

ICD NEWS

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Contributions

LEGAL TECHNICAL ASSISTANCE OF JAPAN AND FUTURE PROSPECTS

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Ministry of Foreign Affairs

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Takayoshi YOSHINO, Former President, Osaka District Court

LEGAL ASSISTANCE AND HUMAN RESOURCE DEVELOPMENT

BY NAGOYA UNIVERSITY - ITS TEN- YEAR HISTORY AND FUTURE

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GREETINGS FROM THE ICD DIRECTOR

One-and a half year has passed since I assumed the position of the ICD Director in June 2012. On this opportunity, I would like to brief on a few main developments surrounding the ICD during that time.

First, the national policy entitled “*the Basic Policies on Legal Technical Assistance*”, which had originally been issued in April 2009, was revised in May 2013. Relevant Ministries including the Ministry of Justice participated in the revision process since late 2012. The ICD made substantial input into the revision which was largely adopted. In addition to the traditional focus of assistance since mid 1990’s on legislative drafting and capacity building in legal and judicial sectors, the revised policy mentions strengthening the assistance in reforming and refining business-related laws, in response to growing needs in recipient countries as well as recognizing the benefit of such assistance for Japanese enterprises and investors. This is also to support the accelerated endeavors in the ASEAN countries towards their economic integration expected in 2015. The revised policy also reflects the change of prioritized countries in view of relevant factors such as their needs, the history of assistance, the diplomatic and economic impacts of assistance on Japan. The revised policy is supposed to guide the direction, scope, and priorities of the ICD’s activities in the coming years.

Second, the first JICA project for Myanmar in this field entitled “The Project for Capacity Development of Legal, Judicial and Relevant Sectors in Myanmar” was successfully negotiated. An official agreement between the two Governments was reached by way of signing Record of Discussions in August 2013. The project has two main counterparts, namely the Union Attorney General’s Office and the Supreme Court, and envisages a broad range of activities from the assistance in legislative drafting and scrutiny to capacity building of judges, prosecutors, and other legal professionals. The ICD, in tandem with JICA, has put in substantial resources for the preparation of this project since mid 2012. What contributed greatly to the speedy formation of mutual understanding and trust were the recent visits of two top leaders of Myanmar’s legal and judicial sectors to Japan: the visit of Myanmar’s Chief Justice U Htun Htun Oo in November 2012 and the visit of Myanmar’s Attorney General Dr. Tun Shin in June 2013. At the ICD, we are very pleased to be able to start a new and ambitious project with our new partners.

Third, there has been a remarkable increase in the number of occasions when legal technical assistance is mentioned in major national policies of the Japanese Government including *Japan Revitalization Strategy* issued in June 2013. There are also increasing opportunities for the ICD than ever before to participate in inter-Ministerial meetings or provide information for debate in the Diet

on issues relevant to the ICD. These phenomena appear to arise from the growing awareness by various stakeholders of positive recognition of past and ongoing projects in this area, accelerating efforts by the Japanese Government with a view to strengthening the rule of law in the international community, and public demands to strategically direct the Japanese ODA resources to projects which benefit both Japan and recipient countries together. The ICD has been doing its best to raise awareness and promote support by a wide range of public and private sectors and civil society.

These recent developments are not distinct but are mutually affecting in a positive way. The ICD would continue to fully utilize its limited resources to remain the spearhead of these developments, while taking steady steps in the implementation of both traditional and new areas of assistance in an equally effective, efficient, and sincere manner. I would cordially ask you to provide it with your continuous support and insights.

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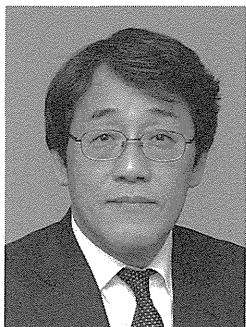
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- I. CONTRIBUTIONS -



LEGAL TECHNICAL ASSISTANCE OF JAPAN AND FUTURE PROSPECTS

Kunio Umeda

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A book I was reading the other day about China read, “In China, usually major cases are decided according to the orders from the authorities, and ordinary cases are decided depending on the amount of money the judge receives from the parties concerned. Only minor cases are tried according to the law. The judiciary of China is in the hands of the Communist Party and for citizens it is simply a bodyguard of the Party.” This statement may indeed reflect the reality in China. In fact, even in cases where an individual files a lawsuit against corruption by local executive officers or requests compensation in relation to land seizure, he/she may not expect a fair trial. Consequently, mass-protests have become the only resort to raise the issue of injustice.

I myself worked at the Embassy of Japan in Beijing from January 2007 until August 2010. During my tenure in China, Japanese citizens and companies found themselves involved in various problems. I recall with nostalgia that my colleagues at that time - Secretary Ueno (originally a public prosecutor), Secretary Kamakura and Secretary Mieno (originally judges)- supported with irresistible force Japanese citizens and companies in China who were involved in “typical cases in China” which seemed to occur one right after the other. For example, there was a case in which Japanese business people were kept captive by their Chinese joint venture partners. In another case, a Japanese shop owner was attacked by mobs as he resisted an eviction order. In a litigation in which a Japanese major company was involved as the defendant, the case had been pending for several years after the trial was concluded, and suddenly, a judgment of guilty was rendered against the company without any prior notice. By examining the background of this sudden decision, it was found that a Bureau of the Communist Party had ordered, through the Supreme Court, that the court in charge promptly render a judgment of guilty against the Japanese company.

As you can find in these cases, in China, while a considerable amount of laws have been established,

complaints have accumulated among Chinese people against the national governance in which injustice and corruption cannot be redressed through the judiciary, and as a result, it has caused rising social tensions. In other words, while Chinese economic and military power has reached the level of the major powers, questions on whether a “fair society” can be realized through the law has come to light as an overriding issue which could shake the foundations of Chinese society.

Recently there is a view that, comparing the eye-opening economic growth of China with the economic quandary in the West and Japan, the Chinese-style governance may be superior to the liberal democratic system; or that the Chinese-style governance or economic model may serve better for nation-building in many developing countries. However, when you look at the reality in China, you may discover that under a form of governance which lacks the independence of the judiciary and the rule of law, it may be difficult to realize a fair society. It has become more and more important for the national interests of Japan to establish universal values, including freedom, democracy and human rights, in as many countries as possible. Accordingly, legal technical assistance which contributes to the above purposes is also gaining in importance.

It has been almost 16 years since Japan officially commenced legal technical cooperation projects. Assistance was originally initiated to Vietnam, and with the help of people concerned, the number of recipient countries has gradually increased. Currently, ten countries in Asia receive Japanese assistance in relation to narrowly-defined legal assistance projects, including those for the establishment of economic laws and mediation system. If administrative capacity-building projects are included, nearly 30 countries are involved in cooperation projects with Japan. In addition, if the training and dialogue programs are also counted, Japan cooperates with even more countries. Japanese legal technical assistance has been improving, not only quantitatively but also qualitatively.

In April 2009, the “Basic Policies on Legal Technical Assistance” were formulated. These basic policies hold, as the purposes of legal technical assistance: 1) the consolidation of the rule of law and the establishment of sound governance in developing countries, through sharing of universal values; 2) the creation of a favorable environment for sustainable growth and the guarantee of adherence to global rules; 3) the sharing of Japanese experience and systems, strengthening of economic partnerships between Japan and developing countries, facilitation of economic activities by Japanese businesses, etc.

In Myanmar which is currently drawing the most global attention, endeavors have been made actively towards democracy, economic reform and national reconciliation since the initiation of the new government in March 2011. In order for this movement to become well-rooted in society, various forms of cooperative initiatives have already begun between Myanmar and Japan, with the

aim of consolidating the rule of law and improving governance, as mentioned in the above “Basic Policies.” The establishment of laws which appropriately serve a market economy is also critical.

Aung San Suu Kyi, a former Nobel Peace laureate and currently a lawmaker, has also reiterated since last year that the rule of law deeply ingrained in society is of foremost importance in the move towards successful democratization. Since August 2012, she has acted as the chairperson of the “Committee for the Rule of Law and Stability.”

In Indonesia and Vietnam which have long received legal technical assistance from Japan, steady results have been achieved in improving their legal systems. However, there still remain needs for legislation of economic-related laws and improvement of legislative guidelines. Thus, assistance needs to continue, especially in the field of legal enforcement and operation.

For example, in Vietnam, after completion of an assistance project for drafting substantive laws, assistance focus has been shifted to legal operation since 2007, under the Project of Technical Assistance for the Legal and Judicial System Reform. In the case of Bangladesh, on the other hand, consolidation of governance is strongly required as a foundation for accelerating inclusive economic growth and for eliminating poverty. In response to this need, Japan has provided assistance with an emphasis on the improvement of administrative capacity.

One of the characteristics of Japanese legal technical assistance is to dispatch legal experts to recipient countries. They maintain close communications and work in cooperation with counterpart organizations to provide assistance which appropriately corresponds to the reality in the recipient countries. This is done having respect for their culture, history, development status and ownership.

Japanese assistance is not limited to simply the drafting and amending of laws, but is of all-inclusive nature, covering the improvement of foundations for proper enforcement, legal education and individual capacity-building. As might be expected, Japanese assistance has been given high marks by the recipient countries. This would not have been possible without an active support by the Japanese Ministry of Justice, as well as by the scholars and legal professionals involved. I would like to take this opportunity to extend my sincere appreciation to everyone who has supported Japanese legal technical assistance.

Over the past 15 years, the entire national budget for development aid has been halved. Therefore, assistance must be provided in a more efficient and strategic manner to achieve equal or even better results. For this purpose, in the formulation and implementation of individual assistance projects, an all-Japan collaboration - which includes not only the public sector (the Research and Training

Institute of the Ministry of Justice, related ministries and JICA), but also the private sector comprising of the Japan Federation of Bar Associations, economic organizations and the academia - is deemed essential. We would like to ask for your continuous support and guidance going forward.



MY LITTLE BUT MEANINGFUL EXPERIENCE IN LEGAL TECHNICAL ASSISTANCE

Takayoshi Yoshino

Former President

Osaka District Court

It began with a phone call. Approximately one month after I resigned from office, I was relaxing at home, immersing myself into the filing of documents and other things which had piled up over the years. On one of those days, I received a phone call from Ms. Mikine Eto, then Professor at the International Cooperation Department (ICD) of the Research and Training Institute. I had met her only once in a meeting, during which time I had told her I would be available after retirement to help the “legal technical assistance” provided by the ICD. I had also had opportunities to talk with Judge Mitsuyasu Matsukawa, who had been seconded to the ICD from the court as a professor, and Judge Yasuko Miura, currently serving the ICD as a professor. I had told both of them the same thing. Professor Eto called me precisely to ask for help, and requested that I visit Mongolia for a week to serve as a lecturer (short-term expert of JICA) for a local seminar scheduled in the beginning of October. The seminar was being organized as part of assistance activities within the framework of the Project for Strengthening Mediation System in Mongolia. The first thing which came to mind at that moment was not the content of the seminar but the issue of language. Immediately, however, I felt relieved to hear that there would be an interpretation service in the seminar (giving it a second thought, it seemed quite natural). As the seminar was three months away, I accepted the request without knowing all the details. I replied that I would consider it positively (a Japanese typical and bureaucratic answer), and just asked for relevant materials for the time being.

It was not as though I had had no prior involvement in legal technical assistance. Looking back on my career, when I was the Director of the Litigation Division in the Osaka Legal Affairs Bureau in 1995, I had met a group of Vietnamese judicial officers who were visiting the Bureau in the course of a seminar on civil-related laws they were attending. Moreover, in around 2005, I had the opportunity to talk, in the capacity of a senior civil judge, about the overview of the Civil Affairs Division of the Osaka District Court, to Uzbek judicial officials who were participating in a study tour to Japan. That information was necessary for them to understand the actual situation of the Bankruptcy Division of the Osaka District Court. On other occasions, when I was serving as the President of the District

Court in Kyoto and Osaka, I received courtesy calls by legal professionals from abroad, who were participating in training courses in Japan. Thus, I had a certain level of interest in legal technical assistance activities.

As mentioned in the beginning of this paper, I was requested to give lectures in a training seminar, which was being conducted as part of the activities for the Project for Strengthening Mediation System in Mongolia. The Project was in its phase I until November 2012, at which time the mediation system was being introduced in two pilot courts in the district of Bayanzürkh, Ulan Bator; and in Darkhan, the second biggest city in Mongolia. In the final stage of its first phase, I took charge of part of lectures for judges and prospective mediators. For your information, the Mediation Law was officially put into force in April 2013 in Mongolia, and through which all courts across the country are required to conduct mediation. With the introduction of this new system, Phase II of the Project was to be commenced from spring in 2013.

Regarding details of the local seminar, these will be reported by other persons involved, so I would like to discuss my personal experience in Mongolia as a JICA short-term expert.

It had been 19 years since I had last traveled abroad and so I had an extremely exciting week in Mongolia. In spite of a large commotion (A typhoon hit Japan on my departure day, so I had to change my flight. My family ridiculed me saying that I had a real bad luck being hit by a typhoon, on the first day of my first travel abroad after a long time). In Mongolia, on the other hand, I found myself fortunate to be supported by many people, including Attorney Oka, a JICA long-term expert, who helped me in every aspect including the arrangement of transportation. Thanks to him and Attorneys Masanori Tanabe and Michiyo Sakai, who also participated in the seminar as short-term experts, I thoroughly enjoyed my stay in Mongolia.

In addition to the incomparable experience of giving lectures twice in the local seminar, it was truly meaningful to visit a court, a bar association, university, etc., and meet judges, court officials, practicing lawyers, university officials, etc. On these occasions, I learnt several things that Japanese society should follow, including the fact that women account for the majority of judges and court officials. I was especially impressed to learn that, when I visited the Research and Education Center for Japanese Law of Nagoya University in the National University of Mongolia, Japanese law is taught thoroughly in Japanese in the said center. It was also amazing that Mongolian students not only were fluent in Japanese, but also had a high level of understanding of difficult Japanese legal concepts. It was explained that Nagoya University had engaged in the education of Japanese law since early times in developing countries, including Mongolia. The foresight and achievements of the university was truly to be admired and I felt honored to call Nagoya my original hometown,

where the university is located.

This experience made me realize: the difference in the legal systems and practices between Japan and Mongolia; that when explaining how to interpret Japanese law and actual legal practices, it is necessary to be well versed in every aspect of Japanese law; and that when interpreting Japanese law, it is crucial to have a deep understanding of foreign law.

Subsequently in November last year, I was given an opportunity to participate for one and half days in the training seminar for Indonesian judges held in Japan, as well as attending the “Annual Conference on Technical Assistance in the Legal Field” held by the ICD. Through these experiences, I have garnered more knowledge about various activities of legal technical assistance.

Needless to say, the mediation system in Japan has a lengthy history of over 90 years since its enforcement in 1922. One year later, when the Great Kanto Earthquake occurred in 1923, the use of the mediation system increased drastically. Since then, thanks to the efforts of stakeholders, mediation has become well-established as an effective resolution alternative to civil disputes, as if it were one of a pair of wheels, with ordinary litigation proceedings on the other.

While several reasons may be listed from various perspectives for the establishment of the mediation system in Japan, I would say that it is attributed to the long Japanese tradition of respecting “harmony through discussions.” Let me cite an old example of this tradition.

The Seventeen-article Constitution of Japan, which is said to be authored by Prince Shotoku (in 604) (Recently there is a theory that the said Constitution was enacted in later years. Some scholars even question the very existence of the Constitution, and there are several theories which question the existence of Prince Shotoku himself) is one of the earliest moral dictatorial documents in history. In its 1st article, which begins with the famous proposition: “Harmony is to be valued...,” it is provided that: “when those above are harmonious and those below are friendly, and there is concord in the discussion of business, right views of things spontaneously gain acceptance. Then what is there which cannot be accomplished (modern translation).” This provision is thought to be the proof that the belief of finding solutions and resolving disputes through discussions has deeply taken root in Japanese society since ancient times.

In other countries, on the other hand, people are said to be unfamiliar with mediation. In Mongolia, the mediation system itself has not existed and compromise during court proceedings has not been used very often. It appears that this situation is common in other Asian countries as well. The reasons

for the lack of popularity for mediation are unclear, and may be different from country to country. Some say that in countries where courts and the judiciary in general are not highly trusted, it may be easily suspected that compromise and mediation proceedings can be used for bribery. Thus, it is one of the factors discouraging judges to recommend negotiation to parties.

As a matter of fact, we have no right to ridicule this situation in developing countries as something irrelevant to us. A well over a thousand years ago, the 5th article of the above-mentioned “Seventeen-article of Constitution” provided that, “If the man who is to decide suits at law makes gain his primary motive, and hears causes with a view to receiving bribes.” Thus, the article deplored those officials in charge of receiving lawsuits as seeking their interests through hearing persons who bribed them. In the legal history, it is also widely known that trials have become open to the public to prevent judges from receiving bribes, in full view of the public, and to ensure fair and just court proceedings.

In order to establish the mediation system in a country, where mediation has never been used as a dispute-resolution method, the royal road must be to improve the status of the judiciary and courts, though this may seem to be the long way around. To be specific, it is necessary to improve the capacity of judges and mediators, and at the same time, cooperation with attorneys, who serve as representatives of parties, is essential.

In Mongolia, however, the number of practicing lawyers is not sufficient in comparison to the number of cases. Above all, it is difficult to say that lawyers have sufficient understanding towards the mediation system, especially in provincial areas. It is therefore desirable to gradually build the number of practicing lawyers with experience in successful mediation.

As mentioned above, when building a new legal system, including the mediation system, in other countries, it is inappropriate to directly “export” the Japanese system or Japanese legal operation, and it is instead necessary to “customize” it to the reality of the recipient country.

In Japan, since about 10 years ago, the court reform has been ongoing as part of the justice reform, and assistant judges have been encouraged to experience other types of jobs, including working in law offices or private companies. Taking advantage of this system of “experiencing other jobs,” the number of junior judges who aspire to work in the field of legal technical assistance is increasing. It appears that even young lawyers have more and more interest in legal technical assistance activities for developing countries. This is not because legal technical assistance has a cross-cultural appeal for its “international characteristics” (Different from our generation, foreign countries are nothing new for young legal professionals. Therefore, it is unimaginable that the younger generation [who have more experience traveling abroad] becomes interested in legal technical assistance only out of the

simple motive of traveling), but young people find it rewarding and gain a sense of accomplishment through it.

Moreover, in Japan, courts or the judiciary in general have focused on learning from the legal systems of advanced countries, and have not intended to learn the legal systems in developing countries, nor had the idea of actively interacting with them in the legal field. Needless to say, in the modern context it is meaningful to deepen our relationships with developing countries, not only for political reasons. Even though I am less experienced in this field, I have come to realize that, if we can transmit the Japanese experience in the building and operation of its legal system, and furthermore, if the number of countries increases which share common legal bases with Japan, it is much more beneficial for Japan than simple economic cooperation.

In the JICA Office in Ulan Bator, it was explained that a lot of elder people like me are involved in international cooperation in various fields. Legal technical assistance, along with steady and continued voluntary activities, is very significant as it contributes to Asia and other broader regions of the world.

Lastly, based on my limited but valuable experience, I would like to enumerate points to consider which have come to mind, when engaging in legal technical assistance. It may be a little presumptuous, but I would like to do so to reflect on my experience.

First, it is a prerequisite for assistance donors or actors to have a certain level of knowledge and understanding on the legal system and reality of the recipient country. In the training seminar in the Project for Strengthening Mediation System in Mongolia, I gave lectures without having enough knowledge on the judicial system of Mongolia, let alone information on its Civil Procedure Code and Civil Law, which were relevant to the topic of the training seminar. Thus I am not sure if my lectures were meaningful for the entire legal system of Mongolia, or may have ended up being a simple introduction of Japanese legal practices. Nevertheless, for three days prior to the training seminar, I had the opportunity to learn about the actual legal situation in Mongolia from the judges, mediators and practicing lawyers I met during my visits to the pilot courts and the bar association. Obviously this information must have been reflected in my lectures.

Secondly, an accurate understanding of the needs in the recipient country serves as the foundation in designing training seminars. In the case of Mongolia, the issue was the reasons for the introduction of the mediation system. In order to give appropriate advice, it is necessary to accurately understand the basic policies of the recipient country, including the roles of the newly to-be introduced system and the position of the new system, on the basis of practices in civil proceedings. Based on this

understanding, it is advisable to plan a project and training courses which best meet the reality and needs of the recipient country.

Thirdly, as a prerequisite for the above, those involved in legal technical assistance need to have a wide-range of experience and knowledge on the legal system and legal practices in Japan, in order to respond to the needs of the recipient country appropriately. When I attended training seminars for Mongolia and Indonesia, I was bewildered by the extreme range of questions and topics of opinions from the participants. In the case of civil procedure, for example, their interests ranged from the first-instance procedure; not only at the district courts but also at the summary courts, to the reform of appeal instance, and sometimes to substantive laws. The status quo of the lay-judge system was also brought up at one time. I strongly felt the necessity of having a wide-range of knowledge and experience, not only in civil justice but in the entire judicial system, in order to correspond to such needs properly.

Lastly, let me add that, while legal technical assistance deals with law, which is an impersonal matter, the object of law are humans, and those who actually operate law are also humans. Thus, it is important to bear in mind that a deep understanding towards human nature, including the difference of nationalities between Japan and other countries, forms the basic part of legal technical assistance. The real appeal of legal technical assistance may not be limited to the interaction between countries, and the contact with people who you have never met before, and the clash of cultures which lie behind humans may be what attracts people.

In spite of my poor experience, I have made rambling statements and a vague conclusion. There is one more personal challenge for me. In order to improve not only my lectures in seminars but also my ability to communicate with various people (as well as to personally enjoy more my travels abroad), I need to further my study of English and other foreign languages.



LEGAL ASSISTANCE AND HUMAN RESOURCE DEVELOPMENT BY NAGOYA UNIVERSITY – ITS TEN-YEAR HISTORY AND FUTURE

Katsuya Ichihashi*

I. INTRODUCTION

The Center for Asian Legal Exchange of Nagoya University (hereinafter referred to as “CALE”) commemorated its 10th anniversary last year. For the benefit of Asian nations, especially countries in transition to market economies, CALE has developed two main activities over the past 10 years: 1) legal assistance and studies on legal assistance; and 2) human resource development through legal education. CALE has been fortunate to gain a solid understanding and encouragement from the government and business community of Japan, and the governments and counterpart universities in the countries where the above undertakings have been carried out. This paper will briefly outline CALE’s 10-year history and its future prospects.

II. BACKGROUND TO THE ESTABLISHMENT OF CALE – COMMENCEMENT OF LEGAL ASSISTANCE BY NAGOYA UNIVERSITY

In 1990, twelve years before the establishment of CALE, Nagoya University began legal assistance activities with the commencement of the “Asia-Pacific Region Studies Project” (hereinafter referred to as “AP Project”). As is well known, this assistance began during a revolutionary era which was first started by the political transformation in Eastern Europe in 1989, followed by the collapse of the socialist regimes in the former Soviet Union and Eastern Europe in 1991. This movement led to the adoption of the reform and openness policy, and the full-scale transition to market economies in other socialist countries in Asia, including China and Vietnam.

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At that time, the School of Law at Nagoya University established a fund (AP Fund) with donations collected from various quarters in commemoration of the School's 40th anniversary, which formed the base for the AP Project.

At the time of the beginning of the AP Project, legal scholarship in Japan centered still on western traditions. Compared with the law faculties of the other Former Imperial Universities (namely: Hokkaido University, Tohoku University, University of Tokyo, Kyoto University, Osaka University, and Kyushu University), Nagoya University's School of Law had a shorter history and abbreviated tradition. However, it enjoyed a free-spirited and open-minded academic culture which helped compensate for its shortcomings. Thanks to these characteristics, the University's School of Law developed joint studies on a continual and regular basis with law scholars and legal professionals in Asian countries. In doing so, focus was placed on countries in transition to market economies, including Vietnam, Laos, Cambodia, and Mongolia, though these countries drew less interest from the academic circle in Japan at that time. To date, Nagoya University has built a close and solid network with lawyers, universities and judicial institutions in those countries, which now serves as a valuable asset for CALE's activities.

Moreover, since 1999, CALE has expanded the scope of its activities to include, not only joint studies with lawyers and legal scholars, but also education and human resource development. Accordingly, it has established a law education course in English (hereinafter referred to as "English Course") within the Graduate School of Law, Nagoya University. Through the opening of the English Course -- in addition to those students from countries using the Chinese writing system (China, Korea, Taiwan), being fluent in Japanese, and who had traditionally been accepted in large numbers by the University -- many students from other Asian countries in transition to market economies were also accepted by the University. Through the above-mentioned research network, the latter set of students were granted scholarships from the Ministry of Education, Culture, Sports, Science and Technology (hereinafter referred to as "MEXT"), (those of JICA called) "Japanese Grand Aid for Human Resource Development Scholarship," and other types of scholarships. Thus, the English Course paved the way for students not fluent in Japanese to study Japanese law in English in Japan.

To date, the English Course has yielded significant results producing a great number of foreign graduates from the Graduate School of Law. Many of those who studied in the English Course in the beginning of its establishment have returned to their countries to play active roles in various fields. For example, some are serving in the academic field as deans of the faculties of law, law professors, etc. Others serve in official or legal circles as Vice Ministers of Justice, department directors Supreme Court judges public prosecutors and lawyers. There are also graduates working for

Japanese companies abroad, using the legal knowledge acquired in Japan and the various languages they excel in (English, Japanese, and the official languages used in their countries). As a result, in addition to the network among legal experts representing each target Asian country, which had been built through the above-mentioned joint studies, Nagoya University constructed another network with promising younger generations, which is a valuable asset in the field of legal assistance and cooperation.

We take pride in these assets as being worthy achievements of CALE's activities. Recently, the government of Japan has adopted a reformatory policy of radically globalizing national universities, and as part of its strategies, it has put emphasis on the promotion of education in English and further acceptance of excellent foreign students. In view of this movement, it can be considered that Nagoya University's undertaking over the past decade-plus of human resource development through education of foreign students in the English Course was ahead of the recent government policy.

III. ESTABLISHMENT OF CALE, ITS LEGAL ASSISTANCE AND RESEARCH ACTIVITIES

In the year 2000, ten years after the commencement of legal assistance by Nagoya University, the University's Graduate School of Law and the School of Law established the "Center for Asian Legal Exchange" which was the predecessor of the present CALE (CALE uses the same English name and abbreviation of the former center). In commemoration of the 50th anniversary of the School of Law, a fund was established by collecting donations (from various quarters again) to help create a new CALE as well as the School's independent facility to conduct legal assistance, legal cooperation and research thereon.

In 2002, the new CALE was established as a research center of Asian Law, administered by the School and Graduate School of Law with independent financial resources. It became an independent entity within Nagoya University, with state subsidies granted for its operating expenses.

One of the activities promoted by the establishment of the new CALE is research activities. Its major research results include the following:

- Grant-in-aid for scientific research on priority areas by the Japan Society for Promotion of Science (JSPS), "Legal Assistance in Asia – Structuring a Paradigm for Countries in Transitions –";
- JSPS Core-to-Core Program, "Development Assistance and Law in the 21st century";
- JSPS Asia-Africa Science Platform Program, "A Pragmatic Research Hub of Comparative Legal

Studies for Legal Assistance in Asia”; and

- Program for Area Studies Based on Needs of Society, by the MEXT, “The Study on Strategy of Legal Assistance to South-East Asian Countries – Vietnam, Cambodia, Indonesia, etc.- ”

Furthermore, CALE conducts bilateral or regional research, or law-sectoral research using several science research grants. In addition to the traditional network with universities, research and judicial institutions in countries in transition to market economies in Asia, the above-mentioned series of research activities have formed another network with institutions in East Asia, namely: China, Korea and Taiwan. Moreover, CALE’s research network has expanded to institutions and aid agencies in Western countries, such as the U.S., Germany, France, Australia, etc. As a result, CALE currently conducts studies on legal assistance and legal cooperation via its globally-expanded research network. This global research network has helped CALE gain high evaluation marks and trust from international organizations, universities and research institutes in various countries. For example, it has led to significant results including:

- Accession to the “Global Forum on Law, Justice and Development” organized by World Bank and research commission by World Bank;
- Accession to the “Asia Legal Information Network (ALIN)” organized by the Korea Legislation Research Institute, and joint studies with Korea;
- Accession to the “Global Legal Studies between Asia and Europe (GIS)” organized by the Fondation de la Maison des Sciences de l’Homme, France.

In recent years, not only universities in Western countries but also major schools in Asia (including Korea, China, Singapore, etc.) have established a series of research institutes and centers similar to CALE. They have the same mission of carrying out legal assistance to and legal cooperation with Asia, and studies thereon. These CALE-type centers and institutions are solid partners as well as competitors for CALE. Prior to their establishment, CALE’s activities had been referred to as a sample to follow, and have been the target of their research and studies. This fact can be considered as a proof of the trust toward and high evaluation of CALE which boasts of its global research networks.

IV. ESTABLISHMENT OF OVERSEAS BASES, INCLUDING THE RESEARCH AND EDUCATION CENTERS FOR JAPANESE LAW (CJL), EDUCATION AND HUMAN RESOURCE DEVELOPMENT IN CJL

Another unprecedented activity which has been intensified by the establishment of CALE is education and human resource development.

At approximately the time CALE was established, some of the counterpart universities with which

CALE had been working together (through joint studies on legal assistance and legal cooperation) strongly requested the opening of a center in which their students could learn the Japanese language and Japanese law in Japanese at their universities. Along with Western law, they needed Japanese law to model after -- as Japan is in the same region where those universities are located, with a similar culture, custom and society as theirs. Japan also shared a similar history in addressing the challenge of national modernization and economic growth. However, compared to Western law (which was easily accessible and thus easy to learn) using the languages they had learned, including English, Russian, French, etc., there were no opportunities to have access to, and study Japanese law. This resulted from the Japanese language seeming incomprehensible; and with no experts in Japanese law available.

With a focus on this request, Nagoya University established the Research and Education Center for Japanese Law (hereinafter referred to as "CJL"), the first overseas base, in the Tashkent State Institute of Law in Uzbekistan in 2005. This center offered local undergraduate students the opportunity to learn Japanese and learn Japanese law in Japanese. CJL was subsequently established in other countries; in the National University of Mongolia in Ulan Bator, Hanoi Law University in Vietnam, and in the Royal University of Law and Economics in Phnom Penh, Cambodia. These four CJLs seek to teach Japanese from the ground up to law students for four or five years until their Japanese ability allows them to understand Japanese legal information containing difficult vocabulary. Regarding this CJL's mission, a pessimistic view was presented from specialists in Japanese education, who were consulted at the establishment of CJLs. They deemed it to be unattainable and unrealistic. However, CJLs' endeavors in education and human resource development yielded results contrary to the above forecast. To date, Nagoya University's Graduate School of Law has received a large number of excellent students from among the graduates of the CJLs. Some of them have even obtained LL.D. degrees from Nagoya University.

In 2012, the fifth CJL (the second in Vietnam) was established in Ho Chi Minh City University of Law. This CJL was set up as an official "Japanese Law Course," by the University itself. In this course, students learn Japanese and Japanese law along with Vietnamese law as formal subjects to earn the credits necessary for graduation. A separate tuition is required in this course. In principle, this course is administered by the University's independent financial resources. Nagoya University assists, from the viewpoint of guaranteeing the quality of Japanese language and Japanese law classes, by dispatching a Japanese language teacher and partially taking charge of Japanese law classes. It is expected that the development of the CJL at the Ho Chi Minh City University of Law, will serve as a beneficial reference in considering the future possibilities of the localization of the other four CJLs administered at the expense of the Japanese government.

V. CONCLUSION – ESTABLISHMENT OF NEW OVERSEAS BASES (MYANMAR, LAOS, INDONESIA)

This year Nagoya University plans to establish “Legal Research Centers” in the University of Yangon (Myanmar), National University of Laos, and University of Gadjah Mada (Indonesia), to cooperate with these three countries and Southeast Asian region in legal development and human resource development. This initiative was made possible through a project “Accelerated Promotion of Internationalization through International Human Resource Development and University Alliance, mainly in Asia” to which the National University Reform Support and Strengthening Promotion Subsidy was granted by the MEXT. The University intends to develop activities which best suit the actual situation in each country, addressing several issues, including:

- Legal system reform for the development of democracy and the rule of law, and economic integration and growth; and
- The development of national core professionals who are able to adequately respond to the Southeast Asia regional integration.

The ultimate goal of Nagoya University is to not only help develop legal systems in each target country through transmission of Japanese legal information, collection of legal information in each country, and dissemination of overseas legal information within Japan. It also intends to carry out collaborative activities with the Japanese academia and industries expanding businesses into Southeast Asia, the legal community, the Research and Training Institute of the Ministry of Justice and the Japan International Cooperation Agency (JICA) which are strengthening legal assistance activities in the said region. The establishment of this type of legal research center is a new challenge for the University, and currently it is in the process of conferring with each counterpart university. With the establishment of the Myanmar-Japan Legal Research Center at the end of June, the University will begin the new undertaking on a full scale.

In the wake of the creation of new bases abroad this year, Nagoya University intends to take a further leap in its activities in Asia. The whole University aims to become a highly-globalized university, and CALE will play a part in the globalization of university campuses through its research network (its 20-year achievement), and overseas bases including CJLs. In CALE’s research hubs abroad, focus will be placed on educating graduates from the English Course and CJLs in doctor’s courses to cultivate national core professionals in respective countries.

- II. INTERNATIONAL STUDIES -

JOINT COMPARATIVE STUDY ON THE JUDICIAL SYSTEMS OF JAPAN AND MYANMAR - INVITATION OF THE CHIEF JUSTICE OF THE SUPREME COURT OF THE UNION AND OTHER JUDGES OF THE REPUBLIC OF THE UNION OF MYANMAR -

Hiroki Kunii

*Professor and Government Attorney
International Cooperation Department*

I. INTRODUCTION

Since its shift to civilian rule in March 2011, the whole nation of Myanmar has made steady progress towards democratization and national reconciliation. Lauding Myanmar's effort towards reforms, the Government of Japan made the declaration below at the Japan-Myanmar summit meeting held in April 21, 2012: "In order to assist Myanmar in its reformatory efforts in a wide range of areas, which are advancing rapidly towards democracy, national reconciliation and sustainable development, Japan will provide assistance. We will do this while constantly observing the progress of such efforts, so that a broad swath of people can benefit from democratization, national reconciliation and economic reform." Focus will be placed on assistance: 1) for improving people's lives (including support for ethnic minorities and the poor, agricultural and community development); 2) in personnel and institutional capacity-building which support Myanmar's economy and society (including support for promoting democratization); and 3) in the enhancement of the infrastructure and institutions necessary for sustainable economic growth. In addition, with the establishment of the "Myanmar Public-Private Joint Initiative Task Force" in August of the same year, a public-private cooperation arrangement has been made to aggressively support Myanmar.

Legal technical assistance is classified in the second type of assistance listed above. It is one of the most important assistance areas to establish the "rule of law" in Myanmar and encourage the nation's reformatory efforts. It also fosters a better investment environment for foreign capital, including Japanese.

In Myanmar, the Supreme Court of the Union holds jurisdiction over 52 laws, including basic laws,

such as the Civil Code, Penal Code, Civil Procedure Code and Criminal Procedure Code. Along with the recent reforms, the need has arisen to amend many of the laws under the jurisdiction of the Supreme Court.

On the occasion of the visit by the former Minister of Justice of Japan to Myanmar in September 2012, and by the delegation led by the Director General of the Research and Training Institute (RTI) of the Ministry of Justice the following month, the Chief Justice of the Supreme Court of the Union requested assistance from Japan in the areas of drafting laws under its jurisdiction, and judicial personnel capacity-building.

In response to this request, a comparative study of the judicial systems between Japan and Myanmar was held inviting the Chief Justice - the head of one of the three powers, and several other judges from Myanmar to Japan. This comparative study aimed to provide the stakeholders in both countries with the opportunity to mutually deepen their understandings on the judicial systems and legal training system in Japan and Myanmar, and to exchange views in a concrete and constructive manner on future cooperative relationships between the two countries.

The comparative study was organized jointly by the RTI, Keio University Law School (which has extended strong support to Japanese legal technical assistance activities), and Mita Hoso-kai (an association of private lawyers graduated from Keio University).

II. SCHEDULE OF THE JOINT STUDY AND INVITEES

Period: From Monday, November 26 to Friday, November 30, 2012

Invitees: Chief Justice Htun Htun Oo of the Supreme Court of the Union, and four other judges

III. OUTLINE OF THE JOINT STUDY

This paper aims to widely disseminate information among stakeholders of legal technical assistance on the reality of the justice in Myanmar. For this reason, it discusses matters which deserve special mention on each major program incorporated in the joint study.

A. Visit to the Supreme Court

During the courtesy call on the Chief Justice of the Supreme Court, the top leaders in the judicial branch in Japan and Myanmar met for the first time. However, because of the openness of the two

Chief Justices, a candid exchange of opinions was conducted. Chief Justice of Japan Hironobu Takesaki emphasized the importance of capacity-building by saying, “In the judicial area, in addition to improving law and legal systems, it is important to cultivate the individuals who will operate them in practice. In Japan, even during the prewar era when the military and the political division held power, each judge maintained the independence of the judiciary. In the post-war period this spirit was still adhered to. It is because such a strong awareness exists in each judge that there is no corruption among judges and so they are highly trusted by the people.” In response to this, Chief Justice of the Union Htun Htun Oo mentioned, “Through enforcement of the new Constitution, the separation of powers has been established institutionally. Currently we are pushing forward reforms to assure judicial transparency. Corruption is one of the serious problems Myanmar faces, and not only the judiciary but the whole nation is aware of the need to address this problem. The capacity-building of judges is another challenge and thus we are expecting Japanese assistance in our judicial reform.” Chief Justice Htun Htun Oo made clear his strong expectations for Japanese assistance.

After the courtesy call, Mr. Nakamura, Chief of the Secretarial and Public Relations Division of the General Secretariat of the Supreme Court explained the outline of the judicial system in Japan. It was followed by questions from the Myanmar delegation on practical matters such as the number of judges, number of cases received and disposed of, salary-raise system, etc., and an active discussion was held.

B. Visit to the Tokyo High Court and District Court

During the courtesy call on the Presidents of the Tokyo High and District Courts, the Myanmar delegates actively asked questions on various issues including the number of judges and cases received and disposed of, and also on the period necessary for case disposition at each court. Chief Justice Htun Htun Oo explained that Myanmar is currently considering measures to efficiently allocate judges as part of the judicial reform. Moreover, he mentioned that in civil cases, on average four or five years are necessary for case disposition at the first instance, and thus expeditious case disposition is required. The problem of case management is an issue to be resolved not only in Myanmar but also in other countries assisted by the International Cooperation Department. In Myanmar, the problem of lengthy case management is partly attributed to the non-existence of preparatory proceedings or settlement. In the future, a drastic reform, including the amendment of procedural laws, may be necessary.

At the Tokyo District Court, the delegation observed a criminal trial and subsequently a Q&A session was held with the judge and court clerk in charge of the trial observed. Chief Justice Htun Htun Oo asked detailed questions regarding the training system of court clerks and other court

personnel. He explained that in Myanmar, there are no court clerks with over 20 years of experience, and so the challenge is how to develop skilled court clerks. In Japan, the Legal Training and Research Institute trains judges. Whereas the Training and Research Institute for Court Officials serves to train court clerks, other court officials and family court officials. On the other hand, in Myanmar, while there exists a training institute for judges, no full-time lecturer or school officer is assigned to the institute. Therefore, the judicial training including the establishment of a training system for court officials, in addition to judges, will certainly be the area which requires greater support and cooperation from Japan.

C. Facility Observation at the Urayasu Center, Ministry of Justice

The Urayasu Center accommodates the Research Department of the RTI, and also serves as the training facility of Ministry of Justice officials, including public prosecutors and public prosecutor's assistant officers. Based on the result of a prior-needs assessment in which the Chief Justice of Myanmar had requested assistance in judicial training, the observation of this facility was included in the invitation program so as to help deepen his understanding on the Ministry of Justice personnel training, and also to use the information in the formation of future projects.

During the observation, an explanation was given on the training system of public prosecutors and public prosecutor's assistance officers in Japan. The delegation also observed the witness examination practice by junior prosecutors in a mock trial being conducted in the Urayasu Center. The delegates showed a strong interest in the content of the practice, which was designed based on actual legal practices, as well as in the well-equipped facility.

D. Lecture Presentation and Panel Discussion at Keio University

On November 28, which fell in the middle of the invitation period, a lecture presentation and panel discussion were held under the theme, "Legal Reform and the Judicial System in Myanmar: Current Situation and Direction for Future Development" at Keio University, a joint organizer of the invitation program. Chief Justice Htun Htun Oo delivered a speech on the "Recent Judicial Development in Myanmar," and other delegates also made valuable presentations.

The minutes of the presentations, reference materials (in Japanese and English) and the details of the panel discussion appear in "*Keio Hogaku* (Keio Law Journal) No.26¹" of Keio University. Thus, this paper includes only the presentation program and materials as follows:

Appendix 1: Presentation program

Appendix 2: "Current Developments of Judicial System in Myanmar" by Chief Justice Htun

¹ "*Keio Hogaku*" can be accessed and downloaded at <http://koara.lib.keio.ac.jp/xoonips>

Htun Oo

- Appendix 3-1: “Structure and Functions of Courts in Myanmar” by Director General Sein Than of the Supreme Court of the Union
- Appendix 3-2: PowerPoint slides of 3-1.
- Appendix 4-1: “The Procedure deal with Criminal Justice System in Myanmar” by Chief Justice Tu Jar of the High Court of Kachin State
- Appendix 4-2: PowerPoint slides of 4-1.
- Appendix 5-1: “Procedure deals with Civil Suits in Myanmar Judiciary” by Judge Thin Thin Nwe of the High Court of the Yangon Region
- Appendix 5-2: PowerPoint slides of 5-1.

E. Facility Observation at the Legal Training and Research Institute

The initial schedule included the facility observation and an explanation on the judicial training system at the Legal Training and Research Institute of the Supreme Court. However, through visits to the Tokyo District Court and the Urayasu Center of the Ministry of Justice, the Chief Justice of Myanmar requested more information on the training of court clerks and other court officials in Japan. In response to this request, the Director of the General Training Division and a senior instructor of the Family Court Official Training Division of the Training and Research Institute for Court Officials kindly agreed to give explanations on the training system of court officials other than judges. I would like to take this opportunity to extend our deepest gratitude for all the arrangements made by the Supreme Court.

The Myanmar delegation asked questions from the viewpoint of judicial administration, including those on the training curriculum of judges, as well as the number, placement and the recruitment system of court clerks and other officials, the number and years of experience of the instructors, etc. Thus, an active discussion was held.

IV. COMMENTS

At present, the Ministry of Justice is planning to cooperate in full scale in a legal technical assistance project to be commenced within FY2013 by JICA. The project intends to promote the “rule of law,” “democracy,” and “sustainable economic growth” through development of laws and regulations which correspond to social and economic situation in Myanmar as well as international standards, and appropriate implementation of such rules. To achieve these goals, efforts will be made in the project to: 1) strengthen the capacity to urgently solve legislative challenges that Myanmar faces (assistance in legislative drafting); and to: 2) develop a basis for human resource development at two

counterpart organizations - the Supreme Court of the Union and the Union Attorney General's Office of Myanmar.

The main objective of this joint study was to deepen the mutual understanding between Japan and Myanmar, and to conduct concrete and constructive exchanges of opinions for the full-fledged commencement of the forthcoming assistance project. Throughout the invitation program, Chief Justice Htun Htun Oo and other delegates demonstrated great enthusiasm for judicial reform, which is part of the democratization process of Myanmar. Seeing this passion, Japanese stakeholders reaffirmed their determination to cooperate fully in the endeavors for legal development in Myanmar.

V. CONCLUSION

This joint study was truly meaningful in that: 1) it included the presence of the Chief Justice of the Supreme Court of Myanmar, the top of one of the three powers, in Japan for the first time; as well as: 2) it was organized through a public-private joint initiative between the Ministry of Justice and Keio University. Special thanks go to all the stakeholders, including the Supreme Court, the Ministry of Foreign Affairs, the Embassy of Myanmar in Japan, etc. for their cooperation in the organization of this program.

It would not have been possible to realize this program without major contributions by Mr. Yutaka Agatsuma² and Attorney Iwao Sekiya³. I would also like to take this opportunity to reiterate my gratitude to them. To return their favor, it is our intention to consolidate the friendly relationship between Japan and Myanmar, and based on which, to further promote the cooperative relationship in the judicial field between both countries.

² President of "*Azia Keshi Tensaku Shien Kiko* (Poppy Crop Diversion Assistance Organization)," a specified non-profit corporation authenticated by the Cabinet Office. He has assisted in the crop conversion from poppy to fruits and vegetables in the temperate zone over the past 10 years, in the highland in Chin State, Kachin State and the highland in Shan State in the west, north and east of Myanmar respectively. He has known Chief Justice Htun Htun Oo for a long time.

³ Attorney-at-law and photographer. He has taken pictures of unspoiled scenery in various places in Myanmar and in other Asian countries, on the theme of reverence for nature and scenes of praying, which Japanese have half forgotten. In November 2012, he held the 2nd Japan-Myanmar Photo Exchange Exhibition" at Shwedagon Pagoda, Myanmar.

Appendix 1

<Presentations and Panel Discussion>

“Legal Reform and the Judicial System in Myanmar: Current Situation and Direction for Future Development”

Date and Time: Wednesday, November 28, 2012: 10:00 a.m. – (9:30 a.m. Doors open.)

Venue: North Bldg. Hall, Mita Campus, Keio University

Organized by: Law School and the Faculty of Law, Keio University

Co-hosted by: Mita Hoso-kai;

Research and Training Institute (RTI), Ministry of Justice (MOJ)

Supported by: Ministry of Foreign Affairs

Program

Morning Session: 10:00 – 12:00 (Moderator: Professor Hiroshi Matsuo, Keio University Law School)

Opening Address

Atsushi Seike – President of Keio University

Naoya Katayama – Dean of Keio University Law School

Kunihiko Sakai – Director General, RTI, MOJ

Presentations

“Current Developments of Judicial System in Myanmar”

U Htun Htun Oo – Chief Justice of the Union, Supreme Court of the Union,
Republic of the Union of Myanmar

“Structure and Functions of Courts in Myanmar”

U Sein Than – Director General of the Supreme Court of the Union

Lunch Break: 12:00 – 13:00

Afternoon Session: 13:00 – 17:00 (Moderator: Professor Tatsuya Ota, Faculty of Law of the Keio University)

Welcome Speeches

Noriyuki Shikanai – President of Mita Hoso-kai, Attorney-at-law

U Khin Maung Tin – Ambassador of Myanmar to Japan

Presentations

“The Procedure deal with Criminal Justice System in Myanmar”

U Tu Jar – Chief Justice of the High Court of Kachin State

“Procedure deals with Civil Suits in Myanmar Judiciary”

Daw Thin Thin Nwe – Judge of the High Court of Yangon Region

Coffee Break: 14:30 – 15:00

Panel Discussion: 15:00 – 17:00

“Legal Reform and the Judicial System in Myanmar and Japan: Current Situation and Direction for Future Development”

Panelists:

U Tu Jar – Chief Justice of the High Court of Kachin State

Daw Thin Thin Nwe – Judge of the High Court of the Yangon Region

U Sein Than – Director General of the Supreme Court of the Union

Yukio Horigome – Former Supreme Court Justice, Visiting Professor at Keio University Law School

Motoo Noguchi – Director of the International Cooperation Department, RTI, MOJ

Kimitoshi Yabuki – Chairman of the Committee on International Relations, Japan Federation of Bar Associations; Attorney-at-law

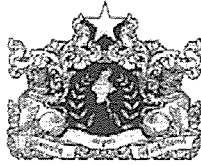
Noriyuki Shikanai – President of Mita Hoso-kai, Attorney-at-law

Nobuto Yamamoto – Professor at Keio University Faculty of Law

Hiroshi Matsuo – Professor at Keio University Law School

Closing Remarks

Yutaka Oishi – Dean of Keio University Faculty of Law



THE REPUBLIC OF THE UNION OF MYANMAR
SUPREME COURT OF THE UNION
SPEECH BY H.E. U HTUN HTUN OO
CHIEF JUSTICE OF THE UNION
"CURRENT DEVELOPMENTS OF JUDICIAL SYSTEM
IN MYANMAR"
KEIO UNIVERSITY, JAPAN
28 NOVEMBER 2012

Introduction

The topic I have chosen for this address is 'current developments' of our judicial system.

There are some changes brought about by our new Constitution, 2008. It lays down the democratic foundation for the separation of state powers and the doctrine of check and balance. The **legislative power** of the Union is vested in the Pyidaungsu Hluttaw (the Parliament), which consists of Pyithu Hluttaw and Amyothar Hluttaw. The President is the head of the executive and exercises the **executive power**, sharing among the Union (Pyidaungsu), the Regions and the States. **Judicial power** is shared among the Supreme Court of the Union and its subordinate Courts. The three branches of sovereign power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.

Judicial Principles

I am going to talk on judicial principles briefly as these are the framework for this speech.

Judicial power is mainly vested in the Supreme Court and its subordinate Courts, namely High Courts of the Region or High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts and other Courts constituted by law. The Supreme Court is the highest Court of the Union save the powers of the Constitutional Tribunal and the Court Martial.

Justice throughout the Union is administered in Courts in accordance with the judicial principles that can be expressed in the following terms:

"to administer justice independently according to law,
to dispense justice in open Court unless otherwise prohibited by law, and
to guarantee in all cases the right of defence and the right of appeal under law."

Moreover, Courts carry out justice in the light of such principles as follows:

to support in building of rule of law and regional peace and tranquility by protecting and safeguarding the interests of the people,
to educate the people to understand and abide by the law and nurture the habit of abiding by the law,
to settle disputes among the people within the framework of the law, and
to aim at reforming morals of the criminal in sentencing him.

Some principles of criminal justice can be summarized as follows:

- (a) no criminal law shall be enacted to provide retrospective effect;
- (b) any person who committed a crime, shall be convicted only in accord with the relevant law then in operation. Moreover, he shall not be punished to a penalty greater than that is applicable under that law;

- (c) any person convicted or acquitted by a competent Court for an offence shall not be retried except that a superior Court annuls the judgment and orders a retrial;
- (d) an accused shall have the right of defence in accord with the law;
- (e) no penalty that violates human dignity shall be prescribed.

Structure of the Courts

Now, I would like to introduce the hierarchy of our Courts. Generally speaking, Township Courts and other Courts constituted by law (e.g. Juvenile Courts, Motor Vehicle Courts, or Municipal Courts) are Courts of origin or Courts of first instance. District Courts, Courts of Self-Administered Division, and Courts of Self-Administered Zone are Courts of first appeal. As far as judicial functions are concerned, they are of the same level. High Courts of the Regions and High Courts of the States are Courts of second appeal. The Supreme Court of the Union is the highest Court of the Union and the Court of final Appeal.

The Supreme Court supervises all Courts in the Union. It is entitled to submit the bills relating to the judiciary to the Pyidaungsu Hluttaw (the Parliament). It has to submit judiciary budget to the Union Government.

The Supreme Court appoints judicial officers for subordinate Courts. They are career judges serving at different levels of Courts except the Supreme Court and High Courts in which Chief Justices and Judges are appointed by the President in coordination with the Chief Justice of the Union and with the approval of the Hluttaws (parliaments of the Union, the Regions or States, respectively).

What I would like to do in this address is to give analysis on the developments and challenges of judicial system in Myanmar focusing on a number of areas of significance to judicial capacity.

But before turning to these, I must say something about the Supreme Court in terms of judicial independence.

The Supreme Court

The Supreme Court is composed of a minimum of seven Judges and a maximum of 11 Judges, including the Chief Justice of the Union. The President with the approval of the Pyidaungsu Hluttaw (the parliament) appoints the Chief Justice. The President in co-ordination with the Chief Justice nominates and appoints Judges of the Supreme Court with the approval of the Pyidaungsu Hluttaw (the parliament). At present, there are 7 Judges including the Chief Justice in the Supreme Court.

A person is qualified for the appointment as a Chief Justice or Judges of the Supreme Court if he or she:

- (a) has served as a Judge of the High Court for at least five years; or
- (b) has served as Judicial Officer or a Law Officer at least ten years at the Region or State Level; or
- (c) has practiced as an Advocate for at least 20 years; or
- (d) is an eminent jurist in the opinion of the President.

None of the Chief Justice and Judges of the Supreme Court are members of a political party, representatives of the Parliament and civil services personnel. They must also be free from party politics.

The impeachment procedures are clearly provided in the Constitution. The President or one-fourth of the total number of representatives of either Hluttaw can impeach the Chief Justice and Judges of the Supreme Court for high treason, breach of the Constitution, misconduct, disqualification or inefficient discharge of duties assigned by law.

The Constitution guarantees the tenure of the Chief Justice and Judges of the Supreme Court. They can hold the office up to the age of 70 unless he or she resigns the office; or is impeached in accordance with the Constitution and removed from office; or is unable to continue to serve due to permanent disability caused by either physical or mental defeat; or dies in office.

As the Supreme Court is the highest Court of the Union and the Court of final appeal, its judgments are final and conclusive. There is no revision upon the judgment of the Supreme Court outside the appeals process. As far as jurisdictions are concerned, the Supreme Court has appellate, revisional, and original jurisdictions in accord with the law. Moreover, it has the power to issue writs appropriate to the Fundamental Rights guaranteed in the Constitution.

Developments

The new Constitution brings some developments in the judiciary.

New High Courts

In terms of the structure, new High Courts are formed. In the past, there was no High Court but only the Supreme Court which exercised the powers of High Court. At that time, the Supreme Court sat in Nay Pyi Taw, Yangon and Mandalay and tried cases appealed from everywhere of the Union.

Nowadays, 14 High Courts for the respective Regions and States are newly formed under the new Constitution. While the Supreme Court supervises all Courts in the Union, High Courts supervise the judicial matters of subordinate Courts within their respective jurisdictions of the Regions and the States in accord with the guidance of the Supreme Court. In terms of formation of new High Courts, the people can ask for decisions of the High Courts in their areas so that they can reduce the costs of litigation.

As our country is constituted by the Union System, state powers are shared among the Union, Regions and States. The extension of Court structure is done to meet this end.

Awareness of the Rule of Law

Our country is a place where multi-national races collectively reside. The new Constitution guarantees every citizen to enjoy the right of equality, the right of liberty and the right of justice as prescribed in it. Only when the eternal principles of justice, liberty and equality are enhanced will the perpetuation of peace and prosperity of the national people achieve. These values can only be secured by an application of the rule of law. The rule of law is essential for materializing the democratic system effectively, and it is the bedrock of a democratic society as well.

We are of course aware that the rule of law is a pre-necessary condition for the national development. Therefore the principle of the rule of law is guaranteed by the new Constitution as fundamental rights of citizens. Article 347 of the Constitution provides that -

"the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection."

Article 353 reads "nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person."

The rule of law is the only basis upon which everybody including public bodies and the executive can order their lives and activities. The functions of Union Government, Hluttaws (Parliament) and Courts are subject to the Constitution and the law so that the rule of law will improve. Article 219 of the Constitution provides that 'the Union Government preserves stability of the Union, community peace and tranquility and prevalence of law and order'.

From the point of the judiciary, only the independent judiciary makes sure to uphold the rule of law. All judges implement their judicial functions independently and subject only to the Constitution and the law. Justice must be administered in accord with law. No person shall be convicted of crime except for violation of a law in force at the time of the commission of the act charged as an offence. An accused have the right of defence and the right to independent and fair trial in accord with the law. The judgments or decisions of all levels of Courts have final character and other bodies of State cannot review and amend those judgments or decisions except filing them to superior Courts for appeal. An independent, impartial, honest and competent judiciary is integral to upholding the rule of law.

Guarantee of Fundamental Rights

Even though there is no Human Rights Law in Myanmar; it is a primary duty of Courts for populace to enjoy their fundamental rights in accord with the Constitution. In order to obtain a fundamental right, any person can apply to the Supreme Court. The Supreme Court has the power to issue such writs as suitable as Writ of Habeas Corpus, Writ of Mandamus, Writ of Prohibition, Writ of Quo Warranto and Writ of Certiorari. The Supreme Court entertains the application of writs under Writs Procedures and safeguards the fundamental rights of the citizens.

Challenges

Under new political system, we now face challenges which mainly include harmonization of the judiciary with democratic culture, absence of corruption in every courtroom and reinforcement of the judicial system.

Harmonization with Democracy

Long time ago, disputes have been settled by traditional judicial system in Myanmar, but during the late 19th century, common law legal system was introduced by British colonialist. The essence of Myanmar traditional judiciary was settlement of disputes through negotiation between the two parties. In contrary, the judicial function of English common law system rested on the decision of win and loss rather than fairness and harmony in the society.

After independence in 1948, different political systems have been dramatically changed, but in the judicial branch the traditional strict appliance of 'law and order' approach has been preferred. Judicial functions were conducted by Courts of law under the influence of the executive authority.

A theme that is popular with some of the media in Myanmar is that the judiciary does not change together with the democratic movement. The judiciary should exercise the 'rule of law' centered approach preferentially in doing its functions to be in line with the democratic values.

We accept that it is the most important duty of the judiciary to protect people's rights through a fair and equitable trial within the limits of domestic legal framework. There must be clear laws under which people can ask protection of their rights and remedies for their grievances before the Court. If the Court carries out a quick, effective and fair response to protect

their rights and to redress their grievance proportionally, the judiciary could maintain the public confidence.

Absent of Corruption

To prevent corruption is a big challenge for all institutions including the judiciary. Absent of corruption is necessary for sustainable development and for maintenance of the rule of law. While the clean government and good governance are carried out by the executive, actions against corruption are being taken strictly by the Supreme Court. All judges should administer justice "without fear or favour, affection or ill-will". The presence of bias, favour, or corruption in a Court System denies justice and undermines the rule of law.

However, actions against bribery and corruption must be coincident with the actual causes. In Myanmar society, people have the conception that taking bribe is a sin. Therefore, the increase of remuneration and general welfare programs are supposed to be advisable solutions. Salary of judges is as same as salary of other ordinary civil services personnel and they get low income.

Reinforcement of the Judiciary

Another challenge is reinforcement of the judiciary to bring about the upright judiciary and to achieve public trust and reliance on it. If the judicial pillar is upright, it can foster public confidence in the fairness and objectivity of the judicial system.

In this address, I would like to highlight four aspects of judicial performance, namely **judicial independence, accountability, efficiency and well-functioning** of the judiciary. These areas need to be reinforced to become an independent, impartial, honest and competent judiciary which is fundamental to upholding the rule of law, engendering public confidence and dispensing justice.

Judicial Independence

Judicial independence is a State Principle and a judicial principle as well. It is essential that there should be an independent judiciary to uphold the rule of law.

The Constitution provides exact procedures for appointment and removal of Chief Justices and Judges of the Supreme Court and High Courts. All judges of the Supreme Court and High Courts shall have a guaranteed tenure until a mandatory retirement age, except on such limited grounds as I mentioned before. While the term of office for the President and Hluttaw is five years, the Chief Justice and Judges of the Supreme Court can hold office up to the age of 70 years and of High Courts up to 65 years.

As Myanmar is a Union State, the judicial power is shared among the Supreme Court, High Courts, and different levels of other Courts; justice throughout the Union is governed and supervised by the Supreme Court.

There is no ministry of justice formulated in Myanmar. The Chief Justice of the Union is Head of the Judiciary. The judiciary has its own structure of governance to ensure the proper governance of the system.

Judiciary budget is proposed by the Supreme Court, to the Union Government in order to include and present in the Annual Budget Bill in accordance with the Constitution. In practice, High Courts of Regions and High Courts of States have to propose the budget of them and their subordinate Courts to the relevant Region or State Budget Programs.

Appointment of judges in subordinate Courts is based on a career and promotion track. As far as appointment of junior judges is concerned, the Supreme Court is of very high accountability, as appointments are made on merit with appropriate independent process. We are confident that there is no misconduct relating to appointment, posting, transfer, promotion and removal of junior judges in subordinate Courts. The Supreme Court disciplines judicial officers and judges for their misconduct, with no influence of the executive.

In fact, there is structural independence in judiciary but operational independence will result only if the executive and legislature refrain from any interference in judicial functions. Judicial independence depends upon the government respecting the principle of judicial independence. If the judiciary achieves the confidence and respect of the populace, they help dispel the risk of significant inroads to judicial independence.

On the other hand, safeguard provisions for judges should be firmly provided by law. There are some safeguard provisions under common law practice. Judges are bound by professional secrecy and enjoy personal immunity from civil and criminal liability in judicial matters.

Accountability

Judicial independence should be coupled with accountability. Each judge is accountable for the decisions he makes; the decisions are made in public and so they are open to public scrutiny and they can be reviewed on appeal. The judiciary is the branch of the State responsible for providing the fair and impartial resolution of disputes between citizens and between citizens and the state or state entities in accordance with the prevailing rules of statute and case law.

Judges are responsible for judicial corruption and miscarriage of justice. Moreover, they should be accountable for their honesty and capacity in doing judicial functions. The Supreme Court makes efforts to ensure honesty and capacity of judges using disciplinary action and due process of supervision.

The Supreme Court conducts the appointment of judges on merit-based examination and assures the transparency of appointing process. It also carries out random assignment of cases, full publication and dissemination of judicial decisions, and peer evaluation on judicial, administrative and disciplined activities of judges. The Supreme Court Administration Committee including the Chief Justice of the Union and all judges of the Supreme Court supervises promotion of judges, judicial complaints and disciplinary actions if necessary.

Efficiency

The third aspect to promote confidence of the citizens is efficiency. The ability to adjudicate disputes in an efficient and timely manner helps achieve public confidence on the judiciary. It has always been the responsibility of the judiciary to ensure that the cases that come before the courts are dealt with as quickly and cheaply as possible, consistent with the

maintenance of high standards of judicial determination. The judiciary must earn and maintain the public trust in its ability to deliver justice on a daily, case by case basis.

From 30th March 2011 on that day the new Constitution came into operation to 30th September 2012, 84791 civil cases are accepted, 60753 cases decided and 24038 cases pending. At the same period, 464501 criminal cases are accepted, 433013 cases decided and 31488 cases pending in the Supreme Court and all other Courts. The clearance rate of civil adjudication is 71.65 percent compared with 93.22 percent in criminal adjudication.

If we are to have a judiciary that has the confidence of the citizens, it is essential to improve judicial efficiency; trying cases speedily and correctly, removing unreasonable delays and backlogs, and enforcing the decisions of Courts effectively. Moreover, the backlog and speed with which Courts can dispose of such a dispute as commercial cases, company cases and torts directly affect investor's trust in our judicial system and market economy system.

Here I would like to make two comments on judicial efficiency: judicial training and enough resources.

We need to build up capacity of judges urgently. The Supreme Court launches different training programs to extend the horizon of our judges; especially in these areas: current developments of the Constitution and laws; changing legal and judicial concepts; information technology and language skill to study them.

Furthermore, the judiciary must have the required financial, logistical and human resources to perform its functions adequately. Sufficient resources are required to maintain court buildings and office facilities, attract and retain well trained and capable staff. To improve judicial efficiency correlates sufficient and adequate allocation of budget and public expenditure to the Courts.

Well-Function

The last aspect of reinforced judiciary is well-functioning of it. Judicial function cannot be performed only by the Courts. Relevant institutions, and prosecutors, lawyers, parties and witnesses must go hand-in-hand to ensure well-functioning of the judiciary. The whole judicial process which involve giving information or reporting of a crime, investigation, litigation, examination of witnesses, interrogation of document or evidence, deciding the case based on the merits of it, and enforcement of Courts' decisions will be functioning if relevant institutions and persons cooperate dutifully and with good intention. If the judiciary functions well it does not impose burden and difficulties upon the parties so that it will regain the public trust and reliance.

The management of Courts must be efficient. Effective case flow management and proper structuring of the jurisdiction of Courts are a means to a well-run Court System that functions according to judicial standards and norms, protecting the rights of the accused, as well as victims and witnesses. A Court must treat each of litigants, witnesses, victims or defendants with dignity and provide accurate information in a helpful, timely, and open manner.

Now we are seriously considering making judicial reform efforts focusing on some critical areas such as:

- (a) enhancing access to justice;
- (b) improving timeliness and quality of justice delivery;
- (c) strengthening integrity, independence, and impartiality of the Courts;
- (d) facilitating coordination across the criminal justice system; and
- (e) increasing public trust in the justice system.

We need to enhance access to justice for prisoners waiting for trial and being in remand. Adjournments are to be reduced. We also need to improve the quality of recordkeeping. We need to set up clear mechanism in order to reduce vulnerability of the system to corruption. We need to encourage people to use alternative dispute resolution ADR and informal justice instead of litigation. Improvements in these areas will result in increased public trust in our judiciary.

In conclusion, I would like to say few remarks on the topic of current developments of our judicial system. The core responsibility of the judiciary is to provide the fair and impartial resolution of disputes between citizens and between citizens and the state or state entities in accordance with the laws. Nowadays, under the changing constitutional landscape, the primary duties of the judiciary become to maintain social order peaceful and tranquil, to have all people to secure justice, liberty and equality and to uphold the rule of law. Doing this task, the judiciary collaborates with the executive and the legislature, rationally and within the framework of constitutional structure. Let me end by saying that constructive and balanced relationships between the three branches of the State are essential to the effective maintenance of the Constitution and the rule of law.

Appendix 3-1**Structure and Functions of Courts in Myanmar***Sein Than* *

The present judicial system was adopted on 28th October 2010 by enacting the Union Judiciary Law in order to implement the judicial works smoothly in accord with the Constitution of the Republic of the Union of Myanmar 2008.

Accordingly, Courts in Myanmar are established in accordance with the Constitution 2008 and the Union Judiciary Law 2010. They are:

- Supreme Court of the Union
- High Courts of the Region and the State
- Courts of the Self Administered Division and Self-Administered Zone
- District Courts
- Township Courts
- Other Courts constituted by law
- Courts-martial
- Constitutional Tribunal of the Union

All the Courts in Myanmar now exist as an independent legal entity alongside the legislative and executive branches.

Supreme Court of the Union

The Supreme Court of the Union is formed in accord with the provisions of the Constitution, 2008 and the Union Judiciary Law, 2010. It is

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The author is now serving as the Director General in the Supreme Court of the Union in Myanmar

the highest Court of the Union without affecting the powers of the Constitutional Tribunal and the Court-Martial. It sits in Nay Pyi Taw, the capital of Myanmar. The Head of the Supreme Court of the Union is called the Chief Justice of the Union. Under the Constitution, Judges of the Supreme Court of the Union including the Chief Justice of the Union may be appointed in the Supreme Court from a minimum of seven and a maximum of 11 in number. Currently, the Supreme Court of the Union has 7 judges including the Chief Justice of the Union and 6 Judges of the Supreme Court of the Union.

The Supreme Court of the Union is the highest court of appeal. It exercises both appellate and revisional powers. It also has original jurisdiction which enables it to hear cases as the court of first instance. Only the Supreme Court of the Union has original jurisdiction in the following matters:

- (a) matters arising out of bilateral treaties concluded by the Union;
- (b) other disputes between the Union Government and the Region or State Government except the Constitutional problems;
- (c) other disputes among the Regions, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems;
- (d) piracy, offences committed at international water or airspace, offences committed at ground or international water or airspace by violating the international law;
- (e) cases prescribed by any law.

The Supreme Court of the Union has the jurisdiction on confirming death sentence and appeal against death sentence. It also has the jurisdiction on a case transferred to it by its own decision and for the transfer of a case

from a Court to any other Court. Unlike the jurisdiction exercised by the former Supreme Court, the Supreme Court of the Union has the power to issue following writs;

- (i) Writ of Habeas Corpus;
- (ii) Writ of Mandamus;
- (iii) Writ of Prohibition;
- (iv) Writ of Quo Warranto;
- (v) Writ of Certiorari.

A case finally and conclusively adjudicated by the Supreme Court of the Union exercising its original jurisdiction, or a case finally and conclusively adjudicated by the Supreme Court of the Union on the final and conclusive decision of any court may, on being admitted for special appeal by the Special Bench, comprising of two Judges of the Supreme Court of the Union, in accordance with the procedures, be heard and adjudicated again by the Special Appellate Bench, formerly it was known as the Full Bench. The Special Appellate Bench will consist of a total of 3 Justices including the Chief Justice of the Union and two Judges of the Supreme Court of the Union. Special appeals are rarely entertained by the Supreme Court of the Union. Only when substantial questions are arisen will the Supreme Court of the Union interfere by way of appeal by special leave in criminal and civil matters. The decision of the Special Appellate Bench is final and conclusive.

The Supreme Court of the Union has the power to prescribe the jurisdiction of the Courts of Self-Administered Division or Self-Administered Zone, District Courts, Township Courts and other Courts established by law to adjudicate criminal and civil cases. It may issue rules, regulations, notifications, orders, directives, procedures and manuals as may be necessary.

Moreover, it has supervisory powers over all courts in the Union and its decisions are binding upon all courts. It may direct to adjudicate the important cases of the High Court of the Region or State, Courts of Self-Administered Division or Self-Administered Zone and District Courts by a bench consisting of more than one judge.

It is entitled to submit the bills relating to the judiciary to the *Pyidaungsu Hluttaw*, or the Union Parliament, in accord with the stipulated manners.

High Courts of the Region and the State

The High Courts of the Region or State are established in the respective Region and State under the provisions of the Constitution, 2008 and the Union Judiciary Law, 2010. There are 14 High Courts of the Region or State in the whole country. Under the Constitution, in every High Court of the Region or State, from a minimum of 3 to a maximum of 7 judges of the High Court including the Chief Justice of the High Court of the Region or State may be appointed. At present, the Chief Justice and Judges of the High Courts are appointed by the President in the number depending on the volume of work of these Regions or States. Currently, there are 52 Judges sitting in these High Courts including 36 male judges and 16 female judges.

As courts of original jurisdiction, the Chief Justice and Judges of the High Courts in the Region or State may hear and determine any kind of criminal cases and civil cases in which the amount in dispute or value of the subject matters is unlimited. However, they do not normally take cognizance of any criminal offences as courts of first instance except where some special circumstances require them to do so.

As courts of appellate jurisdiction, they hear and determine appeals from any sentences or orders passed by the Courts of the Self-Administered Division or Zone, and the District Courts which are subordinate to them.

The Judges of the High Courts of the Region or State adjudicate on appeal cases and revision cases against the judgment, order and decision passed by the Courts of the Self-Administered Division or Self-Administered Zone, the District Courts and the township courts. They also adjudicate on the transfer of cases from one court to another within the region or state concerned.

The Judges of the High Courts of the Region or State supervise the judicial matters upon the all courts within its jurisdiction of the Region or the State in accord with the guidance of the Supreme Court of the Union.

Courts of the Self-Administered Division and the Self-Administered Zone

The Courts of Self-Administered Division or Self-Administered Zone are established under the Constitution and Union Judiciary Law. Same as the jurisdictions of District Judges, the judges of the Courts of Self - Administered Division or Self- Administered Zone are conferred with original criminal jurisdictional powers, criminal appellate and revisional jurisdictional powers according to the Criminal Procedure Code. They also invested with original civil jurisdictional powers, civil appellate and revisional jurisdictional powers according to the Civil Procedure Code. The Judges of the Courts of Self- Administered Division or Courts of Self- Administered Zone supervise the judicial matters of all Township Courts within its relevant jurisdiction in accordance with the guidance of the Supreme Court of the Union, High Court of the Region or State.

District Courts

The District Courts are established under the Constitution and the Union Judiciary Law. There are altogether 67 District Courts in the whole country. In every district court, a district judge is appointed by the Supreme Court of the Union. An additional district judge and deputy district judges are also appointed depending on the volume of work. Currently, there are 146 judges sitting in these district courts including 70 male judges and 76 female judges.

The district judges are conferred with judicial powers by the Supreme Court of the Union in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code. They are conferred with original criminal jurisdictional powers and criminal appellate and revisional jurisdictional powers according to the Criminal Procedure Code. They also invested with original civil jurisdictional powers, civil appellate and revisional jurisdictional powers according to the Civil Procedure Code. As Courts of original jurisdiction they hear and determine serious criminal cases which can pass the sentence of death or transportation for life and civil cases in which the amount in dispute or value of the subject matters is not exceeding 500 million kyats. The district courts supervise the judicial matters of all Township Courts within its relevant jurisdiction in accordance with the guidance of the Supreme Court of the Union, High Court of the Region or State.

Township Courts

The township courts are established under the Constitution and the Union Judiciary Law. There are altogether 324 township courts in the whole

country. In every township court, a township judge is appointed by the Supreme Court of the Union. Additional township judges or deputy township judges are also appointed by the Supreme Court of the Union depending on the volume of work. Currently, there are 738 judges sitting in these township courts including 446 male judges and 292 female judges.

The judges at township level are conferred with judicial powers by the Supreme Court of the Union in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code.

A township judge is the officer in charge of court administration matters. He or she also has the power to distribute all cases received in the township court to other judges of township courts. But every judge has independent jurisdiction over cases assigned to him or her.

Township courts are mainly courts of original jurisdiction. Township judges by virtue of their posts are specially empowered as Magistrates who can pass sentences of up to 7 years imprisonment where as an additional township judge, if he or she is especially empowered with such special magisterial powers, may award sentences not exceeding 7 years. The remaining deputy township judges can impose sentences according to their magisterial powers, such as Courts of First Class Magistrates, Courts of Second Class Magistrates and Court of Third Class Magistrates.

Some of the civil cases in which the amount in dispute or value of the subject matters is not exceeding 10 million kyats are adjudicated by the Township Judges and Additional Township Judges; and in which the amount is not exceeding 3 million kyats are adjudicated by the Deputy Township Judges in township courts. The Township Judges by virtue of their post also exercise juvenile jurisdiction specially conferred under 1993 Child Law.

Other Courts constituted by Law

Separate courts are established either under special provisions in any law or in respect of those cases which occur irregularly in populous areas. Separate courts specially constituted by the Supreme Court of the Union to achieve speedy and effective trial under some special laws include juvenile courts, courts to try municipal offences and courts to try traffic offences. There are altogether 23 judges sitting and performing their judicial functions in these separate courts.

- **Juvenile Courts**

The former State Law and Order Restoration Council enacted the Child Law, 1993. The Child Law, 1993 was adopted to implement the rights of the child envisaged in the United Nations Convention on the Rights of the Child. In the administration of justice in the Republic of the Union of Myanmar a juvenile offender is usually tried summarily by a competent court irrespective of the severity of the offence. In ordinary circumstances the legislature intended the juvenile offender to be punished as leniently as possible so that he or she may be able to enter the mainstream of life with a clear conscience, confident, efficient and with high moral. To achieve that spirit, juvenile offenders cannot be sentenced to death, transportation for life or imprisonment for a term exceeding 7 years.

In accord with the Child Law, township courts are conferred with powers to try juvenile offences. A separate juvenile court (Yangon) has been constituted to try juvenile cases occurring at 20 townships in Yangon City Development Area. A separate juvenile court (Mandalay) has been constituted to try juvenile cases occurring at 5 townships in Mandalay City

Development Area. Apart from that, juvenile court has been established separately in every township within the court house and the cases are adjudicated only by the township judge.

- **Courts to try Municipal Offences**

Seven separate courts have been opened in Yangon after consultation with the Yangon City Development Committee to try municipal offences. Such offences include; violating provisions of the City of Yangon Municipal Act, rules, by-laws, orders and directives still in force and those under the Yangon City Development Law enacted by the former State Law and Order Restoration Council. Four separate courts have also been established in Mandalay after consultation with the Mandalay City Development Committee, to try municipal offences. Similarly, one separate court has been established in Nay Pyi Taw territory to try such offences.

- **Courts to try Traffic Offences**

In order to try offenders violating vehicle rules and road discipline, one separate court in Nay Pyi Taw, 7 separate courts in Yangon City Development Area and 2 separate courts in Mandalay City Development Area exclusively for that purpose have been constituted in consultation with the Traffic Rules Enforcement Supervision Committee.

In conclusion, the courts at different level in Myanmar have been carrying out the administration of justice and other related judicial functions in accord with judicial principles laid down by the Union Judiciary Law. Moreover, the following judicial mottos are always kept in mind of all the judges:

- Adjudicate as to the law
- Adjudicate fairly and speedily
- Act as to the procedure
- Keep from corruption and bribery
- Maintain the integrity and reputation of the court.

Structure and Functions of Courts in Myanmar

Supreme Court of the Union
Republic of the Union of Myanmar

Present Judicial System

- Adopted on 28th October 2010 by promulgating the Union Judiciary Law
- Courts were formed under section 293 of the Constitution of the Republic of the Union of Myanmar and the Union Judiciary Law

Formation of Courts

- Supreme Court of the Union
- High Courts of the Region and the State
- Courts of the Self-Administered Division & Courts of the Self-Administered Zone
- District Courts
- Township Courts
- Other Courts constituted by law

Supreme Court of the Union

- Highest judicial organ in the Union without affecting the powers of the Constitutional Tribunal and the Courts-martial
- Highest court of appeal
- Matters exercised only by the Supreme Court
- Jurisdiction on confirming death sentence and appeal against death sentence
- Power to issue Writs

High Courts of the Region and the State

- Established under the Union Judiciary Law
- Form in the respective Region and the State
- 14 High Courts in the whole country
- 36 male judges and 16 female judges sitting
- In original jurisdiction, try any kind of criminal offence and civil suits which value of subject matter is unlimited
- Appellate jurisdiction upon the Courts of Self-administered Division and Self-Administered Zone, District Courts and Township Courts

Courts of Self-Administered Division and Self-Administered Zone

- Established under the Union Judiciary Law
- Original Criminal and Civil Jurisdiction like the District Courts
- Appellate jurisdiction upon the Township Courts within its local limits

District Courts

- Established under the Union Judiciary Law
- 67 District Courts in the whole country
- 70 male judges and 76 female judges sitting
- In original jurisdiction, try serious criminal cases punishable with death sentence and transportation for life; and civil suits which value of subject matter is not exceeding 500 million kyats
- Appellate jurisdiction upon the Township Courts within its local limits

Township Courts

- Established under the Union Judiciary Law
- Lowest courts and 324 Township Courts in the whole country
- 446 male judges and 292 female judges sitting
- In original jurisdiction, try criminal cases punishable with sentence of 7 years imprisonment ; and civil suits which value of subject matter is not exceeding 10 million kyats

Other Courts constituted by law

- Juvenile Courts
2 separate courts in Yangon and Mandalay
- Courts to try Municipal Offences
12 separate courts in Nay Pyi Taw, Yangon and Mandalay
- Courts to try Traffic Offences
10 separate courts in Nay Pyi Taw, Yangon and Mandalay
- Total 23 judges are sitting in these courts

Judicial Mottos

- Adjudicate as to the law
- Adjudicate fairly and speedily
- Act as to the procedure
- Keep away from corruption and bribery
- Maintain the integrity and reputation of the Court

Thank you

The Procedure deal with Criminal Justice System in Myanmar

Introduction

1. My presentation is composed of the following 7 Parts;
 1. Norms and Standard applied in the Criminal Justice System
 2. Applicable Laws
 3. Formation of the different levels of Criminal Courts
 4. Confer the power to try Criminal Cases
 5. Components of Criminal Justice
 6. Number of cases conducting in Courts
 7. Legal Reform and future perspective

Norms and Standard applied in the Criminal Justice System

Myanmar Judiciary follows the norms which international institutions organized as the basic principles. The Constitution of the Republic of the Union of Myanmar and the Union Judiciary Law grants the core elements to taking action upon criminal cases.

These norms are embodied in the Constitution and Union Judiciary Law as follows;

- (a) No criminal law should be done the retroactive action; any accused person shall be convicted only in accord with the relevant law then in operation. He shall not be penalized to a penalty greater than that is applicable under that law.
- (b) Any person convicted or acquitted by a competent court for an offence shall not be retried unless a superior court annuls the judgment and orders the retrial.
- (c) An accused shall have the right of defence in accord with the law.

- (d) No person shall be held in custody for more than 24 hours without the remand of a competent magistrate.
- (e) Punishment should be aimed to reform the moral character of offender.

Applicable Laws

The Penal Code, the Criminal Procedure Code, Evidence Act and special Laws are enacted in order to examine the criminal cases. When Myanmar was colony of British Empire, some laws from India were brought into Myanmar and exercised since then. Such laws were codified in Burma Code volume 1 to 13. Among them, 214 Laws are currently applied in the field of criminal and civil cases. There were 171 Laws promulgated in the period of Parliament. During the Revolutionary Council period, Socialist period, State and Order Restoration and State Peace and Development period and up to the 2011, totally 840 laws were enacted. Currently, the Pyidaungsu Hluttaw, passed the 26 Laws. When Myanmar acceded the International Conventions, the enactment of Domestic Laws follow in timely.

Formation of the different levels of Criminal Courts

In order to try the cases, Courts of the Union are formed in accordance with the Constitution as follows:

- * Supreme Court of the Union;
- * High Courts of the Region and the State;
- * Courts of the Self-Administered Division;
- * Courts of the Self-Administered Zone;
- * District Courts;
- * Township Courts;
- * Other Courts constituted by law;

At present, the Supreme Court of the Union has 7 judges including the Chief Justice of the Union and 6 Judges of the Supreme Court of the Union. The High

Courts of the Region or State are established in the respective Region and State under the provisions of the Constitution, 2008 and the Union Judiciary Law, 2010 and there are 14 High Courts of the Region or State. There are also 67 District Courts and 346 Township Courts and courts constituted by other laws including Juvenile Courts, Municipal Courts and Traffic Courts.

Confer the power to try Criminal Cases

The Supreme Court of the Union is the highest organ of the State Judiciary of the Republic of the Union in Myanmar without affecting the powers of the Constitutional Tribunal and the Courts-martial. It is the apex of the court system in Myanmar and exists as an independent entity alongside the legislative and executive branches.

The Supreme Court of the Union is the highest court of appeal. It exercises both appellate and revisional powers. It also has original jurisdiction which enables it to hear cases as the court of first instance.

The Supreme Court of the Union has the jurisdiction on confirming death sentence and appeal against death sentence. It also has the jurisdiction on a case transferred to it by its own decision and for the transfer of a case from a Court to any other Court.

As courts of original jurisdiction, the Chief Justice and Judges of the High Courts in the Region or State may hear and determine any kind of criminal cases and civil cases in which the amount in dispute or value of the subject matters is unlimited.

The High Courts of the Region or State adjudicate on appeal cases and revision cases against the judgment, order and decision passed by the Courts of the Self-Administered Division or Zone, the District Courts and the township courts. They also adjudicate on the transfer of cases from one court to another within the region or state concerned.

The district judges are conferred with original criminal jurisdictional powers, criminal appellate and revisional jurisdictional powers according to the Criminal Procedure Code.

As Courts of original jurisdiction they hear and determine serious criminal cases which can pass the sentence of death or transportation for life.

Township courts are mainly courts of original jurisdiction.. Township judges by virtue of their posts are specially empowered as Magistrates who can pass sentences of up to 7 years imprisonment where as an additional township judge, if he or she is especially empowered with such special magisterial powers, may award sentences not exceeding 7 years. The Township Judges are also empowered to trail the Juvenile Cases. The remaining deputy township judges can impose sentences according to their magisterial powers. For example, the first class magistrate can pass imprisonment for a term not exceeding two years and fine not exceeding 1000 kyats. The second class magistrate can impose not exceeding 6 months imprisonment, fine not exceeding 200 kyats. The third class magistrate can impose imprisonment not exceeding 1 month imprisonment, fine not exceeding 50 kyats.

Components of Criminal Justice

The criminal law of the land splits itself up into two broad divisions, one for prevention of crimes, and the other for punishment of criminals. The prevailing law on crime prevention and punishment is embodied in two principal statutes: the Penal Code and the Code of Criminal Procedure.

Prevention of Offences

Besides trial of actual offenders, Magistrates have another function. They are the custodians of public peace and tranquility. It often happens that in a certain locality there are persons, who by their general conduct and past behaviour, threaten to jeopardize the safety of the people. Law provides that this class of men should be made to realize their mistakes and shortcomings, and be on

probation of guaranteed good behavior. The procedures deal with security for keeping the peace and for good behavior are laid down in the Criminal Procedure Code.

The Mode or Taking Cognizance of Offences

Magistrates may take cognizance of any offence -

- * upon a report in writing of such facts made by any police-officer;
- * upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed.

Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. However, when a citizen of the Union of Myanmar commits an offence at any place without and beyond the limits of the Republic of the Union of Myanmar, he may be dealt with in respect of such offence as if it had been committed at any place within the Union of Myanmar at which he may be found. Likewise, when a foreign citizen or an alien of other countries commits an offence within the territory of Myanmar, which is punishable by any law for the time being in force in Myanmar, he or she shall be liable to punishment under section 2 of the Penal Code.

Enquiry and Trial

When the complaint is put up before the Magistrate, empowered to take cognizance of the case, the complainant is called and examined on oath. The Magistrate records the complainant's statement and orders issue of process on the accused, unless he is of opinion that the complainant's story is untrue or has some inherent improbability about it. If the Magistrate refuses to issue process, he either dismisses the case under Section 203 of Criminal Procedure Code, or directs an enquiry by the police or by such other person as he thinks fit. In a

case where enquiry is directed, the magistrate has to wait for the report of the enquiry for disposal of the complaint.

Appearance of the Accused

When on complaint of a party the magistrate issues process, the lawyer should direct his client to file requisites, e.g., process fee and address of the accused. Careless supply of address of the accused or delay in filing the prescribed fee for issue of process often means unnecessary delay, disappointment and expense to the complainant. Ordinarily, the accused on receipt of the summons or warrant appears in court on the date fixed for such appearance.

Bail

In bailable cases, as soon as the accused signifies his assent to take a trial, the court grants him bail and fixes a date on which the trial proper is to begin. Where the offence with which the accused is charged is non-bailable, applications are put in, by the accused stating there in the grounds on which he seeks to be admitted to bail. If the court on a consideration of the petition is of opinion that the accused deserves to be on bail during the trial, an order is passed to that effect fixing the amount of security and number of sureties to be furnished. The accused then secures a surety or sureties who along with him execute a bond. This bond is put up before the magistrate for acceptance.

In non-bailable cases, an accused person may, for reason to be recorded in writing, be released on bail but he shall not be so released on bail, if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. Provided that any person under the age of 16, any woman or any sick or infirm person may be released on bail in any case.

Commencement of Record of Evidence of Trial

A Magistrate can try a case according to law in one of these ways: (a) summons trial (b) warrant trial (c) summary trial.

Summary trial and summons trial require the complainant to appear in court with his witnesses on the date fixed for that purpose. The accused also has to bring his witnesses on that day unless he is spared the necessity of so bringing his witnesses by the court having regard to the nature of its file on that date and the number of witnesses proposed to be examined by the complainant. The court opens the trial by asking the accused if he is guilty or not. If the answer is in the negative, the court asks the complainant to put his witnesses in the box for examination. In summons trial and summary trial, the Magistrate need not record the evidence in *extenso*; he may simply make a memorandum of important and salient points. The defence lawyer must keep ready for cross-examination and take up the witness as soon as the complainant has finished his examination-in-chief. When the complainant has exhausted the list of his witnesses, the defence puts in evidence if so desired.

In summons trial and summary trial the magistrate need not frame any charge. He has to examine the accused under Section 342 of the Criminal Procedure Code.

In warrant trial, prosecution goes on examining witnesses till the list is exhausted or till the magistrate considers that sufficient evidence has been led to enable him to frame a charge against the accused. The defence lawyer has the right to cross-examine the prosecution witness twice, once before charge and again after it. The accused in a warrant case may get an adjournment for cross-examination of witnesses examined by the prosecution up to the point of framing of the charge. If the lawyer gets sufficient materials from the cross-examination of the prosecution witnesses, it is hardly necessary or advisable to adduce any evidence in defence.

Judgment

Judgment must be pronounced in open court, in the presence of the accused, or, if his personal attendance during the trial has been dispensed with and he is acquitted or the sentence is one of fine only, in the presence of his pleader.

Appeal and Revision

An appeal shall lie to the respective appellate court in accordance with the Union Judiciary Law, 2010 and the Criminal Procedure Code.

The superior courts empowered with revisional power, may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself as to the correctness, legality and propriety of finding, sentence or order, passed by inferior court.

Number of cases conducting in Courts

From 30th March 2011 to 30th September 2012, the following numbers of cases that handling by the respective courts are as follows;

Sr.	Courts	Received	Decided	Pending
1.	Supreme Court of the Union	1487	1153	334
2.	High Courts of the Regions and States	8212	7016	2105
3.	District Courts	14735	13965	3233
4.	Township Courts	418577	410139	25816

Legal Reform and future perspective

Now, the Supreme Court of the Union is drafting the new laws to be in line with the current situation. The Supreme Court has already submitted 6 Draft Bills to the Pyidaungsu Hluttaw and they are on the process. These Drafts are Law Amending the Penal Code; Law Amending the Code of Criminal Procedure;

Law Amending the Limitation Act; Law Amending the Code of Civil Procedure; Draft Law on Contempt of Court and Law Amending the Transfer of Property Act.

Appendix 4-2

The Procedure deal with Criminal Justice System in Myanmar

Presented by
Mr. Tu Jar
Chief Justice
High Court of Kachin State

1

Introduction

- Norms and Standard applied in the Criminal Justice System
- Applicable Laws
- Formation of the different levels of Criminal Courts
- Confer the power to trial Criminal Cases
- Components of Criminal Justice
- Number of cases conducting in Courts
- Legal Reform and future perspective

2

Norms and Standard applied in the Criminal Justice System

- Convicted only in accord with the relevant law then in operation
- Convicted or acquitted by a competent court for an offence shall not be retried unless a superior court annuls the judgment and orders the retrial.
- Accused shall have the right of defence in accord with the law.
- No person shall be held in custody for more than 24 hours without the remand of a competent magistrate.
- Punishment should be aimed to reform the moral character of offender.

3

Applicable Laws

- The Penal Code, the Criminal Procedure Code, Evidence Act and special Laws
- Burma Code volume 1 to 13 – 214
- Parliament period – 171
- Revolutionary Council period, Socialist period, State and Order Restoration and State Peace and Development period up to 2011 – totally 840
- Pyidaungsu Hluttaw - 26

4

Formation of the different levels of Criminal Courts

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graph TD
    A[Supreme Court of the Union] --> B[High Courts of the Regions/ States - 14]
    B --> C[District Courts - 67]
    C --> D[Township Courts / other courts constituted by laws 346]
    
```

5

Confer the power to try Criminal Cases

Sr.	Courts	Empower
1.	Supreme Court	original jurisdiction, appellate and revisional powers, confirming death sentence and appeal against death sentence, transfer of a case from a Court to any other Court
2.	High Courts of Region/ States	hear and determine any kind of criminal cases, adjudicate on appeal cases and revision cases, transfer of a case from a Court to any other Court within the region or state concerned
3.	District Courts	hear and determine serious criminal cases which can pass the sentence of death or transportation for life, appellate and revisional jurisdictional powers
4.	Township Courts	Township judges / Add Tsp Judge -7 years imprisonment 1 st Class Magistrate-2 years imprisonment/ 1000K 2 nd Class Magistrate-6 months imprisonment / 200 K 3 rd Class Magistrate-1 month imprisonment/ 50 K

6

Components of Criminal Justice

- Prevention of crimes
- Punishment of criminals
 - > Two principal statutes
- ❖ Penal Code
- ❖ Code of Criminal Procedure

7

Prevention of Offences

- To maintain public peace and tranquility
- Security for keeping the peace and for good behavior are laid down in the Criminal Procedure Code.

8

Taking Cognizance of Offences

- upon a report in writing of such facts made by any police-officer;
- upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed

9

Enquiry and Trial

- complainant is called and examined on oath
- complainant's story is true - orders issue of process on the accused
- If the Magistrate refuses to issue process, he either dismisses the case under Section 203 of Criminal Procedure or directs an enquiry by the police or by such other person as he thinks fit

10

Appearance of the Accused

- complaint of a party the magistrate issues process, the lawyer should direct his client to file requisites, e.g., process fee and address of the accused
- accused on receipt of the summons or warrant appears in court on the date fixed for such appearance.

11

Bail

- bailable cases, as soon as the accused signifies his assent to take a trial, the court grants him bail and fixes a date on which the trial proper is to begin
- non-bailable - accused secures a surety or sureties who along with him execute a bond
- if there appear reasonable grounds for believing that accused has been guilty of an offence punishable with death or transportation for life - shall not be so released on bail
- any person under the age of 16, any woman or any sick or infirm person may be released on bail in any case.

12

Commencement of Record of Evidence of Trial

- A Magistrate can try a case according to law in one of these ways:
 - (a) summons trial
 - (b) summary trial
 - (c) warrant trial

13

Judgment

- pronounced in open court, in the presence of the accused, or, if his personal attendance during the trial has been dispensed with and he is acquitted or the sentence is one of fine only, in the presence of his pleader.

14

Appeal and Revision

- An appeal shall lie to the respective appellate court in accordance with the Union Judiciary Law, 2010 and the Criminal Procedure Code.
- superior courts empowered with revisional power, may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself as to the correctness, legality and propriety of finding, sentence or order, passed by inferior court.

15

Number of cases conducting in Courts(30th March 2011 to 30th September 2012)

Sr	Courts	Received	Decided	Pending
1.	Supreme Court of the Union	1487	1153	334
2.	High Courts of the Regions and States	8212	7016	2105
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4.	Township Courts	418577	410139	25816

Legal Reform and future perspective

- Supreme Court of the Union is drafting the new laws to be in line with the current situation
 - Law Amending the Penal Code;
 - Law Amending the Code of Criminal Procedure;
 - Law Amending the Limitation Act;
 - Law Amending the Code of Civil Procedure;
 - Draft Law on Contempt of Court;
 - Law Amending the Transfer of Property Act.

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Thank you

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Appendix 5-1

PROCEDURE DEALS WITH CIVIL SUITS IN MYANMAR JUDICIARY

1. Introduction

In Myanmar judicial system, Courts are conferred with powers to try criminal cases and civil suits in both. Courts are following the Code of Criminal Procedure for criminal cases and the Code of Civil Procedure for civil suits.

The Code of Civil Procedure (CPC) is the procedural law which consists of the provisions from institution to execution of original civil suits, appeals from original decrees, reference and review etc. The original Code of Civil procedure is an India Act which had been enacted in 1895. The Code had been amended in 1877, 1882, 1909 and the present Civil Procedure Code is the Code which was adopted in 1909. The Code is divided into two parts: sections and orders. The sections laid down the general principles and the rules furnished machinery for applying those sections. In this presentation, the procedure deals with original civil suit will be mentioned and explained.

2. General Principles

Suits in general are detailed by the Civil Procedure Code. The Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. For example, a suit in which the right to property or to an offence is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. (CPC, Sec.9)

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in a previously instituted suit. But these suits must be between the same parties or parties under whom they or any of them claim, litigating under the same title, and where such suit is pending in the same Court or any other Court having jurisdiction. (CPC, Sec.10)

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly in issue in a former suit between the same parties, litigating same title in the Court such issue has been heard and finally decided. (CPC, Sec.11)

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit for such cause of action. (CPC, Sec.12)

3. Civil Jurisdiction

The jurisdiction of Courts is its authority to decide matters that are litigated before it. Generally, Myanmar Courts have jurisdiction to try all civil suits against all persons (whether local or foreign) within Myanmar, other than foreign sovereign. The appropriate Court in which commence proceedings in Myanmar is dependent upon the type and value of the claims and, perhaps, the location of the parties or the place the business is or act in question was carried on. Therefore, the Court firstly scrutinizes the place of suing whether it can be commenced under the jurisdiction of the Court or not.

Every suit shall be instituted in the Court of the lowest grade competent to try it and where subject matter situates. (CPC, Sec. 15)

Subject to the pecuniary or other limitations prescribed by any law, suits for immovable property shall be instituted where subject matter situated. (CPC, Sec.16) In case of immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate (CPC, Sec. 17).

However, where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property (CPC, Sec. 18).

Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff on either or the said Courts. (CPC, Sec.19)

Other suits shall be instituted in a Court where defendants reside or cause of action arises (CPC, Sec.20).

The Supreme Court of the Union confers the pecuniary jurisdiction to subordinate Courts from time to time by Directives. To solve the over-loading civil suits in High Courts and District Courts, the Supreme Court amended the pecuniary jurisdiction of the Courts in 2011. At present, the Township Courts are conferred jurisdiction to try the original civil suits of the value of not more than Ten million Kyats (Myanmar currency). Courts of Self-Administered Division or Zone and District Courts are conferred jurisdiction to try the original civil suits of the value of not more than five hundred million Kyats. However, the pecuniary jurisdiction of High Courts of Region or State is not limited and High Courts can try any original civil suits of the value more than five hundred million Kyats.

According to Union Judiciary Law, the Supreme Court has also original civil jurisdiction in matters arising out of bilateral treaties concluded by the Union, other disputes between the Union of Government and the Region or State Government, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems, other disputes among the regions and cases prescribed by any law.

4. When Aliens or Foreign States may sue

Under the Civil Procedure Code, alien enemies residing in the Union of Myanmar within the permission of the President of the Union of Myanmar, and alien friends, may sue on the Courts of the Union of Myanmar, as if they were citizens of the Union. And, no alien enemy residing in the Union of Myanmar without such permission, or residing in a foreign country, shall sue in any of such Courts (CPC, Sec. 83).

A foreign State may sue in any Court of the Union of Myanmar if such State has been recognized by the President of the Union (CPC, Sec. 84).

5. Court Procedure for Original Civil Suits

5.1. Filing a original civil suit

Civil suits are filed in Courts having proper jurisdiction, that is to say, territorial or local, pecuniary, subject matter and personal jurisdiction. A civil suit is instituted by filing plaint in the Court of the lowest grade competent to try it.

The plaint must comply with the requirements set out under Order 6 and 7 of the Civil Procedure Code. Every plaint shall contain the name of Court, description and place of residence of the plaintiff and the defendant, the statement of where the plaintiff or defendant is a minor or a person of unsound mind, cause of action, jurisdiction, the relief claimed by plaintiff, (if any) set-off or relinquished amount, value of the subject-matter of the suit (CPC, Or.7, R.1).

In money suit, the plaint shall state the precise amount claimed (CPC, Or.7, R.2). Where the subject-matter of the suit is immovable property, a description of the property sufficient to identify shall be contained in the plaint (CPC, Or.7, R.3). Moreover, the plaint shall show interest of the plaintiff and defendant, grounds of exemption from limitation law, alternative relief, separate and distinct grounds for claims (if any) (CPC, Or.7, R.4, 5, 6, 7 and 8).

The Court shall return to be presented to the Court in which the suit should have been instituted (CPC, Or.7, R.10). The Court shall reject the plaint where it does not disclose a cause of action, the relief claimed is undervalued, insufficiently stamped plaint, statement to be barred by any law (CPC, Or.7, R.11).

Civil suit are instituted in the competent Court for the right of the one party which is denied by the other. Therefore, the Court has to decide the relief of the plaintiff in accordance with the laws related to the claimant.

5.1.1. Court-fees

For institution of original civil suit, pay of sufficient Court-fees and litigation within the time of limitation are also essential. Subject- matter of the suit must be valued for Court-fees and sufficiently stamped. The Court-Fees Act provides fixed court-fees and Court-fee payable in suit value. All fees referred or chargeable under the Act shall be collected by stamps (The Court-Fees Act, Sec.25).

5.1.2. Limitation of actions

Prescriptive period of limitation for various actions and application is governed by the Limitation Act. For different types of suits and application, the period of limitation and time from which period begins to run are prescribed in the Act. Every suit instituted after the period of limitation prescribed in the Act shall be dismissed, although limitation has not been set up as a defence (The Limitation Act, Sec.3).

5.2. Filing written statement by defendants

When received the summons, the defendant shall come to the Court and file his written statement if he wants to deny the allegation made in the plaint or admit them.

The defendant may present a written statement of his defence at or before the first hearing or within such time as the Court permits (CPC, Or.8, R.1). The defendant must raise all matters which show the suit not to be maintainable and all grounds of defence (CPC, Or.8, R.2). Denial in written statement must be specific for each allegation of fact which he does not admit (CPC, Or.8, R.3).

Every allegation of fact in the plaint shall be taken to be admitted if the defendant does not deny specifically in the written statement (CPC, Or.8, R.5). In a suit for the recovery of money the defendant may claim to set-off against the plaintiff's demand any ascertained sum of money (CPC, Or.8, R.6).

When party fail to present written statement within the time fixed by the Court, the Court may pronounce judgment against him or make an order as it think fit (CPC, Or.8, R.10).

5.3. Settlement of issues

At the first hearing of the suit, the Court shall, after reading the plaint and the written statement and shall there upon proceed to frame and record the issues on which the right decisions of the case appear to depend.

Issues are to be framed only in respect of those material propositions of fact or law is affirmed by the one party and denied by the other party (Or.14, R.3). In the same suit, issues both of law and fact may arise. The court is of opinion that the case or any part thereof may be disposed of on the issues of law only; it shall try those issues first and may postpone the settlement of the issues of fact until after the issues of law have been determined (Or.14, R.2). However when the issue of law is compound with the facts, the court may settle the issues both of law and fact after hearing the suit and examination of witnesses.

The Court may amend the issues or frame additional issued or strike out any issues as it think fit, at any time before passing a degree (Or.14, R.5).

The date of framing issues is the first hearing of a suit. Therefore non-appearance of the parties and non-production of documents at that date shall be effect to the suit. At first hearing, all documentary evidence in possession of the parties shall

be produced and no documentary evidence shall be received at any subsequent stage of the proceeding unless good cause is shown to the satisfaction of the Court (Or.13, R.1 and 2). Where at the first hearing of a suit it appears that parties are not at issue on any question of law or fact, the court may at once pronounce judgment (Or.15, R.1).

5.4. Hearing of the suit

For settlement of issues of the fact, the Court shall proceed to hearing of the suit and examination of witnesses.

For attendance of witness, the parties may obtain, on application to the Court, summonses to persons who attendance is required either to give evidence or to produce documents at any time after the suit is instituted (Or.16, R.1). The expenses of witness shall be paid into the Court by the party applying for summons (Or.16, R.2). If witness fails to appear the Court may impose fine and may order his property to be attached and sold, having regard to his condition in life and all circumstances of the case (Or.16, R.12).

5.4.1. Production of evidence

The party on whom the burden of proof lies should begin the examination. Generally the plaintiff has the right to begin (Or.18, R.1). On the day fixed for the hearing of the suit on any other adjourned day, the party shall state his case and produce his evidence, documentary as well as oral in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence (if any) in the manner aforesaid (Or.18, R.2).

5.4.2. Examination of witnesses

The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the judge (Or.18, R.4). The evidence of witness shall be taken down in writing in the language of the Court or in English (Or.18, R.5). After Myanmar language is stated as official language, the language used in Court became Myanmar language.

5.4.3. Order of Examination

The order in which witnesses are produced and examined shall be regulated by the Evidence Act and Civil Procedure (Evidence Act Sec.135). Admissibility of evidence shall be decided by judge in accordance with the Evidence Act (Evidence Act Sec.136). As the order of examination, witnesses shall be first examined-in-chief by the party who calls him. Then witnesses shall be cross-examined if the adverse party so desires and re-examined if the party calling him so desires (Evidence Act Sec.137). The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief (Evidence Act Sec.138).

5.5. Judgment and Decree

After hearing the suit and final argument by both of parties or their pleaders (if any), the Court shall pronounce judgment in open Court either at once or some future day of which due notice shall be given to the parties or the pleaders. On such judgment a decree shall follow (CPC, Sec.33 and Or.20, R.1).

Decrees may differ according to the nature of the suits. There are also different judgments passed under different conditions like: judgment on admission by party, judgment by consent, declaratory judgment and judgment by default.

Judgment is the statement given by the judge of the grounds of a decree or order (CPC, Sec. 2(9)). Decree means formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question arising between the parties. But any adjudication from which an appeal lies as an appeal from an order and any order of dismissal for default (CPC, Sec. 2(2)).

Therefore judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision (CPC, Or.20, R.4(2)).

The decree shall agree with the judgment and shall contain the number of suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit, and by whom or out of what property and in

what portions such costs are to be paid. The court may direct that the costs payable to one party by the other shall be set off any sum which is admitted or found to be due from the former to the latter (CPC, Or.20, R.6).

6. Temporary Injunctions and Interlocutory orders

6.1. Temporary injunctions

According to the Civil Procedure, temporary injunction may be granted during the process of the suit. For temporary injunction the party who applies, is necessary to prove by affidavit or otherwise that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors. The court may grant a temporary injunction to restrain such act until the disposal of the suit or until further orders for the purpose of prevention (CPC, Or.39, R.1).

6.2. Interlocutory orders

Before judgment the Court has power to order interim sale on application of any party to a suit. The Court may order the sale of any moveable property which is subject-matter of the suit and which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once (CPC, Or.39, R.6).

7. Withdrawal and Adjustment of Suits

7.1. Withdrawal of the suit

At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdrawal his suit or abandon part of his claim. Where the Court is satisfied that a suit must be fail by reason of some formal defect, or that there are other sufficient grounds, it may grant the plaintiff permission to withdrawal. Where the plaintiff withdraws or abandonment without the permission of the Court, he shall be precluded from instituting any fresh suit in respect of such subject-matter or claim (CPC, Or.23, R.1).

7.2. Compromise of suits

Where the suit has been adjusted wholly or in any part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff, the Court

shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith. Otherwise, the Court may order to stay the proceedings upon the terms of the agreement, compromise or satisfaction with liberty to the parties to apply for the purpose of carrying the same into effect (CPC, Or.23, R.3).

Withdrawal and compromise of suits under the Civil Procedure shall not apply to any proceedings in execution of a decree or order (CPC, Or.23, R.4).

8. Procedure in Execution

Any person in whose favour a decree has been passed or an order capable of execution has been made, can make application to the Court which passed the decree for enforcement of the decree or order. Execution may be effected either against the person or property or both, of the judgment debtor. The Court having jurisdiction is that situates at the place where the person resides or where the property situates. The only exception is when a Court issues a percept to another court having jurisdiction over the property to be attached.

The court may order execution of the decree by delivery of any property specially decreed; by attachment and sale or sale without attachment of any property; by arrest and detention in prison; by appointing a receiver; or in such other manner as the nature of the relief granted may require (CPC, Sec.51).

In execution of decree, judgment-debtor shall be detained, where the decree is for the payment of money, for a period of six months. He shall be released from such detention before the expiration of period on the decree against him being fully satisfaction. A judgment-debtor release from detention shall not merely by reason of his release be discharge from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in civil prison (CPC, Sec.58).

Before issuing a warrant of arrest, the Court shall issue a notice calling upon judgment-debtor to appear before the Court and show cause why he should not be committed to the civil prison. However, such notice shall not necessary if the Court is satisfied that he is likely to abscond or leave the local limits of the jurisdiction of the Court with the object or effect of delaying the execution of the decree (CPC, Or.21, R.37).

Ordinarily, the Civil Procedure Code had been prohibited the arrest or detention in a civil prison of a woman in execution of a decree for the payment of

money. But this provision was deleted by the Law Amending the Code of Civil Procedure in 2000. The procedure in arrest and detention can be now applicable to every judgment-debtor.

9. Types of Civil Suits and Laws relating to Civil Suits

9.1. Types of Civil Suits

In Myanmar, some types of civil suit are usually instituted. They are suit for money (including suit for remedies), divorce, suit for possession of movable property or immovable property, suit for partition of property or separate possession of a share therein, administration suit (including suit for dissolution of partnership and suit for administration of the property of deceased person), declaratory suit, suit for specific performance of contract, suit for recovery of possession etc.

9.2. Laws relating to Civil Suits

There is no comprehensive Civil Code which covers all types of civil suits in Myanmar. Myanmar Codes (Volume-1 to 13) codified the laws like Contract Act, Transfer of Property Act, Specific Relief Act, Succession Act, Guardian and Wards Act, Company Act, promulgated before 1954.

Under the Myanmar Laws Act, 1898, questions regarding succession, inheritance, marriage, caste, or any religious usage or institution are to be decided to Myanmar Customary Law where parties are Myanmar Buddhists; according to Mohammedan Law in case of Mohammedans and by the Hindu Law in case of Hindus.

Thus, people living in Myanmar are governed by different customary laws. A man carries his customary or personal law wherever he goes. From the time of Myanmar King personal matters of Myanmar Buddhist people are decided by age-old Myanmar Customary Law formally known as Burmese Buddhist Law. It is composed of Myanmar Dhammasats essentially based on Myanmar customs, enacted laws and judicial precedents or rulings of the highest Courts in Myanmar.

Where there is no statute regulating a particular matter, the Courts are to apply Myanmar's general law, which is based on English common law as adopted by Myanmar case law and which embodies the rules of equity, justice and good conscience.

10. Conclusion

The Civil Procedure Code is a form of law code which aims to achieve the ends of justice and to prevent it from being defeated. Therefore, the Code continued to be in force even after Myanmar gained independence and remained in operation although some provisions were amended in 2000 and 2008. Now the Supreme Court of the Union is going to review the Code to be consistency with the current situation of civil litigation in Myanmar.

End of document

Appendix 5-2

PROCEDURE DEALS WITH CIVIL SUITS IN MYANMAR JUDICIARY

Daw Thin Thin Nwe
High Court Judge
High Court of Yangon Region
Myanmar

1

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- Court Procedure for Original Civil Suits

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- Powers to try criminal cases and civil suits
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The Code of Civil Procedure

- The procedural law which is consists of the provisions from institution to execution of original civil suits, appeals from original decrees, reference and review etc.
- Adopted in 1909
- Including Two parts: sections and orders

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- Suits for immovable property
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Pecuniary jurisdiction

- Township Courts: suit value not more than Ten million Kyats
- Courts of Self-Administered Division or Zone and District Courts: suit value more than Ten million Kyats but not more than five hundred million Kyats
- High Courts of Region or State: suit value more than five hundred million Kyats.

9

Original civil jurisdiction of the Supreme Court of the Union

- Matters arising out of bilateral treaties concluded by the Union
- Other disputes between the Union of Government and the Region or State Government, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems
- Other disputes among the regions and cases prescribed by any law.

10

When Aliens or Foreign States may sue

- Alien enemies residing in the Union of Myanmar within the permission of the President of the Union of Myanmar, and alien friends, may sue on the Courts of the Union of Myanmar, as if they were citizens of the Union
- No alien enemy residing in the Union of Myanmar without such permission, or residing in a foreign country, shall sue in any of such Courts

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Types of Civil Suits and Laws relating to Civil Suits

- Types of Civil Suits
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- Continuance in enforce after independence of Myanmar
- Still in operation as existing law
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THANK YOU

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**JOINT COMPARATIVE STUDY ON THE LEGAL SYSTEMS
OF JAPAN AND MYANMAR
- INVITATION OF THE ATTORNEY GENERAL OF THE UNION AND
THE CHAIRPERSON OF THE BILL COMMITTEE
OF PYITHU HLUTTAW
OF THE REPUBLIC OF THE UNION OF MYANMAR -**

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I. INTRODUCTION

Since its transition to civilian rule in March 2011, Myanmar has placed top priority on the establishment of good governance and a clean government in order to build a democratized, modern nation. To this end, it has strived toward the solid establishment of the rule of law as one of its challenges, and has made steady progress towards democratization.

In order to support Myanmar's effort towards accelerated reforms in a wide range of areas for democratization, national reconciliation and sustainable development, the Government of Japan announced a policy of proactively assisting Myanmar in its endeavors under the cooperation between the public and private sectors. This initiative includes the creation of a public-private joint task force on Myanmar, under the Ministerial Meeting on Strategy relating to Infrastructure, Export and Economic Cooperation. While continuously monitoring the progress in reformatory efforts in Myanmar, assistance will be provided to facilitate the benefits to the broadest range of people on democratization, national reconciliation and economic reform.

In January 2013, Deputy Prime Minister Taro Aso¹, visited Myanmar as the first Cabinet Minister of the current Japanese administration. In the following April, the Japanese government invited Ms. Aung San Suu Kyi, Chairperson of the National League for Democracy (and also Chairperson of the Parliamentary Committee on Rule of Law, Peace and Tranquility) to have discussions with Prime

¹ Mr. Taro Aso also holds the post of the Minister of Finance.

Minister Shinzo Abe², and Minister of Justice Sadakazu Tanigaki³ and others. At the end of May, Prime Minister Abe visited Myanmar, at the invitation by H.E. President of Myanmar Thein Sein, as the first Prime Minister of Japan to do so in 36 years. During his stay, the two leaders announced a joint statement titled, “Joint Statement between Japan and the Republic of the Union of Myanmar – New Foundation for Mutual Friendship.” This statement emphasized: “The development of economic and social capital including infrastructure, the development of institutions, capacity building, the development of rural and ethnic minority areas, among others, are key to improving the livelihoods of the people of Myanmar and to building a prosperous nation.” Through this joint statement, the two leaders “shared the view as to the importance of Japan’s technical cooperation for institutional development and capacity development of the Government of Myanmar and confirmed their intentions for its further promotion.”⁴

Amid the advance in the strengthening of relationships between Japan and Myanmar, the Research and Training Institute of the Ministry of Justice, in cooperation with the Japan International Cooperation Agency (JICA), held a series of discussions with several legal and judicial institutions in Myanmar. Through these discussions, it has been planned to officially commence, together with two counterpart organizations - the Union Attorney General’s Office and the Supreme Court of the Union of Myanmar, a “Project for Capacity Development of Legal, Judicial and Relevant Sectors in Myanmar” within the 2013 fiscal year. This project aims to promote the “rule of law,” “democracy,” and “sustainable economic growth,” through development and operation of laws which suit the social and economic conditions in Myanmar, while complying with international standards. And it consists of two main pillars: 1) strengthening of the capacity to handle the pressing legislative challenges that Myanmar faces (assistance in legislative capacity-building); and 2) the development of foundations for human resource development of the two counterpart organizations.

The Union Attorney General’s Office of Myanmar has the same functions as those of the Ministry of Justice, Public Prosecutors Office and the Cabinet Legislation Bureau of Japan. The joint comparative study on the legal systems of Japan and Myanmar, as stated in the title of this paper, was conducted inviting six officials in total. These included the Attorney General of the Union and four incumbent prosecutors, as well as the Chairperson of the Bill Committee of Pyithu Hluttaw (House of People’s Representatives), all for the following purposes:

- To study and compare the legal systems in Japan and Myanmar so as to deepen the understanding of the legal system of Myanmar, and to facilitate the understanding by relevant

² For details on the discussion with Prime Minister Abe, visit the website of the Prime Minister of Japan and his Cabinet at: http://www.kantei.go.jp/foreign/96_abe/actions/201304/18myanmar_e.html

³ For details on the discussion with Minister of Justice Tanigaki, visit the website of the Ministry of Justice at: http://www.moj.go.jp/hisho/kouhou/hisho06_00196.html (in Japanese)

⁴ For details on the visit to Myanmar by Prime Minister Abe, visit the website of the Ministry of Foreign Affairs at: http://www.mofa.go.jp/region/page3e_000062.html

- officials of Myanmar on the legal systems and the actual legal training system in Japan;
- Based on the above mutual understanding, to decide detailed activities for the upcoming project; and
 - To exchange concrete and constructive opinions on future cooperative relationships.

The joint comparative study was co-organized by the Research and Training Institute, JICA and the International Civil and Commercial Law Centre Foundation (ICCLC).

II. SCHEDULE OF THE JOINT STUDY AND INVITED OFFICERS

Period: June 10 (Mon.) – 14 (Fri.), 2013

Invited officers: H.E. Dr. Tun Shin, Attorney General of the Union

H.E. Mr. Ti Khun Myat, Chairperson of the Bill Committee of Pyithu Hluttaw

H.E. Mr. Kyaw Moe Naing, Advocate General of the Yangon Region

and three others.

III. ACTIVITIES

This joint study was held, following the invitation of H.E. Mr. Htun Htun Oo, Chief Justice of the Supreme Court of Myanmar to Japan in November 2012, inviting the Attorney General and other delegates who were central figures in the legal community in Myanmar. In order to widely share with related parties the information on the actual judicial system in Myanmar, I will describe, as below, matters which deserve special mention in relation to our joint study.

A. Courtesy Call

To promote personnel exchanges between Dr. Tun Shin, the first Attorney General of Myanmar who visited Japan, and relevant officials in Japan, courtesy calls were paid on judicial officials including the Minister of Justice, Prosecutor General, Justices of the Supreme Court, Superintending Prosecutor of the Tokyo High Public Prosecutors Office, President of the Tokyo High Court, Chief Prosecutor of the Tokyo District Public Prosecutors Office, President of the Tokyo District Court, as well as the Minister of Finance, Parliamentary Senior Vice-Minister for Foreign Affairs⁵, President of JICA, Director-General of the Cabinet Legislative Bureau, and others. Owing to his rich legal knowledge and broad international experience, the Attorney General holds additional important posts

⁵ For details on the meeting with Mr. Shunichi Suzuki, Parliamentary Senior Vice-Minister for Foreign Affairs visit the website of the Ministry of Foreign Affairs at: http://www.mofa.go.jp/mofaj/annai/page3_000236.html (in Japanese).

as a committee member on foreign investment and as the Chairperson of the Committee for Policy Formulation of Legal Development. During his courtesy call on Mr. Tanigaki, Minister of Justice; and Mr. Tanaka, President of JICA, the Attorney General expressed, on behalf of the Government of Myanmar, his gratitude for the invitation to Japan, and also showed strong expectations regarding the upcoming legal cooperation project and future bilateral relationships⁶.

At present, a Project for Capital Market Development in Myanmar, which includes assistance in the legislation of securities and exchange laws and regulations, is ongoing between the Policy Research Institute of the Ministry of Finance of Japan and the Central Bank of Myanmar. During his courtesy call on Minister of Finance Taro Aso, the Attorney General also expressed profound gratitude for Japanese assistance in capacity-building for the development of a capital market in Myanmar through said project. He further was highly appreciative of other Japanese undertakings such as Prime Minister Abe's visit as well as new financial loans for Myanmar.

B. Symposium

On Wednesday, June 12, we held, with support from the Ministry of Foreign Affairs, the Policy Research Institute of the Ministry of Finance, Japan Federation of Bar Associations and the Japan External Trade Organization (JETRO), a symposium titled "Recent Development of Myanmar and the Challenges It Faces – From Legal Perspectives" at JICA Takebashi Godo Building. In spite of the short notice of this event, over 150 individuals participated in the symposium coming from government agencies, legal community, academia and private companies. At the symposium, presentations were given by the Attorney General; Mr. Ti Khun Myat, Chairperson of the Bill Committee of Pyithu Hluttaw; and Mr. Kyaw Moe Naing, Yangon Advocate General. During the question and answer session, the Attorney General went beyond the scheduled time and politely fielded questions from the audience. The venue was filled with a vibrant atmosphere.

The symposium was covered by "New Light of Myanmar", one of the most popular national newspapers of Myanmar (dated June 20).

A detailed transcript (and other materials) of the symposium (in Japanese and English) are to be posted on the JICA website, and therefore this paper solely provides the program and the following materials used in the symposium:

Material 1: Program

Material 2: Presentation by H.E. Dr. Tun Shin, "The Legal System of Myanmar and Update on Myanmar Business Law"

⁶ For details on the meeting with Minister of Justice Tanigaki, visit the website of the Ministry of Justice at: http://www.moj.go.jp/hisho/kouhou/hisho06_00206.html (in Japanese).

Material 3: Presentation by H.E. Mr. Ti Khun Myat, “The Formation and Law Making Processes of Hluttaws”

Material 4: Presentation by H.E. Mr. Kyaw Moe Naing, “The Role of the Union Attorney-General’s Office of the Republic of the Union of Myanmar”

Material 5: An article of “New Light of Myanmar” (an excerpt from the newspaper on June 20, 2013)

Jointly with Keio University (Tokyo), the Research and Training Institute invited Chief Justice of the Supreme Court of Myanmar to Japan in November 2012. An open symposium was also held on that occasion (See the other article by Hiroki Kunii, pp. 17), the transcript of which was published in a law journal of Myanmar⁷. These instances help demonstrate the attention paid in Myanmar to our activities for the country.

C. Observation of Trial

In order to help deepen the understanding of the actual judicial system in Japan, the invited officers were provided the opportunity to observe a criminal trial and also a courtroom for lay-judge trials at the Tokyo District Court, with an explanation given by a judge of the Criminal Division. Comparing the Japanese criminal trial procedure with that of Myanmar, which derives from the common law system, the Attorney General was interested in the principle of indictment-based prosecution in Japan. In this system only the charging sheet is submitted to the court before trial so as not to prejudice the judge on the case. The Attorney General also showed a strong interest in the lay-judge trial system in Japan, and gave the following comments: “How to secure the people’s trust toward the judiciary is considered to be one of the priority issues in Myanmar. I understand that in Japan efforts are being made to gain the trust of the people by involving the general public directly in criminal justice, and thus maintaining transparency in the judiciary. This has been possible through the introduction of the lay-judge trial system, which does not exist in Myanmar. Such an approach is quite interesting.” The Attorney General asked detailed questions on the selection method of lay judges, decision-making approaches in the collegiate court, etc.

In the lay-judge trial system, in order to help lay judges and the audience understand the facts in the case, discussions are repeatedly held by the three legal professionals in criminal trial, that is; the judge, prosecutor and defense counsel. Moreover, a wide screen is installed in the courtroom to show close-up drawings to witnesses, or the examination of witnesses is recorded to be referred to during the deliberation of judges. These efforts also piqued interest of the invited officers.

⁷ The judicial journal of Myanmar can be downloaded from the website of the Supreme Court of the Union, Republic of the Union of Myanmar at <http://www.unionsupremecourt.gov.mm/?q=content/journals>

As the Chief Justice of Myanmar mentioned during his visit to Japan in November 2012, Myanmar understands the need to improve its court facilities, and this issue will be one of the primary focal points in the upcoming project.

D. Observation of Urayasu Center, Ministry of Justice

The Urayasu Center of the Ministry of Justice houses the Research Department of the Research and Training Institute of the Ministry of Justice, which collects and analyzes various types of criminal statistics and also creates white papers on crime. The center also serves as the training facility of officials of the Ministry, including public prosecutors and their assistant officers. As one of the main objectives of the upcoming project for Myanmar is the capacity-building of prosecutors, the Attorney General and other invited officers had the opportunity to observe this center to better understand the real training of prosecutors and prosecutors' assistant officers in Japan. It was also sought to form a concrete image on the plan of human resource development and training after the commencement of the project.

During the visit, an explanation was given on the training curricula for prosecutors and their assistant officers which are segmentalized by career and purpose. Moreover, the Attorney General and other officers observed a discussion between researchers of the National Research Institute of Police Science and prosecutors on the topic, "Scientific Criminal Investigation Techniques," as well as the training facilities such as a mock courtroom and the library.

It was explained that at the Union Attorney General's Office, a hall is used as a mock courtroom by placing desks in rows to train junior prosecutors. The Attorney General exhibited a keen interest in the center's mock courtroom equipped with a video-recording facility and asked several questions including its use, etc. In addition, active questions and answers were conducted regarding practical matters such as the obstruction of justice and in particular, dealing with perjuries, et al.

During the exchange of opinions with the Research Department of the Research and Training Institute, and according to the awareness of problems held by Mr. Kyaw Moe Naing, Advocate General of the Yangon Region, opinions actively were exchanged in comparing the criminal tendency in Japan and the Yangon Region. Opinions were also exchanged on countermeasures against juvenile crime, which is on the rise in Myanmar, recidivism of adult inmates, educational campaigns for the public, etc.

E. Observation of the Cabinet Legislative Bureau

The Union Attorney General's Office of Myanmar examines all bills to be submitted to the government, including laws under the jurisdiction of other ministries, and thus bears similar

responsibilities to the Cabinet Legislative Bureau of Japan. Therefore, the invited officers from Myanmar were given the opportunity to observe said bureau to understand the actual legislative examination system in Japan.

The Cabinet Legislative Bureau introduced the “Legislative Examination Support System” in 2006. This system was developed to allow effective and secure examination of draft bills, not only on erroneous descriptions but also on variances with other relevant laws. This was to be done through a database constructed to manage all laws and regulations already promulgated or bills being drafted by the date of enactment.

During the observation, the Attorney General and each invited officer were given a demonstration of the system to realize its benefits. The Attorney General was especially interested.

In Myanmar, due to the recent accelerated legislation of new laws, the Law Scrutiny and Drafting Department of the Union Attorney General’s Office is being overwhelmed by excessive workloads. Thus, reducing this burden is one of the issues to be tackled in the upcoming project, and consideration should be given to actively support this department which will be further taxed in the near future.

IV. PERSONAL COMMENTS

It was very meaningful, just prior to the official commencement of our project for Myanmar, to invite to Japan the Attorney General and other relevant officials from the Union Attorney General’s Office -- one of the project counterpart organizations. We sought to provide them with opportunities to see for themselves and experience the actual judicial system in Japan, and to have thorough discussions on the details of the project. It could also be considered a significant achievement that the top leaders of the counterpart organization deepened their understanding of the training system of prosecutors and prosecutors’ assistant officers in Japan and shared a concrete image of our project activities.

Amid the relationship between Japan and Myanmar being strengthened through the visit of Prime Minister Abe to Myanmar, the invitation of the Attorney General of the Union to Japan made it possible to further reinforce our personal ties through meetings with numerous judicial officers, including the Minister of Justice, in Japan, and thus build mutual trust. In terms of the development of future bilateral relationships, this joint comparative study has been quite productive.

The International Cooperation Department has reaffirmed its commitment to legal cooperation for the further development of Myanmar, based on the relationship of trust thus constructed to date.

V. CONCLUSION

Due to constraints of space, we were unable to provide in this paper a detailed reference to supporting organizations. However, this joint comparative study would not have been able to yield such substantial results without the help of numerous related institutions, including the Ministry of Finance, Ministry of Foreign Affairs, Supreme Court, Japan Federation of Bar Associations, Cabinet Legislative Bureau, JETRO, Nagoya University and others. My thanks go to all the parties concerned from these organizations.

Furthermore, as when we invited the Chief Justice of the Supreme Court of Myanmar last year to Japan, the Embassy of the Republic of the Union of Myanmar in Japan was greatly supportive in organizing this event. This included the company of H.E. Mr. Khin Maung Tin, Ambassador of Myanmar during the whole itinerary. I would like to reiterate my gratitude to the Embassy and it is my sincere hope to reciprocate their kindness by offering my contributions to the development of Myanmar.

Recent Development of Myanmar and the Challenges It Faces - from the Legal Perspectives –

Wednesday, June 12, 2013: 11:00 – 17:10

JICA Takebashi Godo Building, Hall on 9F

Organized by:

Research and Training Institute, Ministry of Justice

Japan International Cooperation Agency (JICA)

International Civil and Commercial Law Centre Foundation (ICCLC)

In Myanmar -- a rapidly-growing country -- Japan is helping implement a legal cooperation project to assist in the institutional and personnel capacity-building of legal and judicial institutions. This project aims to promote the rule of law, democratization and sustainable economic growth in Myanmar, through development and appropriate operation of laws in conformity with international standards.

To achieve the successful implementation of the project, we have reconfirmed our awareness regarding the ideal bilateral cooperation and its direction in the legal and judicial field, through comparative studies of legal systems in both countries. As part of these approaches, this comparative study will include information-sharing regarding the legal system, business law, and roles of the Union General Attorney's Office in Myanmar. It will also include exchanges of opinions on the endeavors being made for legal development and future prospects in Myanmar.

【Program】

Date and Time: Wednesday, June 12, 2013: 11:00 – 17:10 (Reception begins at 10:30.)

Venue: JICA Takebashi Godo Bldg., Hall on 9F
Otemachi 1-4-1, Chiyoda-ku, Tokyo

Organizers: Research and Training Institute (RTI), Ministry of Justice (MOJ)
Japan International Cooperation Agency (JICA)
International Civil and Commercial Law Centre Foundation (ICCLC)

Supporters: Ministry of Foreign Affairs
Policy Research Institute, Ministry of Finance
Japan Federation of Bar Associations
Japan External Trade Organization (JETRO)

Language: Japanese, English (An English-Japanese simultaneous interpretation service will be provided.)

Union Attorney General's Office

The Union Attorney General's Office takes charge of giving advice on, and examining all draft bills to be submitted to the government. It also examines documents produced by the government and gives advice on the operation of laws and regulations. Further, it plays prosecutorial functions in criminal cases and participates in lieu of other government agencies in civil litigations in which the government stands as a party. In other words, it has the functions of the Ministry of Justice, Public Prosecutors Office and the Cabinet Legislative Bureau of Japan. The Attorney General of the Union is a member of the Government of the Republic of the Union of Myanmar and is appointed by the president. The Union Attorney General's Office is considered to be one of the central agencies in the Government of Myanmar responsible for reforms in the legal and judicial fields.

TIME TABLE

Session 1 (11:00-12:40)

- 11:00 Opening Address
- Mr. Masakazu Ichikawa, Vice President, JICA
 - Mr. Kunihiko Sakai, Director General, RTI
- Greeting by a guest
- H.E. Mr. Khin Maung Tin, Ambassador of Myanmar to Japan
- 11:30 – 12:10 Keynote Speech:
- H.E. Dr. Tun Shin, Attorney General of the Union, Republic of the Union of Myanmar
- “The Legal System of Myanmar and Update on Myanmar Business Law”
- <Profile of H.E. Dr. Tun Shin>
- After serving as a law officer at the Law Commission, Council of State; Deputy Director of the Legal Advice Department, Union Attorney General’s Office; Legal Adviser and Director of the Ministry of National Planning and Economic Development; Deputy Director General of the Directorate of Investment and Companies Administration (Myanmar Investment Commission Secretariat); Director General of the Union Attorney General’s Office; and Deputy Attorney General, Union Attorney General’s Office, he has been in the present position since 2011. In 2012, Dr. Tun Shin was awarded the Wunna Kyaw Htin Title (an honor given to a public servant) and further decorations.
- 12:10 – 12:40 Presentation 1:
- H.E. Mr. Ti Khun Myat, Chairman of the Bill Committee of Pyithu Hluttaw
- “The Formation and Law-Making Processes of Hluttaws of the Republic of the Union of Myanmar”

Break (12:40-14:00)

Session 2 (14:00-17:10)

- 14:00 – 14:20 Presentation 2:
- H.E. Mr. Kyaw Moe Naing, Yangon Advocate General
- “The Role of the Union Attorney General’s Office of the Republic of the Union of Myanmar”
- 14:20 – 14:40 Report 1:
- Mr. Takeshi Komatsu, Attorney-at-law at Mori Hamada & Matsumoto, Singapore Office
- “Overview of the Report of Research regarding the Legal System in the Republic of the Union of Myanmar”

14:50 – 16:10 Panel Discussion:

“Efforts for Legal Development and Challenges for the Next Ten Years in Myanmar”

Moderator:

Mr. Motoo Noguchi,

Director, International Cooperation Department, RTI, MOJ

Panelists:

- H.E. Dr. Tun Shin, Attorney General of the Union, Republic of the Union of Myanmar

- H.E.Mr. Kyaw Moe Naing, Yangon Advocate General

- Prof. Masanori Aikyo, Director and Vice President, Nagoya University

-Mr. Takuya Sasayama, Chief of the First Southeast Asia Division, South Asian Affairs Department, Asian and Oceanian Affairs Bureau, Ministry of Foreign Affairs

-Mr. Eitaro Kojima, Deputy Chief of the Asia and Pacific Division, Overseas Research Department, JETRO (Former Managing Director of JETRO Office in Yangon)

-Mr. Takeshi Komatsu, Attorney-at-law, Mori, Hamada & Matsumoto, Singapore Office

-Mr. Naoshi Sato, JICA Senior Advisor, Attorney-at-law

Break (16:10-16:25)

16:25 – 17:00 Q&A

17:00 – 17:10 Closing Address

Mr. Takeo Kosugi ,Vice President, ICCLC

Japan International Cooperation Agency

For more information, please contact:

Legal Technical Assistant Unit (Ms. Yamada, Ms. Yamaguchi),

Legal and Judicial Section,

Governance Group,

Industrial Development/Public Policy Department

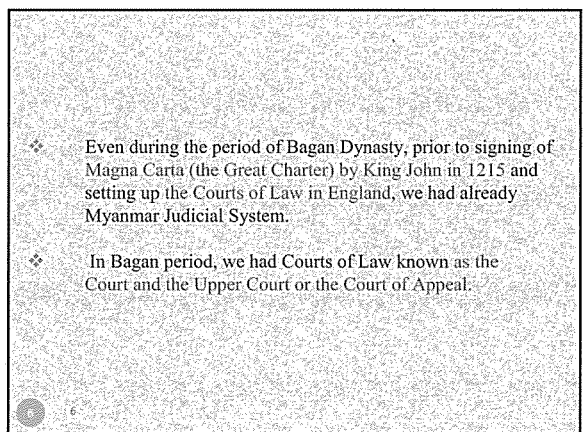
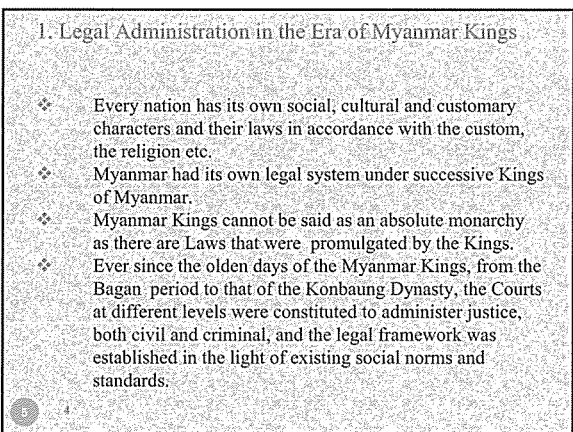
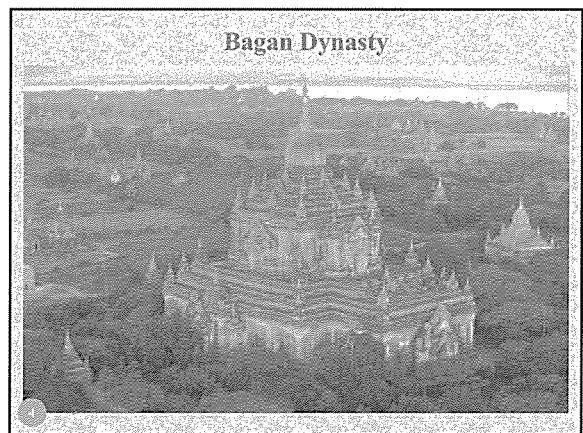
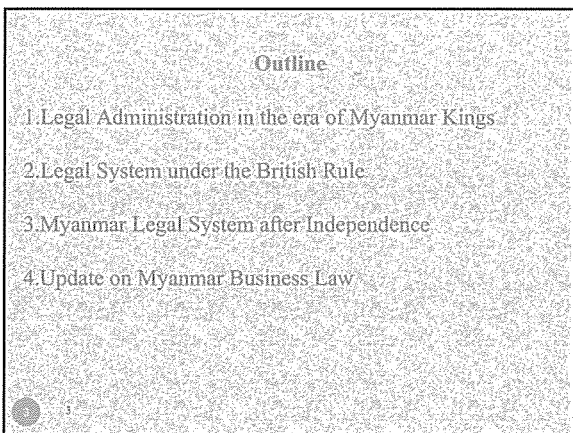
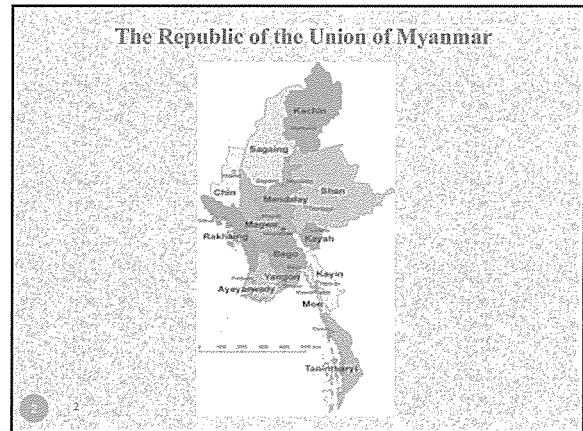
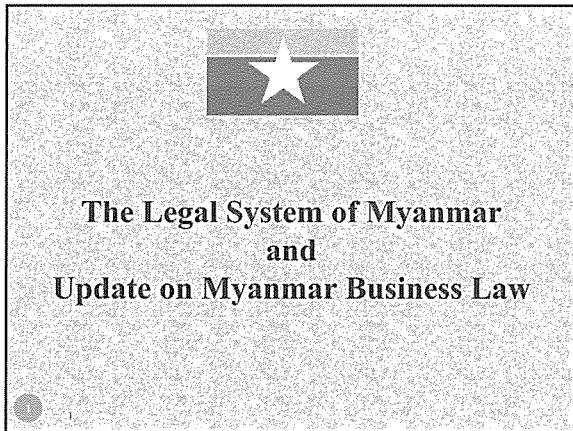
JICA

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Material 2



Taungoo Dynasty



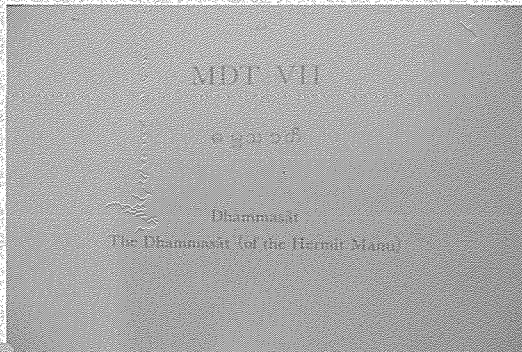
- ❖ The Second Great Dynasty of Myanmar, the Taungoo Dynasty (A.D.1531-1752), was established by the King Bayintnaug Kyaw Htinnaurahtar (A.D.1551-1581).
- ❖ The *Manusara Dhammathat* was produced in reign of King Sinbyumyashin at Bago (the then Pegu) in 1549 A.D.
- ❖ The *Dhammathat Kyaw* produced by the King Ngazudayaka of Taungoo in 1733 A.D. was one of the nine leading Institutes of Myanmar (the then Burmese) referred to often in Myanmar (the then Burmese) literature.

Konbuong Dynasty

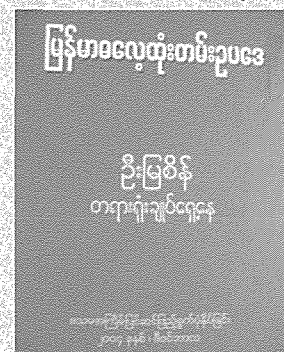


- ❖ The Third or the Last Dynasty, the Konbuong Dynasty (A.D. 1753-1885), was built by King Alaungpaya in A.D.1753-1760).
- ❖ During the reigns of King Mindon (A.D.1853-1878), Chief Minister of Justice, Kinwum Mingyi U Kaung's 34 and 36 volumes of consolidated Dhammathats were very popular.

Dhammathat



The Burmese Customary Law

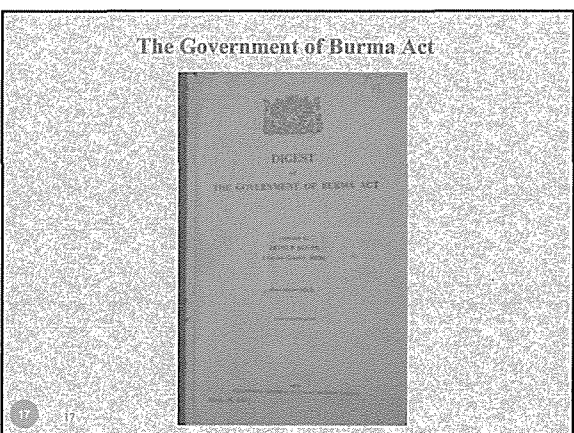


- ❖ **Dhammavilasa Dhammathat** ruled upon the lawyer to entitle his fees in the Royal Edict of 1607 A.D.
- ❖ In the Edict of 1634 A.D., the King ordained severe penalties for lawyers and in the Edict of 1636 A.D., the King set out the duties and functions of a good legal adviser.
- ❖ In 1645 A.D., **Thalunmintara** issued a roll to be taken and maintained of members of the legal profession.

- DHAMMATHATS, YAZATHATS and PHYATTONS
- ❖ The **Dhammathats** are *corpus juris* of Myanmar Customary tradition and convention and *ratio decidendi* of eminent judges and learned personnel.
 - ❖ They are composed of legal rules and legal principles relating to equality under the law founded on egalitarian family rights which are solely based on the rules of natural justice and humanitarian legal principles of Myanmar.
 - ❖ Dhammathat principles are still being applied by the present-day Courts of the Republic of the Union of Myanmar without interruption.

- ❖ **Yazarthats** are the King's Royal Edicts and Ordinances, are composed of the King's Commands and Criminal Laws for prevalence of law and order, security and peace.
- ❖ **Phyattons** are Judicial Precedents passed by Courts, Benches and the King Hluttaw.
- ❖ **PHYATTONS** were the records of judicial decisions rendered by various monarchs and judges.
- ❖ The **PHYATTON** is a collection of decisions rendered by the judges, arbitrators or persons of royal blood.
- ❖ The **Thudamasari PHYATTON** is a famous one.

- ❖ The operation of Yazathat and statute laws of Myanmar Kings faded annually after the first Anglo-Burmese War (1824-26) and the second Anglo-Burmese War (1852-53), and ceased totally after the Anglo-Burmese War (1885-86).



- 2. Legal System under the British Rule**
- ❖ When the British annexed Myanmar, as a step in the expansion of colonies, they extended the law originally promulgated in India to Myanmar and hierarchy of Indian Courts was formed in Myanmar.
 - ❖ After the complete annexation of Myanmar, British Government formed Civil Courts and Criminal Courts and introduced the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Penal Code, all other laws and Maxims of Equity.
 - ❖ Since that time, the Myanmar Legal System took its roots in British concept of justice, equity and good conscience.

- ❖ Since the end of the first Anglo-Myanmar War in 1826, the British introduced a legal system for criminal and civil cases in Myanmar.
- ❖ Although Myanmar belongs to the Common Law Legal Family, it is different from the Common Law Legal System practised in England.
- ❖ The genesis of the Codified Laws or Statutes can be found as we all know in the Justinian Code of the Roman era or the Codex Napoleon of the Napoleonic times.
- ❖ Denning and Lord Macaulay, therefore, said that the laws of Myanmar are "peculiar creatures."
- ❖ It has the peculiar features by reflecting the historical background of Myanmar Legal System.

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- ❖ In 1862, the British Government appointed a Chief Commissioner to be jointly responsible for not only administration but also judiciary as a Judicial Commissioner.
- ❖ According to the Burma Recorder's Courts Act 1863, India Act No.1, they established the Recorder's Courts in Yangon (the then Rangoon), Sittway and Mawlamyine (the then Moulmein).

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- ❖ In 1885, after the British had annexed the Upper Myanmar, the whole of Myanmar fell under the Bengal State of India.
- ❖ Just as the establishment of the Courts in India, the British also constituted the Courts in Myanmar in 1886.

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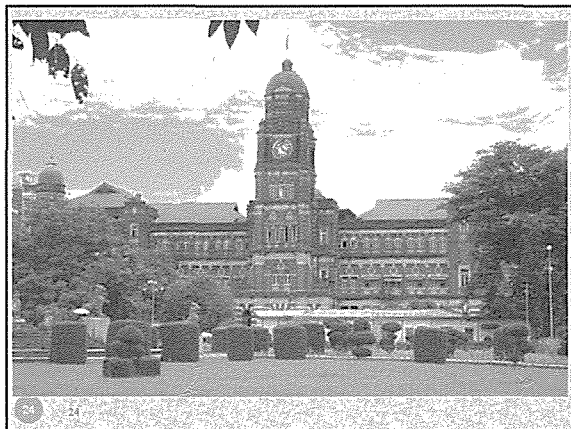
- ❖ Under the Government of India Act 1919, the High Court of Judicature at Yangon was established by Letters Patent in 1922.
- ❖ The Government of Myanmar (the then Burma)Act was enacted in 1935.
- ❖ In this Act, one may explore that there was separation of legislative, executive and judiciary.

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High Court (Yangon)

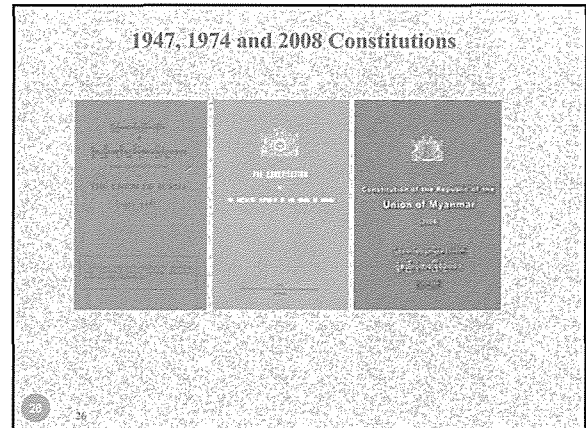


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- ❖ The Bar Council Act was promulgated in 1939 to govern advocates.
- ❖ The Legal Practitioner Act 1879 also promulgated to supervise Higher Grade Pleader and Lower Grade Pleader.
- ❖ Common Law principle of doctrine *stare decisis* or doctrine of precedents is used in Myanmar.
- ❖ In England, it is called case law but in Myanmar, we call ruling. *Obiter dictum* and *ratio decidendi* are also used in leading cases.



- 3. Myanmar Legal System after Independence**
- ❖ The first Constitution of the Union of Myanmar was adopted in 1947.
 - ❖ The second Constitution called the Socialist Republic of the Union of Myanmar was the 1974 Constitution.
 - ❖ In 2008, the Constitution of the Republic of the Union of Myanmar was adopted.
 - ❖ Legal System of Myanmar developed step by step but its basic also changed although the *modus operandi* has changed.

- Update on Myanmar Business Law**
- ❖ Basing on the traditional aspect of contemporary legal history, Corporate Laws and Commercial Laws also belong to the same fundamentals or modalities of the principles of the Myanmar Legal System.
 - ❖ Today, Corporate Laws, Commercial Laws and Economic Laws are pillars of our market economy system.
 - ❖ Historically, these laws which have the principles of Common Law are kept intact during the past twenty-five years before 1988.
 - ❖ In 1988, when our country adopted the market economy system, a new legal injection has been given to these laws and they came into life once again.

- ❖ Commencing with the State Law and Order Restoration Council and later taken over by the State Peace and Development Council those legislative organs not only put life onto these laws but promulgated new laws for investment, introduced privatization and developed the market economy system that there will be a promotion of foreign investment, citizens taking active part in the economy, the developing of the market economy and the achieving of better quality of life for our people.

- ❖ After taking office the new Government under the 2008 Constitution, it has been carrying out political reforms and economic reforms simultaneously, with special emphasis on Good Governance and Clean Government, Transparency and Accountability is the intention of enhancing the rule of law not only in the economic sector but also in the other sectors.

❖ Corporate Laws and Commercial Laws dividing them into following sectors: -

1. Basic Legislative Framework;
2. Investment in Myanmar;
3. The Transport Laws Framework of Myanmar;
4. *Locus Standii* of the Enterprises, Companies and the Laws governing them;
5. The Hierarchy of Statutes and other related Laws;
6. The Legal Framework of the Settlement of Disputes in corporate and commercial cases;
7. Economy-Related Laws.

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Basic Legislative Framework

- ❖ Basically, foreign lawyers will find that there are three types of laws. One is the older laws promulgated before the country started to adopt the market economy system in 1988 and next laws promulgated after 1988.
- ❖ With the coming into legal effect of the Constitution of the Republic of the Union of Myanmar, 2008, these new laws are given new dimensions by the Constitution, which endorses the market economy system providing basic principles of fair business.
- ❖ Laws promulgated in this period of time can be classed as the third type of laws.

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❖ The Constitution also gives birth to new modern laws that are designed to provide an investor friendly climate with fair deals for all.

❖ In 2012, the Foreign Investment Law, *Pyidaungsu Hhuttaw* Law No. 21/2012, has been promulgated.

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❖ Moreover, the State-Owned Economic Enterprises Law (1989) that gives the right for the formation of Enterprises and Joint Ventures plays the role of basic legislative framework.

❖ As we all know, Public International Law gives a State absolute sovereignty over its territory of land, sea and air.

❖ This absolute sovereignty gives a State an inalienable right over its natural resources.

❖ Section 3 gives the Government this right to perform certain activities through the law.

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❖ Though Section 3 empowers only the State-Owned Economic Enterprises to undertake the twelve activities, exemption, or rather escape section to non-jurist, is made through Section 4.

❖ Under this Section, these activities can be given to Joint Ventures between the Government and any person or economic organizations subject to conditions.

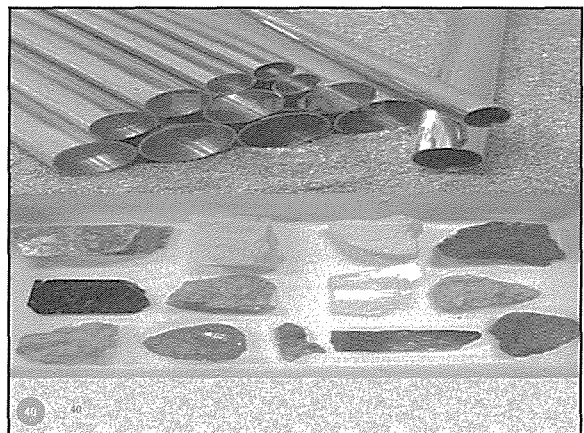
❖ The *modus operandi* for such permission is made through a Notification by the Government.

❖ Section 4 also serves as a vehicle for privatization.

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Investment in Myanmar

- ❖ Myanmar is a vast country with great potential in rich natural resources.
- ❖ It is the largest country in the mainland of South-East Asia with a total area of 676, 577 sq. km. (167.2 million acres)
- ❖ It also has vast potential resources for cultivation and other agricultural products.
- ❖ The total land area is vast. There is a long coastline of 2832 Kilometers.
- ❖ There are swamps, which are ideal for prawn culture.
- ❖ A vast continental shelf with a big economic zone exists.

- ❖ In the forestry area, Myanmar is also rich.
- ❖ Expansive forest, which covers half of total area of the country, exports 80% of world teak supply.
- ❖ In the oil and gas sector since the day before War World II, she is renowned for discovery of oil.
- ❖ Now oil and gas both off shore and on shore are discovered in quantities of worthwhile exploration, development and production, which is a 10th largest resource of natural gas in the world with storing over 90 trillion cubic feet.
- ❖ She is also endowed with mineral resources.

- ❖ The manufacturing sector offers good opportunities as in other areas like tourism, hotel, industrial estates, real estates, transportation estates and others.
- ❖ In the seas and in land waters, there are opportunities for good fishing and breeding.
- ❖ One investor sums up the opportunities that "Myanmar is the only place in the world where the fish die of old age!"

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- ❖ The State also encourages domestic investors.
- ❖ This has led to the promulgation of the Myanmar Citizens Investment Law (State Law and Order Restoration Council Law No.4 of 1994). Citizens are entitled to the same exemptions and privileges as foreigners who are entitled under Foreign Investment Law.

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- ❖ To give an investor an bird's eye view, extracts of the law will be provided in this talk.
- ❖ It is hoped that the Foreign Investment Law will be helpful to the investor.
- ❖ As regards forms of investment, Section 9 of this law states that the investment may be carried out by a foreigner with one hundred per cent foreign capital on the businesses permitted by the Commission; or by a joint venture between a foreigner and a citizen or the relevant government department and organization; or by any system contained in the contract which approved by both parties.

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- ❖ Section 13 of the said law empowers Myanmar Investment Commission to accept the proposal.
- ❖ Moreover, the Commission shall grant the investor the tax exemption or tax reliefs under Section 27 of this law.
- ❖ It is remarkable that the Union Government guarantees a business formed under the permit shall not be nationalized in accordance with Section.
- ❖ Rules for implementation of the Foreign Investment Law has also been released on 31st January 2013.

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The Transport Laws Framework of Myanmar

- ❖ Transport law sector can be divided into three specific areas.
- ❖ They are, namely, the areas of sea commerce or shipping law, of air transport and land transport.
- ❖ Firstly, regarding in the area of Charter Parties in Shipping Law, it is found that the classic Lloyds forms for Time Charters, Voyage Charters and Demise Charters are used.
- ❖ As these forms use the principles of Common Law and they apply to transactions under these charters, the textbooks such as Carver's Carriage by Sea, Scrutton on Charter Parties and Payne and Ivarmy's Carriage of Goods by Sea are used in Myanmar.

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- ❖ We also have the Carriage of Goods by Sea Act (1925), which is enacted to give the force of law to the Hague Rules or the Convention for Unification of Certain Rules of Bill of Lading made in Brussels in 1923.
- ❖ Shipping lawyers know the importance of the Bill of Lading Act (1862), which gives the consignee cause of action direct to the shipowner.
- ❖ We find this Act enacted as the Bill of Lading Act 1856 with original in the India Act IX of 1856.
- ❖ It is almost a replica of the English Bill of Lading Act (1855).

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- ❖ We also have the Myanmar Merchant Shipping Act(1923).
- ❖ The registration of ships in Myanmar is governed by the Myanmar Registration of Ships Act (1841).
- ❖ Originally, this Act was designed for registration of ships in the Myanmar Registry for ships owned by Myanmar citizens.
- ❖ Then in 1986, an amendment law was made to give registration to ships that are made on Charter by Demise or Bare-Boat Charter to Myanmar citizens or authorized organizations.
- ❖ Regarding collisions, we have the Sea-going Vessels Navigation Convention Act (1952).
- ❖ This gives effect to the Brussels Convention on Collision of Ships or Salvage of 1910.

- ❖ Secondly, in the Air Transport sector, Myanmar ratified the Chicago Convention (1944) or the Convention for International Civil Aviation Organization in April 1948.
- ❖ Our Air Services Agreements are based on the Bermuda pattern.
- ❖ The Chicago Convention and these agreements are strictly observed.
- ❖ In the commercial sector, we have the Aircraft Act of 1934 and Aircraft Rules of 1937 which give effect to the navigation of aircraft with the development of the market economic system.
- ❖ The Aircraft Rules were amended by the State Law and Order Restoration Council Rules No. 1/94 to issue Air Operator's Certificates to Joint Venture airlines that are incorporated in Myanmar.
- ❖ We now have Joint Venture airlines.

- ❖ For Private Air Law regarding the loss of life or damages or loss of cargo, baggage, and luggage we have the Carriage by Air Act of 1935. Its origin lies in the India Act XX, 1934.
- ❖ This Act gives domestic legal effect to the Convention for the Unification of Rules relating to International Convention for Carriage by Air or popularly known to aviation lawyers as the Warsaw Convention of 1929.
- ❖ The textbooks on Air Law, which one is familiar with such as Bin Cheng's the Law of International Air Transport, Shawcross and Beaumont on Air Law, McNair's the Law of the Air and others, are used very widely in Myanmar.

- ❖ Thirdly, the Law of Carriage by Land is the product of enacting the principles of Common Law.
- ❖ Thus, we find in the Carriers Act, 1865 and the Railways Act of 1890.
- ❖ All principles of Common Law can be found in these Acts.

- Locus Standii* of the Enterprises, Companies and the Laws governing them**
- ❖ Whenever an investor wishes to invest he ask himself the nagging question, if I were to invest where do I legally stand?
 - ❖ This is the factor lawyers say in Latin *Locus Standii* or legal standing.

- ❖ Also, it is often asked in contract negotiations and international workshops and seminars and seen in contracts drawn by overseas lawyer that certain clauses mentioning that the State-Owned Economic Enterprises of Myanmar when they are one of the parties to the contract, will not invoke sovereign immunity when they are parties to a contract .
- ❖ As we all know, sovereign immunity is a concept in Public International Law where it gives immunity to a State from claims or commercial jurisdiction of Courts of Law.

- ❖ This question whether a State-Owned Economic Enterprise can invoke sovereign immunity can best be understood if we study how these enterprises are formed in Myanmar.
- ❖ The State-Owned Economic Enterprises are formed as corporate bodies that have complete legal personality or legal person in the Myanmar Legal System.
- ❖ They are not the State itself nor can they invoke sovereign immunity, as they are mere commercial enterprises.
- ❖ They have the right to sue or be sued as a company.
- ❖ There are many cases, which form as an example where arbitrations between the enterprises and other parties have taken place.

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- ❖ It is interesting to note the question of how these enterprises are formed.
- ❖ There are two types of documents that give *locus standii* to these enterprises.
- ❖ The first type is called "the Law" where the enterprise has been formed thereunder.
- ❖ A good example is the Union of Myanmar Air Transport Board Act (Law establishing the Myanmar Airways).
- ❖ It was promulgated as an Act in 1953 by Act No.39 of 1952. This Act formed the current Myanmar Airways, which is an enterprise under the Ministry of Transport.

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- ❖ Under these Acts or Laws, the enterprise concerned is given the *locus standii* to be a legal person that has a right to sue or be sued.
- ❖ Another category of enterprises is formed under Notifications by various Ministries.
- ❖ The Ministry concerned issues a Notification for the formation of an Enterprise or Directorate.
- ❖ An example of such formation is the Notification issued by the Ministry of Hotels and Tourism for the formation of Myanmar Hotels and Tourism Service.
- ❖ The Ministry of National Planning and Economic Development also issued the Notification for the formation of the Directorate of Investment and Company Administration under which the Department of Companies and Company Registrar is one of the departments.

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- ❖ Besides State-Owned Economic Enterprises, the formation of Joint Ventures, Foreign Companies operating in Myanmar and Partnership are also seen as products of our market economy system.
- ❖ The formation of Joint Ventures are two kinds; viz., those that fall within the ambit of Foreign Investment Law and those that are formed outside the scope of this law.
- ❖ Joint Ventures where the State is a party are formed under Special Company Act of 1950.

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- ❖ The Myanmar Companies Act (1914) is the procedural law that covers the procedure aspect of company formation for all types of companies of private citizens and Joint Ventures between State Enterprises and Foreign Partners.
- ❖ The Myanmar Companies Act is based on the India Act VII of 1913.
- ❖ There is also Myanmar Companies Rules which was enacted in 1940.

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- ❖ Partnerships can be formed with two to the maximum of twenty persons.
- ❖ A Partnership is not a corporate body.
- ❖ It is governed by the Partnership Act of 1932. Its registration is optional.
- ❖ There is also the sole proprietorship in Myanmar and they need no registration.
- ❖ For foreign companies, the permit has to be obtained from the Ministry of National Planning and Economic Development.

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The Hierarchy of Statutes and other related Laws

- ❖ These are Statutes passed by the legislature.
- ❖ After 1962, till date, the Statutes are given the name "Law".
- ❖ This term has the same legal effect as acts predecessor, the "Acts". Acts or Laws are Statutes in the Common Law sense.
- ❖ Below these Statutes, we have something that we call Rules or Procedures.
- ❖ They are Rules that are made out of Acts or Laws as are empowered.

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- ❖ Next, for detail enforcement of Laws or Acts and Rules, we have Regulations.
- ❖ Finally, we have Notifications. Notifications are normally issued by the Ministries concerned and they are normally at the bottom of the ladder.
- ❖ However, in certain exceptional cases, legislature makes a certain notification that has the force of law.

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The Legal Framework of the Settlement of Disputes in Corporate and Commercial Cases

- ❖ As corporate lawyers know, all commercial contracts have a Settlement of Dispute Clause.
- ❖ This Clause serves the contracts as a *modus vivendi* which is a mode of settlement when disputes arise.
- ❖ In the same way, we do find the *modus vivendi* in the laws of Myanmar.
- ❖ In this section, we shall be presenting the laws that concern the *modus vivendi* of dispute resolutions in Myanmar will be discussed.

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- ❖ The Arbitration Act, 1944 was promulgated on 1st March, 1944 as Myanmar Act-IV, 1944 which is applied domestically.
- ❖ It is the main Procedural Law for Arbitration in Myanmar.
- ❖ This Law is based on the principles that are found in the English Arbitration Act of 1950.

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- ❖ Though it is promulgated in 1944, we find the principles the same as the English Act.
- ❖ The Arbitration Act, 1944 is designed as an Act similar to those in other Common Law countries.
- ❖ The appointment of arbitrators, the supervision by the Court for their removal, the award, the enforcement of award in the civil court, appeal from an award to the Supreme Court are all mentioned in this Act.
- ❖ At this moment, the Arbitration Act (1944) is under review.

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- ❖ Besides the Arbitration Act of 1944, we also have the Arbitration (Protocol & Convention) Act of 1939. Its origin is the India Act VI of 1937.
- ❖ This Act gives the domestic legal effect to the Protocol on Arbitration Clauses (The Geneva Protocol of 1923).
- ❖ This Protocol is made an integral part of the Act in the First Schedule.

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- ❖ In the same way, the Convention on the Execution of Foreign Arbitral Awards has been given the legal effect in the Second Schedule of this Act.
- ❖ This Protocol, as we all know is called the Geneva Protocol, 1923 and the Convention is known as Geneva Convention of 1927.

- ❖ As regards dispute settlements, Section 43 of the Foreign Investment Law 2012 provides as follows:
- ❖ If any dispute arises in respect of the investment business:
 - (a) dispute arisen between persons of dispute shall be settled amicably;
 - (b) if such dispute cannot be settled under sub-section (a):
 - (i) it shall be complied and carried out in accord with the existing laws of the Union if the dispute settlement mechanism is not stipulated in the relevant agreement;
 - (ii) it shall be complied and carried out in accord with the dispute settlement mechanism if it is stipulated in the relevant agreement.

- ❖ Note is to be made that UNCITRAL Rules (United Nations Commission on International Trade Arbitration Rules) are now used for contracts with foreign investors.
- ❖ On 5th March 2013, the Seventeenth day Six Regular Session of the *Pyidaungsu Hluttaw*, it approved to accede the New York Convention and to use the UNCITRAL rules.
- ❖ It is obvious that the UN Convention on Enforcement of Arbitral Awards (1958, New York Convention) is to be given the domestic legal effect by legislation in the near future.

- ❖ Likewise, as promulgating the domestic law to implement the New York Convention, the Arbitration Law (Draft) is scrutinized by my office.
- ❖ It is apparent that it will create a better environment for investors and reforming the Myanmar arbitration infrastructure to keep up with the international standards obtaining confidence from investors.

Economy-Related Laws

- ❖ There is also the Contract Act of 1872. Its origin lies in India Act IX of 1972.
- ❖ This Act have the same principles that one finds in the Law of Contract of the English Common Law System.
- ❖ Its principles include the promise, proposal, the acceptance, consideration, and factors, tendering to defeat contractual liability, such as incapacity, misrepresentation, duress and undue influence, illegality, discharge, remedies, contingent contract and agency.

- ❖ Again, for this, we have the Myanmar the Registration Act of 1909, which has been mentioned above.
- ❖ This Act is followed by the Registration Manual of 1946.
- ❖ In this Manual there is an article called 18 (f) which specifies the registration of the trademark to give it a legal effect.
- ❖ In practice, after registration the legal effect starts.
- ❖ Next, regarding copyrights we do have the Copyright Act of 1914, India Act III 1914 and the Patents and Designs Act of 1945, the Patents and Designs (Emergency Provisions) Act of 1946 and the Myanmar Merchandise Marks Act 1889.
- ❖ These Acts are designed to protect copyrights and patents.

- ❖ The basic principle for protection of Copyrights, Trademarks and Designs are similar to the laws of other Common Law Legal Family.
- ❖ In the area of Intellectual Property, the four new laws namely Patent Law, Industrial Design Law, Trade Marks and Service Marks Law, and Copyright Law are being drafted.
- ❖ Myanmar is a founding member of the World Trade Organization and thus a Party to the Marrakesh Treaty that establishes the World Trade Organization 1994 (WTO Agreement).
- ❖ It is also a Party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- ❖ Four modern laws have been finally drafted by the Ministry of Science and Technology and will be submitted to the *Hluttaw* for adoption soon.

- ### The Area of I.C.T or E- Commerce
- ❖ There have been developments to have Myanmar Cyber Laws.
 - ❖ This is a collection of laws such as the Myanmar Telegraph Act (1885), Myanmar Wireless Telegraphy Act (1933), the Electronic Transactions Law (2004), the Computer Science Development Law (1996) and the Telecommunications Law (Draft).
 - ❖ The Telecommunications Law is at our *Hluttaw*, and when promulgated, will be known as Myanmar Cyber Law.
 - ❖ It will place Myanmar I.C.T at par with other advanced ASEAN countries in the area of I.C.T.

- ### The Area of Foreign Currency Management
- ❖ The Foreign Currency Supervision Law was enacted by the Pyidaungsu *Hluttaw* on 10 August 2012 as Law No.12/2012.
 - ❖ It is administered by the Central Bank of Myanmar.

- ❖ In the area of Competition Law and Competition Policy for preventing monopoly on economy, it is at the stage of drafting.
- ❖ For developing the capital market, the Securities Exchange Law is now in the *Hluttaw* and is being discussed.

- ❖ We also have
 - the Negotiable Instruments Act (1881),
 - the Sale of Goods Act (1930),
 - the Transfer of Property Act (1882),
 - the Transfer of Immoveable Property Restriction Law (1987),
 - the Registration Act (1909),
 - the Myanmar Stamp Act (1899) and
 - the Science and Technology Development Law (1994).
- ❖ Recently promulgated laws include
 - the Special Economic Zone Law (2011),
 - the Dawei Economic Zone Law (2011) and
 - the Farm Land Law (2012) and
 - other rules, orders and directives for friendly investment climate.

- ❖ The formation of companies is governed by the Myanmar Companies Act and Special Company Act as in other countries.
- ❖ Now, the Special Economic Zone Law 2011 is revised to meet the better requirements of foreign investors.
- ❖ Likewise, the Thilawa Economic Zone Law and the Kyaukphyu Economic Zone Law will be drafted.

The Area of Taxation

- ❖ We have
 - the Income Tax Law (1976),
 - the Tax Law (1990),
 - the Court Fees Act (1870),
 - the Sea Customs Act (1887),
 - the Land Customs Act (1924),
 - the Tariff Law (1992) and
 - the Land and Revenue Act (1879).

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The Area of Finance and Banking

- ❖ we have
 - the Central Bank of Myanmar Law (1990),
 - the Financial Institutions of Myanmar Law (1990),
 - the Control of Money Laundering Law (2002),
 - the Savings Bank Law (1992),
 - the Myanmar Agricultural and Rural Development Bank Law (1990) and
 - the Micro Finance Business Law (2011).

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- ❖ As regards the economic enterprises, there are also the related laws such as

- the Promotion of Cottage Industries Law (1991),
- the Private Industry Law (1990),
- the Salt Enterprise Law (1992),
- the Fishing Right of Foreign Fishing Vessels Law (1989),
- Aquacultural Law (1989),
- Myanmar Marine Fisheries Law (1990),
- the Fresh Water Fisheries Law (1991),

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Cont:

- the Myanmar Pearl Law (1995),
- the Private Industrial Enterprise Law (1990),
- the Myanmar Hotels and Tourism Law 1993,
- the Myanmar Mines Law (1993),
- the Myanmar Gemstones Law (1995),
- the Myanmar Insurance Law (1993),
- the Insurance Business Law (1996),
- the Television and Video Law (1996),
- the Motion Picture Law (1996),
- the National Drug Law (1992),
- the Indigenous Medicine Law (1996),
- the National Food Law (1997),
- the Blood and Blood Products Law (2003),
- the Forest Law (1992),
- the Cooperative Society Law (1992), so and so forth.

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Conclusion

- ❖ Myanmar is named the golden business destination.
- ❖ There is ample opportunity for foreign investors to come to invest because of her rich resources.
- ❖ To foster to create the investor friendly environment, Myanmar has already enacted the Foreign Investment Law, 2012.
- ❖ Myanmar has massive work force that would facilitate labour-intensive industries.
- ❖ Other legislations are in legal effect with more modern laws under drafting.

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- ❖ Furthermore, Myanmar Investment Commission meets weekly and decides very important investment matters.
- ❖ We strive for the Rule of Law not only in Civil and Criminal matters but also in economic sectors.
- ❖ Section 35 of the Constitution provides for the implementation of the market economy.
- ❖ We promote fair trade and prohibit monopoly.

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- ❖ There is a saying for work to be done, if we do nothing, nothing will come out. If we do something, something will come out.
- ❖ But in this something, there are advantages and disadvantages, pros and cons.
- ❖ We need to face such challenges. Political reform is progressing well. Economic reform is also in process with high objectives.
- ❖ Furthermore, administrative reform is progressing well.
- ❖ There is a saying that nothing venture, nothing done. Myanmar is venturing into her future.

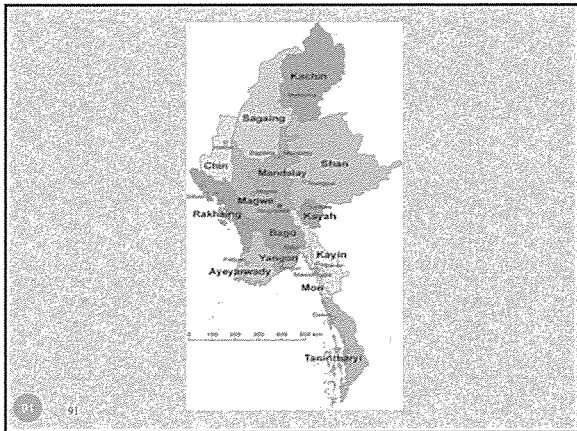
- ❖ There are many things to do for the development of our legal system.
- ❖ At this moment, Myanmar has been making its utmost efforts for legal reforms to develop legal environment, which meets the will of investors.
- ❖ To accomplish this heavy task, the Union Attorney General's Office plays as a key player in this process.

- ❖ In this juncture, Japan is the significant country giving lots of cooperation and technical assistance for the development of our legal system.
- ❖ In order to develop the human resources in Myanmar, Japan has also been training the legal scholars through the scholarship programme since many years.

- ❖ Recently JICA and the Union Attorney General's Office had jointly held some international seminars such as
 - Seminar on "Commercial Arbitration",
 - Seminar on the "Legal Aspects on the Privatization of State-owned Enterprises" and
 - Seminar of "Reforming Legal Systems of Public Company and the Legal Governance".

- ❖ These seminars are well received by the international private company.
- ❖ These sorts of programmes are very helpful for legal reform in Myanmar, particularly in economic laws.
- ❖ There are still many programmes for further cooperation between JICA and Myanmar.
- ❖ Obviously, this official visit is a part of our cooperation programmes and could enhance our friendship and relationship, which have been already existing between our two countries.

- ❖ We are grateful to have friends like Japan.



Material 3

The Formation and Law Making Processes of Hluttaws

The Republic of the Union of Myanmar

Introduction

- * The essence and fundamental nature of political change and reform of a country lie with the Constitution. In Myanmar, there has been three State Constitutions.
- * (1) The Constitution of the Union of Burma, 1947.
- * (2) The Constitution of the Socialist Republic of Myanmar, 1947.
- * (3) The Constitution of the Republic of the Union of Myanmar, 2008.

The Constitution of the Republic of the Union of Myanmar, 2008 was promulgated by National Referendum on the 29th May 2008. The multi-party general election was held on 7th November 2010, (3069) candidates from (37) political parties and (82) individual candidates contested for the respective Hluttaws. The emergence of *Pyidaungsu Hluttaw* (The Union Parliament) started on the first regular session of the first *Pyidaungsu Hluttaw* held at Nay Pyi Taw on the 31st January 2011.

Hluttaw Formation and Sessions

- * The *Pyidaungsu Hluttaw* (The Union Parliament) is Myanmar's bicameral legislature. It is composed of lower house called *Pyithu Hluttaw* (House of the People's representatives) and an Upper House, called *Amyotha Hluttaw* (House of the Nationalities).
- * The Speaker and the Deputy Speaker of *Amyotha Hluttaw* shall serve as the Speaker and Deputy Speaker of the *Pyidaungsu Hluttaw* from the day of the *Pyithu Hluttaw* commences up to the end of (30) months and the Speaker and the Deputy Speaker of *Pyithu Hluttaw* shall also serve as the Speaker and the Deputy Speaker of the *Pyidaungsu Hluttaw* for the remaining term. The term of the *Pyidaungsu Hluttaw* is five years from the day of its first session. Our first *Pyidaungsu Hluttaw*, first regular session was held on 31st January 2011. Six regular sessions had been held so far and one special session was held recently from 20th May to 21st May 2013.

Pyithu Hluttaw and *Amyotha Hluttaw*

- * In the *Pyithu Hluttaw* we have (440) representatives, (330) elected representatives from (330) townships. That is one elected representative from each township. The remaining (110) representatives are Defence Services Personnel nominated by the Commander-In-Chief of the Defence Services in accord with the law.
- * The *Amyotha Hluttaw* is formed with a total number of (224) representatives, 168 representatives are elected in equal numbers of (12) representatives from each Region or State. Our country is composed of (7) Regions and (7) States. Out of the total (224) representatives (56) are Defence Services Personnel nominated by the Commander-In-Chief of the Defence Services, that is four representative from each Region or State.

State and Regional Hluttaws

- * Apart from these mentioned Hluttaws, we have Regional or State Hluttaws in each Region or State. (2) representatives are elected from each Township to form the Region or State Hluttaws. The number of representatives varies according to the number of Townships constituted in the Region or State. In each and every Hluttaw two third of the representatives are elected and one third of the representatives are Defence Services Personnel nominated by the Commander-In Chief of the Defence Services.

Pyidaungsu Hluttaw

- * The *Pyidaungsu Hluttaw* is the highest law-making organ of the State. In addition to passing laws, the *Pyidaungsu Hluttaw* is formally responsible for selecting the President and two vice Presidents of the State. The *Pyidaungsu Hluttaw* is the combination of *Pyithu Hluttaw* and *Amyotha Hluttaw*. The maximum representative of the *Pyidaungsu* is (664). Although the *Pyithu Hluttaw* definitely has the advantage of its numerical strength, the power and status of both the Hluttaws are coordinate and equal.

Formation of the Hluttaw Committees

The following (4) standing committees are formed respectively with appointed chairmen and secretaries in the *Pyithu Hluttaw* and *Amyotha Hluttaw*.

- a) Bill Committee
- b) Public Account Committee
- c) Hluttaw Rights Committee
- d) Governments' Guarantees, Pledges and Undertaking Vetting Committees

Hluttaw Joint Committees

Pyidaungsu Hluttaw also formed the following joint committees;-

- a) Joint Bill Committee
- b) Joint Public Account Committee

Extended Committees and Commissions formed at *Pyithu Hluttaw* and *Amyotha Hluttaw*

PYITHU HLUTTAW

- 1 Fundamental Rights of Citizens, Democracy and Human Rights Committee
- 2 Ethnic Races Affairs and Internal Peace Restoration Committee
- 3 Banks and Monetary Development Committee
- 4 Planning and Financial Development Committee
- 5 Peasant Worker and Youth Affairs Committee
- 6 International Relations Committee
- 7 Economic and Trade Development Committee
- 8 Transport, Communication and Construction Development Committee
- 9 Sports, Culture and Public Relations Development Committee

- 10 Agriculture and Livestock Breeding Development Committee
- 11 Investment and Industrial Development Committee
- 12 Resources and Environmental Conservation Committee
- 13 Health Development Committee
- 14 Education Development Committee
- 15 Judicial and Legal Affairs Committee
- 16 Public Affairs Management Committee
- 17 Population and Social Development Committee
- 18 Reformation and Modernization Scrutiny Committee
- 19 Maritime Transport Development Committee
- 20 Rule of Law and Tranquility Committee

Extended Committees and Commissions formed at *Pyithu Hluttaw* and *Amyotha Hluttaw*

Amyotha Hluttaw

- 1 Hluttaw Representatives Vetting Committee
- 2 Nationalities Affairs Committee
- 3 Fundamental Rights of the Citizens, Democracy and Human Rights Committee
- 4 National Planning Committee
- 5 Monetary and Taxation Committee
- 6 Commerce Committee
- 7 Education, Health and Culture Committee
- 8 Woman and Child Affairs Committee

- 9 Public Complaint and Petition Committee
- 10 International Relations Committee
- 11 Local and Overseas Workers Affairs Committee
- 12 International Non-government Organizations and Non-government Organizations Committee
- 13 Mineral and Natural Resources Committee
- 14 ASEAN Political-Security Community Committee
- 15 ASEAN Economic Community Committee
- 16 ASEAN Socio-Cultural Community Committee
- 17 Farmers Affairs Committee

Commissions

- * *Pyithu Hluttaw* Commission for assessment of Legal Affairs and Special Issues.
- * *Amyotha Hluttaw* Commission for Finance and Legal Affairs.

Committee Formation and Functions

* The above mentioned Hluttaw Committees are formed up with at least (15) members of Hluttaw representatives in each committee. Each Committee is constituted in such manner that it represents a replica of the Hluttaw in miniature. As stated in the provision of the Constitution, there are check and balance and reciprocal control among Legislative bodies, Executive bodies and Judicial bodies. Oversight is one of Hluttaw's core responsibility. Committees are formed essentially to endeavor strong oversight and to maintain balances in the Republic of the Union of Myanmar. These committees have to cooperate, examine and monitor all the undertakings of Ministries. Committees are responsible to scrutinize whether the undertakings are in conformity with the existing laws. Scrutinizing National Projects and Budgets are Hluttaw's most important oversight function, in order to achieve greatest accountability and administrative efficiency for the Union and the people.

Formation and Functions of Commissions

- * Unlike the Committees, the two Commissions are formed not only with Hluttaw representatives but also with suitable citizens who are well-known and well experienced in their respective fields. These members are nominated and appointed by the respective Speakers with the approval of the Hluttaw. The number of the members of Commission is not fixed. They play an important role by providing technical assistance and advice to the Committees and the Hluttaws.

Functions of Hluttaw Joint Committees

- * The Hluttaw Joint Committees are responsible to *Pyidaungsu Hluttaw*. It is through a Joint Committee of both Hluttaws that efforts are made to resolve and iron out the differences between the two Hluttaws on Bills, failing which the Bills consideration is given up.

The Legislature

- * The basic principles of The Republic of the Union of Myanmar is stipulated in chapter one of the Constitution, comprising of (48) sections.
- * Regarding to the separation of power in section 11 (a) - The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.

The Legislature

- * The distribution of legislative powers of the Union is shared among the *Pyidaungsu Hluttaw*, Region Hluttaw and State Hluttaw is detailed in the schedules of the Constitution. The schedule one enumerates matters on which *Pyidaungsu Hluttaw* can exclusively legislate, while schedule two thereof specifies matters on which Region or State legislatures alone can make laws. Schedule three is the list of legislation of the leading Body of Self-Administered Division or Self-Administered Area.
- * The *Pyidaungsu Hluttaw* has the exclusive power of legislation on all matters not enumerated in any of the lists. While a Region or State Hluttaw cannot make a law on matters within the powers of *Pyidaungsu Hluttaw*, *Pyidaungsu Hluttaw* can make a law on matters enumerated in the Region or State list in certain contingencies. This proves the predominance of *Pyidaungsu Hluttaw* over Region or State Hluttaw in the matter of legislation.

Submission of Bill

- * All legislative proposals must be brought in the form of Bills before the Hluttaws. Subject to the provision of the Constitution, Bills may be introduced in either *Pyithu Hluttaw* or *Amyotha Hluttaw* of the *Pyidaungsu Hluttaw*. Bills are classified into public Bill and private bill. Public Bills are sponsored by Ministers and private Bills are sponsored by member of Hluttaws or the Committees of the Hluttaws.
- * Normally, the Bill to be introduced shall be submitted to the *Pyidaungsu Hluttaw* office in accord with the prescribed procedure, (30) days before the session commences. The Speaker may consider the bills submitted beyond the time limitation, if there is a reasonable ground.
- * Regarding to the submission of a Bill in accord with the law, the restriction of the Constitution should be carefully noted.

Section 100

- * Section 100
- (a) - The Union level organizations formed under the Constitution shall have the right to submit the Bills relating to matters they administered among the matters included in the Union legislative list of the *Pyidaungsu Hluttaw* in accord with the prescribed procedures.
- (b) - Bills relating to national plans, annual budget and taxation, which are to be submitted exclusively by the Union Government shall be discussed and resolved at the *Pyidaungsu Hluttaw* in accord with the prescribed procedures.
- * This section 100 describes that the Ministries have the right to submit the Bills relating to matters they administered except, the (3) kinds of Bill relating to national plans, annual budgets and Taxation.

Submission of Bill

- To initiate a public bill the Ministry concerned has to work out the political as well as administrative, financial, economic and social implications of the proposal. Opinions of the legal and constitutional experts are obtained through the Union Attorney-General's office. After this scrutiny, a memorandum is submitted to the Cabinet for approval. The proposal is then converted into a Bill.
- The Bill as drafted, is examined in detail by the Union Attorney-General. Sometimes the Bill may have to be drafted several times before it can meet all the requirements. After the draft of the Bill has been finalized the Ministry concerned forwards the proposal to the Cabinet for consideration and approval. With the decision of the Cabinet the Bill is submitted to the *Pyidaungsu Hluttaw* office.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Formation

- * The Bill Committee of *Pyithu Hluttaw* was formed on the (1-3-2011) during the first *Pyidaungsu Hluttaw*, first regular session with (13) members, one chairman and one secretary in accord with the law.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Principles

- * The main task of the Bill Committee is to scrutinize the Bills referred to the committee by the Speaker of *Pyithu Hluttaw*. In scrutinizing any Bill the committee shall abide to the following principles:
 - a) Whether the Bill is in conformity with the policies and objectives of the Republic of the Union of Myanmar.
 - b) Whether the Bill is in conformity with the Constitution and the existing laws.
 - c) Whether the Bill can safeguard the interest of the Union and the people.
 - d) Whether the contents of a Bill may pose threat to the stability and security of the Union.
 - e) Whether the Bill is in accord with the current situations.
 - f) Whether the Bill may harm the security of the people and their properties.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Principles

- g) Whether the terms and vocabularies used in the Bill may damage the unity of the nationalities.
- h) Whether the Bill may conflict the rights of one Ministry to another or the rights of government offices and institutions.
- i) Due to the requirements of international or regional treaties or memorandum of understanding, should there be needed to make a new agreement, whether they are in conformity with the previous agreements or whether they may harm the sovereignty of the Union.
- j) Regarding to the policy matters whether the ingredient of the policy are sufficient.
- k) Whether the provisions are practically applicable.
- l) Whether the Bill have sufficient clauses to implement the purpose.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Procedures

- * The works of the Bill Committee begins at the time the *Pyithu Hluttaw* receives the Bill from the *Pyidaungsu Hluttaw*. The Bill Committee is responsible to distribute the copies of the Bill to all representative of the *Pyithu Hluttaw* in time. On the fixed date, the Minister or the Deputy Minister concern, shall introduce Bill at the *Pyithu Hluttaw* session.
- * If such an introduction is accepted for further discussion at the Hluttaw, publication of the Bill in Gazette is done for eliciting public opinion and the Bill is referred to Bill Committee. If the introduction of a Bill is rejected the Speaker shall announce the rejection of the Bill. Within these two and a half years in the *Pyithu Hluttaw*, no public Bill (Government's Bill) has been rejected so far.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Procedures

- * The Bill Committee, on receipt of the Bill referred by the Speaker shall make a report and send to the Speaker within seven days. Due to the time limitations members of the Committee has to held a meeting without any delay. This 1st meeting within the Committee, the following procedures are carried out:
 - a) Invitation of related Hluttaw Committee to discuss exclusively On the Bill
 - b) Invitation of related Ministries and organizations for necessary questioning
 - c) Fixing the date for discussion

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Procedures

- On the fixed date the above mentioned Committees and Ministries together with members of Bill Committee and members of the Commission for legal affairs and special issues, the Bill is discussed exclusively. Based on discussion in the meeting, the conclusion for scrutinizing is drawn for necessary amendments. The whole discussion is recorded and the report to submit to *Pyithu Hluttaw* is prepared in a prescribed procedure.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Procedures

- The report along with the meeting records and how the Bill was scrutinized shall be sent to the Speaker. On the fixed date, the Ministry that initiated the Bill shall submit the original Bill before the Hluttaw. The report of the Bill Committee and the comparison of the two Bills are distributed to members of Hluttaw before the scheduled session convenes. The report of the Bill Committee shall be read out and submitted by one of the Committee members at the session. After the reading, the Speaker shall invite members of Hluttaw to discuss the Bill. Members who seek to scrutinize or amend the bill shall be registered in accord to the rules and procedures of the Hluttaw within the limited time. The Speaker may decide the next session to discuss the matter. On the scheduled session, the Bill shall be discussed clause by clause in detail and the resolutions shall be drawn at *Pyithu Hluttaw*.

Formation and Functions of *Pyithu Hluttaw* Bill Committee

Procedures

- The Bill passed by the *Pyithu Hluttaw* shall be sent to the *Amyotha Hluttaw* to continue to discuss and resolve. The *Amyotha Hluttaw* may resolve to agree or disagree, or agree with amendments in accord with the resolution of *Pyithu Hluttaw*. The Bill shall be sent back to *Pyithu Hluttaw* together with the resolution of *Amyotha Hluttaw*. If the *Pyithu Hluttaw* accepts the Bill with amendments of the *Amyotha Hluttaw*, it shall send to the Speakers of the *Pyidaungsu Hluttaw* for further process. If the *Pyithu Hluttaw* disagrees, it shall take the resolution of the *Pyidaungsu Hluttaw*.

Promulgation


- After a Bill has been passed by both Hluttaws or resolution has been made at the *Pyidaungsu Hluttaw*, the Bill obtains the assent of the President. The President shall sign the Bills within (14) days after the day of receipt of the Bill and shall promulgate it as law. Within the prescribed period, the President may also return the Bill to the *Pyidaungsu Hluttaw* with his recommendations for reconsideration. The *Pyidaungsu Hluttaw*, after discussion of the President's comments, may accept his comment and resolve to amend the Bill or may resolve to approve the Bill as it is without accepting the President's comment. After receiving the Bill back, the President shall sign the Bill and promulgate it as law within the period of (7) days. If it is not signed by the President within that prescribed period, it shall become law as if he had signed it on the last day of the prescribed period. This is a brief account of how a Bill has to be passed through many processes to become a law.

Promulgation



- Before the formation of Hluttaws, we have (401) existing laws in our country. Some existing laws are from the British Colonial era, some laws are not inconsistent with the prevailing situations, some laws do not fit the ideal of a democratic society. This outdated laws have to be revoked. The *Pyidaungsu Hluttaw* has repealed (26) laws and promulgated (51) laws so far. The *Pyidaungsu Hluttaw* is also responsible to review all existing laws, and at the same time, necessary laws are to be adopted in time. The functions of *Pyidaungsu Hluttaw* is enormous.

Conclusion

- Our Hluttaw is still very young and our democracy is just at an infant stage. Two years ago, when we just came into the Hluttaw everything was new to us, we understand very little about legislature and we did not know where and how to begin. On the other hand, back in the constituency the people were expecting a lot from us. We were in great difficulties, but with the close guidance of our Speaker and technical support provided by The Union Attorney General's office we have come a long way in the fields of legislation. There is no backtrack possibility, we are determined to push forward. We believe in genuine democracy as crucial foundation to the development of our country.



**Thank you very much for
your kind attention.**

**The Role of the
Union Attorney-General's Office of
the Republic of the Union of
Myanmar**

Presented by
U Kyaw Moe Naing
Advocate-General of Yangon Region

Historical Background of UAGO

- Public Prosecutors and Government Advocate were appointed in early British Era
- the Advocate General, Government Advocate were appointed under the Government of Burma Act, 1935
- after regaining Independence in 1948, the President of the Union could appoint an Attorney General with the advice of the Prime Minister under the Constitution of the Union of Myanmar, 1947 & The Office of the Attorney General was formed under the Attorney General of the Union Act, 1948
- an Attorney General was appointed in 1962 under the Regime of Revolutionary Council
- 1972- a new Attorney General's Office was formed
- 1974 Constitution- the Council of People's Attorneys- the Central, State/Divisional, Township Law Office were formed

Historical Background of UAGO (Continued)

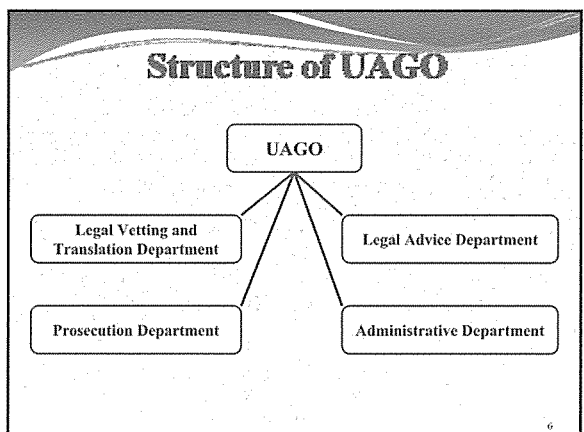
- 1988, SLORC promulgated the Attorney-General Law, 1988
- 2001, SPDC promulgated the Attorney-General Law, 2001
- Subject to the Constitution of the Republic of the Union of Myanmar 2008, the Attorney-General of the Union Law, 2010 was promulgated
- Current Union Attorney General's Office and various levels of Law Offices are constituted in accord with this 2010 Law

Formation of UAGO

- 2008 Constitution & the Attorney-General of the Union Law, 2010
 - formed the Union Attorney-General's Office, the Advocate-General's Office of the State/Region, the Various Levels of Law Offices
 - the Attorney-General of the Union was appointed by the President with the approval of the Pyidaungsu Hluttaw
 - the AGU is a member of the Union Government and responsible to the President
 - the AGU obliged to submit the unusual situation of legal matter to the three Hluttaws if there arise in these Hluttaws

Formation of UAGO (Continued)

- 2008 Constitution & the Attorney-General of the Union Law, 2010
 - Deputy Attorney-General was appointed by the President on his own volition
 - DAG is responsible to the AGU and responsible to the President through AGU
 - the Advocate-General of the State/Region was nominated by the Chief Minister of the State/Region with the approval of the respective State/Region Hluttaw and appointed by the President
 - the AG of State/Region is responsible not only to AGU but also to the Chief Minister of State/Region and to the President through the Chief Minister of State/Region as well



Hierarchical Organizational Chart of UAGO and Its Subordinate Offices

Union Attorney General's Office headed by Director General

Offices of Advocate-General of Regions/States headed by S/R LO

District Law Offices headed by the District Law Officer

Township Law Offices headed by Township Law Officer

7

Functions of Legal Vetting and Translation Department

- Vetting and advising the draft laws initially drafted and sent by the relevant ministry
- Vetting the draft laws sent by the relevant ministry to amend, added and substitute in respect of any existing law
- Vetting and advising the draft rules, procedures, notifications, orders and directives
- Translating laws

8

Functions of Legal Advice Department

- Tendering legal advice to the President of the Union, the Speakers of the three Hluttaws (Pyidaungsu Hluttaw, the Pyithu Hluttaw, the Amyotha Hluttaw), any Ministry of the Union, Nay Pyi Taw Council, any Union level organizations on matters relating to:
 - International, regional or bilateral or multilateral treaties;
 - MOU, MOA, local and foreign investment instruments and other instruments;
 - Any other legal issues

9

Functions of Prosecution Department

- Appearing on behalf of the State in original, appeal, revision and special appeal cases
- Appearing on behalf of the State in applications to issue writs to the Supreme Court of the Union (SCU)
- Appearing in criminal cases on behalf of the Union
- Appearing on behalf of the Union in original civil case, civil appeal case, civil revision case and special revision case as the plaintiff or defendant
- Filing appeal or revision if it is necessary to file to the SCU
- Withdrawing the entire case, any charge or any accused
- Making decision to close the criminal cases that cannot be prosecuted at the Court
- Filing appeal against acquittal order to the SCU

10

Functions of Administrative Department

- Carry outs the functions relating to:
 - Civil service personnel affairs;
 - Inspection ;
 - Budget and accounts;
 - Logistic and building;
 - Training and legal research;
 - Compiling and publishing law books;
 - Information technology

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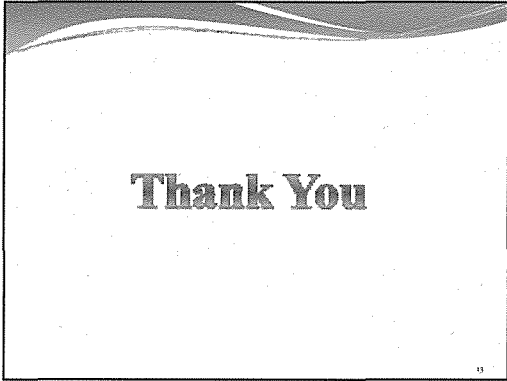
Motto of UAGO



*“Causidico Nobilis Est
Professionem”*

The Legal Profession is the Noble Profession

12

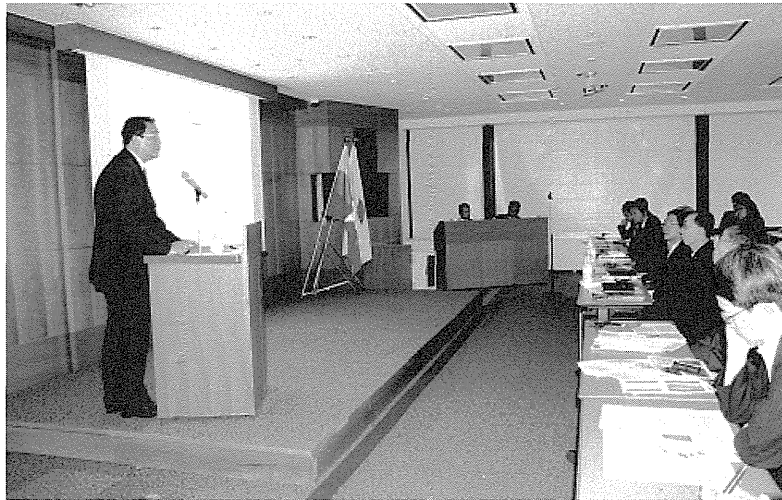


Union Attorney-General attends "Recent Development of Myanmar and Challenges it Faces- from the Legal and other Perspectives" workshop in Japan

NAY PYI TAW, 19 June- Attorney-General of the Union Dr Tun Shin read out the paper titled the Legal System of Myanmar and updates on Myanmar Business Law, at a workshop on comparison between legal systems in Myanmar and Japan held on 8-15 June in Japan.

The Attorney-General of the Union discussed legal system in Myanmar's successive eras and business laws; Chairman of Pyithu Hluttaw Bill Committee U T Khun Myat, committee's works and Yangon Region Advocate-General U Kyaw Moe Naing, the role of the Office of the Attorney-General of the Union.

During his visit,



Attorney-General of the Union Dr Tun Shin reading out his paper at the workshop.- MNA

the Attorney-General with Japanese officials Myanmar and Japan and of the Union held talks on cooperation between other legal affairs.- MNA

- III. REPORTS ON FIELD SURVEY -

REPORT ON FIELD SURVEY AND LOCAL SEMINAR IN INDONESIA

Yasuko Miura

*Professor and Government Attorney
International Cooperation Department*

The author of this paper visited Indonesia from August 1 to 14, 2012, to conduct a field survey on the actual situation of the legal and judicial systems and local seminars, together with several Japanese law scholars. This paper discusses the results of the trip.

I. PURPOSE OF THE VISIT

A. Purpose of the Visit

Since the completion of the Project on Improvement of Mediation System administered jointly by the Japan International Cooperation Agency (hereinafter “JICA”) and the Supreme Court of Indonesia in March 2009, Japan has not actively provided legal technical assistance to Indonesia. Yet, this country, with a population of over 230 million people, remains extremely important for Japan, as the two countries maintain strong ties in culture and economy. With a high regard for this strong relationship, the International Cooperation Department (hereinafter “ICD”) has continued, and will continue its assistance to Indonesia, by holding seminars in Japan for Indonesian judges to follow up on the above Project, and also holding joint studies on personnel capacity-building. In order to enhance its assistance and make it more effective, the ICD sent a delegation to research the actual situation of the legal and judicial systems in Indonesia.

Professor Yoshiro Kusano at Gakushuin University and Professor Kazuto Inaba at Chuo University, who were members of the advisory group for the above Project, have continued to visit Indonesia every year, even after the completion of the Project of JICA, to conduct seminars on the mediation system of Japan and other topics. They also participated in the delegation to follow up the Project.

B. Schedule

See the “Schedule of Local Seminars in Indonesia” on pp.131.

II. ACTIVITIES DURING THE FIELD TRIP

The following reports on the activities and results of the meetings conducted at each institution visited.

A. Supreme Court and Affiliated Institution

1. Courtesy Call on the Chief Justice

We paid a courtesy call on Chief Justice Dr. H.M. Hatta Ali who had assumed the post in March 2012. The two Vice Chief Justices, two Deputy Chief Justices (a position second to Vice Chief Justice) and the Director of the Research and Development, Education and Training Agency (hereinafter “RDETA”) also joined the meeting.

Not only the fact that the Chief Justice accepted the courtesy call but also the presence of both Vice Chief Justices may indicate their high expectations for Japanese assistance, based on the relationship of trust built upon through years of cooperation between both countries.

The Chief Justice expressed an appreciation for Japanese assistance to date, and also a hope for continuation of the cooperative relationship.

2. Visit to the RDETA

a. We visited the RDETA, a training institute of judges. It was explained that in this agency, an American project titled “Change for Justice” was underway to be completed in May 2014, in which efforts were being made towards the introduction of computer technology and the expansion of the accompanying electric power supply (to secure an electric power supply capacity, which is necessary for the introduction of a large amount of computers) at courts in nine places.

b. Observation of the facility

We observed the accommodation facility of trainees, library, etc. The single-room accommodation was large enough for each trainee to undergo a long period of training courses. The library was also spacious and was in a good condition with several personal computers, though the type of books stored was limited.

While the infrastructure put in place was sufficient, there was still room for improvement in “soft” aspects. There is a need for Japanese assistance in the field of training program designing, development of teaching materials, and personnel capacity-building for management. With a type of assistance modeled after that for the Royal School for Judges and Prosecutors in

Cambodia, this well-developed infrastructure could be utilized more efficiently.

c. Observation of training

We were given an opportunity to observe a training seminar for candidate judges to be qualified as mediators.

Using sample cases, approximately 30 trainees were learning skills to find facts at issue in mediation, and rephrase statements of parties on facts diplomatically. The content of the training was basic but practical, and the trainees were actively presenting their opinions.

B. Lower Courts

1. Visit to the Central Jakarta District Court

The Central Jakarta District Court is located in the central part of Jakarta, and holds a commercial special court, human rights special court and a corruption special court. Judges including the Chief Judge in this court explained as follows on the situation surrounding the court:

- In Indonesia, parties may choose mediation by a career judge or non-judge. As they are required to pay commission fees in the latter case, mediation by non-judges has not been used at all, although 60 non-judge mediators are registered. As a result, career judges are overloaded with many mediation cases as well as usual lawsuits, resulting in insufficient mediation.
- Reaching a compromise between parties is difficult as their counsels tend to extend proceedings to demand more remuneration. In the case of a breach of contract, generally the parties have negotiated in advance before bringing the case to the court. Thus, these cases can be settled relatively easily through mediation by extending the time limit for performance. Many divorce cases are also settled through negotiation. Most Indonesian are Muslims, and the divorce of Muslims is under the jurisdiction of the religious court. Thus, this court has received few divorce cases of non-Muslims. If the parties decide not to divorce and withdraw the case, it is considered as being successful.
- There is a plan to establish the summary court upon enactment of a new law. It will be built within the premise of the district court, as in the case of the special commercial court. There is also a plan to provide requirements for appeal against judgments by lower courts, by amending the Court Law.
- The court has received security-related assistance from the U.S., including the provision of PCs. It expects Japanese assistance, including information provision, through training seminars and others on the ensuring of security in the court. Assistance for the introduction of speech recognition software would be very useful and highly appreciated.

2. Visit to the South Jakarta Religious Court

a. Presentation by the Chief Judge of the South Jakarta Religious Court

When we visited the South Jakarta Religious Court, the Chief Judge gave us the following explanation regarding the status of use of mediation, which began in 2011 at the court.

- In 2011, the court received 1,151 cases in total for mediation; 41 cases of which ended successfully, while in the remaining 1,110 cases mediation failed. Attention should be paid to the definition of success and failure referred to here. Successful cases refer to those in which the parties decide not to divorce and instead withdraw their cases; and failed cases are those in which the parties continue to move towards divorce, which is quite different from the concept in Japan.
- In 2012, out of 637 cases received, 83 cases were successful and the remaining 554 resulted in failure. The increase of the successful ratio may be attributed to the fact that cases in which a certain type of agreement (for example, an agreement on the designation of the person with parental authority) was reached were also counted.
- The court faces several problems including:
 - i) Mediators receive training only once at appointment;
 - ii) Training is not specialized in domestic-relations cases;
 - iii) There is no system for mediators to share their experiences; etc.

b. Seminar by Professor Kusano

A seminar was held by Professor Kusano regarding the Japanese system of compromise and mediation, in which approximately 30 individuals, including judges, mediators, court clerks of the court participated. With a focus on the above-mentioned problems at the court, the professor mentioned that in Japan there is a system in which inexperienced mediators can gain experience and learn skills from experienced mediators who are in charge of same cases.

c. Facility observation

The mediation rooms we visited were pleasant in atmosphere, with artificial flowers decorated in each room. There was a special reception area for mediation, and several measures were taken in consideration of parties.

3. Visit to the Surabaya District Court

We visited the district court in Surabaya, the second commercial city in Indonesia.

The Chief Judge of the court gave us a detailed explanation on the status of various types of cases, including those of bankruptcy, labor, etc.

Regarding labor cases, as in Japan, both the laborer's side and the employer's side attend trial sessions presided over by a judge. Experience tells me that in Japan, such a panel structure of trial

makes it easier to convince the parties to reach an agreement through mediation or negotiation. In Indonesia, on the other hand, as mediation or arbitration is a prerequisite before moving to trial proceedings, only those in which an agreement has not been reached through mediation are referred to trial proceedings. Therefore, in trial sessions there is very small room for parties to agree through negotiation, and due to conflicts between both parties, the judge cannot form an opinion and find it difficult to render a judgment. This may be one of the reasons for the low success rate of negotiation during trial. However, the underlying cause may be the low predictability of the adjudication.

C. Ministry of Law and Human Rights (MLHR)

1. Visit to the Directorate General of Intellectual Property Rights (DGIPR)

a. Location

The DGIPR of the MLHR (located in the City of Tangerang, approximately one hour from the center of Jakarta)

b. Purpose of the visit

Currently the Industry and Trade Division, Industry Development and Public Policy Department of JICA administers a project on intellectual property rights for Indonesia, together with the DGIPR. The Supreme Court is one of the counterpart organizations, and the ICD also cooperates in the Project. Thus, we decided to visit the Directorate General in order to gain information on the disposal status of intellectual property cases and relevant legislative movement.

c. Meeting at JICA Project Office

Prior to the exchange of information with the Director General of the DGIPR, we visited the JICA Project Office located within the premise of the Directorate General. We were informed that the two decrees of the Supreme Court regarding the control and provisional disposition of counterfeit goods at the border, which had been pending since a few years ago, were finally enacted at the end of July, 2012. It is expected that through these decrees, the use of civil measures may be promoted to protect intellectual property rights, which have been under the jurisdiction of criminal procedure.

d. Exchange of Information with the Director General

The Directorate General has, under the Director General, six departments: the Copyright and Design Department, the Patent Department, the Trademark Department, the Cooperation Promotion Department, the Information Technology Department and the Investigation Department. During our visit, we were provided the following information on the situation of the Departments of Copyright and Design, Patent, Trademark and Investigation:

- The Investigation Department was established in 2010, and has disposed of 40 cases to date.

While there are cases which can be settled through negotiation, usually investigations are initiated upon receipt of a damage report, and cases are referred to the prosecution office in collaboration with police. In cases of a violation of patent and trademark, they are not prosecuted if the damage report is withdrawn, while a case of copyright may be prosecuted in spite of the withdrawal of the damage report. Many cases of the violation of trademark are over products of Honda, which cannot be settled through negotiation;

- The Directorate General is deeply involved in civil cases of violation of trademark, etc. There are cases where, in addition to the defendant who is the actual infringer, the Directorate General is required to stand trial as a defendant. In such a case, an official in charge stands in court to explain the reason for granting the trademark to the defendant and for this purpose a letter of proxy from the Director General of the DGIPR and an order from the court are necessary;
- When a judgment declaring the revocation of the trademark is rendered, it can be promptly enforced upon request by the parties;
- In both civil and criminal cases, there are cases where the DGIPR is required to give testimonies as a witness regarding professional matters, and also to intermediate negotiations between parties.
- With regard to legislative planning, amendment is being considered as for patent law, trademark law and copyright law.

2. Courtesy Call on the MLHR

We had an opportunity to pay a courtesy call on the Minister of Law and Human Rights Amir Syamsuddin.

During our call, we first expressed our appreciation for allowing us to visit the DGIPR and providing us valuable information, and also conveyed our condolences on the death of one of the Indonesian delegates, when they visited Japan together with the Minister in June 2012.

The Minister expressed that, in spite of the unfortunate event, their visit to Japan was extremely meaningful as they obtained Japanese knowledge at the Intellectual Property High Court and the Patent Agency, and also had an opportunity to discuss with the Minister of Justice of Japan, who had just assumed his post on the day of their visit. Moreover, the Minister welcomed my interest in the legislative movement in Indonesia, and expressed his hope for a continued and productive relationship with the Ministry of Justice of Japan.

D. The Third Committee of the House of Representatives

We exchanged views with the Chairperson and other members of the Third Committee of the

House of Representatives. This Committee deals with legal affairs, human rights, and public security, which is equivalent to the Legal Affairs Committee of Japan.

When we asked regarding possible amendments to the Civil Procedure Law and Criminal Procedure Law, it was explained that:

As for the Criminal Procedure Law; there is a great need for its amendment as it contains several provisions that do not conform to the concept of fundamental human rights. However, as the coordination of roles between the prosecution service and police is difficult even within the Ministry of Justice and Human Rights, there are no prospects for a bill to be submitted, and the exposure of corruption through improvement of the Corruption Prevention Committee is the most pressing issue.

Needless to say, for the eradication of corruption, national determination towards this purpose is critical. In addition, from the perspective of the overall judiciary, for sustainable development of corruption-free culture, it appears to be necessary to secure transparency through development of basic laws and human resources who operate them, and thereby to establish an environment which does not harbor corruption. Looking at the reality rife with corruption in Indonesia, it may be inevitable to seek to address this problem by quick-impact crackdown of corruption cases to some extent. At the same time, it is expected that the country adopts a policy in consideration of the effectiveness of concurrently taking measures from the long-term viewpoint.

E. Universities

1. Visit to, and a Seminar at Tarumanagara University

We visited Tarumanagara University in Jakarta to hold a seminar by Professors Kusano and Inaba.

It is a private Christian university with eight faculties, including the faculty of law and the faculty of economics. Children of relatively affluent families are studying in this school, and most graduates from the faculty of law work in the business world.

Although there were not a great variety of books held in the university library, it was equipped with a considerable number of computers and multiple meeting rooms for students, and looked like a library in a U.S. law school.

After the facility observation, Professors Kusano and Inaba conducted a seminar on the topics of compromise, mediation and ADR, which were attended by dozens of individuals, including students, mediators and private attorneys, even though the school was closed due to Ramadan.

During the Q&A session, several questions were asked, with one being about the relationship

between the people's trust towards the judiciary and mediation. This question reminded us of various problems facing highly inspired mediators in Indonesia, where the people in general have a high level of mistrust towards the judiciary and judicial officers.

2. Visit to, and a Seminar at Airlangga University

We visited Airlangga University in Surabaya and Professor Kusano gave a seminar.

This university was first established in 1948 as an extension campus of the University of Indonesia. It has 13 faculties and has produced five incumbent Supreme Court Justices, including Chief Justice Dr. H.M. Hatta Ali.

The Faculty of Law of this university focuses on the training of legal practitioners, and is equipped with very ample facilities, including four rooms for practicing ADR, seven model courtrooms with several types of robes (one of them is larger than actual courtrooms) and classrooms imitating law firms, etc. Even Professor Kusano, who had visited many universities, admired the faculty as it had the most excellent facilities he had ever seen.

Professor Kusano gave a seminar at the university, and some of the questions from the audience made us realize that mediation was not functioning as intended in Indonesia. It was explained that the parties were not interested in mediation, as fees were required in case of mediation by non-judges, and win-win resolutions were possible even through court judgments. Regarding the last point, not only negative but also positive evaluation thereof was possible. For example:

- Negative opinion: Judgments leading to win-win resolutions may not be made according to appropriate interpretation or application of law;
- Positive opinion: Many judges make efforts to find reasonable solutions.

F. Inaugural Meeting of the Japan-Indonesia Lawyers Association

In response to a call by Professor Kusano, an association of Japanese lawyers interested in Indonesia and Indonesian lawyers interested in Japan was established, and its inaugural meeting was held. The association was named "Japan-Indonesia Lawyers Association" and plans to carry on such activities as: sharing information among its members, supporting acceptance of lawyers as students between both countries, organizing study meetings, etc.

III. Personal Comments

1. This was my first visit to Indonesia. Jakarta was bigger than I had expected, and there were

skyscrapers all around, not only in the central part but also in the surrounding areas. I found many Japanese middle to high-end cars in the city. Prices were high, and clothes sold in a shopping center cost almost the same as in Japan.

What casts a shadow on the smooth economic growth in Indonesia, which is represented by the above-mentioned urban development, are problems of corruption, labor disputes, the severance of the central and local governments, etc. It appears that the number of discovered corruption cases has increased gradually, due to the aggressive anti-corruption policy of the Yudhoyono administration. However, it may be necessary to establish a transparent procedure which does not give rise to corruption.

Regarding labor disputes, while workers' rights should be respected, the existence of labor disputes itself deters the expansion of Japanese businesses into Indonesia. Thus, a mechanism which balances workers and employers must be put in place.

As for the relationship between the central and local governments, due to the political background, local empowerment was promoted without taking sufficient measures to ensure integrity between the central and local governments. Consequently, it appears that local governments have insufficient capacity to exercise the delegated authority.

2. In the legal field, the country faces challenges in terms of predictability and procedure transparency due to several reasons. For example: 1) the people's trust to courts is extremely low due to corruption and the low capacity of judicial officers; and 2) basic laws, such as the Civil Law, Civil Procedure Law and the Criminal Procedure Law, have not been amended for many years. Regarding the Civil and Criminal Procedure Laws, they are on the priority list of laws to be revised, but their drafting has not proceeded to date. In addition, it appears that Indonesian lawyers have low recognition of the need for prompt amendment of these laws.
3. On the other hand, as for intellectual property laws, while they have not been revised yet due to political reasons, there appears to be an intention to adapt them to the global situation. Thus, the country has a certain capacity to collect legal information to draft statutory articles. Moreover, many legal professionals have master or higher degrees, blessed with excellent facilities to practice law, as in the case of the Research and Development, Education and Training Agency and the South Jakarta Religious Court.

It may be because these positive factors that not a few legal professionals in Indonesia seemed to have feelings of resistance against, or become wary of comments or criticism by outsiders about

the many challenges they face.

4. Last but not least, I would like to express my sincere appreciation to many people who supported us during this visit: the professors who participated in this visit, the Embassy of Japan in Indonesia, the Consulate of Japan in Surabaya, people involved in the JICA Project on Intellectual Property and others.

Schedule of Local Seminars in Indonesia

[Professor in Charge: Ms. Miura, Administrative Officer in Charge: Ms. Hori]

International Cooperation Department, Research and Training Institute, Ministry of Justice

Date			Place
8 / 1	Wed.	Leave Japan	Plane, Jakarta
8 / 2	Thu.	9:00 Visit to JICA Intellectual Property Project Office 10:00 Visit to Directorate General of Intellectual Property Rights (DGIPR), Ministry of Law and Human Rights (MLHR)	13:00 Courtesy call on Director General of DGIPR, MLHR Jakarta
8 / 3	Fri.	9:00 Visit to Commercial Court (in Central Jakarta DC)	13:30 Courtesy call on JICA Office in Indonesia 15:30 Courtesy call on ASEAN Ambassador Ishikane Jakarta
8 / 4	Sat.		Jakarta
8 / 5	Sun.	Study tour in Jakarta	Jakarta
8 / 6	Mon.	10:00 Visit to Religious Court (in South Jakarta RC), lecture by Prof. Kusano	12:30 Courtesy call on Minister of Law and Human Rights Jakarta
8 / 7	Tue.	9:00 Visit to Tarumanagara University, lecture by Profs. Kusano and Inaba	13:30 Visit to Bank Indonesia Jakarta
8 / 8	Wed.	10:00 Visit to Supreme Court, courtesy call on Chief Justice	15:00 Courtesy call on Japanese Ambassador Katori to Indonesia Jakarta
8 / 9	Thu.	Visit to Research and Development, Education and Training Agency (all day)	Jakarta
8 / 10	Fri.	Meeting with Supreme Court on study tour to Japan in Nov.	13:30 Visit to 3rd Commission of House of Representatives Jakarta
8 / 11	Sat.	Meeting with Japan-Indonesia Lawyers Association	Leave Jakarta at 15:30 and arrive in Subalaya at 16:55 on GA320 Sulabaya
8 / 12	Sun.	Study tour in Sulabaya	Sulabaya
8 / 13	Mon.	9:00 Visit to Airlangga University, lecture by Prof. Kusano	14:00 Exchange of opinions with practicing lawyers in Sulabaya 15:00 Courtesy call on Consul in Sulabaya Sulabaya
8 / 14	Tue.	10:00 Visit to District Court (Surabaya DC)	Plane
8 / 15	Wed.	Arrive in Japan	Japan

REPORT ON FIELD SURVEY AND LOCAL SEMINARS IN TIMOR-LESTE

Mikine Eto

*Professor and Government Attorney¹
International Cooperation Department*

I. PURPOSE OF THE VISIT AND SEMINARS

The International Cooperation Department (ICD) has provided assistance in strengthening legislative-drafting capacity to the National Directorate of Legal Advice and Legislation of the Ministry of Justice of Timor-Leste since 2008. In order to make its assistance more effective, the ICD has conducted field surveys twice on the local judicial system. In Fiscal Year 2012, the ICD commissioned Attorney Tsutomu Hiraishi² to research the local civil justice system. Moreover, the author of this paper was dispatched to Timor-Leste to conduct the third field survey. This was done mainly by interviewing officials at relevant judicial institutions, which had never been visited before by ICD staff members (Attorney Hiraishi partly participated in the survey).

In addition to the field survey, we organized workshops to follow up on the comparative study on legal systems, which had been held previously in Osaka in September 2012³. The workshop dealt with “drug-related laws” and “the arbitration law,” the draft laws of which had been prepared by the above-mentioned Directorate.

This paper reports on the field survey and workshops conducted recently by the author, and also overviews the judicial organization in Timor-Leste, based on the surveys conducted to date⁴.

¹ The author was transferred to the Osaka District Public Prosecutors Office as of April 1, 2013

² Attorney Hiraishi is a former JICA long-term expert in Indonesia. Currently he is an advisor on international law at Jakarta International Law Office, and resides in Indonesia.

³ Regarding the comparative study of legal systems, see ICD NEWS No.53, pp. 158 (in Japanese).

⁴ Attorney Hiraishi researched in detail the civil justice system in Timor-Leste under commission of the ICD. The results of the research were submitted at the end of FY2012, and are posted to the website of the ICD.

II. ITINERARY

The outline of the itinerary from December 3-14 of 2012 (including travel days) is as follows:

- December 4: Meeting with JICA Office in Timor-Leste
- December 5: Courtesy call on the Embassy of Japan in Timor-Leste
Visit to the United Nations Integrated Mission in Timor-Leste (UNMIT)
Discussion with the United Nations Development Programme (UNDP)
- December 6: Courtesy call on the Vice Minister of Justice
Interview at the Association of Advocates in Timor-Leste (AATL)
Legislative-Drafting Workshop I
- December 9: Field survey on ADR at Lauala, Ermera District
- December 10: Visit to the Dili District Court, observation of trials, visit to the Court of Appeals
- December 11: Visit to the Public Defender Office
Visit to the Justice System Monitoring Program (JSMP)
Legislative-Drafting Workshop II
- December 12: Legislative-Drafting Workshop III
Legislative-Drafting Workshop IV
- December 13: Press conference organized by the Embassy of Japan

III. ACTIVITIES

A. Field Survey

We visited several judicial institutions to conduct interviews on their activities.

1. Courtesy call on the Vice-Minister of Justice

We paid a courtesy call on H. E. Mr. Ivo Jorge Valente, Vice-Minister of Justice to exchange views regarding the legal cooperation between Japan and Timor-Leste. Information on our visit was posted to the website of the Ministry of Justice.



Center: The Vice-Minister of Justice
Second from left: the author
Second from right: Mr. Tone, an administrative officer of
the ICD. He has tais, a textile of Timor-Leste, hanging
from his neck.

2. Discussion with a judge of the Dili District Court

We interviewed a judge of the Dili District Court who explained the flow of the civil first-instance procedure. The overview of the interview is as follows:



Dili District Court

- Civil cases are handled in accordance with the Civil Procedure Code in Timor-Leste (which was originally drafted in Portuguese and has since been translated into Tetung⁵).
- Counsels are assigned to all cases (litigation by parties themselves is not allowed).
- The flow of the civil first-instance procedure:
Filing of a suit – Notice – Answer (Unless the defendant answers to the complaint within 30 days upon receipt thereof, it shall be considered that the defendant has upheld the claim. Family affairs cases shall proceed without responses from defendants). Subsequently, the court shall encourage parties to reach a settlement. This opportunity is given only once. When a settlement has been reached, it has the same effect as a final judgment. When the parties have not reached a

⁵ Timor-Leste has adopted two official languages: Portuguese and Tetung. While Portuguese is spoken by only a small part of the population, almost everyone can speak Tetung. However, Tetung has a too limited vocabulary to draft effective laws. Therefore laws have been written in Portuguese.

settlement, an oral argument is held to render a judgment.)

3. Interview with a bailiff of the Dili District Court

A bailiff of the Dili District Court gave us an overview of civil execution as follows:

- Number of civil execution cases: 14 cases were filed and 9 cases were enforced as of December 2012.
- The majority of cases filed deal with land disputes.
- Procedure: Petition for execution -> Notice -> Period for appeal (20 days) -> Execution
- As the general public has no knowledge of trial or execution, the execution procedure requires a certain period of time.
- Staff of the Dili District Court: 12 judges (including two Portuguese judges) and six bailiffs.

4. Observation of trials at the Dili District Court

As there were no civil trial sessions on the day of our visit, we observed three criminal trials as follows:

- The first trial on a charge of injury:
As the accused did not appear in court, the trial was postponed. The session was conducted in Tetung.
- The second trial on a charge of homicide:
As the defense counsel did not appear, the trial was postponed. This case was handled by a foreign judge and prosecutor, and so the trial proceedings were conducted in Portuguese. There were interpreters for both the prosecution and the defense, and explanations were given through the interpreters on the adjournment proceedings.
- The third trial on a charge of domestic violence:
As a result of a quarrel, which arose due to a wife's suspicion on her husband's infidelity, the husband hit the wife with a pesticide can, thereby causing her to faint. The case was dealt with in Tetung.

Outline of the trial proceedings: 1) Notification of the right of the accused by the judge, questions for identification of the accused; 2) Questions to the accused regarding charged facts (in the order of: judge, prosecutor and defense counsel); 3) Questions to the witness (in the order of: judge, prosecutor and defense counsel); 4) Closing argument and recommended sentence by the prosecutor; 5) Closing argument by the defense counsel; 6) Pronunciation of the date of judgment-rendering.

The judge had the case dossier at hand, and the trial proceeded under the inquisitorial system, primarily with questions by the judge based on the dossier.



At the court: (left) The prosecutor in charge of trial; (right) The author

5. Discussion with the President of the Court of Appeals

We interviewed the President of the Court of Appeals⁶, who gave us the following information:

- Currently the court system is composed of one Court of Appeals and four District Courts⁷. While the Constitution requires the establishment of a Supreme Court, it has not yet been set up (the President of the Court made a statement to the effect that the Court of Appeals may be abolished if the Supreme Court is in fact set up). The establishment of special courts⁸ is also provided for by the Constitution, but they have not yet been built either. Therefore, currently all cases are heard by the ordinary courts and the Court of Appeals, and the court organization is two-tiered.
- There are seven judges in the Court of Appeals: four East Timorese judges (including the President) and three foreign judges. The Court receives approximately 200 cases annually, most of which are criminal cases. Civil cases account for only one-third the number of criminal cases.

6. Discussion with the Director of the Public Defender Office

The Director of the Public Defense Office gave us the following information:

- The Public Defender Office (PDO) was established in July, 1999, by the United Nations Transitional Administration in Timor-Leste (UNTAET). Its main duties include providing legal advice or legal aid, and conducting mediation⁹.
- The PDO is under the jurisdiction of the Ministry of Justice. It offers free legal services according to government policy, and fees of public defenders are paid by the government. While public defenders are allowed to accept requests by individuals, they should not accept

⁶ Mr. Claudio Ximenes, President of the Court of Appeals, once served as a judge in the High Court in Lisbon, Portugal, and is a member of the Coordination Council (CoC), which consists of the Minister of Justice, the President of the Court of Appeals, the Prosecutor General and the Director of the Public Defender Office.

⁷ Dili District Court, Baucau District Court, Suai District Court and Oecussi District Court

⁸ High Administrative Tax and Accounting Court, Military Court, Maritime Court and Administrative Court

⁹ It conducts mediation on both criminal and civil cases. As for criminal cases, it may deal with less serious cases punishable by not more than three years prison. Regarding civil cases, both judicial and non-judicial mediation is available. It was explained that non-judicial mediation can be enforceable when notarized.

remuneration from clients.

- Public defenders are selected, as in the case of judges and prosecutors, from among law graduates who have become private lawyers after completing the Legal Training Center (LTC). The LTC aims to train individuals in three legal professions under the unified quality standard. This year, however, only 12 students graduated from the center, which is largely under the quota: that is; 45 judges, prosecutors and practicing lawyers in total.
- Foreign attorneys with five years experience or more in their original countries are allowed to practice law in Timor-Leste.
- Currently there are 16 public defenders, including three Brazilians. Nine offenders are stationed in Dili; two in Suai, three in Baucau, and two in Oecussi, who provide legal services in each region. Moreover, mobile courts are also established in regions with no fixed courts.

7. Discussion with the President of the Association of Advocates in Timor-Leste (AATL)

The following information was given through discussion with the President of the AATL:

- The AATL is composed of 247 members who have LL.B.
- The current challenge for the Association is the foundation of a bar association. For this purpose a council has been formed with five members (three from the Ministry of Justice and two from the AATL).
- It is necessary to graduate from the LTC to be admitted to the bar. However, very few members of the AATL have met this requirement, so the bar qualification is also an issue to be addressed.

8. Discussion with the Justice System Monitoring Program (JSMP)

We visited an NGO which conducts surveys on the judicial system in Timor-Leste, the activities of which are described below:

- The JSMP is an NGO established in 2001 by East Timorese.
- One of its main duties is to monitor trials of serious cases for national judicial development. Its staff members observe trials daily, and it also has a women's unit to monitor cases involving female victims, including rape and DV cases. The NGO also monitors the legislative process of the National Parliament and analyzes sample cases to disseminate the court justice system to the entire nation.
- The achievements of its activities are published on its website in Tetung, Indonesian, and English¹⁰. The English version is made for its donors (Ausaid, USaid and Asia Foundation) which finance its activities.
- The NGO also accepts individual research requests from organizations other than its donors.

¹⁰ The publications of the JSMP are available at <http://jsmp.tl/en/publikasaun-publications/>

9. Visit to Lauala, Ermera District, Discussion with Executive Officers in Lauala



Survey at Lauala

We visited Lauala, Ermera District, to research the actual situation of mediation in villages. The following information was obtained through interviews with the village mayor and others.

- In Lauala, several cases including injury, theft, divorce, land disputes, DV, etc. are handled through the customary village procedure (mediation).
- All cases occurring in the village are reported to the mayor, who decides the commencement of mediation on the reported cases.
- Serious crimes including homicide and rapes by minors are reported to police (which means, criminal cases other than those more serious ones are not reported to police and the relevant procedures are concluded solely within the village). At the same time, the mediation procedure is also undertaken within the village to resolve such cases.
- At the commencement of mediation, the parties concerned pay procedural costs to security staff, and also provide meals to all participants in mediation.
- In mediation, parties, witnesses and relevant villagers present opinions and interrogate one another until an agreement is reached.
- The mediation procedure is recorded. If mediation ends successfully, a written agreement is made and procedural costs paid. The perpetrator pays damages based on the custom¹¹.
- If mediation fails, parties concerned proceed to the police (in case of criminal cases) or bring the case to the court (in case of civil cases) with documents prepared by the village.

B. Workshops

1. Review of “Drug-related Laws” (lectured by the author)

In Timor-Leste, with the amendment of a new criminal law, the Indonesian Criminal Code which had until then been effective ceased to have an effect. The new criminal law lacks drug-related

¹¹ In Lauala, compensation for damages is decided in detail according to the local custom. For example, in the case of violence against parents, valuable textiles and one pig were awarded. In the case of violence against parents-in-law, a buffalo and a precious stone awarded. In the case of violence against a person without any family relationship, a cloth, pig and a goat were awarded.

provisions, which causes inability to deal with drugs by law. Compared to the situation in other countries, in Timor-Leste the problem of drug-related crimes is not as serious. To date, only a few cases have been reported, including those in which Timor-Leste was used as a pass-through point for drug smuggling between Australia and Indonesia.

In this workshop, discussions were held with the draftsmen of the National Directorate of Legal Advice and Legislation of the Ministry of Justice, regarding questions previously submitted. Their questions varied from criminalization of the transfer of drugs to how to legislate the membership of the Anti-Drug Committee. Furthermore, they questioned cooperation with police and other relevant institutions, types of drugs used for research and medical purposes, control of drug import and export, etc. The lecturer explained relevant Japanese systems and sample procedures on each question.

The new draft law, which was re-made based on the review during the joint legal study held in Japan in September of the same year, was also examined during the workshop. It appeared that the draft law needed further improvements to reach completion. Among other issues, it lacked provisions on crimes committed outside Timor-Leste, as well as on interception warrants. Moreover, further consideration appeared necessary on the relationship between the draft law and the Criminal Procedure Code. On the other hand, many of the newly recruited draftsmen were graduates from the LTC, and all seemed to have certain legal grounding, as they were able to relate the lecturer's questions to relevant statutory provisions written in Portuguese¹².

It should be noted that their final draft law may not conform to international standards, partly because, it is intended to be a draft which accommodates problems unique to Timor-Leste, and also the country does not yet have a plan to ratify the three major drug control treaties.

2. Arbitration Law (lectured by Attorney Hiraishi)

In Timor-Leste, disputes have traditionally been resolved within villages and the formal judicial procedure has not been of much use due to the lack of courts, etc. Thus, the Ministry of Justice is intending to provide a legal basis for informal dispute resolution methods that are most commonly used among the people, and is currently undertaking the drafting of mediation and arbitration laws.

¹² In the local seminar held in March 2012, it was pointed out that the participants did not have enough knowledge of law as attendees had been widely recruited. This was not true in the workshop held in December as it targeted only drafting members.



A scene of the workshop
(center) Attorney Hiraishi

In the workshop, Attorney Hiraishi first explained the outline of the Japanese mediation and arbitration systems. Based on this explanation, issues that need to be addressed in legislating informal mediation were selected. Their matters of concern included: whether or not minor criminal cases should be brought to mediation in villages¹³; qualifications of mediators; selection of mediation or arbitration; the relationships between mediation, arbitration, settlement and the Civil Law, etc. The interview at a district court revealed that mediation is conducted within civil proceedings (which is similar to judicial settlement), but it was unclear whether arbitration was also included therein (it is possibly not conducted).

The author of this paper explained that, as an arbitral award has the same effect as a final judgment and cannot be appealed, arbitration may not be suitable to be included in the informal judicial system. She also made mention of similar systems in Vietnam and China.



Participants in the workshop

C. Discussions with Donors

Discussions were held with other donors in the judicial field in Timor-Leste in order to gather information on their activities. The United Nations Integrated Mission in Timor-Leste (UNMIT) was planning to withdraw from the country in December 2012, and UNDP was then to become the largest donor in Timor-Leste. Thus, the information on the accomplishments of the UNMIT over the

¹³ The Civil Procedure Code allows mediation (or settlement or out-of-court settlement) of crimes punishable by imprisonment of not more than three years.

past six years and activities of UNDP will be very useful in planning our future assistance.

1. Visit to, and Interview with UNMIT

The chief of the Governance Support Unit at UNMIT gave us information on their activities as listed below:

- After the independence of Timor-Leste in 2002, the UN planned to withdraw from the country in 2006. However, due to the turmoil erupting that year, UNMIT was established.
- The unrest in 2006 was attributed to the immature nature of democracy and governance in the country, and thus the Governance Support Unit was established to further help democracy and governance take root. Activities of the Unit included assistance in conducting elections; advice on the separation of powers; assistance towards the National Parliament and the Personnel Authority; anti-corruption measures; dispatch of experts for capacity-building, etc. In addition, in order to internalize democracy, democratic governance forums were organized in provincial areas 175 times, in which 12,000 people in total participated. All activities are deemed to have been successful.
- The success of UNMIT can be attributed to the fact that no security challenges have arisen since 2006; a democratic governance system has been built; and the oil fund functions well in helping stabilize the national economy.

2. Discussion with UNDP in Timor-Leste

A discussion was held with the chief and members of the UNDP Governance Unit, in which the following information was gained:

- The UNDP Governance Unit assists in governance areas in the judiciary and executive branches, including facility administration and capacity-building. It provides assistance to prosecution offices, prisons, the LTC, the Public Defender Office, NGOs, and also in legal aid, elections, etc. It especially focuses on access to justice and human resource development. For example, the LTC is operated with assistance from international donors, including UNDP, so one of the bigger challenges the LTC faces is in how to nationalize its operation. Its autonomous management and cooperation with law faculties are also issues to be addressed.
- UNDP is also involved in legislative-drafting. The majority of legislation in Timor-Leste are decree laws, the drafts of which are prepared by Portuguese draftsmen (international advisors).
- UNDP is aware of Japanese assistance in drug-related laws. UNDP has also been consulted in this field, and currently discussions with UNODC on possible assistance are ongoing.
- In relation to local justice, a relevant draft law was completed a few years ago with assistance from UNDP. However, as the former Minister of Justice did not approve it, the draft is still being deliberated (currently deliberation is adjourned). In Timor-Leste, 90% of disputes are disposed of according to customary law, with the majority being criminal cases. The local justice-related

draft law provides for the outline of the system, such as definitions, check system, etc. UNDP attributes the rejection of the draft law to the fact that no discussions have been held on specific policies on this issue in Timor-Leste.

- (Regarding Japanese assistance) While the LTC trains prospective judges, prosecutors and private attorneys, it does not provide training to its graduates. Thus, continued education and training of legal professionals will be necessary in the future. In this case, the same educational approach as that in the LTC must be taken in the same language (training in Portuguese?). Timor-Leste has received assistance from many donors, including UNDP, Portugal, Sweden, Spain, Australia, etc. However, as each donor has a limited budget, it will be necessary to establish one contact point to coordinate assistance activities among all donors.

C. Press Conference hosted by the Embassy of Japan



A scene of the press conference

From left, Mr. Nelinho Vital, Director of the National Directorate of Legal Advice and Legislation; Mr. Francisco Carceres, Director General of the Ministry of Justice; Mr. Hanada, Ambassador to Timor-Leste and the author

By courtesy of Mr. Yoshitaka Hanada, Ambassador Extraordinary and Plenipotentiary to Timor-Leste, a press conference was held at the Embassy of Japan on December 13, 2012, at 10:00 a.m., regarding Japanese legal technical assistance to Timor-Leste. In addition to Ambassador Hanada and the author, Mr. Francisco Carceres, Director General of the Ministry of Justice; and Mr. Nelinho Vital, Director of the National Directorate of Legal Advice and Legislation of the Ministry attended. News on the press conference was reported in local newspapers, etc.¹⁴

IV. COMMENTS

In Timor-Leste, both Portuguese and Tetung are considered official languages. The former is spoken

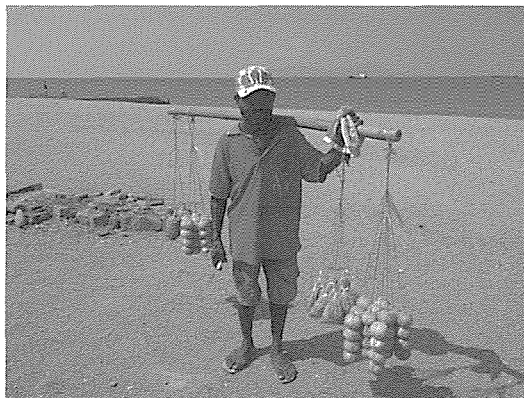
¹⁴ Information on the press conference is also posted to the website of the Embassy of Japan at http://www.timor-leste.emb-japan.go.jp/economic_assistance_j.htm

only by a select few national leaders. Conversely, almost all people can speak Tetung. However, as it is underdeveloped and is not suitable to draft laws, laws are written in Portuguese. Moreover, those who received education during the occupation by Indonesia speak Indonesian, while the younger generation (high school and lower school students) is educated in Portuguese and Tetung. This complicated language system imposes hurdles on the general population in having access to justice, as well as being a burden on judicial officers as they are forced to learn Portuguese when studying law. Moreover, interpreters are necessary in most trial sessions, which cause delays in court proceedings. Therefore, UNMIT proposes translating all laws from Portuguese to Tetung, and augmenting interpreters in both quality and quantity.

With the above information at hand, we observed three trials. In two, all participants concerned were able to speak Tetung, so trials were conducted without interpreters. The trial on the domestic violence case was concluded in one trial session and which lasted less than two hours. It seemed that delays in trial proceedings are caused not only by the language barrier but also due to the non-appearance of parties concerned.

The Criminal Code, Criminal Procedure Code, and the Civil Procedure Code are already translated into Tetung and used by judicial officers. In cases of terms not existing in Tetung, their Portuguese counterparts are used, and language localization is ongoing in this way¹⁵.

On the other hand, the slow but steady increase in the number of legal professionals -- owing to the existence of the LTC since 2004 -- is also contributing to the judicial localization in Timor-Leste.



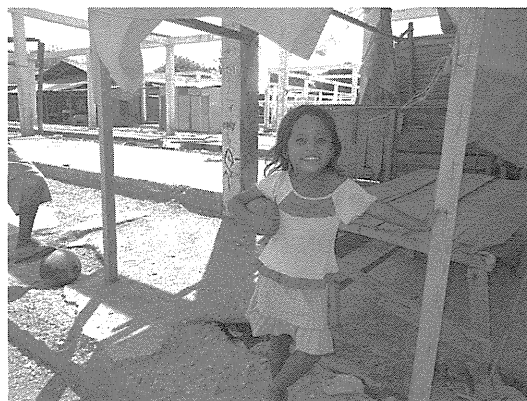
A vendor of fruits at the coast

Another point that was made clear through this field survey is that the judicial system in Timor-Leste is well-structured to some extent, but lacks overall substance. More specifically, the five courts currently in existence were established around 2000 during the period of UNTAET (United Nations

¹⁵ Even in cases where common terms do not exist in Tetung, such as “television”, their Portuguese terms are used. Thus, the combined use of Tetung and Portuguese is becoming more common.

Transitional Administration in Timor-Leste). This was before national independence, with the Public Defender Office being established in 1999. Separation of powers has been provided in the Constitution since independence. Moreover, in order to realize the equality of arms, the people can be supported by public defenders for free in both civil and criminal cases. In the LTC founded in 2004, the unified training system of judges, prosecutors and private lawyers has been adopted to assure equal quality of the three legal professions. In spite of these legal institutions, there exists the problem of a serious lack of personnel, knowledge and experiences to be able to put them into practice. Therefore, even if more courts are built, the insufficient number of judges and other court officials, prosecutors and private lawyers will still be prevalent¹⁶. Moreover, for the remainder of the population living outside Dili, the courts are located too far away to help, thus hindering their access to formal justice. Because of these physical conditions, as well as the low recognition of the court system among the people, informal mediation in villages is much more commonly used.

Due to the above, while the issue of language barrier needs to be solved by Timor-Leste itself, continued assistance from outside will be necessary for its legal personnel capacity-building. Assistance methods should be decided in consultation with the Embassy of Japan in Timor-Leste and JICA. With regard to donor coordination, the relationship with UNDP will be especially important. As UNDP provides all-round assistance in the judicial field, attention should be paid to avoid contradiction or discrepancies in the mutual effects of assistance provided by multiple donors. However, regarding the “assistance through one contact point” proposed by UNDP, it may run the risk of causing Japanese assistance to lose its originality. Therefore careful and sufficient consideration on this matter will be necessary.



A girl in Comoro Market. Timor-Leste is a country of the youth. Approximately 46% of its population are 15 years old or younger.

¹⁶ According to the website of JMSP, judges are not constantly stationed in district courts other than in Dili, and judges visit Baucau one day weekly, and other cities monthly for just a few days.

– IV. INTERNATIONAL TRAINING –

LET’S LEARN FROM NEIGHBORING COUNTRIES
– COOPERATION BETWEEN “THE TECHNICAL COOPERATION
PROJECT FOR THE LEGAL AND JUDICIAL SYSTEM REFORM IN
VIETNAM” AND “THE PROJECT FOR HUMAN RESOURCE
DEVELOPMENT IN THE LEGAL SECTOR IN LAOS” –

Hiroyuki Ito

JICA Long-Term Expert

Project for Human Resource Development

in the Legal Sector in Lao P.D.R.

I. INTRODUCTION

From January 28 to February 1, 2013, the fifteen member sub-working group (SWG) on the Code of Criminal Procedure in the JICA Project for Human Resource Development in the Legal Sector in Laos (hereinafter referred to as “Laos Project”) visited Vietnam. The aim of the Laos Project was for human resource development in the legal field accomplished through various activities including studies and development of teaching materials of Laotian law, etc. In the Project, three SWGs have been formed to focus on the Civil Code, Code of Civil Procedure, and the Code of Criminal Procedure. Each SWG -- composed of officials of the Ministry of Justice (MOJ), Supreme People’s Prosecutors Office, People’s Supreme Court, and instructors of the Faculty of Law and Political Science of the National University of Laos -- engages in project activities in the field of its respective target law.

In Laos, the revised Code of Criminal Procedure was approved at the National Assembly in July 2012, and was subsequently promulgated and enacted as of August 1 of the same year¹. This code, while being based on the previous Code, has been drastically revised with the number of articles increased from 122 to 275. Thus, the SWG members on the Code of Criminal Procedure urgently needed a working understanding of the content of the revised code. Learning Vietnamese law, as was referred to in revising the code, would assist in this facilitation. As the Vietnamese law was one which influenced the revising work of the Laotian Code, it was deemed beneficial for the SWG members to learn the Criminal Procedure Code and its practice in Vietnam.

¹ In reality, a decree by the President dated August 1, 2012 was issued to promulgate the revised Code in November of the same year.

Vietnam has long been a recipient of legal technical assistance from Japan. Currently the JICA Technical Cooperation Project for the Legal and Judicial System Reform (hereinafter referred to as “Vietnam Project”) is underway in Vietnam. While project activities vary, the Vietnam Project includes assistance in revising the Criminal Procedure Code according to the country’s need. Mr. Takeshi Nishioka, the chief adviser of the Vietnam Project², has been dispatched to Vietnam from the International Cooperation Department (ICD) of the Research and Training Institute (RTI) of the Ministry of Justice of Japan, like I was sent to Laos. We have kept in touch since commencement of our assignments abroad.

In the course of developing assistance activities, Mr. Nishioka and I proposed and planned a study tour for the Laotian SWG to Vietnam as a joint effort between the Vietnam and Laos Projects. In the history of Japanese legal technical assistance, this was the first trial cooperation activity between two recipient countries of JICA legal technical assistance projects (so-called “south-south cooperation”). This paper reports the outline and achievements of this trial program for future reference.

II. BACKGROUND TO THE STUDY TOUR

Though this study tour was first proposed in the spring of 2012, preparations actually commenced in November. While the plan was being discussed among concerned individuals in Laos, Mr. Nishioka and I concurrently made necessary arrangements (via e-mail and phone) including: confirmation of the purposes and schedule of the study tour, selection of places to visit³, selection and themes of desired programs at each place of visit. As this was the first joint program between the Vietnam and Laos Projects, information on preparations was shared among officers in charge at the JICA HQs and JICA local offices in both countries. On this basis, in the beginning of January 2013, a meeting was held through the JICA-net system among the JICA HQs and concerned individuals in Vietnam and Laos. In this meeting, which mainly dealt with logistic matters and program content, an in-depth discussion was held on the role-sharing and sharing of costs together with the JICA HQs. In this way, the joint program made a solid start from the preparation stage.

Specifically, those involved in the Vietnam Project were responsible for sending request letters and making appointments with the places to visit, forwarding requests from Laos to Vietnam on detailed programs, and making arrangements for transportation and accommodation in Vietnam. For Vietnamese-Laotian translation, an officer of the MOJ of Laos, who had studied in Vietnam,

² His tenure as a JICA long-term expert ended on September 30, 2013. Currently he serves as a public prosecutor at the Nagoya District Public Prosecutors Office.

³ The study tour incorporated not only visits but also lectures by officers dispatched from relevant institutions.

accompanied the Laotian delegates⁴.

In addition to these numerous logistic arrangements, one of the advantages of inter-project cooperation was the fact that necessary preparations fit seamlessly with regard to the program content as below:

1. Selection of the places to visit:

In deciding the places to visit, the SWG members in Laos at first narrowed down the information that was only absolutely necessary, which was in turn forwarded to the Vietnam Project Office. Mr. Nishioka in Vietnam then offered, based on the situation in Vietnam, very useful information on the appropriate institutions to visit and topics to be addressed at each. In fact, it turned out that at the last minute it was necessary to change the places to visit. However, even in such a situation, thanks to the close liaison with Mr. Nishioka and coordination with the Vietnam Project, the places to visit were changed swiftly in a way still serving the purposes of the study tour.

2. Easy sharing of information and materials in advance:

The Vietnam Project Office provided useful materials in advance on the Criminal Procedure Code and the criminal defense system of Vietnam. In reference to these materials and being aware of the differences in the systems of both countries, I gave preliminary lectures to the SWG members using PowerPoint slides. The purpose of which was to give them the basic knowledge on the outline of the criminal procedure in Vietnam.

Moreover, I prepared an outline chart of the criminal procedure in Laos and materials comparing the criminal defense system in both countries, to provide them to the Vietnam Project Office. They were then translated into Vietnamese and distributed to each place to visit in advance for information-sharing.

With all these arrangements, bilateral approaches and preliminary information on each country, concerned individuals in both countries were well prepared for the joint program. These efforts facilitated the Laotian SWG members to better understand the lectures given in Vietnam and focus on essential matters in discussions, which was conducive to the improvement of the training efficiency.

⁴ For lectures and visits during the study tour, a Japanese-Vietnamese interpreter was arranged by the JICA Vietnam Project Office. Moreover, a local staff member of the Laos Project who is fluent in English also accompanied the delegates as an interpreter.

III. CONTENT OF THE TRAINING SEMINAR

A. Schedule

Monday, January 28	Travel to Hanoi (by plane)
Tuesday, January 29	AM : Lecture by the Deputy Director of the Institute for Procuratorial Science, Supreme People's Procuracy PM : Lecture by the Vietnam Bar Federation
Wednesday, January 30	All day : Visit to the Bac Ninh Provincial Court, and observe a trial at the Bac Ninh Municipal Court
Thursday, January 31	AM : Visit to the Judicial Academy PM : Internal meeting of the SWG on the Code of Criminal Procedure of Laos
Friday, February 1	Return to Vientiane

B. Activities

1. Lecture by the Deputy Director of the Institute for Prosecutorial Science, Supreme People's Procuracy (January 29, 8:30 – 11:30)

Ms. Thuy, Deputy Director of the Institute, explained: 1) the background to the revision of the Criminal Procedure Code (differences between the 2003 Code and the previous code); 2) the merits of the revision and current challenges; and 3) the necessity of future revisions [points at issue in revision], and a Q&A session followed.

According to Ms. Thuy, a comparative analysis was made between the adversarial system and inquisitorial system to choose a model to follow in revising the Criminal Procedure Code. As a result, it was decided to integrate some elements of the adversarial system, while maintaining the traditional inquisitorial system.

The following ten items were enumerated as the major points of revision:

- i. Radical overhaul of the basic principles;
- ii. Specific sharing of powers among procedure-conducting bodies (introduction of the principles of the adversarial system);
- iii. Review of the sharing of powers between the heads and staff members within procedure-conducting bodies;
- iv. Strengthening of the powers of defense counsel and the expansion of the scope of its

- involvement;
- v. Collection of evidence (by defense counsel);
 - vi. Improvement in temporary detention and seizure;
 - vii. Establishment of juvenile proceedings;
 - viii. Revision of the summary procedure;
 - ix. Limitation of the duration of trial; and
 - x. Improvement of provisions on international cooperation in the criminal procedure.



During the Q&A session, the Laotian participants actively asked questions on the inquisitorial system, case-building procedure (establishing a case, incriminating a suspect), appeal procedure against case-building, summary procedure, juvenile case procedure, criminal compensation, etc. All questions were patiently answered by Deputy Director Thuy.

2. Lecture by the Vietnam Bar Federation (VBF) (January 29, 2:00 – 5:00)

Mr. Thao, Vice President of the VBF; Mr. Thiep, Vice Chairman of the Right Protection Committee of the VBF and Vice Chairman of the Hanoi Bar Association; and three other attorneys hosted a lecture. At the lecture, the roles of attorneys in the criminal procedure were explained, primarily by Mr. Thiep, and a Q&A session followed.

Although it may be meaningless to make a simple comparison of the number of attorneys in Laos and Vietnam because of the difference in population, in Vietnam – where there are nearly 8,000 attorneys vs. less than 200 in Laos – the roles of attorneys in criminal cases are highly valued compared with Laos. It was also explained in detail that there are several problems in the practice of attorneys and that for resolving these issues, the Bar Federation is making various proposals and endeavors.

An exchange of opinions was also conducted on the issues of interest to the Laotian participants. For example, in both Laos and Vietnam, individuals other than qualified attorneys are allowed to participate in trials as defense counsel. Regarding this system, explanations were given on its history and actual operation, and also on the fact that with an increasing number of attorneys in Vietnam, the system is no longer required.

3. Visit to the Bac Ninh Provincial Court and Bac Ninh Municipal Court (January 30)

Following the courtesy call on Mr. Pham Minh Tuyen, Deputy Chief Judge of the Bac Ninh Provincial People's Court, with his guidance, the Laotian participants observed a trial of a robbery case (against three defendants) at the Bac Ninh Municipal Court. They were given an opportunity to observe the trial proceedings from the beginning to the pronouncement of the judgment, so as to be able to understand the Vietnamese procedure and its difference from the Laotian one. While the basic flow of trial was almost the same as that in Laos, it seemed that the judge carefully presided over each stage of the trial. After the observation, there was a Q&A session with the Deputy Chief Judge.

On that day a Vietnamese TV crew visited the court to cover the visit of the participants in the Laos Project and to interview them.

4. Visit to the Judicial Academy (January 31, A.M.)

The Deputy Director of the Academy and other officials in charge of judicial training explained to us the outline of the Academy and the contents of training and teaching materials in detail. Following this, a Q&A was conducted.

According to their explanation, the Academy administers education and training courses for law graduates to become legal professionals, including those for judges, prosecutors, private attorneys, bailiffs, etc. Their training courses are divided into four stages: 1) lectures to improve students' culture; 2) professional skills (which can be applied in law practices - for preparatory proceedings or adjudicative skills in the first instance trial, etc.); 3) lectures on special subjects; and 4) on-the-job training.

It was also explained that the Academy uses textbooks for case studies, etc., prepared in reference to teaching materials created in cooperation with JICA and based on actual cases.

The Laotian SWG was in the process of preparing teaching materials. Moreover, in Laos preparations were being made for establishing a judicial training institute which would provide unified training for all types of legal professionals. Thus, the participants were quite interested in the explanations given and actively asked questions.



IV. CONCLUSION

Throughout the training seminar, the SWG members actively asked questions, which showed their strong desire of absorbing the Vietnamese system and experience. The Vietnamese officials involved in this seminar kindly and enthusiastically responded to their expectations, and all the scheduled activities overran the allotted time. In fact, the participants highly evaluated the training seminar, giving such comments as: “the seminar was very informative,” and “it was easy to understand,” etc. The model teaching material which is currently being drafted will embrace their learning in Vietnam, including the comparison between the Vietnamese and Laotian systems.

As a general rule, technical cooperation is provided from developed countries to developing countries. Through this study tour, however, it was found that cooperation among developing countries is also effective, when their development level varies. As Vietnam has long received legal technical assistance, it offers a great deal for Laos to learn from. Moreover, as Laos and Vietnam have the same social regime with similar legal systems, and thus bases to easily understand each other, sharing the Vietnamese experience is extremely beneficial for both countries. This form of cooperation is advantageous not only as it offers easy-to-understand and familiar models to follow for learning countries. Teaching countries may be able to reconfirm their actual situation and challenges they are facing, by arranging and transmitting their experiences. And doing so will serve to further their development.

Furthermore, it may bring a great deal of good for Japan as well due to the following types of merits:

- Achievements obtained through assistance to one country may affect other countries;
- Not only unilateral but also multilateral cooperation is possible;
- The development level of various countries can be compared, etc.

The merits of multi-project cooperation are, as mentioned earlier: 1) Multi-project cooperation is possible only through well-laid preparations; and 2) As the request for cooperation was made through the Vietnam project office, it made it possible to obtain extremely useful resources from counterpart organizations. In this training seminar, all the host lecturers in Vietnam were very helpful in explaining the important points succinctly in an easy-to-understand way, and time was allotted properly for lectures and Q&A sessions. In spite of being busy before Tet (Vietnamese New Year), executive officials in important positions of all related organizations made adequate preparations (explaining the contents of their lectures to interpreters in advance, etc.) and actively cooperated with the training seminar. This may owe a lot to the Vietnam Project, and such Vietnamese cooperation would not have been possible without the involvement of the Vietnam Project Office.

This form of development aid is not free of challenges. In case of cooperation between developing countries, care should be taken as to the selection of themes and instructors. Otherwise, it may result in discussions being held on matters with which the aid-providing country is not familiarized, which may end up causing confusion between the recipient and assisting countries. Thus, the resources of the aid provider are of extreme importance. In this study tour we received collaboration of extremely appropriate personnel.

This activity also offered much to learn for me as a JICA expert. It gave me the opportunity to learn the law and legal system of Vietnam, compare and analyze the legal systems of both countries, and thereby better understand the Laotian system. It also enabled me to become acquainted with the project activity status, relationships with counterpart organizations, etc. in another recipient country (On February 1, I had the opportunity to observe a meeting of the Joint Coordination Committee (JCC) of the Vietnam Project).

Ms. Thuy, Deputy Director of the Institute for Procuratorial Science of the Supreme People's Procuracy visited Japan through an exchange program with the International Cooperation Department (ICD) about two and half years ago. At that time, I was working for the ICD as a professor and had the opportunity to have drinks with her in the Vietnamese way. Therefore, we enjoyed an unexpected happy reunion.

As mentioned earlier, cooperation between JICA Projects in different countries would be beneficial for the involved countries as well as Japan. Recipient countries, including Vietnam, which have developed through long-term assistance, may be able to promote its own development by causing the effect of their achievements to extend to neighboring countries, thus eventually promoting regional growth. While there is plenty of room for improvement in this form of cooperation, we intend to continue this type of undertaking in the future.

Last but not least, special thanks go to all the people involved in the Vietnam Project, JICA HQs, JICA Vietnam Office and JICA Laos Office, who displayed outstanding commitment and cooperation for the success of this study tour. Thank you very much.

Appendix

Participants

1. From Laos

- Viengvilay THIENGCHANHXAY, Acting Dean of the Faculty of Law and Political Science, National University of Laos (NUOL)
- Bounkhong PHANVONGSA, Deputy General Director of the Administrative and Personnel Department, Ministry of Justice (MOJ)
- Sengthavy INTHAVONG, Head of the Criminal Law Department, Faculty of Law and Political Science, NUOL
- Souphasith LOVANXAY, Deputy Director of the Research and Training Prosecutor Institute, Office of the Supreme People's Prosecutor (SPP)
- Sommay BOUTTAVONG, Chief of the Children Division, People's Court of the Middle Region
- Souphaphone INTHAVONG, Deputy Chief, People's Prosecutor Organization of Bokeo Province
- Bounma DUANGMALASINH, Deputy Chief, People's Prosecutor Organization of Vientiane Capital
- Chanthaboun PHENGKHAMSAI, Head of the Law Study Division, SPP
- Ouphayvanh XAYAVONG, Deputy Director of the Southern Law College, MOJ
- Sisouda SOPHAVANDY, Deputy Director General, Law Dissemination Department, MOJ
- Vilay LANGKAVONG, Head of the Personnel Division, Faculty of Law and Political Science, NUOL
- Syvanh BOUTHALA, Deputy Chief of the Criminal Court Division, People's Court of the Middle Region
- Mitlakhone SONGKHAMCHAN, Vice Head of Division, Law Science Research Institute, MOJ
- Phetpaserth VANNAPHA, Chief of the Academic Section, Northern Law College, MOJ
- Soulideth SOINXAY, Assistant Judge, People's Supreme Court
- Phannola THONGCHANH, Interpreter
- Hiroyuki ITO, JICA Long-Term Expert
- Sisomsouk PHIPHACPHOMMACHANH, Laos Project local staff

2. From Vietnam

- Takeshi NISHIOKA, Former Chief Advisor, JICA Vietnam Project (Currently a public prosecutor)

at the Nagoya District Public Prosecutors Office)

- Shusaku TATARA, Former Long-Term Expert for JICA Vietnam Project (Currently an assistant judge at the Sapporo District Court)
- Mariko KIMOTO, Long-Term Expert for JICA Vietnam Project
- Tsugunori TERAMOTO, Program Coordinator for JICA Vietnam Project

3. From JICA Headquarters

- Naoshi SATO, JICA International Cooperation Expert, Attorney-at-law
- Itaru CHIBA, Law and Justice Section, Industrial Development and Public Policy Department



THE FIRST TRAINING SEMINAR TO SUPPORT DISSEMINATION OF THE CIVIL CODE AND CODE OF CIVIL PROCEDURE IN CAMBODIA

Yasuhiko Tsuji

*Professor and Government Attorney
International Cooperation Department*

I. INTRODUCTION

In Cambodia, the Civil Code, the application of which had been suspended for a period of time after its enactment, finally went into effect in December 2011. With this development, Japanese assistance on the Civil Code moved from the drafting stage to the stage of improving its operation and dissemination. Accordingly, in April 2012, JICA launched a new five-year project: “Project to Support Dissemination of Civil Code and Code of Civil Procedure in Cambodia.” In addition to the conventional three counterpart organizations -- the Ministry of Justice (MOJ), the Royal Academy for Judicial Professions (RAJP)¹ and the Bar Association of the Kingdom of Cambodia (BAKC) -- this project added the Royal University of Law and Economics (RULE) as one of the target organizations. With the aim of improving the interpretation and operation capacity in the civil law field, JICA long-term experts regularly hold study meetings with selected officials from each counterpart organization.

In the new project, the first training seminar was held in Japan inviting officials from the four different target organizations together. It was the first trial in the history of legal technical assistance to Cambodia to organize a joint training course for different institutions. Below I will discuss the outline of the training seminar.

II. OUTLINE OF THE TRAINING SEMINAR

1. Duration

February 18 to 28, 2013

¹ The former project worked together with the Royal School for Judges and Prosecutors (RSJP) as the counterpart organization. In the new project, the Royal Academy for Judicial Prosecutor (a superior organization of the RSJP) was selected to work together.

2. Participants

In this training seminar, 20 Cambodian officials in total - five officials from each organization- participated.

[From the MOJ]

Mr. Tith Rithy- Judge in the MOJ

Mr. Bunyay Narin- Deputy Director General of the General Department of Administration and Finance

Ms. Nil Philippe - Director of the Legal Education and Dissemination Department

Mr. Hok Chansovannara - Vice Chief of the Civil Affairs Department

Mr. Ol Thirak - Vice Chief of the Prosecution Affairs Department

[From the RAJP]

Mr. Nguon Ratana, Judge at the Pursat First Instance Court

Mr. Ket Socheat, Judge at the Kratie First Instance Court

Ms. Va Sakada, Deputy Prosecutor at the Phnom Penh First Instance Prosecution

Mr. Sam Rithyveasna, Deputy Prosecutor at the Kandal Prosecution

Mr. Chhe Vivathanak, Judge at the Kandal First Instance Court

[From the BAKC]

Mr. Iv Poly, Attorney-at-law

Ms. Tep Bophal, Attorney-at-law

Mr. Soung Sophea, Attorney-at-law

Mr. Yin Savat, Attorney-at-law

Ms. Sek Sovanna, Attorney-at-law

[From the RULE]

Mr. Hap Phalthy, Vice Director of the Graduate Program

Ms. Buoy Thida, Professor, Director of the Education Office

Mr. Kong Sopheak, Lecturer and Researcher

Ms. Poly Pagna, Lecturer and Researcher

Mr. Oun Sakada, Lecturer

III. CURRICULUM OF THE TRAINING SEMINAR (in chronological order)

(See the attached seminar schedule)

A. Lecture “Legal Apprenticeship System”

I gave a lecture on the “Legal Apprenticeship System in Japan.” In this lecture, I explained the outline and problems of the previous national bar examination system, and the transition to the new bar examination, with a focus on the introduction of the law school system. The seminar participants showed a great deal of interest in the purpose of the law school system – which connects the undergraduate law education with the practical training of legal professionals. They seemed to have high expectations for their visit to Kansai University Law School which was scheduled for the following day. Furthermore, they were also interested in the unified bar examination and legal apprenticeship system for the three legal professions -- judge, prosecutor and private attorney -- with a few individuals desirable of introducing a similar system in Cambodia.

B. Visit to Kansai University Law School

During the visit to Kansai University Law School, the seminar participants were warmly received by the host professors, including the Dean - Professor Satoshi Kinoshita. After being given an outline of the school and following a Q&A session, the participants were shown around the school facilities. It was explained to them that the school adopted an educational policy of emphasizing interactive dialogue between teachers and students. This is in contrast to the traditional method in which teachers unilaterally give lectures. According to this policy, teachers ask questions of students to foster their ability to think for themselves and present their own opinions. The participants, especially those from the RULE, were quite enthusiastic about this policy. They also had lunch together with school teachers and conversed in a relaxed atmosphere.

C. Lecture on the Practice of Secured Transaction

In the lecture by Attorney Keiko Horino on the practice of secured transaction, an explanation was given on a broad range of issues in the field of securities. This covered the basic knowledge of the difference between typical security and atypical security, to practical matters including the mortgage of provisional registration, revolving mortgage and the mortgage by transfer of future claims. In Cambodia, upon application of the Civil Code in December 2011 and the issuance of the Inter-Ministerial Prakas concerning Real Rights Registration Procedure in January 2013, the practice of secured transaction of land has changed. Currently Cambodia is in a transitional process, from the system of pledge of immovables called “GAGE” (in which the debtor deposits a land certificate with the creditor) to a new system of mortgage on the basis of public notice through registration. In these circumstances, Ms. Horino’s lecture truly seemed to address the practical needs in Cambodia.

D. Lecture on the Roles of Attorneys and Bar Associations

Attorney Takeshi Isokawa gave a lecture on the “Roles of Attorneys and the Bar Associations.” Attorney Isokawa covered a wide range of issues providing specific examples from the macro-perspective including:

- The progress in specialization in the attorney’s industry;
- The issue of supply and demand of attorneys in urban areas;
- Pro bono activities of bar associations, etc.,

to realistic issues directly connected to the practice of attorneys, such as:

- The building of a relationship of trust with clients;
- The management of statutes of limitation and conflicts of interest;
- Thorough confidentiality;
- Issues to note in the preparation of contracts.

Seminar participants including not only attorneys but also those from other organizations asked questions in succession.

E. Visit to the Osaka Bar Association

During the visit, a discussion meeting was held with a number of attorneys belonging to the association, including Mr. Hidefumi Naito, Vice President of the Association. The participants asked a broad array of questions such as:

- The kind of investigation authorities the committee of human rights protection has;
- The types of activities the legal consultation center conducts;
- The differences between individual attorneys and legal professional corporations;
- The reason for which the ban on TV advertisement for attorneys has been lifted;
- Among disciplinary actions, the differences between expulsion order from the bar association and the deprivation of bar qualification.

The attending attorneys patiently answered all the questions asked. During the facility observation, the participants were taken around the library, mock court, Conflict Resolution Center, etc.

F. Lecture on the Roles of District Legal Affairs Bureaus

Mr. Asayama, a professor at the International Cooperation Department (ICD), gave a lecture on the “Roles of District Legal Affairs Bureau.” In his lecture, he explained mostly on the real property registration system, including its history and the cutting-edge computerized service, etc. Thus, he gave the basic and necessary information on the bureau to the participants prior to their visit to the Nara District Legal Affairs Bureau scheduled two days later.

As mentioned earlier, in Cambodia, in January 2013 (and just before this training seminar) the Inter-Ministerial Prakas concerning Real Rights Registration Procedure was issued, which

accordingly commenced the full-scale operation of the system. Perhaps not surprisingly, the participants showed a strong interest in the lecture. An additional explanation was given on the services under jurisdiction of local legal affairs bureaus including the deposit system and family registration system.

G. Visit to the Nara District Legal Affairs Bureau

During the visit, Ms. Kayo Tsuchiya, Chief of the General Affairs Division of the Katsuragi Branch Office of the Bureau, who had once worked for the ICD as an administrative officer, explained in an easy-to-understand manner about the duties of the district legal affairs bureaus. When observing the facility, and having access to the actual public figures, cadastral maps and real property registry, the participants listened to the explanations with enthusiasm and interest.

During the Q&A session following the facility observation, a wide variety of questions were asked. These ranged from a unique question regarding the registration of standing trees (a type of service rarely required) to one on a practical matter such as the registration of a loss of a building. Each question was answered patiently and in detail.



Visit to the Nara District Legal Affairs Bureau

H. Lecture on Civil Legislative Techniques

Mr. Atsushi Fukuda, a government attorney at the Councilors Office of the Civil Affairs Bureau, Ministry of Justice, explained the drafting process of laws to be submitted to the Cabinet in chronological order as follows:

- Review of the bill within the Bureau;
- Research and deliberation of the bill by the Legislative Council;
- Compilation of the interim draft proposal;
- The seeking of public opinion on the draft proposal;
- Compilation of the draft outline;
- Drafting of articles;
- Examination of the bill by the Cabinet Legislative Bureau; and

- Discussion with the ministries related to the bill.

Moreover, Mr. Fukuda gave detailed explanations on matters to note in drafting statutory provisions, including: the propriety of the selection of words and consistency with other laws. The lecturer also introduced reference materials used in legislative-drafting, such as legal lexicons and a series of books on questions and answers. The participants asked questions on the merits and demerits of amending laws; how public opinions are sought; and to what extent public opinions are reflected, etc.

I. Lecture on the Preparation of Law Study Materials

In my lecture on “How to Prepare Law Study Materials,” I presented four civil-law study materials: 1) Series of Commentaries on Civil Code; 2) Textbook on Civil Code Written by a Law Scholar; 3) Reference Book on Civil Code written by a Legal Practitioner; and 4) Selection of 100 Civil-Law Precedents. I sought to offer advice on the creation of teaching materials, as the current project for Cambodia aims at compiling teaching materials which highlight the achievements of local study groups.

J. Lecture on Civil and Domestic Affairs Procedures

In her lecture on the civil and domestic affairs procedures in Japan, Ms. Yasuko Miura, an ICD professor, explained (before going into the substance of the topic) the organization of the courts in Japan in preparation for the visit to the Kobe District Court and Kobe Family Court scheduled the following day. The participants asked several questions including: “Is the appointment of judges by the Cabinet not against the independence of the judicial power?” “Have disciplinary actions ever been taken against judges?” To a question regarding the civil procedure: “In what cases is it difficult to evaluate evidence?” she replied that when the expert witness has given dubious opinions, it is difficult to evaluate his/her opinions. Regarding the domestic affairs procedure, the participants asked such questions as: “When deciding on the individual for parental authority, if the parent whom the child prefers more is not a reliable person, what judgment should be made?” etc.

K. Lecture on Preservation and Enforcement

Private Attorney Yoshiko Honma (Professor at Soka University Law School) gave an interactive lecture in which she asked questions to the participants, including: “What kinds of enforcement measures are available against claims?” and “What are the typical cases of compulsory enforcement the purpose of which is not a monetary payment?” This type of lecture was well received by the participants as it maintained a sense of uncertainty. During the Q&A phase, an active cross-organizational discussion was held among the participants on whether or not the certificate of execution is necessary in the execution of security rights.

The lecturer had once worked for Cambodia as a JICA long-term expert in the Project for Drafting

Civil Code and Code of Civil Procedure. She was pleasantly surprised to find that the Cambodian participants had improved their law-interpretation capacity compared to the time when she was in Cambodia.

L. Visit to Kobe Family Court and District Court

During the visit, several judges and court clerks of the courts explained the outline of the courts, and also guided the participants around the juvenile courtroom, domestic relations courtroom, scientific research office, ordinary courtroom, judges' office and clerks' office. A discussion was also held between the court officers and the Cambodian participants. As there is no family court system in Cambodia, the participants were quite interested in the family court system in Japan which exclusively deals with domestic-relations and juvenile cases. In addition, they expressed their thoughts on the visit, such as: "it was impressive that the judge said he attends the questioning of witnesses being well-prepared by perusing the case dossier," "It is beneficial that judges with different levels of experience work in the same office so less-experienced judges can always ask for advice from more-experienced ones."

M. Mock Trial

Nearing the end of the training seminar, a mock civil-trial was conducted by the participants. On the topic of a relatively simple case claiming the repayment of a loan, the participants were divided into five groups. They discussed and made presentations on the arrangement of issues, and thereby learned the basic idea on this issue. Subsequently, according to the casting decided by lot, they read on a script prepared in advance. In this way, they re-produced the flow of civil procedure. Though it was only a one-day mock trial, the participants seemed to deepen their understanding of the procedure with the information gained through the lecture by Ms. Miura, and the visit to the Kobe District Court.



Visit to the Kobe District Court and Kobe Family Court



Presentation of the tentative arrangement of issues



Mock preparatory proceedings

N. Presentations by Participants

In the last period of the seminar, the participants (divided into five groups) made presentations on the matters they had learned throughout the seminar. Though allotted only 25 minutes each, the groups succinctly sorted out the important points on 2-3 topics. Two weeks after the completion of this training seminar, a joint-working group session was held by the four participating organizations in Phnom Penh on March 14. We were informed that in that session, the results of the seminar in Japan were presented by the same groups of the training participants, and in this way, the information gained through the training in Japan was shared among the attendees of the working session.

IV. CONCLUSION

Through their two-week stay together in Japan, the participating members from different organizations mutually developed friendly relationships. This should be considered one of the significant results of this seminar. We sincerely hope that their fledgling friendships are an initial step towards building relationships of trust and information-sharing among the counterpart organizations.

Last but not least, I would like to extend my sincere appreciation to all the lecturers and officials of the institutions which accepted the visit of the seminar participants for their collaboration with the training seminar.

Schedule for the 1st Training Course on the Dissemination of the Civil Code and Code of Civil Procedure in Cambodia

[Professors in charge: Mr. Tsuji, Ms. Miura; Administrative Officers in charge: Ms. Yamada, Ms. Hori]

Date	10:00		14:00		Notes
			17:00		
2 / Sun. 17	Travel Day				
2 / Mon. 18	Orientation by JICA	Orientation by the ICD* ¹ (13:30~14:00) JICA Kansai* ²	Lecture "Legal Apprenticeship System in Japan" Prof. Tsuji, ICD JICA Kansai		
2 / Tue. 19	Visit to a Law School Kansai University Law School		Lecture "Practices in Secured Transaction" Attorney Horino, Kitahama Partners ICD		
2 / Wed. 20	Lecture "Roles of Attorneys and Bar Associations" Attorney Isokawa, Global Law Office ICD	12:15~ Exchange of Opinions with ICD Director, group photo-taking	Lecture "Roles of Local Legal Affairs Bureaus" Prof. Asayama, ICD ICD		
2 / Thu. 21	Visit to the Osaka Bar Association		Lecture "Civil Legislative-Skills" Government Attorney Fukuda Civil Affairs Bureau, Ministry of Justice ICD		
2 / Fri. 22	Lecture "How to Prepare Law Study Materials" Prof. Tsuji, ICD ICD		Visit to the Nara District Legal Affairs Bureau		
2 / Sat. 23					
2 / Sun. 24					
2 / Mon. 25	Lecture "Civil and Domestic Affairs Procedures in Japan" Prof. Miura, ICD ICD		Lecture "Preservation and Enforcement" Professor and Attorney Honma, Soka University Law School ICD		
2 / Tue. 26	Visit to the Kobe Family Court		Visit to the Kobe District Court		
2 / Wed. 27	Mock Trial ICD		Mock Trial ICD		
2 / Thu. 28	Presentation of Training Results, Wrap-up, Q&A ICD		Evaluation and Closing Ceremony ICD		
3 / Fri. 1	Travel Day				

*¹ ICD : International Cooperation Department

*² JICA Kansai : JICA Kansai International Center

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