cause make the government to withdraw its draft.

If the draft law passes this stage, it's ready for committee deliberation. At the committee stage the government can strengthen its draft law, and make concessions based on the outcome of earlier debate. The government's priority is to make sure the draft comes out of the committee in a form that will be ultimately passed by the house, whereas the opposition may seek to weaken the draft or change it significantly. It may undergo large-scale change at this stage, and when it emerges its amendments are considered by the entire house. Then the third reading occurs, at which point a final debate and vote occurs on the draft. In the House of Lords it may be amended further at this stage, whereas in the House of Commons no further amendment is permitted.

The draft is next sent to the other house. The Commons has the power to tell the Lords that they will not act, in which case the draft fails and is delayed indefinitely. In the case where the Commons sends the draft to the Lords, however, the Lords do not have the absolute power to reject the draft. They can reject most bills from the Commons initially, but the Commons may force action in a year.

The house to which the bill is passed can propose amendments to the bill and put it through committees, then pass it back. The Lords may propose amendments so long as they are not against the spirit of the bill. The bill may now pass between the two houses several times

as amendments are proposed and rejected. The Parliament Acts may be invoked if agreement is not reached, but if this action is not considered worthwhile, the draft will fail.

Once both houses are agreed on a final version of the draft, it becomes law. The final step is for the draft to gain the consent of the monarch, (or the assent of the Governor-General in the case of Commonwealth states). The monarch or their representative Governor-Generals almost always act only in accordance with constitutional convention and the advice of the Prime Minister. Today, this step is almost entirely ceremonial, although it is a necessity before a draft becomes a law.

G. USA

The USA follows a federal system, with certain areas regulated by the federal government in Washington DC, and other areas reserved to the legislatures of the fifty states. In areas over which the federal government has acted, especially in the area of commerce among the states, the states are not permitted to adopt conflicting laws. In general, if a state law is in conflict with a federal law, the state law will be invalidated.

1. Federal System

The federal legislative branch is bicameral, with an “upper house” (the Senate) and a “lower house (the House of Representatives). All are considered to be full time, and their compensation level is set by them. All outside activities should be annexed and conflicts of interest are subject to review by ethics committees of each house.

It requires the action of each house to adopt a law. If draft laws of each of the two houses are not the same, a joint committee of the two houses will meet and resolve the differences before sending the draft law to the President for signature (or veto).

The role of Committees in the US system is extremely important. The US House of Representatives has approximately 25 committees, and more than 100 subcommittees, each with support staff and access to specialists in a wide number of areas. The Senate has approximately 20 committees and more than 70 subcommittees, also well supplied with staff and expertise.

Offices of Legislative Counsel (Senate and House of Representatives).

Both houses of the US system have specialized offices of lawyers who assist in preparing draft laws. Dozens of lawyers and administrative staff provide legislative drafting services for the Committees and Members of the United States Senate and House of Representatives and their staff members. The lawyers are intended to be strictly nonpartisan and do not

make policy. Their role as professional law drafters is to turn every request by a legislator into clear, concise, and legally effective legislative language.

The Offices have a long history of providing professional services to both majority and minority parties.

Staff Support to Committees, subcommittees and individual legislators

The staff support of the legislature is very significant. There are professional lawyers, accountants, IT specialists as well as specialists in the environment, health, finance etc. that support both individual members of the legislature, all subcommittees and all committees. While it is difficult to know the exact number of legislative support staff, the total number of support staff for the 100 Senators and 492 members of the House of Representatives certainly exceeds 20,000.²⁸ Individual Senators may have from 20 to 30 persons, with a variety of different specialties (law, agriculture, finance, tourism etc) supporting their law and policy making efforts. Individual members of the House of Representatives may have between 10-20.

2. State legislatures

While all 50 states have legislature that draft laws, the potential for confusing, conflicting laws, especially in the business area, is significantly reduced by use of “Uniform Laws”. Many different law reform groups, consisting of private lawyers, judges, professors and other ordinary citizens, meet on an ongoing basis to review both federal and state laws and consider if changes need to be made to improve the laws. One such group is the “Commission on Uniform State Laws” which periodically submits new draft laws that the state legislatures are encouraged to adopt.

The state legislatures are generally modeled after the federal system, with a bicameral legislature and the Governor in place of the president. Tension between the legislature and the executive is therefore much more possible at this state level than in the case of parliamentary systems. Similarly to the federal level, the technical aspects of the law drafting process at the state level is usually assisted by means of a “legislative counsel’s office”. This office will consist of one or a number of well-qualified lawyers whose sole responsibility is to assure that every draft law is well-researched for consistency with the constitution and other laws and is in a form that is uniform in all respects and consistent with other laws. The legislature of the state of Texas, for example, has over 50 lawyers and 45 typists of various legislative agencies working on drafting laws.

²⁸ Between 1958 and 1982, the number of Senate staff grew from 2,500 to 7,000.

State legislatures use the committee system, with committees having the right to hold public hearings on draft laws as well as to conduct oversight or supervision over executive agencies.

The role of lobbyists

Any discussion of law making in the US would be incomplete and misleading without reference to the role, both negative and positive, played by lobbyists.

While public participation is considered a positive feature in all countries surveyed, a related feature, the “lobbying” by private interests, has a much more controversial reputation. At worst, lobbying by persons whose private businesses or other interests may be affected by draft laws being considered by the legislature, may subvert democracy and be considered little more than corruption or covert bribery.

Role of the Courts in assuring quality and consistency of the laws.

While the above mechanisms of hearings, legislative counsel and strong staff support are the central means that the legislature uses to assure the quality and consistency of the laws, it is very important to note that most supervision and control of quality and consistency in the US is with the court system at both federal and state levels. If, despite the care of the legislature and its use of all of the mechanisms discussed above, a law is adopted that is inconsistent with a higher law, or with the constitution, a court may invalidate that law. If, for example, an administrative regulation (a form of LND) of a local agency is inconsistent with another administrative regulation, or is beyond the power of the agency to issue, a citizen who has been negatively affected by that regulation may ask the court to invalidate it. In this way, the laws are improved as they are used, and as the citizens who are affected by the laws discover weaknesses or inconsistencies that were not discovered by the legislature or by any other law-making agency. While the legislature and other “suppliers” of the laws try to assure that their quality and consistency are high, the “users” of the law have an important mechanism to participate in the process. Without this mechanism, many weaknesses and flaws in the laws would not have been discovered and corrected.

ANNEX G

REGULATORY ASSESSMENT CHECKLIST

Section 1: Contact Details of the Authority Issuing the Legislation

Section 2: Explanatory Note--Background Description

Question 2.1: What are the problem(s) or issue(s) to be addressed by this draft legal instrument?

Question 2.2: How are those problems or issues currently addressed?

Question 2.3: Why is government action required?

Section 3: What difference is draft new/amended legislation expected to make?

Question 4: Why is regulation preferred to non-regulatory government action?

Section 4: Compliance of the draft legal instrument with international obligations

Question 4: Is the draft instrument compliant with obligation under World Trade Organization, ASEAN Economic Community, or other international treaties or conventions Lao PDR is party to?

(Please mention the obligation, and describe which obligation is aimed to be met.)

Section 5: Draft Legal Instrument Details

Question 5.1: Why is this draft legal instrument the best answer to address the problem(s) or issue(s) identified in 2.1?

Question 5.2: What is this draft legal instrument trying to achieve? *(focus on the objective rather than the means to achieve it)*

Question 5.3: How is this draft legal instrument to meet the objective determined under question 5.2? *(e.g. increased government accountability, greater ministerial efficiency)*

Question 5.4: How is this draft legal instrument expected to interact with other existing legislation applicable?

Section 6: Compliance and Other Impacts on Business, Consumers or Government

Question 6.1: Will any costs be imposed or reduced on business or consumers due to this proposal? Please detail briefly

Section 7: Expected Budgetary Impact

Question 7.1: What are the expected impacts of the draft legal instrument on State revenue?

Question 7.2: Are there any compliance, administration or enforcement costs or benefits on government due to this proposal?

Section 8. Consultation

Question 8.1: What consultations have been conducted so far in the preparation of this draft legal instrument? *(Please mention the persons/organizations/firms that have been consulted)*

Question 8.2: What are the outcomes of these consultations?

Question 8.3: Were there any major objections to the new/amended legal instrument? How were these objections addressed?

Section 9: Additional Information

Question 9: If necessary, please provide any additional information (no more than two paragraphs)

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