



Law Drafting

A) Introduction:

To draft a law is a very difficult task. Law drafting can be compared to the work of an engineer who constructs a big machine: It takes a lot of planning and organizing of little technical details until this machine is finally able to run smoothly and well. If not all parts of this machine fit together well or if their function is not clearly defined or if the construction plan does not respect the basic principles of nature and physics the machine will suffer from internal or external tensions and will break.

Only trained and experienced legal experts will be capable of constructing a well working new law. To minimize the dependency of the Cambodian legislation on foreign experts in this field and to empower more Cambodian jurists to draft the laws of their country by themselves some law drafting courses have been conducted and related **hand books on law drafting in Cambodia** have been published in recent years²⁰.

The following text leaves it to the study of these handbooks and to the participation in such specialized law drafting courses to gain expert law drafting knowledge.

This study text book wants to give an overall view of the main difficulties of law drafting and some insight into the most common mistakes which are currently still made when laws are drafted. Thus this text wants to **enable members of civil society in Cambodia at least to comment new draft laws** in a coordinated, profound and critical way and to come up with some proposals for improvements. This includes a basic understanding of the problems and difficulties related to the different parts of a law and their functions.

B) Basic Contents of a Law:

As already mentioned in the chapter on the “Rule of Law” the main function of a law is to solve a problem which arises from various conflicting human rights of the different members within a society. To provide a practicable conflict solution any law must provide answers on four basic questions:

- What is the **scope** of the law regulation?
 - who are the addressees of the law?
 - what fields and subjects shall be regulated by the law?
 - what is the time frame for the law enactment?
- What **rights and duties** are stipulated by the law?
- Which **executive body** are **implemented** by the law?
- What are the **sanctions** in case of violation of the law?

²⁰ see Konrad Adenauer Foundation: “Handbook on Drafting Law and Legislation” and Patricia Baars, “A Practical Guide to Legislative Drafting” (2001 - in Khmer and in English)



Therefore every law has at least four basic chapters or parts that deal with these questions:

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I) Goals and Definitions

At the beginning of most law texts normally there is one part that includes a description of the goals of that law followed by a description of its scope. In this part of the law one also finds definitions of the addressees and of the covered fields and terms of the law regulation.

II) Rights and Duties (Permissions and Prohibitions)

In the core of the law text provides detailed regulations about duties and rights of the affected persons. This part contains prohibitions for the addressees but also permissions for them (exceptions of the prohibition). This part of the law is one of the most important parts with respect to human rights.

III) Executive Agency and Administration Process

A further part regulates which government agency has to implement and control the law. This part includes the rights and duties of the government body. It either refers to already existing government branches or it explicitly creates a new government agency.

Here one also finds authorizations for the exercise of special powers as well as legislative delegations of rulemaking authority to the executive and maybe even detailed regulations about budget and finances of this executive branch. This part may also include specific regulations about the administrative process and its judicial control.

IV) Final Regulations

The last part of a law text usually covers the following topics:

- Penalties and sanctions for specific types of violation of the law.
- Time frame for the law to enter into effect and transitional regulations.
- Abrogation or adaptation of other conflicting laws.