ICD NEWS

LAW FOR DEVELOPMENT

INTERNATIONAL COOPERATION DEPARTMENT
RESEARCH AND TRAINING INSTITUTE
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～Features～

Contents

The names of Japanese authors are written in the conventional Japanese order: the family name is put first in capital letters and the given name second.

THE 10th ANNIVERSARY OF THE INTERNATIONAL COOPERATION DEPARTMENT

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I. THE BIRTH OF THE INTERNATIONAL COOPERATION DEPARTMENT (ICD)

The ICD was founded on April 1, 2001, and marked its 10th anniversary in April last year. The year would normally be indicated by Japanese era names, but as this paper discusses “international” matters, years shall be referred to according to the Western calendar.

Speaking of the year 2001, on June 12 of that year the recommendations of the Judicial Reform Council were submitted to the Cabinet, which included the statement, “legal technical assistance to developing countries should be promoted” in the 3rd item titled, “promoting legal technical assistance” in Chapter II, Part 3. The ICD is the very department which materializes those assistance activities.

The ICD was first established in the red-brick building of the Ministry of Justice, and half a year later, in November, it was relocated to the newly built Osaka Nakanoshima National Government Building. Since then, the ICD has been located there. In March of the same year, Universal Studios Japan was opened in Osaka. In November, the Japanese baseball player, Ichiro, became the leading hitter, stole the most bases, and was named Rookie of the Year and the Most Valuable Player (MVP) in his first year in the major league. Looking back over the ten years of the ICD’s history, some people may feel, “it has already been 10 years,” and others may feel, “it has been only 10 years”, but it is true that the ICD has marked the end of its first stage.

To establish a new department, internal effort and scrap-and-build are essential. The 1st and 2nd Research Departments, which used to exist in those days, were integrated into the “Research Department”, and the ICD was newly founded. Thus, the establishment of a new department necessarily affects other entities. It should be noted that one entity

vanished due to the birth of the ICD. Based on these circumstances, Article 62, paragraph 1, item 4 of the Order for Organization of the Ministry of Justice provides that the duty of the ICD is to “extend international cooperation regarding the maintenance and improvement of legal systems in foreign countries (countries or regions outside the territory of Japan).” The ICD currently extends international cooperation with a focus on civil and commercial-related laws in developing countries, mostly in Asia. However, its duty may cover a broader range of activities under the above-mentioned provisions, so hopefully you can understand the importance of the ICD’s role.

II. EMBRYONIC STAGE

When things are newly created, “embryonic movements” always take place. Let me explain the situation before the ICD was born.

Activities categorized as “legal technical assistance” in the early-mentioned recommendations of the Judicial Reform Council started in 1994 when even such a title did not exist. Legal technical assistance started with a training seminar for high-level officials of the Ministry of Justice of Vietnam in which the Japanese legal system was introduced. It was administered by the Secretarial Division of the Justice Minister’s Secretariat. From 1995, one year later, training seminars were organized annually by the General Affairs and Planning Department of the Research and Training Institute (RTI). This department was established in 1995 (it was formerly named “Secretariat”), so the officials in charge of training courses first participated in a seminar organized by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) to experience and learn how to administer international training seminars. At the same time training seminars for Cambodia also started and they were conducted annually by the Japan Federation of Bar Associations with the help of the Ministry of Justice and the Supreme Court.

In 1996, in order to promote legal technical assistance from the standpoint of the private sector, the International Civil and Commercial Law Centre Foundation (ICCLC) was established. Since that year, the “Japan-China Civil and Commercial Law Seminar” has been regularly organized in cooperation with the ICCLC and the ICD. Moreover, the International Civil and Commercial Law Seminar also started in the same year. This Seminar was called “multi-seminar” and targeted several countries

in Asia. It is a kind of civil and commercial law version of the international training seminars held by UNAFEI. In December of the same year, the Japan International Cooperation Agency (JICA) began a three-year project for Vietnam, dispatching an attorney-at-law to the Ministry of Justice of Vietnam.

From 1997, training seminars in Japan and local seminars in Vietnam were organized biannually and quarterly respectively, and the RTI cooperated in the administration of, and coordinated the dispatch of lecturers to these seminars.

In 1998, a survey was conducted for the purpose of supporting Cambodia, and a basic agreement was signed between Japan and Cambodia for assistance in the drafting of the civil code and the civil procedure code. In the same year, a seminar for Laos was also organized in collaboration with Nagoya University.

The ICD's embryonic movements suddenly became active from 1999 to 2000. Its assistance to Vietnam was transformed into the following 3-year project, and as a token of the new project, the "Japan-Vietnam Civil and Commercial Law Seminar" was held by the ICCLC in Hanoi. In this seminar, the late Professor Emeritus Akira Mikazuki of the University of Tokyo and a former special advisor to the Ministry of Justice delivered a distinguished keynote speech, and his speech was compiled under the title of "An overview of the History of Construction of Japan's Modern Legal System After the Meiji Revolution (1868)" (provided in English and Japanese) by the RTI (issued in July 2001). Since 2000, three legal professionals (judge, prosecutor and attorney-at-law) have been dispatched to the Ministry of Justice of Vietnam as JICA long-term experts.

As for assistance to Cambodia, teams of famed law scholars and legal practitioners were formed to assist in the drafting of the Civil Code and the Civil Procedure Code, and both the Japanese teams and Cambodian teams began their activities in full, traveling between Japan and Cambodia.

Since 1999, the "Japan-Korea Partnership Seminar" has been organized in collaboration with the ICCLC for the purpose of enhancing expertise of registration officers in both countries by enlightening each other on an equal footing, and at the same time strengthening their friendship through cooperation. This is a joint-study type activity and one of the ideal forms of international cooperation after a recipient country no longer needs assistance from other countries. As the Seminar was started

under the theme of registration and family register, the institutions which have jurisdictions over these matters, that is, the Ministry of Justice of Japan and the Supreme Court of South Korea have worked together as counterparts in the Seminars.

In addition, in May 2000 a multi-countries seminar was also organized for lawyers in China, India, Nepal, Pakistan, the Philippines and Thailand, in cooperation with Asia Development Bank.

The 1st "Annual Conference on Technical Assistance in the Legal Field" was held in January 2000 at the main conference room on the 1st basement floor of the Ministry of Justice (the 2nd conference was held in October of the same year). As legal technical assistance had been extended at various levels, from individual to organization bases, this conference aimed to bring together all those assistance providers in order for them to exchange and share information and thereby promote cooperation among them.

III. ORGANIZATIONAL RESPONSE

In parallel to this stage of embryonic movements, the building plan of the Osaka Nakanoshima National Government Building was underway. While the most part of this building is occupied by the Osaka District Public Prosecutors Office, it became the new base of the ICD as mentioned at the beginning of this paper. Though the ICD is one of the seven departments composing the RTI, the ICD staff needs to work in Osaka. Therefore, its members, more specifically its administrative officers (government attorneys assigned to the ICD are excluded here) shall be basically from the Kansai region (the southern-central region of Japan's main island). However, as the ICD relates to international affairs and has close relationships with the headquarters of the Ministry of Justice and the RTI, officers who have worked only in the Kansai region may have difficulties in performing their daily duties in the ICD. Therefore, from 2000, one year before the relocation of the ICD, a deliberate arrangement of personnel was conducted. Some officers from the Kansai region were transferred to the Planning Division of the General Affairs and Planning Department of the RTI and UNAFEI, both located in Tokyo, to learn through experience how to deal with duties related to international cooperation (including organization of seminars). In the following year, they were to be moved to the ICD in Osaka. Though they were transferred from Kansai to Tokyo and from Tokyo to Kansai in a short period of time, it was the best way for them to learn new duties through on-the-job-training.

Changing the subject, the multi-countries anti-corruption seminar was held in 1998 and 1999 by the General Affairs and Planning Department of the RTI, mostly at the Osaka International Center of JICA (OSIC). This seminar was somehow related to the plan of building a new national government building in Osaka. Since assistance activities by the said department became more focused on the civil-and-commercial-law field, since 2002 the seminar has been organized under the jurisdiction of UNAFEI.

As mentioned above, the whole Ministry of Justice stepped up its efforts and measures to establish the ICD, through staff transfer and the shift of departments in charge of the administration of seminars.

IV. THE START-UP OF THE ICD

As explained in the beginning of this paper, the ICD was first set up in the red-brick building of the Ministry of Justice on April 1, 2001. At the request of the RTI President at that time, the inauguration ceremony was held by the first ICD staff members in the 3rd classroom of the building. Each staff member, including the first ICD director, expressed their intentions in a few words, like: “I will make great efforts in my new and important assignments.”

As the ICD was to be relocated to Osaka in November 2001, for the purpose of announcing its relocation plan and other matters, the 3rd Annual Conference on Technical Assistance in the Legal Field was held in the Urayasu Center on September 13 of the same year. The ICD often makes unprecedented attempts and both government attorneys and administrative officers of the ICD have been impartially given the opportunities to learn the PCM (Project Cycle Management) method, a must in the assistance field.

From November 2001, the operation of the ICD was moved gradually to, and the department began its activities in Osaka. It was in January 2002 that the first departmental journal, “ICD NEWS” was published (subsequently it has been published regularly and up to Volume 49 has been published as of December 2011). In February 2002, an inauguration ceremony of the new national government building was held and invited high-level judicial officers from recipient countries gave commemorative speeches.

The ICD has intermittently contributed articles to journals such as "*Horitsu no Hiroba* (Law Plaza)", "*Tsumi to Batsu* (Crime and Punishment)", "*Kenshu* (Training)", "*Minji Kenshu* (Training in Civil Matters)", "*Ho no Shihai* (Rule of Law)", "*Jiyu to Seigi* (Freedom and Justice)", "*Hikakuho Kenkyu* (Comparative Law Study)", "*Hogaku Semina* (Seminar on Jurisprudence)", "*Hoso* (Legal Profession)", etc.

V. FULL-SCALE ACTIVITIES AND CHANGES

The ICD assists developing countries in their efforts to maintain and improve their legal systems. Its activities range from assistance in drafting laws (legislative support) to provision of information and materials as a basis for drafting laws in target countries (advisory support), assistance in the operation of legal systems and in the education of people who operate law, that is, legal professionals. The situation in developing countries varies from country to country and therefore assistance must be designed and provided in accordance with their actual conditions. In providing assistance, the ICD adopts and combines the following four methods: 1. providing advice on a daily basis and organizing workshops by dispatched long-term experts; 2. organizing local seminars by short-term experts; 3. providing comments or advice by Japanese advisory groups; and 4. organizing training seminars in Japan. These methods have been adopted since the ICD was established and they have been continued for the past 10 years.

The following is the description of the progress of the ICD in figures:

1. Increase in the number of target countries

The Ministry of Justice first started its assistance activities for Vietnam, Cambodia, Laos and Korea. In 2001 when the ICD was established, local surveys were conducted in Mongolia, Uzbekistan and Indonesia, and subsequently the ICD began assisting these countries (assistance to Mongolia was principally provided by the Japan Federation of Bar Associations). In 2008, assistance to Uzbekistan changed its form and started to target more countries in the form of seminars on comparative law study for four Central Asian countries. Moreover, in the same year assistance to China in the field of civil procedure law started. In 2009 the ICD received requests for assistance from East Timor and Nepal. Thus, the number of regions targeted by the ICD is constantly expanding. Adding other countries for which the ICD conducted training seminars on single occasions to the above-mentioned 12 regular recipient countries, 16

countries and 1,013 people in total (28 countries and 1,439 people since 1994) received assistance from the ICD and participated in the training seminars held by the ICD, respectively.

2. Expansion of the human network

With regard to the dispatch of personnel of, or persons related to the Ministry of Justice to recipient countries as JICA long-term experts, which started in Vietnam with the dispatch of two experts, its scale also expanded and currently five people are dispatched to three countries: Vietnam, Laos and Cambodia (50 people in total, if lawyers and scholars are included). As for Japanese experts who have been dispatched to local surveys or seminars, 97 experts in total have been dispatched to 11 countries (120 experts since 1994). Since 2004, judges have also joined the ICD faculty.

Activities of the ICD are closely related to JICA and thus they are subject to changes in JICA. This organization went through large-scale institutional reforms in 2003 and 2008, placing more focus on region-based aid, rather than aid for multi-countries, and country-based aid, rather than it being region-based. Influenced by these movements, the International Civil and Commercial Law Seminar, which started at the embryonic stage of the ICD as mentioned above, ended in the fiscal year 2007. It was a unique program in which Japanese officials, including those from the private sector, also participated. The end of this seminar symbolizes the flow of the times.

VI. ACHIEVEMENTS MADE SO FAR

Achievements of international cooperation in the legal field are barely visible. As legal assistance is related to the sovereignty of a nation in the end, and legislative priorities may change subject to the political situation of a target country, assistance may not be reflected as purported in their legal system. Moreover, legislative support does not end when laws are enacted and consideration is necessary on how to encourage enacted laws to take root in the target country. Even taking into consideration these circumstances, several results have been produced by the ICD as follows:

1. Vietnam

As for legislative support for Vietnam (advisory type), the ICD provided assistance in the revision of the 1995 Civil Code and the Bankruptcy Law and in drafting the Intellectual Property Law, Civil Procedure Code, Property Registration Law, Secured

Transaction Registration Law, Judgment Execution Law, State Compensation Law, etc. As a result, the Civil Code was not revised but was totally renewed as the 2005 Civil Code. The new Civil Code fully adopted the principle of contract and made several other achievements, though it did not sufficiently respond to the nation's transition to a market economy. The Civil Procedure Code and the revised Bankruptcy Law were enacted in June 2004, and the Civil Judgment Execution Law was enacted in November 2008. As for the State Compensation Law, it was passed, though greatly delayed, in June 2009. Other statutes are pending due to changes in Vietnamese policies.

With regard to capacity building, teaching materials on the resolution techniques of civil and criminal cases, a judgment writing manual, a joint study on the development of the precedent system, a prosecutor's manual, etc. have been completed and they are used in law practice and legal training.

2. Cambodia

Assistance to Cambodia began with the drafting of the Civil Code and the Civil Procedure Code through dialogues between Japanese law scholars, a practitioners' team and a Cambodian judicial officials team. In contrast to other donors which draft laws for a short period of time, the Japanese legislative support continued for more than 4 years to reflect the actual situation of Cambodia in the Codes and made them durable under the international standard. Both draft Codes were completed in Khmer by March 2003 and submitted to Cambodia. Subsequently, even during the legislative procedure in Cambodia, assistance was continued. Finally, the Civil Procedure Code was promulgated in July 2006 (came into force in July 2007) and the Civil Code in December 2007 (it has not come into force as of March 2011). Moreover, assistance was provided to draft laws related to the above two Codes (Personal Status Litigation Law, Non-Suit Civil Case Procedural Law, etc.), which are to be enacted successively.

In addition, since November 2005, assistance has been offered in relation to the training of civil matters based on the Civil Code and the Civil Procedure Code for candidate teachers of the Royal School for Judges and Prosecutors. To date, 28 candidates have completed training and 7 of them have actually joined the faculty of the said school, two of them teaching also in the Training School of Court Clerks. This way they are actively contributing to the training of future judicial officials and the remaining candidates are also expected to become teachers.

3. Laos

For Laos, from 2003 assistance had been provided for preparation of textbooks on the Civil Code and Company Law, a judgment writing manual and an investigation manual for prosecutors and they have been used in actual practices. Later in July 2010, a new project for capacity building of judicial personnel started. This new project is not a type of legislative support to draft individual statutes, but aims to strengthen the training system, human resources and institutions in the legal and judicial fields, and the project is highly expected to attain its goals.

4. Indonesia

For Indonesia, after analyzing the actual condition of its legal system for five years, through comparative studies of civil justice systems since 2002, etc. the two-year project for strengthening the mediation system was implemented from 2007. As a result, in July 2008 the regulations of the Supreme Court of Indonesia were revised, and coupled with the preparation of a commentary on the said regulations and a Q&A book, there is growing interest in the active use of the mediation system. Through these activities, a relationship of trust has been developed between the ICD and the Supreme Court of Indonesia, and a continued cooperative relationship in the field of capacity building is expected.

5. Uzbekistan

Assistance for Uzbekistan was elaborated in the form of a project to support their bankruptcy law (for two years from 2005), and the Commentary on the Bankruptcy Law was completed for the first time in this country to be used by law practitioners.

In addition to such specific results, a more important achievement is also observed; trust of target countries toward Japanese assistance. Each country expects Japan not only to continue its assistance but also to count on Japanese experts when they need advice from foreign countries on specific issues. Some of them want to keep relationships with Japan even sharing half of the necessary costs. This can be considered as one of the great invisible results of ICD efforts.

VII. CURRENT SITUATION AND THE FUTURE

While the ICD has been pursuing its duties as above, the Council of Overseas Economic Cooperation reached an agreement to the effect that legal technical

assistance activities are one of the important areas of overseas economic cooperation and thus they need to be implemented strategically. The Council issued the “Basic Policies on Legal Technical Assistance” (on April 22, 2009) and thus the importance of legal technical assistance is growing more and more.

As it is necessary to continuously cultivate human resources who are competent enough to engage in legal technical assistance, the ICD is actively promoting its activities to young people, by organizing symposia targeting undergraduate and graduate students in collaboration with the academia and organizing internship programs for law school students, etc. Moreover, since 2009 the ICD has organized seminars of capacity building for international cooperation, including opportunities to visit cooperation sites abroad, to train human resources within the Ministry of Justice.

In order to bring an end to international cooperation in the form of assistance for developing countries, recipient countries need to be able to establish and improve their legal systems by themselves. In this sense, legal technical assistance requires mid- and long-term goals. Even when developing countries become capable enough to do so, improvement of legal systems or judicial reforms may continue in any country. Therefore, it is ideal that each country, when they are developed enough, interacts with each other on an equal footing. For this purpose, it is crucial for the ICD to work on its duties and be aware of the need to improve the quality of its activities on a constant basis.

THE ICD IN 2011

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I. UPDATE OUTLINE

For the International Cooperation Department - ICD -2011 was as hectic as usual. In addition to organizing and conducting regular study tours and in-country seminars for a number of countries within the framework of ongoing JICA projects, the ICD was also engaged in some cooperation activities with some countries funded by its own budget, as well as domestic activities such as organizing conferences, symposiums, and internships for students interested in this area.

There were some changes in ICD staff. In accordance with routine job rotation in April at the beginning of the Japanese fiscal year, four of our staff members – International Training Officers - were replaced by newcomers.

Mr. Norimitsu Yasuhara, who used to work at the Headquarters of the Research and Training Institute (RTI) of the Ministry of Justice, joined the ICD to take over the position of his predecessor, Mr. Mitsuru Tanaka, who went back to the Osaka District Public Prosecutors Office. Similarly, Ms. Saeko Eguchi, Mr. Yoshio Inamoto and Ms. Ai Watada left the office for their new assignments at the Osaka Legal Affairs Bureau[1] and Kobe District Public Prosecutors Office, and the ICD welcomed Ms. Harumi Ishihara from the Takamatsu District Public Prosecutors Office, Ms. Natsuko Sugawara from the Headquarters of the RTI and Ms. Kazuko Sano from the Osaka Legal Affairs Bureau. While Mr. Yasuhara supervises staff members in his capacity as the head of Training Officers, Ms. Ishihara is in charge of activities with Cambodia and Timor-Leste, Ms. Sugawara deals with programs for Laos, Central Asia and Mongolia, and Ms. Sano is involved in cooperation with Vietnam, in addition to their other assignments. As to lecturers, there was no change except for Mr. Kenichi Nakamura from the Tokyo District Public Prosecutors Office. He is in charge of the project for

[1] Legal Affairs Bureaus are local agencies subordinate to the Ministry of Justice and they handle state legal affairs such as property and company registrations, human rights protection and state-related civil and administrative litigations.

Laos.

Some of the JICA long-term experts who had been dispatched to recipient countries were replaced. Hon. Judge Shusaku Tatara, who joined the ICD members in April, was immediately dispatched to Vietnam to replace Hon. Judge Osamu Nishimura, and started his work at the project office in Hanoi. In July, Ms. Watanabe, a government attorney who had been dispatched to Vientiane, Lao PDR for one year for the JICA "Project for Human Resource Development in the Legal Sector" completed her tenure and assumed a new position at the Tokyo District Public Prosecutors Office. Her position was taken over by Mr. Hiyoyuki Ito, an ICD government attorney, who is currently working at the Project Office in Vientiane set up inside the premises of the Lao Procurator's Training School.

Though Japan was severely hit and affected by the triple disaster, the earthquake, tsunami and the nuclear power plant explosion on March 11, the activities of the ICD were less affected than in other sectors of the government, and there were only some minor changes in its entire work schedule. This may be attributable not only to the idea that international cooperation activities had never been so important than they were at such a time, but also to the kind and accurate understanding by our foreign counterparts and their people regarding the situation in Japan who were not unreasonably or overly afraid to come to Japan. I have to emphasize that the ICD received a lot of encouraging and comforting messages from all our counterparts and even donations which were forwarded through proper channels to the people up north in the Tohoku region, who were, and still are, in desperate need of any kind of assistance for the area's recovery. On behalf of the people who benefited by such kind messages and donations, and on behalf of all the Japanese people, the ICD would like to hereby thank all of our international friends for their courtesy and kindness, which is the real foundation and core value of international cooperation. With our foreign friends standing by us, we are very much sure that the Tohoku region and Japan as a whole will surely overcome this unprecedented crisis.

II. OUR ACTIVITIES IN 2011

A. Vietnam

For our oldest partner country, Vietnam, JICA started the 2nd phase of "Technical Cooperation for the Legal and Judicial System Reform" in April 2011. Being a

successful project focusing on institutional capacity development as well as further reform in basic legislation, the 2nd phase basically follows the path of the 1st phase which ended with fairly good results. While the project office team comprised of one prosecutor, one judge, one private lawyer and one coordinator, all dispatched from Japan and two of them being ICD members, handles very tough jobs in Hanoi, tough in the sense that development in the justice sector in Vietnam is still quite turbulent despite making steady steps forward, the ICD renders support to their activities in Vietnam. In 2011, we conducted the following activities:

1. Vietnam SPC Civil Procedure Code Study Tour (Osaka, Jan.13th – 21st)
This is an activity under the JICA project scheme for the benefit of one of our counterparts, the Supreme People's Court (SPC) of Vietnam. Seven participants including Deputy Chief Justice Hon. Tu Van Nhu visited Osaka and had discussions on issues concerning the revision of the VN Civil Procedure Code with Japanese scholars and practitioners. They also had the chance to observe case management practices concerning provisional remedies at the Osaka District Court and practices on small claims and immediate settlement (settlement prior to the filing of action) at the Osaka Summary Court. On the last day, one member of the delegation, Hon. Justice Vu The Doan, Deputy Chief Judge of the SPC Hanoi Appellate Court, delivered a presentation concerning the progress of justice reform in Vietnam at our 12th Annual Conference on Legal Technical Cooperation 2011.

2. Vietnam SPP Exchange Program (Osaka, June 27th – July 1st)
The annual RTI-SPP Exchange Program, which started in 2001 pursuant to a proposal made by Dr. Khuat Van Nga, the then Deputy Chief Procurator, is an ICD activity which is not necessarily linked to any JICA activity but serves as a marvelous opportunity for the ICD and the Supreme People's Procuracy (SPP) of Vietnam to mutually provide and collect updated information. In 2011, two participants – Mr. Nguyen Duy Giang, Vice Head of the Personnel Department, SPP and Mr. Nguyen Trong Vinh, Legal Expert of the Institute for Procuratorial Science, SPP – were invited to Osaka. We had discussions on the latest progress of the criminal procedure code revision in Vietnam and updates on Japanese law. They also had an opportunity to observe a court session at the Kyoto District Court and the case management system at the Osaka District Public Prosecutors Office.

B. Cambodia
In Cambodia, there are two different JICA projects ongoing. One is with the Ministry

of Justice (MOJ) of Cambodia for legislative support for drafting a number of laws in the civil area, and the other is trainers' training in the civil law area at the Royal School for Judges and Prosecutors (RSJP). The ICD was always busy in organizing study tours for both of these projects, but in 2011, more work was added thereto because both projects were to end in early 2012 and we helped JICA Headquarters to formulate one successor project covering both areas dealt with by the two previous ones, and towards that, several research missions were dispatched to Cambodia. Three study tours and one in-country seminar were conducted, and four missions were sent to Phnom Penh for the purpose of evaluating the ongoing projects and holding dialogues aimed at the formulation of a new project.

1. Cambodia MOJ Study Tour on Civil Law (Collateral/Immovable Property Registration) (Tokyo, Feb. 1st – 10th)

This was an activity under the JICA Cambodia MOJ Project. Fourteen participants including HE Chan Sotheavy, Vice Minister, MOJ and HE LIM Voan, Counsel to the Ministry of Land Administration, Urban Planning and Construction, visited Japan and attended lectures and discussion sessions on collateral rights etc. for the purpose of assisting in drafting the Immovable Property Registration Law. Reports were made by the Cambodian side on the progress of the drafting work of a ministerial ordinance on immovable property registration, and Japanese professors gave some comments thereon. The curriculum also included lectures on collateral rights, subrogation by performance and obligees' subrogation rights, as well as some observatory activities at a legal affairs bureau.

2. Cambodia In-Country Tort Law and Civil Procedure Law Seminar for RSJP (Phnom Penh, Mar. 15th – 24th)

This seminar was held as a part of the activities scheduled under the RSJP capacity building project. Lectures on tort law and civil execution/provisional remedy were given by ICD lecturers, Mr. Uesaka and Judge Matsukawa, to RSJP lecturers and prospective lecturers in Phnom Penh. They explained about conditions and effects of tortuous acts; extraordinary tort; relation of judgments /settlement terms and execution. Participants became able to understand how to write "decision of the court" in consideration to the issues of execution in mind.

3. Cambodia RSJP Study Tour on Execution and Provisional Remedy (Osaka, June 20th – 24th)

The issues of civil execution and provisional remedies such as preliminary injunctions and provisional attachments are quite new for Cambodian judges. Therefore, this study tour for 6 participants – judges - all of them being prospective lecturers of the RSJP, was designed to give them a clear idea on how these systems work. Lectures by Japanese law professors on civil execution and provisional remedy comprised the main part of the tour. A focus was put on fundamental knowledge on these systems and precise understanding of procedures in accordance with the "Manual on Coercive Execution on Real Property" as well as the "Manual on Provisional Attachment of Real Property", both of which had already been compiled in the course of the JICA-RSJP Project.

4. Cambodia RSJP Study Tour (Mock Court) (Osaka, October 3rd – 14th)

For several years, training through mock court role plays has been an important and effective method to strengthen the teaching capability of RSJP lecturers and prospective lecturers. In this study tour, 7 participants - junior judges – all being prospective lecturers of the RSJP, went through mock court training and some workshops on civil law; the mock trial dealt with a civil case where the plaintiff claimed the return of a house owned by him based on the termination of a lease contract on the grounds of unauthorized reform work done by the defendant-lessee on the property. The participants worked on pleading preparation, witness examination, plaintiff examination, defendant examination, judgment drafting and pronouncement of a judgment. The Japanese side was very much impressed to find the great progress made by the Cambodian participants in improving their own skills and capacity.

5. Research and Project Formation

- Cambodia Preliminary Research Mission (Phnom Penh, July 3rd – 7th)
- Cambodia MOJ Project Final Evaluation Mission (Phnom Penh, August 28th – 30th)
- Cambodia RSJP Project Final Evaluation Mission (Phnom Penh, September 4th – 7th)
- Cambodia Research Mission for Detailed Project Planning (Phnom Penh, October 19th – 29th)

C. Laos

In Lao PDR, the JICA Project for Human Resource Development in the Legal Sector 2010-2014[2] is ongoing. In response to the active progress being made in this project in Vientiane, the ICD worked an active schedule for the Laos Project. Two in-country

[2] As to the formation of this project, see page 65, ICD News English Edition, December 2010.

seminars and two study tours to Japan were organized and implemented in 2011 as follows.

1. Lao PDR In-Country Seminar on Civil and Criminal Procedure
(Vientiane, Feb.21st – 25th, combined with the JICA project operation monitoring mission)

With the help of some prominent Japanese scholars in the field of procedural law, two seminars were conducted in Vientiane. In the field of civil procedure, case studies on topics such as contents of civil complaints, roles of parties and the court in determining the subject matter of adjudication, effect of a judgment, and prohibition of overlapping litigation were conducted. In the criminal area, lectures on the Japanese criminal procedure were given, and case studies on topics such as suspect interrogation, voluntariness of a suspect's confession at the investigation stage and admissibility of a confession as evidence were also conducted.

2. Lao PDR Study Tour on Civil Law + Internship for Law School Students
(Tokyo, March 14th – 22nd)

This was the first study tour under the new project scheme for Lao PDR. Thirteen participants from the Peoples' Supreme Court, the Ministry of Justice (including the three law schools under its supervision), the Office of the Supreme Peoples' Prosecutor and the National University of Laos (NUOL) attended the tour and discussions were held with Japanese university professors and ICD lecturers concerning basic materials prepared by the Lao counterparts which are later to become the draft Civil Law Handbook. In addition, observatory activities were organized at some Japanese institutions related to civil justice administration. Although this study tour was conducted right after the March 11 earthquake, the participants were able to concentrate on their studies. Japanese internship students who attended some sessions of this study trip were really delighted to hear the intensive and interesting discussions between the Japanese and Laotian sides.

3. Lao PDR Study Tour on Criminal Procedure (Osaka, October 17th – 28th)

The second study tour for the JICA Laos Project was conducted for 13 members of the Lao Criminal Procedure Working Group led by Prof. Viengvilay Thiengchanhxay, Dean of the Law Faculty, NUOL. Discussions were held on the basic concept of prospective model teaching materials on criminal procedure, lectures on comparative criminal procedure and some observatory visits (police, prosecution, court and law school) were paid as the main activities of this tour.

4. Lao PDR In-Country Seminar on Civil Procedure
(Vientiane/Thalat, September 27th – October 1st)

Some ICD lecturers visited Laos to conduct an in-country seminar which consisted of intensive group work on the basic concept of prospective teaching materials on civil procedure law. Participants, who were members of the working group on civil procedure law locked themselves in a resort hotel in a small town near the Nam Gum Reservoir and discussed fundamental issues to be included and dealt with prospective teaching materials, using the "clip board method" - in which the participants wrote short key-phrases on any issue that crossed their minds on post-it notes, placed them on a big clipboard and reshuffled them so that they were lined up in a systematic and logical sequence. This method is quite helpful to sort out issues and find out priorities and the order of handling different issues when incorporating them in essays or articles. Participants quickly got used to this method and intensive discussions were held on the image of prospective teaching materials, which helped them get concrete ideas of work to be done for the compilation of such materials.

D. China

China, in terms of development of legal system, is of course much more advanced than any other country the ICD deals with. Therefore, the characteristics of cooperation with China are somewhat different from the activities with other developing countries. As the private business sector is very much interested and eager to learn about the Chinese legal system, especially in the areas of civil and commercial law, the International Civil and Commercial Law Centre Foundation (ICCLC), an NPO established by a number of major business entities in Japan to help us with international cooperation activities, regularly organizes exchange sessions with the Chinese judicial authorities. In 2011, the ICD was involved in the following events with China:

1. Japan-China Civil and Commercial Law Seminar Beijing Session
(Beijing, March 7th – 9th)

At this Beijing session of the continuing comparative seminar with China organized by the ICCLC, some major issues of corporate governance were discussed intensively.

2. Japan-China Civil and Commercial Law Seminar Japan Session
(Tokyo/Osaka, October 19th – 21st)

The Japan session of this ICCLC event was conducted in Tokyo and Osaka, with focus on antitrust and labor laws of P.R. China, in which Japanese corporations operating in

China are very much interested.

3. China National Judicial Academy Study Tour (Tokyo, November 7th – 12th)
This study tour was organized in accordance with a special request from the Supreme People's Court of China which is currently working on the reform of their judicial training schemes for judges. Eight participants attended the tour which comprised of lectures on the Japanese legal training system and some observatory activities including a visit to the Legal Research and Training Institute (LTRI) of the Supreme Court of Japan.

4. China In-Country Seminar on Civil Procedure (Fuzhou, November 20th – 23rd)
This seminar was organized as part of the ongoing JICA cooperation scheme with China. Very detailed discussions and a comparative study were conducted on the Japanese and Chinese Civil Procedures during this seminar, reflecting the high demand for high-level technical legislation skills for the purpose of reforming the Chinese civil procedure law. Topics such as service of process, evidence production order, settlement on compromise, appeal procedure and counterclaim, etc. were put on the table and intensively discussed.

E. Central Asia

For four Central Asian Countries, i.e., Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, JICA's Osaka International Center (OSIC)[3] carried out these series of seminars in Osaka under the title, "JICA-OSIC Central Asia Comparative Study Seminar on Legal Systems". The 4th Session of the series was conducted from December 5th to 16th inviting seven participants; three from Kazakhstan, two from Kyrgyz and two from Tajikistan all being judges or legal affairs officers. The purpose of the seminar was to conduct a comparative study on company law and incorporation procedure and the participants held presentations and discussions on the systems of each of their respective countries. Unfortunately, there were no participants from Uzbekistan in 2011 for some reasons. Instead, some Uzbek Ph.D. students of Nagoya University took part in the sessions and marvelously filled in the vacancy.

F. Indonesia

The ICD worked on the following two events with Indonesia in 2011.

[3] In April 2012, under the internal reform of JICA, OSIC will be merged into the JICA Kansai International Center in Kobe City.

1. Indonesia Research Mission & Seminar (Jakarta/Denpasar, August 8th – 17th)

Even after the completion of a JICA project focusing on court-annexed mediation, the ICD has intended to find out ways to restart a possible cooperation scheme with Indonesia, though it may take time. In the meantime, the ICD finds it very important and meaningful to keep contact with our Indonesian counterparts. Therefore, the ICD decided to send some of its staff to Jakarta and Bali to organize some workshops and research activities. Coming back from the sessions, Judge Matsukawa was convinced that there are still substantial needs in the justice sector in Indonesia, especially in the field of capacity building of judges.

2. Indonesia-Japan Joint Research on Capacity Building of Judges
(Tokyo, November 14th – 18th)

In line with Judge Matsukawa's findings and based on close dialogues with the Supreme Court of Indonesia which accepted cost-sharing with the ICD, we organized a study tour for 10 Indonesian judges and court officers on the topic of judges training. Its basic content was a comparative study on various aspects of the training systems for judges in both countries, comprised of presentations from each side and exchange of opinions, as well as some observatory tours including a visit to the LTRI of the Supreme Court of Japan.

G. Nepal

Being in charge of activities with Nepal, I kept myself quite busy in 2011, because the ICD implemented three activities, mainly in the field of criminal procedure practice of Nepal. In close coordination with, and with kind support from the Japanese Embassy and the JICA Nepal Office in Kathmandu, I went on two missions to Nepal and organized one very interesting study tour for two Nepali prosecutors in Japan as follows:

1. Nepal Research Mission and Seminars (Kathmandu/Nepalgunj, Feb. 21st – Mar. 1st)
2. Nepal-Japan Joint Comparative Study on Criminal Investigation and Prosecution (Osaka/ Sapporo/Hakodate, September 7th – 16th)
3. Nepal Research Mission and Seminars (Kathmandu, Nov. 21st – Dec. 1st)

For details of these activities, please refer to another of the author's articles in this edition at page 29.

H. Timor-Leste

Timor-Leste Research Mission and Seminar (Dili, Mar. 14th – 18th)

We have conducted small support activities together with JICA for Timor-Leste since 2009. Unfortunately, due to some reasons including fund constraints, JICA was no more able to provide any substantial support to the justice sector of the country. Thus, the ICD unilaterally decided to organize a trial small in-country seminar focused on the improvement of legislative skills for cadres of the Ministry of Justice of Timor-Leste and do some research on possible needs in and support for this country. Mr. Matsubara, one of ICD lecturers, visited Dili and held the belief that there is still demand and room for Japan to provide support for the improvement of legislative skills of the personnel of the Ministry of Justice, in order to enable them to acquire the ability to draft laws in harmony with Timor-Leste's international commitments and applicable international laws and standards. For this purpose, further research is still necessary, and the ICD is planning to go on with more research.

I. Other Activities

As in the previous years, the ICD was involved in or conducted a variety of other activities and events by itself throughout the year 2011. Below are some examples:

1. The 12th Annual Conference on Legal Technical Cooperation (Osaka, Jan. 21st)
2. Japan-Korea Mini Symposium on Legal Technical Cooperation (Osaka, Mar. 7th)
3. Kanazawa Seminar on Asian Legal Systems (Kanazawa City, Mar. 10th)
4. KLRI (Korea Legislation Research Institute[4] [KLRI]) -ICD Joint Forum on Legal Technical Assistance (Seoul, Aug. 18th)
5. Internship and Summer Symposium (joint event with the Centre for Asian Legal Exchange, Nagoya University, Nagoya and Osaka, Aug. 29th – Sep. 2nd) for Students
6. Symposium on Audit Systems of Asia (Osaka, Sep. 20th)
7. The 3rd ICD Capacity Development Training Program for Ministry of Justice Officers and Prosecution Officers (Osaka/Hanoi, Nov. 9th – 22nd)
8. Asian Legal Information Forum (Incheon, Nov. 10th -11th)
9. Japan-Korea Partnership Training on Registration Matters

These events are not necessarily designed to be direct technical assistance to developing countries, but are quite important in the sense that all of them are related to the dissemination of information and knowledge concerning legal technical assistance and Asian law within the Japanese legal community as well as the business community, and more importantly, to the younger generation interested in legal technical cooperation with developing countries.

[4] As for the Korea Legislation Research Institute, please visit their website: http://www.klri.re.kr/eng/category/main.do

What is noteworthy is that the ICD in 2011 was able to strengthen its relationship with Korea, especially with the KLRI, in addition to the relationship it has kept with the Supreme Court of Korea for more than a decade in conducting the above-mentioned Japan-Korea Partnership Training on Registration Matters. Korea is now actively engaging in legal technical cooperation with developing countries by making full use of their technical advantages in areas such as laws related to information technology or environmental issues. We hope that this good relationship with our friends in Korea will be further enhanced so that, in the near future, we can collaborate in helping developing countries with their justice sector reforms.

III. CHALLENGES

Although the ICD has gained abundant experience during the past decade, naturally there are difficulties and challenges to address for further development of its activities. Among the many challenges the ICD is facing, three issues may be worth mentioning here.

1. Capacity building of its own personnel

Although ICD members – lecturers and training officers - are carefully chosen from capable personnel having sufficient experience in their original areas of duties, most of them are not necessarily specialists in the field of international cooperation in the justice sector. Indeed, many of our newcomers have difficulty in adapting themselves to their new assignments in this field which requires certain communication skills and knowledge related to legal technical assistance which they otherwise would not be expected to possess. In order to mitigate such hardships for newcomers, the ICD started to organize the above-mentioned “ICD Capacity Development Training Program for Ministry of Justice Officers and Prosecution Officers”, a short training program conducted in and outside Japan for personnel who are likely to be transferred to the ICD, with the aim of helping participants experience international cooperation activities. However, this activity may not be enough. The ICD will need to plan some more advanced schemes for the sake of fostering personnel capable of working under the unique pressures international cooperation-related jobs inevitably impose.

2. Streamlining of accumulated data and materials

Since its establishment in 2001, the ICD has gone through many trials and errors, out of which it gained precious experience as well as valuable materials and data. However,

those valuable assets – tangible and intangible - are haphazardly maintained as computer data or in the form of hard copies, or merely memorized by its personnel, and are hardly used. Though the ICD has been aware of this problem for a long time, no workable solutions have been found to address this issue. Unless some measures are taken to solve this problem, this useful information cannot be shared with stakeholders who may need it and it may even get lost or buried somewhere. As it seems that other institutions such as universities and other governmental agencies face the same problem, the ICD is willing to cooperate with our allies to find some solutions, necessary skills, technology or some kind of database which can be shared with other entities involved in this field.

3. Coordination with other institutions and donors

Well-organized coordination with other domestic institutions and international donors has always been desired but nonetheless has never been realized in this field. There are plenty of reasons for this - difficulties in communication due to language barriers, differences in budgeting systems, lack of funding to attend or organize meetings, differences in ODA policymaking, etc. etc. etc. In this regard, there is an agreement that it is impossible to go forward with sector-wide legal technical cooperation without proper coordination among stakeholders and donor institutions, domestic and international. As a matter of course, the ICD cannot establish such a coordination mechanism by itself, and needs support from other related institutions and individuals. Although the ICD has exerted great efforts toward that end, it has not been enough. Development of ICD institutional capacity and individual capacity of its officers is highly required.

DEVELOPMENT OF HUMAN RESOURCES FOR FUTURE ASSISTANCE: SUMMER SYMPOSIUM "OUR LEGAL TECHNICAL ASSISTANCE 2011"

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Since 2009, the ICD has held a summer symposium annually for university and law school students on the theme of legal technical assistance. On September 2, 2011, we held the third summer symposium for undergraduate students under the title "Our Legal Technical Assistance 2011". In this article I will introduce these summer symposiums held for students over the past three years.

I. WHY A SYMPOSIUM FOR STUDENTS?

A simple answer to this question is to cultivate talented young people.

More than a decade has passed since Japan started legal technical assistance for other countries, such as Vietnam and Cambodia, in the middle of the 1990s. In the course of providing legal technical assistance, Japan has always put an emphasis on respecting the cultures and societies of partner countries, and thus Japanese cooperation has been highly evaluated by those countries. In order to continue such high-quality support, it is important for us to cultivate talented young people and offer them an opportunity to experience legal technical assistance and learn its know-how from the 1st generation providers of assistance. Therefore, the International Cooperation Department (ICD), as one of the pioneers of Japanese legal technical assistance, decided to hold an annual symposium in 2009 to provide students interested in legal technical assistance with a chance to learn more about it.

II. THE FIRST SUMMER SYMPOSIUM (August 28, 2009)

The first summer symposium for students was held at "Soukairou Hall" of the National

Graduate Institute for Policy Studies located in Roppongi, Minato-ku, Tokyo, under the theme “Our Legal Technical Assistance - Let’s Think Together about International Cooperation in the Legal Field”. Approximately 200 students, mostly law students or law school students, participated in this symposium.

In the first symposium, Mr. Yoshinobu Onuki, the then President of the Research and Training Institute of the Ministry of Justice, gave the opening speech in which he quoted from President Obama’s inaugural address: “We can no longer afford indifference to the suffering outside our borders. For the world has changed, and we must change with it.” In the following speech, Ms. Tomoko Akane, the then ICD Director displayed a photo of Laotian children on the screen and said “I am convinced that we can do something for the future of these children. I want all of you to find out together what we can do.” Following this, Mr. Charles Bowman Philpott, a Canadian expert with a wealth of experience in legal cooperation, gave a keynote speech.

In one of the two panel discussions held following the speeches, panelists who were then or former JICA long-term experts in legal technical assistance discussed their experiences in Vietnam and Cambodia, and also talked about the appeal of legal technical assistance. A long-term expert in Cambodia reported the reality of Cambodia as follows: “I support training at the Royal School for Judges and Prosecutors. I was surprised to know that students’ choices of becoming a judge or prosecutor were decided by lot before graduation. It was hard for me to understand it with the Japanese common sense. However, after hearing their reason for doing so, I began to understand that there were certain reasonable grounds. They explained that by using a lot they were able to make fair decisions on the careers of students without unjust pressures or unnecessary factors.”

In another panel discussion, students themselves participated as a chairperson and panelists. In the discussion, a student said: “I went to Kenya when I was a junior high school student. Before going to Kenya, I used to think I was living in ordinary circumstances. However, after visiting the country, I found I was in a much more privileged society. Since then, I became interested in international cooperation and began to consider legal technical assistance as a shortcut to change the world to a place where everybody can live with a smile. Therefore, I wanted to be involved in legal technical assistance.”

Thus, the first summer symposium was concluded with fruitful results.

III. THE SECOND SUMMER SYMPOSIUM (September 3, 2010)

The second summer symposium was held at the international conference hall of the ICD in Osaka. The venue was connected with Nagoya University and Keio University through a video-conference system and the symposium was attended by approximately 80 undergraduate and law school students.

This symposium was held, in affiliation with Nagoya University Graduate School of Law, Center for Asian Legal Exchange, as part of the Power-Up Summer School Program 2010 held at the said university.

The summer school was expected to provide participants with an opportunity to obtain some basic knowledge and research methodology of Asian law and legal technical assistance projects. The ICD gave an assignment about legal technical assistance to participants and the symposium served as a venue for participants to present the results of their studies. Both the summer school and symposium aimed to arouse more interest in legal technical assistance among participants.

The assignment asked participants to make a plan of legal technical assistance on the assumption that Japan received a request for assistance from a virtual nation called the "Democratic Republic Tramontana", which was described as follows: "In the late 16th century the Ramon tribe gained power from among a number of powerful tribal nations and they established the 'Ramon Kingdom' which had almost the same borders as the current ones…. (omitted)." Furthermore, students were required to explain the reasons or grounds for their plan.

In spite of our concern that this assignment would be too difficult for students to challenge, 18 participants in total, divided in three groups, two groups from Nagoya University and one group from Keio University, decided to take the challenge and applied for the summer symposium.

All their presentations were of a high level and showed unique viewpoints. Professor Hiroshi Matsuo of Keio University Law School, who gives lectures on legal assistance, highly evaluated their presentation and said as follows: "Frankly speaking, your work was very unique. You attempted the assignment and recognized the blind spots of traditional approaches. You should be given high evaluations. Your suggestions were truly of the nature of young people."

This symposium indeed provided us with a good opportunity to find many students who were deeply interested in legal technical assistance, and that there was strong demand among them for chances, like the summer school or symposium we organized, for their interest to materialize in to something more.

IV. THE THIRD SUMMER SYMPOSIUM (September 2, 2011)

The third summer symposium was also held at the international conference hall of the ICD in Osaka, as in the previous year. In spite of a very strong typhoon that hit Osaka on the date of the symposium, about 60 people attended it, in addition to seven undergraduate and graduate students who participated in an internship program of the Ministry of Justice.

The assignment given to students in the third summer symposium was to choose one case of Japanese legal technical assistance and analyze it for its improvement, which was quite different from the assignment of the previous year.

Our intent was to encourage students to understand the reality of Japanese legal technical assistance, that is: legal technical assistance is still on-going through a trial-and-error method, and to study not only successes but also mistakes of pioneers, through case studies from a critical viewpoint.

On this occasion 23 students in total, three groups from Keio University and one group from Nagoya University, applied for the symposium as presenters. All of them carried out sufficient research and prepared enough to give presentations in front of eminent scholars and legal practitioners who were the first-generation providers of legal technical assistance. Each group dealt with a different case in different countries, such as Cambodia, Nepal, Uzbekistan and East Timor. Surprisingly, they referred to agricultural development and elimination of discrimination in their presentations. Strictly speaking, though these issues are not addressed in legal technical assistance, or at least, in traditional cases, their presentations were full of new ideas and free thinking.

At the end of the symposium, Professor Masanori Aikyo, Dean of the Graduate Law School of Nagoya University, sent the following message to the students: “Law and history varies from country to country. You need to learn the law and history of recipient countries before actually commencing assistance.”

V. FOR THE FUTURE

The three symposiums held for students are just the beginning of our activities to cultivate future providers of legal technical assistance. The number of students interested in legal cooperation is constantly on the rise, and we realize that there are potential needs among students for opportunities to learn about legal technical assistance. Therefore, it is important for us to understand their real needs and to correspond with them for effective human resource development, just as it is necessary to do so in recipient countries of our assistance.

ICD's ACTIVITIES WITH NEPAL

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A panoramic view of the Himalayas from Nagarkot, a tourist spot outside Kathmandu

I. NEPAL – A LAND FULL OF BEAUTY

If you have a chance to fly to Kathmandu from Bangkok, make sure you get a window seat on the right side of your plane. Just when your aircraft starts descending to Tribhuvan International Airport, and you are requested to check your seat belt, the heavenly scenery of the mighty Himalayan mountains headed by the silverly Sagarmatha – Mt. Everest shining high above the clouds will welcome you. If you have seen pictures of the world's highest peak in encyclopedias or tourist guidebooks, you will immediately recognize its shape. It's just gorgeous. Do not fall asleep and miss this sublime view. I have been on the same route five times so far but have never been bored with the scenery.

But that's not all what Nepal is worth visiting for. Besides the blessed gifts of Mother Nature, its very long history and rich and unique culture is nurtured, preserved and displayed not only in historical sites, tourist spots and religious premises but also on every street, and it is just fascinating. Above all, its people are the true treasure of this

country, with their heart-warming greeting, “Namaste”, accompanied by their shy smiles.

The Durbar Square in Bakhtapur

II. BACKGROUND – HOW THE ICD BECAME ENGAGED IN ACTIVITIES FOR NEPAL

A. First Impression

I made my first visit to Nepal in July 2009 when the Japan International Cooperation Agency – JICA – requested me to accompany a research mission to Kathmandu given the task of surveying what support this Japanese ODA implementing body could offer to Nepal in the field of law and justice. Japan received a request from the Nepali Government in 2008 for some assistance in their effort for law reform, in particular in the drafting of five basic statutes, i.e., the civil code, civil procedure code, penal code, criminal procedure code and the sentencing act, which were supposed to replace the Muluki Ain – the “Law of the Land”, a large comprehensive code enacted more than a century ago which became obsolete in many aspects despite repeated amendments made thereto through the years. At that time JICA had already begun to focus on the civil law area, and requested me to join their mission and take a look at the situation concerning the criminal law area, as apparently there was increasing demand for assistance in that field, too.

At first I was not sure whether Japanese assistance in the criminal law area would do any good for the legal reform in Nepal. For me, and I believe for many other Japanese experts involved in this field, the Nepali legal system was something remote and unfamiliar. My only guess was that Nepal might have been influenced by its giant

neighbor, India, which may have made the entire system quite a common-law oriented one, and, as a legal expert with civil law-related background, I thought it might be difficult to offer any substantial support other than merely explaining the Japanese system as just one reference sample for the law-related institutions or academics of Nepal. Japan gained fairly good experiences in civil law countries such as Vietnam, Cambodia, Lao PDR and so on, but none in common-law countries. Therefore, my first thought was simply “Well, OK, maybe a change won’t hurt.”

B. The Turning Point

This perception of mine soon turned out to be wrong. During the talks we had with our Nepali counterparts including Supreme Court justices, Ministry of Law and Justice officers, as well as some government attorneys and private practitioners, I learned that there were many elements which Japan and Nepal share in common, possibly because of their respective history of law development. As I learned more on their legal system afterwards, it seemed that the Nepali legal system used to be pretty much continental-styled until the 1960’s having a codified system represented by the Muluki Ain which is said to have been enacted and inspired by the Napoleonic Code in the 19th century and later heavily influenced by the Indian-style common law models. Haven’t we heard that before? To some extent, there may be some similarities to the law development of Japan after the 2nd World War, where U.S. common law ideas and models were sprinkled on top of the Japanese traditional French-German style civil law oriented system. Of course, you cannot easily resort to an analogous analysis when discussing such kinds of issues, but nevertheless, these similarities encouraged me to take a closer look at the Nepali system and consider whether there was anything we could do for Nepal with the law reform for which they had requested assistance.

I told my impression about Nepal to our then boss, the ICD Director, and got her consent to further explore the possibilities of support for Nepal. So the ICD started its engine and went on to wade through the fog surrounding the Nepali legal system and its contemporary issues. We started with a very modest method of proposing a simple comparative study to the Nepali side on the criminal justice system, to which JICA agreed and kindly organized an in-country seminar in Kathmandu in October 2009. Eventually one study tour to Japan was also organized in July 2010 for the members of the Nepali Criminal Law Reform and Improvement Task Force, a team set up by the Nepali Government for drafting the prospective penal code, criminal procedure code and sentencing act, headed by Honorable Justice Kalyan Shrestha of the Supreme

Court of Nepal[1]. The seminar and the study tour ended with clear results– both the Japanese side and the Nepali side were very much inspired by each other, and by the time the study tour came to an end, everyone was confident that such kind of information sharing and discussions would be beneficial to the reform and development of the Nepali system. In addition to these JICA activities, the ICD had the pleasure to invite Honorable Justice Kalyan Shrestha and Honorable Judge Til Prasad Shrestha of the Butwal Appellate Court (currently a faculty member of the National Judicial Academy) to attend our "Annual Conference on Technical Assistance in the Legal Field"[2] held in January 2010 in Osaka. On this occasion Honorable Justice Shrestha delivered a very impressive speech on the needs of the Nepali judiciary[3]. Also, in March of the same year, I had the chance to visit Kathmandu on my way back from another mission in Europe and to continue talks with our Nepali counterparts and also give a seminar on issues relating to the drafting of the above-mentioned three bills in the criminal law area.

C. Expansion of Cooperation

In such a way, the relationship between the ICD and the Nepali counterparts started and continued. While JICA eventually exerted its maximum effort to assist Nepal in its legal reform activities by continuing the "Seminar on Civil Code and Related Laws" and also dispatching a long-term resident expert, Mr. Katsumune Hirai, Esq., a private lawyer based on the recommendation of the Japan Federation of Bar Associations – JFBA – to Kathmandu to work with the Supreme Court and the Ministry of Law and Justice, the ICD maintained its ties with them in the field of criminal justice as well. I myself have been working as a member of the advisory group for the Nepali civil law established by JICA and along with this, have been engaged in ICD activities for Nepal. In the year 2011, the ICD conducted two research-seminar missions in Nepal and one study tour for Nepali government attorneys in Japan – which are the main topics of this article.

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[1] The Nepali Government also set up another group for the drafting of the civil code and civil procedure code, namely the "Civil Law Reform and Improvement Task Force". This was led by Honorable Justice Khil Raj Regmi of the Nepali Supreme Court, who is now the Right Honorable Chief Justice of Nepal.

[2] This is an annual conference held in January by the ICD jointly with JICA for the purpose of discussing current topics related to legal technical cooperation. Around 80 to 100 people involved in this field gather to share information and opinions.

[3] At this conference, with the courtesy of JICA, Dr. Ram Krishna Timalsena, the then Supreme Court Registrar, also attended the session and joined the panel discussion. We also had the pleasure to have Mr. Kim Ki-pyo, President of the Korean Legislative Research Institute with us as one of guest speakers.

III. RESEARCH MISSION (FEBRUARY 2011)

A. Background

During the year 2010, the drafting of the two Task Forces set up for revising and re-compiling the Muluki Ain reached a certain stage and the above-mentioned 5 bills were submitted to the Constituent Assembly in early 2011. Thus, the legal and judicial reform process of Nepal seemed to be entering a new phase, shifting its focus on reform activities relating to implementation of law and practice issues. In the civil law area, JICA began planning support activities for the compilation of "Explanatory Notes" on the civil code bill, which was supposed to serve not only as a reference material for lawmakers in discussing the civil code bill, but also as a study material for practitioners and academics.

The ICD was aware of the necessity for assistance in the criminal law area as well. Having had conducted some research and seminars in Kathmandu, we realized that, generally speaking, the urgent need of Nepal in the criminal law area lies in the field of institutional and individual capacity development. While the system itself had considerable shortcomings which could not be overcome in a short period of time even if the proposed new bills passed the Constituent Assembly session, there seemed to be even greater problems with case management skills in the judiciary and investigation/prosecution skills in the government attorney's offices and police. The lack of these skills undoubtedly led to procedural delays and the notorious "impunity" problem which, after all, was causing loss of public trust in the justice system. Thus, the ICD decided again to dispatch me to Nepal to gather updated information to find out what the ICD could do in the next step, in addition to holding a seminar to follow up on the past seminars and the study tour conducted in 2010.

B. In Nepal

The mission was conducted from February 23rd to 28th, 2011. Besides conducting a comparative seminar on Japanese criminal proceedings at the National Judicial Academy (NJA), a training facility set up in 2004 with financial assistance from the Asian Development Bank (ADB) – under the auspices of the Supreme Court of Nepal, I had talks with Honorable Justice Shrestha, Professors of the Nepal Law Campus of Tribhuvan University, Dr. Yubraj Sangroula, then Attorney General, as well as people of the Access to Justice Project of UNDP Nepal and the Rule of Law Initiative supported by the American Bar Association.

Every meeting was beneficial for me in that I could update my knowledge on the current situation of Nepal. The most precious experience for me was that I was given an opportunity to personally chat with Dr. Sangroula, the then Attorney General. Being an academic expert in comparative criminal law himself, he is a charismatic person in the Nepali legal community as he is deeply concerned with the current situation in the law and justice sector of Nepal. It was at this meeting with Dr. Sangroula when I was told about his wishes to send some of his men to Japan and have them study Japanese criminal practices in detail. He had quite a concrete plan in his mind. He wanted to send six handpicked government attorneys for just six days in total to Japan, three days for lectures and three days to observe closely the prosecution offices and police as well as the courts in Japan. He said he was quite sure that his personnel would be more than capable to learn from watching and to analyze foreign systems, and to extract advantageous features therefrom, and such knowledge and information would surely benefit the Nepali prosecution in its pursuit of a modernized and effective criminal justice system. If possible, he said, he would be delighted if his men could watch real interrogations and other investigation activities conducted by the police and the prosecution in Japan. Although I could not promise him immediately at that time to fulfill his wishes, I told that the ICD would surely consider his request and try to do its best – and this led to the organization of the study tour to Japan conducted in September of the same year.

With Director Vaidja and his staff at the NJA

Talking with Dr. Sangroula

Also, another quite fruitful event was that, thanks to a kind suggestion of Honorable Justice Shrestha, I was given the opportunity to attend a seminar organized by the National Judicial Academy of Nepal in Nepalgunj, a city in the Mid-West Region, on the topics of “transitional justice” and “differentiated case management”, and also to observe a conference organized by the Supreme Court of Nepal at the same venue on

the evaluation of the progress of the Second Five-Year Strategic Plan of the Nepali Judiciary with a focus on the courts in the Mid-West Region[4]. The two events were carefully prepared and implemented by the National Judicial Academy together with the Supreme Court, and Honorable Judge Til Prasad Shresta and Dr. Ram Krishna Timalsena, then Registrar of the Supreme Court, delivered very interesting and comprehensive presentations on these news topics in Nepal. It seemed that especially Hororable Judge Til Prasad Shrestha had done an in-depth study on the issue of case management. His Honor introduced to the participants actual data gathered from various sources, examples of India and the U.S.A. among them[5], and carefully analyzed them to extract positive aspects of those Indian and U.S. efforts towards quick and fair adjudication. The evaluation session concerning the Five-Year Plan conducted under the supervision of Honorable Justice Kalyan Shrestha was also very interesting, giving me a concrete idea on the obstacles and challenges the courts of Nepal, especially in the rural areas, are facing. It seemed to me that the Nepali courts are making greater efforts to streamline and rationalize their daily practices. However, they might be in need of further understanding of the concept of “transitional justice” and “differentiated case management”, both of which deeply relate to a higher goal Nepali courts are struggling to reach – efficient and effective delivery of justice towards gaining more public trust to the judiciary.

IV. SEPTEMBER 2011 STUDY TOUR - *"COMPARATIVE STUDY ON CRIMINAL INVESTIGATION AND PROSECUTION PRACTICE OF JAPAN AND NEPAL”* (SEPTEMBER 7th – 16th, 2011)

Shortly after coming back from Kathmandu, I started to consider how the ICD could respond to the wishes expressed by Dr. Sangroula about the dispatch of Nepali government attorneys to Japan. We were also aware that it would be of great help for the Nepali prosecution if they could observe “live” investigation and prosecution processes in detail. But there were inevitably some constraints. As always there were financial constraints, which led us to limit the number of invitees to only two instead of six as Dr. Sangroula requested. That couldn’t be helped. I consulted with Mr. Hirai, the JICA long-term expert in Kathmandu in order to pursue the possibility of additional funding by the UNDP Nepal or the Office of the Attorney General itself, but it did not

[4] Representatives of Nepalgunj Appellate Court, Surkhet Appelate Court, Banke District Court, Bardhia District Court, Surkhet District Court, Dailek District Court and Jajarkot District Court attended the conference and all spoke about their status quo and achievements.
[5] Hon. Judge Til Prasad Shrestha specifically referred to the example of Fairfax County Court, Virginia, U.S.A. which seems to have achieved outstanding results – ref.: http://www.fairfaxcounty.gov/courts/circuit/dctp.htm

work out. Still, Dr. Sangroula seemed to be happy to go on with this program, even for just two people, and nominated Mr. Yubraj Subedi, Joint Government Attorney of the Attorney General's Office and Mr. Soorya Prasad Pokharel, Joint Government Attorney of the Butwal Appellate Government Attorneys Office as his delegates. Both of them are not only high-ranked but also highly experienced government attorneys/prosecutors. Whereas Mr. Subedi with his wide variety of experiences working in various sectors in the Government of Nepal looked to me like a person equipped with abundant knowledge concerning multiple areas in both domestic and international affairs not limited to the field of prosecution and judiciary, Mr. Pokharel gave me the impression of a "born prosecutor," sending out an aura of strong commitment to truth and justice, truly admirable.

Another constraint was that it was impossible to give these two gentlemen an opportunity to directly observe real interrogations or questioning of citizens as requested by Dr. Sangroula, because investigation activities require confidentiality as well as protection of the privacy of people involved. Neither was it possible to let them read actual case records because Japanese law requires strict secrecy of case dossiers until the time of finalization of judgments. In order to respond to their request for a chance to observe real Japanese procedure in detail to the extent possible, I compiled a mock case dossier in English, with the help of my colleagues, which was supposed to look like a "real" one. I asked the prosecutors who were to receive our invitees at their offices to "play" a mock interrogation based on this case dossier handling a hypothetical burglary case. Except for this part of observation, I elaborated the session plan very much focused on actual practices rather than discussions on theories. My plan was put into practice with the permission of my boss and with the support of many institutions and individuals who welcomed our invitees with cordial hospitality. The underlying idea of my plan was to show them prosecutorial practice and case management not only in a large-sized but also in a small-sized office and facilitate their understanding that in Japan, the prosecution service does actually maintain an equally high standard of performance in urban areas and in other rural jurisdictions. Towards that end, we were offered generous support from Hokkaido, Hakodate District Public Prosecutors Office in particular. Plus, the Asia Crime Prevention Foundation (ACPF), a Japanese NPO established for the purpose of improved crime prevention and rehabilitation activities in the Asian region, kindly accepted our invitees to make a presentation in their seminar for its members in Sapporo. We gladly decided to include Sapporo and Hakodate sessions after the Osaka session in the itinerary. Below are the details of each session:

1. Osaka Session

i) Explanation on the outline of investigation and proof activities under the Japanese criminal procedure system, by ICD lecturers;

ii) Explanation on the duties and work of the Osaka District Public Prosecutors Office focused on case flow and management, by a prosecutor in charge of case management;

iii) Observation of related sections of the Osaka Office including the evidence storage and document storage facilities, starting from case acceptance to execution; and

iv) Joint discussion on the topic "Problems in Prosecutorial Practice – Towards Regaining Public Confidence – A comparison of Nepali and Japanese Realities", an interactive session involving people from the Supreme Public Prosecutors Office and UNAFEI[6].

2. Sapporo Session

i) Observation of a criminal trial at the Sapporo District Court and explanation by the presiding judge on the proceedings; and

ii) ACPF Sapporo Seminar "New Nepali Constitution and the Future of Nepali Criminal Justice"

3. Hakodate Session

i) Observation of the facilities and explanation on the duties and work of the Hakodate District Public Prosecutors Office, by the Chief Prosecutor of the Hakodate Office;

ii) Discussion session with Hakodate prosecutors on police-prosecutor relationships;

iii) Mock interrogation by prosecutors and assistant officers;

iv) Practice of giving instructions to the police force – live observation of a preliminary discussion at the prosecutors office between a prosecutor and a police investigator before initiating a formal investigation;

v) Observation tour of the facilities of the Hakodate District Headquarters of Hokkaido Police, including an explanation on their duties and activities by the District Police Chief as well as a discussion session with front-line investigators on issues concerning daily investigation practice;

vi) Visit to the Hakodate Bar Association and discussion on issues relating to

[6] United Nations Asia and Far East Institute for the Prevention of Crime and the Rehabilitation of Offenders; see http://www.unafei.or.jp/

criminal proceedings with criminal defense lawyers; and

vii) Overall Q&A

In between all these sessions, formal courtesy calls were paid to the Superintending Prosecutor of the Osaka High Public Prosecutors Office, Chief Prosecutor of the Osaka District Public Prosecutors Office, Superintending Prosecutor of the Sapporo High Public Prosecutors Office, Chief Prosecutor of the Sapporo District Prosecutors Office, Chief Prosecutor of the Hakodate District Public Prosecutors Office, as well as to the Chief Judges of the Sapporo District Court and Hakodate District Court. Mr. Subedi and Mr. Pokharel had friendly conversations with the leaders of these institutions and these meetings surely contributed to the enhancement of friendship between Japan and Nepal. In addition, at the very end of the Hakodate session, NHK, the national TV of Japan, interviewed Mr. Subedi about his impression about Japan and its justice system, and aired the interview on the evening news.

We believe the study tour which lasted for almost 10 days was successful. At the very end of the entire tour, Mr. Subedi and Mr. Pokharel seemed to be quite satisfied with what they had seen and heard during their stay in Japan. They repeatedly told us about how they were impressed by the ways all these criminal justice related institutions operate. In the prosecution offices, they observed how systematically and efficiently each case was processed, the mutual trust existing between the prosecution and police, and how such trust ultimately led to efficient and effective prosecution and trial proceedings at courts. At the police headquarters, they learned how the well-trained police force with pride and sense of responsibility dealt with criminal cases, sometimes with support of modern forensic technology, and in good coordination with the prosecution. At the Sapporo District Court, they were very impressed to learn how efficiently the judge controlled the entire procedure and how seriously and sincerely he questioned the defendant in the final stage of trial, in a way that everyone in the courtroom got the impression that the judge was doing his best to find out the most appropriate sentencing in that particular assault case. At the end of the day, Mr. Subedi told me they were very impressed and inspired by the serious attitudes of each individual officer or lawyer towards fulfilling his/her duty, regardless of whether he/she was a judge, prosecutor, lawyer, clerk or assistant officer, than the system itself or the infrastructure.

Courtesy call to the Superintending Prosecutor in Osaka

Presentation at the ACPF Seminar

Visit to the Hakodate Police Forensic Lab.

Courtesy call to the Chief Prosecutor of Hakodate

V. SEMINAR AND RESEARCH MISSION IN KATHMANDU (NOVEMBER 2011)

Although the study tour in Japan was certainly fruitful, we never thought that it was enough and were sure that we could offer more assistance to Nepal. Normally, no matter how successfully completed, study tours tend to leave many questions unanswered, or, have the resulting effect of giving rise to new questions once participants go back to their homes and start recalling what they saw or learnt during the tour. This led us to plan our next visit to Nepal. And on top of that, there was the need to gather further updated information concerning the progress of Nepal's reform in the justice sector, especially after the resignation of Dr. Sangroula and the appointment of the new Attorney General, Mr. Mukti Narayan Pradhan, Esq., in order to formulate our next plan for Nepal.

Upon close consultation with Mr. Hirai again, and with support of JICA Nepal and the Japanese Embassy in Kathmandu, I went on my fifth trip to Nepal with one of our staff members, Hiroyuki Sei, Senior International Training Officer of the ICD. Thanks to

the arrangements made by Mr. Hirai and the Attorney General's Office, our visit was again very successful. I was given the chance to give lectures and presentations on four occasions and had the pleasure to call on the following numerous relevant institutions, all of which gave us a warm welcome:

① Supreme Court of Nepal
② Special Court
③ Lalitpur District Court
④ National Judicial Academy (NJA)
⑤ Office of the Attorney General (OAG)
⑥ Prosecution Training Centre
⑦ Commission for Investigation of Abuse of Authority (CIAA)
⑧ Patan Appellate Government Attorney's Office
⑨ Kathmandu District Government Attorney's Office
⑩ Lalitpur District Government Attorney's Office
⑪ Ministry of Law and Justice
⑫ Lalitpur Police
⑬ Central Prison
⑭ Nepal Law Campus, Tribhuvan University
⑮ Kathmandu School of Law (KSL)
⑯ United Nations Office of High Commissioner for Human Rights (UNOHCHR)
⑰ United Nations Development Programme (UNDP), Nepal Office
⑱ Centre for Constitutional Dialogue (CCD)
⑲ Embassy of Japan in Nepal
⑳ JICA Nepal Office

At these institutions, we held seminars, discussions, and observations as well as courtesy calls. I delivered lectures and presentations on the requested topics at the Nepal Law Campus together with Dr. Professor Rajit Bhakta Pradhananga for his students, at the CCD together with Honorable Justice Kalyan Shrestha for high-ranked police officers, at the Prosecution Training Center of the OAG for government attorneys and key officials of the OAG, and at the NJA for section officers, all related to topics in the criminal law area. Moreover, I had the pleasure and honor of meeting his Right Honorable Chief Justice Khil Raj Regmi and Mr. Lohit Chandra Shah, Acting Registrar of the Supreme Court, Attorney General Mukti Narayan Pradhan, Esq., Honorable Judges of the Special Court, many other high-ranked justices and officers of the Nepali Government as well as officers of some international organizations. With special courtesy of the Attorney General's Office, I was able to visit a number of courts

and government attorneys' offices as well as other facilities where I had informative and inspiring discussions with the people there.

Courtesy call to the Right Honorable Chief Justice

At the OAG

With the Lalitpur Police People

At the KSL with Dr. Sangroula

VI. OVERALL IMPRESSION

Every time I visit Nepal, I am surprised by some of the new findings – mostly the turbulent political situation and the pious effort our Nepali counterparts are exerting towards making progress in their reform despite the difficult circumstances. Though I heard some pessimistic opinions about the progress of reform in the justice sector, it seems to me that, even things may sometimes go back and forth, the Nepali judiciary and the legal profession are definitely making progress. It is true that the process of forming a new constitution has been so slow and deliberation at the Constituent Assembly on the five important laws replacing the Muluki Ain has not begun yet. Nevertheless, I was able to see that, on the ground in the area of practice, remarkable changes have begun. Especially encouraging trends were, among others, that:

(i) Triggered by the submission of the three draft bills on criminal law, people in the justice sector have begun intensive discussions about the image of the prospective criminal justice system. Even in the police which tends to be

somewhat conservative, more people are becoming aware of and are beginning to understand crucial issues, such as the necessity of introducing the warrant system proposed by the new criminal procedure code bill;

(ii) According to the Lalitpur Police Chief, the Nepali Police has already set up specialized divisions in their offices to handle criminal investigations and, these days, the younger generation in the police force are gradually getting interested in criminal investigation activities;

(iii) The CIAA is quite active in the investigation of corruption cases;

(iv) The Special Court, despite undue interferences and pressures from politics, stands firm in rendering appropriate judgments in corruption cases and has recently started to handle money-laundering cases as well; and

(v) Dr. Sangroula, the former Attorney General, is committed to further support the OAG in its reform utilizing his position as a prominent scholar and the Rector of Kathmandu School of Law.

I was really delighted to observe such positive trends towards the reform in Nepal which will undoubtedly lead to the establishment of a stronger justice sector gaining public trust and also considered myself to be very lucky to have been able to further deepen my knowledge and understanding of the Nepali criminal justice system and contemporary issues relating thereto, by having been given a chance to see the frontline of its justice administration. To be honest, this visit to Nepal much more benefited the Japanese side than the Nepali side in this aspect. At the same time, however, with all due respect, the visit made me realize the serious problems the contemporary Nepali criminal justice system and its practice are facing.

May I point out some of the shortcomings in the system itself which may have been caused by insufficient studies on the raison d'etre of the existing models of criminal procedure when the Nepali criminal justice shifted from the inquisitorial system to the adversarial system, for example:

(i) insufficient control by courts and prosecution over investigation activities;

(ii) rigid trial procedure (no changes of charged facts allowed, no supplementary investigation can be conducted during trial, litigation processes on case basis and not on defendant basis, thus bringing the procedure to a halt when there is a co-defendant still not apprehended, etc.);

(iii) vague evidence rules, lack of perjury, destruction of evidence and /or harboring criminals being quite easy, triggering false testimony and difficulty in calling witnesses before court; and

(iv) uncordinated procedures, leading to serious procedural delay.

The following can be considered as examples of problems in practical aspects:

(i) insufficient skills and knowledge of investigators and prosecutors;
(ii) bad institutional (but not individual) relationships between prosecution and police leading to difficulties in investigation activities focusing on the outcomes of criminal trials;
(iii) prosecution based on insufficient evidence leading to a high rate of acquittal; and
(iv) disproportionate reliance and emphasis on confessions and other testimonial evidence, and the low capability to collect objective and material evidence.

These negative factors seem to be causing inefficient and ineffective investigation and trial as well as procedural delays (according to some prosecutors, even a simple theft or burglary case can easily take two years until it is finally adjudicated), definitely leading to the loss of trust by the general public toward justice. And because of this, citizens are becoming more and more uncooperative with criminal justice. This is a vicious circle. Combined with the undue political interventions into criminal justice, there is little doubt that this is one of the major causes of lingering impunity.

It is my impression that the Nepali justice sector, having sufficient capability, especially at the highest levels, may have made only insufficient research and studies in legal theories based on their own justice practices. Therefore, their understanding of the prevailing system and provisions of laws seems to be shallow, and this may be resulting in difficulties in proper implementation of its own system. And, accompanied by certain shortcomings in the physical infrastructure and shortage of skills and knowledge of practitioners – judges, prosecutors and private lawyers – the entire criminal justice system seems to be weak.

A sound criminal justice system, in combination with the civil justice system, serves as a safety net for the peaceful daily lives of citizens, for an active economy, investment and the development of a nation. Without it, no effort for development or aid will achieve its goal. Honorable Justice Kalyan Shrestha repeatedly told me this, and I could not agree more with his Honor. Nepal needs support, well balanced in both civil and criminal areas. Currently the ICD is considering what to do next in the coming fiscal year for Nepal. Through intense communication with our Nepali counterparts and with assistance of the Embassy of Japan in Nepal and JICA, I hope we can

continue successful cooperation activities with Nepal, which will further strengthen ties in the field of law and justice between both countries.

METHODOLOGY OF INTERNATIONAL LEGAL COOPERATION AND ASSISTANCE BY THE KOREA LEGISLATION RESEARCH INSTITUTION

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I. FOREWORD

South Korea became the 24th member of the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) in 2009. Thus, the country's status switched from that as an aid recipient to that as an aid donor country. As the country is said to be a model that has accomplished great things, and most notably rapid economic development and democratization within a short period of time, many developing countries in Asia are trying to benchmark the country's achievements. Against this background, the country has come to engage in many projects designed to provide support for legal reforms in many developing Asian countries and countries that have undergone changes of political regimes.

South Korea's Official Development Assistance (ODA)-related businesses are performed mostly by the Korea International Cooperation Agency (KOICA). KOICA-led support is focused on governance, i.e., on the establishment of a sound public system and the reinforcement of administrative strength, rather than on legal reforms. Government agencies, such as the International Legal Affairs Division of the Ministry of Justice, the Court Administration Department of the Supreme Court, the Ministry of Government Legislation, the Legal Research and Training Institute and so forth provide direct or indirect support for countries that intend to reform their legal systems. However, the country remains at the inception stage in terms of the concept, system, implementation method, and contents of support for reforming legal systems of other countries. Even the terminologies adopted by different government agencies concerning the provision of

such support have not been unified.[1] Under such circumstances, it is feared that projects of this kind, if carried out without full consideration of methodologies, may be no more than a mechanical repetition of efforts undertaken in the past.

The Korea Legislation Research Institute (KLRI), for one, has carried out the International Legal Cooperation and Assistance Project ("the Project") since 2008. The Project is focused on the provision of support for reforming legal systems in developing countries and countries that have gone through changes of political regimes, as have done the Law & Development Project of the U.S. and the Legal Technical Assistance Project of Japan. As a late starter, the KLRI is looking for a way of exploiting its characteristics as a research institute to differentiate it from other similar institutions in the U.S., Japan, and even those within the country. However, it has many limitations, such as its inability to dispatch its personnel on a long-term basis for direct administration of projects, as do other government agencies, or to invite foreigners to training/education programs held in South Korea, or the difficulty of showing the results of its activities amid an increasing number of similar projects being undertaken by many other agencies. In this article, I will discuss some matters which I devoted myself to contemplating a great deal while participating in the Project last year. As stated in the beginning, our project-related methodologies are still in a transitional stage subject to revisions upon proposals.

II. CONSIDERATION OF THE PROJECT-RELATED METHODOLOGIES

A. Essence of the Project

The first thing that came to my mind ahead of any other things to consider in drawing up a plan for the Project was the essence of the Project. In my opinion, answers to questions concerning the purpose of the Project or desired results of the Project should precede considerations about targets of the Project or suitable methods to carry out the Project.

It can be said that the basic essence of the Project is to provide support for legal reform. The provision of this kind of support (i.e., concerning laws and systems of other countries) can greatly contribute to the invigoration of international exchanges and collaboration, in addition to having a considerable impact on the formation of legal

[1] Hee Doo Son, "Korean Experiences in Supporting Legislative System Revisions and the Role of G20 (article for discussion)," in G20 and Global Legislation Strategies, KLRI 20th Anniversary International Conference, July 1st, 2010, at 207.

systems and establishment of legalism in relevant countries.

Many developing countries and countries that have undergone changes of political regimes appear to be benchmarking the policies and measures adopted by South Korea to realize rapid economic development and democratization. Furthermore, Hallyu (Korean wave), the current vogue for South Korean pop culture in many foreign countries, also appears to be a factor behind their intense focus on the country.

B. Selection and Concentration

Advanced countries, including the U.S., Japan, and some European countries, have carried out programs to support legal reforms in other countries over the past decades. Many South Korean government agencies and law firms have also performed such projects for development of Asian countries, including Vietnam, Cambodia, and Laos. At this stage of development, questions concerning which selections to make and on what the Project should focus lingered in my mind.

To answer these questions, I paid attention to the characteristics of the KLRI, as its consideration would indicate what we could do through the Project and why we should carry it out. As a result, we reached the following conclusions: It is difficult for the KLRI, a research institution, to actively carry out a support project in recipient countries, like other government agencies, but the KLRI has an advantage. Compared to other government agencies, the KLRI enjoys neutrality and thus recipient countries will feel fewer burdens (freely make choices to accept support). Besides, the KLRI is able to propose useful alternatives to recipient countries through objective and comparable studies. This conclusion led us to focus on the following three factors in carrying out the Project: indirectness, neutrality, and objectivity.

Based on such logic, it can be said that our Project differs from the Legal Technical Assistance Project of Japan in that the former adopts a method of partial approach, whereas the latter stresses a comprehensive approach and thus involves overall matters, including governing authorities, judicial systems, legislation processes, legal education and training and others, in addition to legal reform.[2] The Japanese approach may be viewed as a more fundamental approach according to the opinion that innovation in a legal system should be based on changes in legal consciousness and culture, as

[2] SASAKI Yuta, “Daigaku ni yoru Kokusaikyouryoku no Ichirei toshite Ajia Houseibishien [Legal Technical Assistance as an Example of International Cooperation by Universities]” (Houritsu no Hiroba [Legal Plaza], Oct. 2001) at 34.

innovation in a legal system itself, which constitutes the supra-structure of a country's culture and economy, is merely a castle in the sky if legal consciousness or culture are not taken into account.[3] However, it is feared that, with such a comprehensive approach, a party's view may be overemphasized and become unbalanced. Should such a situation ever occur, it would damage the intended goals of the Project. Thus, we would rather not adopt such a comprehensive approach.

C. Suggestions

The U.S. has carried out the Law & Development Project to provide support for legal reform in recipient countries over the past forty years with a view to establishing the rule of law, guaranteeing political activities, forming a civil society, and establishing a social governance structure.[4] However, it was pointed out that the project was carried out based on a U.S. plan rather than in a way that it would encourage spontaneous innovation by recipient countries. The following factors were also pointed out: 1) institutional changes cannot be made only with the transfer of foreign laws; 2) a considerable amount of investment should be provided to support changes in a system[5]; 3) there are limitations to the provision of support for legal reform by ODA agencies; 4) participation of the private sector was promoted, but the basis for evaluating such participation was lacking.[6]

The Legal Technical Assistance Project of Japan appears to focus on the importance of respecting recipient countries' cultures and values, and is implemented in the form of partnership with local lawyers, paying attention to the criticism that the Law & Development Project of the U.S. was a one-sided attempt to transfer U.S. laws.[7] Japan makes efforts to conduct systematic studies of recipient countries' legal cultures and consciousness in the form of history analysis, and through field surveys and thorough assessment of local needs.[8] The Japanese project also stresses the need for training/education of talented people, a comprehensive approach and language-based communication,[9] and adopts interdisciplinary methodologies originating from legal

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[3] Yoo-Hwan Kim, "Current Situation of Assistance for Legal Reform – Japan.", in Oh-Seung Kwon et al., Assistance for Legal Reform in Transit Countries (Seoul National University Press, 2006), at 50.
[4] Eric G. Enlow, "Current Situation of Assistance for Legal Reform – U.S.A.", in Oh-Seung Kwon et al., Assistance for Legal Reform in Transit Countries (Seoul National University Press, 2006), at 9.
[5] Id, at 13.
[6] Id.
[7] See YAMASHITA Terutoshi, "Nihon no Houseibishien no Gaiyo [Outline of Japanese Legal Technical Assistance]", in the Korea Legislation Research Institute, The Lessons from Experiences of Japanese Legal Technical Assistance Project, The KLRI-ICD Joint Forum (Aug. 18th, 2011), at 14.
[8] SASAKI Yuta (supra note 2), at 34.
[9] Id, at 34-36.

history, legal sociology, and legal anthropology. It also strives to cooperate with other support donors while trying to secure its own uniqueness,[10] as well as proposing the need to establish a network with relevant countries and exchanging legal information.[11] It is thought that the adoption of such Japanese methodologies is associated with five major principles of ownership, alignment, harmonization, managing for results, and mutual accountability, which were presented at the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action.[12]

We at the KLRI would like to stress ownership and mutual accountability in particular, while applying the aforesaid five major principles to the Project. That is to say, a country's legal reform should not be carried out in accordance with the donor's one-sided ideas, and the relevant countries' perspectives should also be fully taken into account. Furthermore, a donor country should be able to propose the method most suited to the relevant countries based on their real needs.

D. Maintenance of Continuity

Legal reform is not a one-time event that can be completed within a short period of time. It requires a lot of time and effort and does not necessarily ensure good results. As such, aid donor countries need to have patience and make continued efforts,[13] and should expect gradual and sustainable results.

III. SELECTION OF METHODOLOGIES FOR THE PROJECT

A. Asian Legislation Information Network

The KLRI spent a year establishing the Asian Legislation Information Network (ALIN) in 2003, with the aim of exchanging legal information with other countries and providing support for legal reforms in those countries. Since then, the ALIN has cooperated with other Asian countries in the said field, holding international conferences, workshops and seminars. Currently, 23 universities and research institutions from 15 countries in total participate in the ALIN as members.

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[10] OZAKI Michiaki, "Houseibishien no Aratana Tenkai, Kokusaikyouryoku-bu no Shinsetsu [New Development of Legal Technical Assistance, Establishment of the International Cooperation Department]" (Houritsu no Hiroba [Legal Plaza], Oct. 2001) at 4.

[11] SASAKI Yuta (supra note 2), at 36-37.

[12] For more details about the Paris Declaration, see <http://www.oecd.org/dataoecd/11/41/34428351.pdf>

[13] See MORINAGA Taro, "Nihon niyoru Houseibishien no Genkyo 2 – Kambojia [Current Situation of Japanese Legal Technical Assistance 2 –Cambodia]" in the Korea Legislation Research Institute, The Lessons from Experiences of Japanese Legal Technical Assistance Project, The KLRI-ICD Join Forum (Aug 18th, 2011) at 71.

<Table 1. Partnership of the ALIN>

Year	Country	Partner Institution
2002	Korea	· Korea Legislation Research Institute · The University of Seoul
2003	Korea	· World Economic Law Research Center, Korea University · Legal Information Center on North Korea, Kookmin University
	Taiwan	· College of Law, National Taiwan University
2004	Korea	· Law Research Institute, Center for International Area Studies, Hankuk University of Foreign Studies
	Taiwan	· Science & Technology Law Center, The Institute for Information Industry on Legal Information of Taiwan
	China	· China University of Political Science and Law
		· East China University of Politics and Law
	Mongolia	· National Legal Center of Mongolia
	Thailand	· Faculty of Law, Chulalongkorn University
	Philippines	· The College of Law, University of the Philippines
	Indonesia	· Faculty of Law, The Gadjah Mada University
2005	India	· Indian Law Institute
	Malaysia	· Faculty of Law, The University of Malaysia
	Kazakhstan	· The Legislation Research Institute of the Republic of Kazakhstan
	Uzbekistan	· Tashkent State Institute of Law
	Russia	· Far Eastern National University
2006	Vietnam	· Vietnam Institute of State and Law
	Japan	· Center for Asian Legal Exchange, Nagoya University
2011	Cambodia	· The Royal University of Law and Economics

The objectives of the ALIN is to exchange materials and research results concerning laws, judicial precedents and any other legal information, to promote cooperation among related researchers and staff members, through mutual visits, and to build a horizontal network to distribute and thus maximize effective values of gained legal information and research results.

B. Roles of the ALIN

1. Establishment of Human and Material Network

- Establishment of a human and material network through which Asian legal information-related institutions or organizations are able to exchange their legal information and related knowledge as well as to cooperate with each other;
- Establishment of a system for Asian countries' joint participation and cooperation in projects or conferences related to laws; -
- Construction of a foundation for Asian legal information-related institutions' common use of the results of seminars or conferences, which are held separately by each of them;
- Foundation of a network for human and material exchanges among the related parties of the Asia Legal Information Network.

2. Creation of Legal Information Database Hub

- Creation of an online database of statutes, cases, official gazettes and any other legal information of Asian countries which will be freely available to Asian legal information-related institutions or organizations:
- Establishment and management of the ALIN Homepage (www.e-alin.org) through which legal information held by each of its partners is available to all of them;
- Provision of electronic data in English or any other relevant languages on legal information of Asian countries through web links where searching either in English or in any other relevant languages is possible, and an annual provision of a real-time translation service;
- Provision of systematically collected legal information of each Asian country as data pertinent for investment and research in each country.

3. Assistance in Projects to Improve Law and Education Program

- Establishment of a mutual assistance system to improve legal education and laws among Asian countries;
- Supplement of legal information required by any Asian country and establishment of an assistance system for improvement or reform of laws;
- Promotion of mutual cooperation and assistance in projects to improve laws as well as in related education programs among Asian countries.

Available legal information or related research results will be provided upon request.

C. Challenged Faced by the ALIN

So far, ALIN's activities have focused on the establishment and maintenance of a network for collaboration. In 2011, the ALIN started to promote collaboration among network members. At the International Conference held by the ALIN in 2011, the KLRI set four agenda items as follows for the purpose of promoting ALIN activities.

1. Joint Work in the Network

The members are requested to carry out joint studies on common subjects and share results in accordance with the need to study relevant subjects from diverse perspectives, propose proper alternatives, and present results to those who need such information.

2. Expansion of the Network

Currently the ALIN is composed of 23 member institutions from 15 countries, including the Royal University of Law and Economics in Cambodia, which joined the ALIN Conference 2011. The KLRI is making an effort to increase the number of member institutions of the ALIN as a venue for communication and exchange of legal information among members.

3. Exchange through the Network

The KLRI is striving to expand the scope of exchange among relevant human resources, in addition to sharing and exchanging information. We, along with the KOICA, are also preparing education programs on the legal system of South Korea in connection with the need to exchange and educate human resources who can analyze available information and propose proper alternatives for realistic resolutions of problems related to their legal systems.

4. E-communication within the Network

The KLRI aims to enhance the accessibility of information for member institutions by making available all information obtained through the network and by providing a venue for mutual communication at the ALIN website as one of the main channels of the Project.

IV. CONCLUSION

Any attempt to promote social development or political changes through legal reform requires long-term effort and a considerable amount of budget, in addition to abundant

professional knowledge and experience. Developing countries and countries that pursue changes of political regimes for social development via legal reform need to make self-help efforts, while learning from experiences of more advanced countries. We at the KLRI intend to help such countries find the method that is most suited to them, making the best use of our unique characteristics as a research institute, rather than simply conveying South Korea's experiences to them. For its realization, it is necessary for us to continue to exchange information with relevant countries through the ALIN, develop balanced perspectives through communication with relevant countries, carry out studies in an objective and neutral way, and ensure that recipient countries are able to freely select the most desirable results for them.

SUPPORTING RULE OF LAW IN MIDDLE INCOME COUNTRIES: REFLECTIONS FROM VIET NAM

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I. INTRODUCTION

1. In January 2009 I had the good fortune to address the ICD's 10th Annual Conference on Technical Assistance in the Legal Field on UNDP's strategy for supporting rule of law and access to justice, both globally and in Viet Nam, where I have now been working since 2008 as the Policy Advisor on Rule of Law and Access to Justice. Three years later, I am delighted to have this opportunity to provide an updated 'report from the field', reflecting on the progress of rule of law and access to justice in Viet Nam, the challenges and opportunities, and UNDP's response. I will take the opportunity in closing, briefly, to consider whether our experiences in Viet Nam hold any useful lessons for our work in other middle income country contexts.

2. Viet Nam is a socialist republic under the leadership of the Communist Party of Viet Nam. Ho Chi Minh's declaration of independence in 1945 was followed by three decades of devastating conflict, and then a further decade of extreme poverty with a failing economy under Soviet-style central planning, until the beginning of economic reforms in the late 1980s, known as the "renovation" or *đổi mới* in Vietnamese. Later, in the 1990s, came the commitment to governance reforms including the establishment of a "socialist rule-of-law-based state" (*nhà nước pháp quyền xã hội chủ nghĩa*).

3. This new commitment heralded a comprehensive transformation of the role of law in Viet Nam. Over the first 20 years of *đổi mới*, a comprehensive legal framework was enacted in place of a system which had once relied entirely on administrative directions; the legal profession, which had ceased to exist, was revived; law

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universities and faculties were established; courts and prosecution offices were fundamentally restructured, and their personnel given extensive professional training.

4. At the same time, a new policy of openness to the world outside enabled the international community to play a strong supporting role to these new initiatives. Starting with UNDP's first legal assistance project with the Ministry of Justice in 1992, an extensive network of international cooperation established itself through the 1990s, involving many bilateral donors (Japan, the US, Canada, Sweden, France, Denmark, the European Community…) and many legal agencies (the Supreme People's Court, the Supreme People's Procuracy, the National Assembly, bar associations…).

5. The first decade of the new century saw Viet Nam adopt high-level strategies for the future path of legal and judicial reform, the Legal Systems Development Strategy[2] and the Judicial Reform Strategy adopted by the Politburo in 2005[3], which set out the path for reforms through to 2020. The aim of the Judicial Reform Strategy is to place the courts at the centre of the justice system, and for adjudication to play the key role[4], with criminal and civil procedure reform giving greater rights to the parties and their lawyers[5]. At the same time, legal aid and legal awareness initiatives are to be strengthened[6], increasing access to justice for the poor and underprivileged, together with a more autonomous and better-trained legal profession[7], and a new Judiciary Committee of the National Assembly to provide strengthened democratic oversight of judicial bodies[8].

6. In 2012 we will pass the "half-way" mark for these 15-year strategies, and it is therefore an excellent time to review progress and reflect on the challenges ahead, and on how UNDP and other donors can help Viet Nam address them.

7. In the meantime, since the adoption of the strategies, Viet Nam has progressed to the rank of a middle-income country – albeit still for the moment in the lower-middle-income bracket – and in the years to come, we may expect bilateral donors to begin

[2] Politburo Resolution No. 48-NQ/TW of 24 May 2005 on the strategy for development and improvement of Vietnam's legal system to the year 2010 with direction to the period up to 2020 ("LSDS")
[3] Politburo Resolution No. 49-NQ/TW of 2 June 2005 on the judicial reform strategy to 2020 ("JRS")
[4] JRS paragraph II. 1.2
[5] JRS paragraph II. 2.1, 2.2, 2.3
[6] LSDS paragraph III. 2.1
[7] JRS paragraph II. 2.3
[8] JRS paragraph II. 2.5

to scale down their aid programmes in Viet Nam. Multilateral donors such as UNDP, on the other hand, are committed to remain in Viet Nam for a longer term, but we also need to consider the appropriate strategy for aid in a middle income country environment. I would therefore like to focus in particular on the changing nature of the challenges facing Viet Nam's legal and judicial reforms, and to explain how UNDP's own approach to supporting these reforms has changed in response.

II. LEGAL REFORM 2005-2011

8. The last few years have seen the continued strengthening of Viet Nam's legal framework. The 2006 Law on Lawyers[9] gave a clear regulatory underpinning to the legal profession, the rights and legitimate interests of lawyers, and paved the way for the national Vietnam Bar Federation which was inaugurated in 2009. The 2006 Legal Aid Law[10] enshrined the rights of the poorest and most disadvantaged to legal advice provided by the state, while Decree 77 in 2008[11] provided a framework for some non-governmental actors (such as the Vietnam Lawyers' Association, the Women's Union, and law universities) to provide free legal consultancy services. The rights of disadvantaged groups were strengthened through laws on HIV/AIDS[12], Gender Equality[13] and the Control and Prevention of Domestic Violence[14]. With regard to the law-making system itself, the revised Law on Legal Normative Documents[15] mandated publication of all draft laws, decrees and other major legal documents on websites for a 60-day comment period, as well as requiring regulatory impact assessments. Viet Nam also continued its policy of international integration through joining the World Trade Organisation in 2007[16], signing the International Convention on the Rights of Persons with Disabilities[17] and ratifying the UN

[9] Law No. 65/2006/QH11 of 29 June 2006, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4766. (this page, and all pages in this article, were accessed on 13 February 2012)
[10] Law No. 69/2006/QH11 of 29 June 2006, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4753
[11] Decree No. 77/2008/ND-CP on Legal Consultancy, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10786
[12] Law No. 64/2006/QH11 of 29 June 2006 on HIV/AIDS Prevention and Control, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4768
[13] Law No. 73/2006/QH11 of 29 November 2006, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3786
[14] Law No. 02/2007/QH12 of 21 November 2007 on Domestic Violence Prevention and Control, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3030
[15] Law No. 17/2008/QH12 of 3 June 2008 on the Promulgation of Legal Normative Documents, available at http://vbqppl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10500
[16] http://www.wto.org/english/thewto_e/acc_e/a1_vietnam_e.htm
[17] http://www.un.org/disabilities/countries.asp?id=166

Convention Against Corruption [18], as well as inviting international special rapporteurs on the right to health, ethnic minorities and extreme poverty to visit the country.

9. There still remain some important gaps in the legal framework. The Constitution provides for freedom of association and expression in accordance with the law[19], but legislation to protect these rights has still not been enacted [20]. Civil society organizations are still required to seek the state's permission to operate under a complicated regulatory system, while demonstrations remain subject to the discretion of state authorities. A law on Access to Information went through numerous drafts but has yet to be scheduled for consideration by the National Assembly.

10. Nonetheless, Viet Nam now enjoys a relatively comprehensive legal framework. Viet Nam is now, for the most part, a state which 'rules by law', so that the state's power is externally manifested by reference to duly adopted legal documents within a constitutional hierarchy with the National Assembly at its apex. The challenge now is to move further towards a 'rule of law' state, one in which the legal rules form part of a true legal system – a coherent hierarchy of norms which provide clear and reliable guidance on the state's powers and responsibilities, which also provide accountability mechanisms to ensure that the state acts within and according to those powers.

11. In particular, the legal framework still displays internal inconsistencies, gaps and ambiguities. Occasionally, public bodies act without reference to the legal framework, as for instance in August 2011 when the Hanoi People's Committee issued an unsigned document banning demonstrations which made no reference to any legal basis[21], and more recently when the Danang People's Committee issued a request to the Danang Police to stop granting residence permits to those in rented accommodation without steady employment, notwithstanding their entitlement to registration under the Law on Residence[22].

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[18] http://www.unodc.org/unodc/en/treaties/CAC/signatories.html

[19] Article 69, 1992 Constitution (amended 2001), available at http://www.asianlii.org/vn/legis/const/1992/1.html#A002

[20] A Law on Associations was originally scheduled for the 2006-2010 legislature but disagreement between state agencies and civil society resulted in postponement to a later legislative agenda. All three laws – on associations, demonstrations, and access to information, are on the 'reserve list' for discussion in the 2011-2016 legislative term, but there is as yet no clear timetable for any of these laws.

[21] See e.g. http://www.dawn.com/2011/08/19/vietnam-anti-china-protestors-reject-order-to-stop.html

[22] See http://www.thanhniennews.com/index/pages/20111224-vietnam-central-city-restricts-immigration-to-secure-development.aspx.

12. These problems are exacerbated by the lack of effective mechanisms to determine the legality and constitutionality of documents issued by public bodies. Courts have no power to interpret the law, still less to declare legal documents invalid for conflict with higher laws or the Constitution. The Standing Committee of the National Assembly has the power to interpret the Constitution and laws[23], but has exercised it only a handful of times (in respect of laws – never with respect to the constitution). The Ministry of Justice has a department charged with reviewing legal documents and resolving inconsistencies, but there are few recorded examples of it exercising these powers. These shortcomings have been increasingly frequently discussed over the past decade, with increasing calls for an effective constitutional review or "constitutional protection" mechanism.

13. Recognising these problems, the 2011 Party Congress resolved to introduce some form of constitutional review mechanism[24]. Later in the year, the Party Central Committee approved a process to amend the current Constitution by the end of 2013, and the Constitutional Amendment Drafting Committee which was established in August 2011 has been tasked, amongst other matters, with including a constitutional review mechanism in the draft[25]. What is not yet known is what form this review mechanism will take – whether, for example, through strengthening the existing function of the National Assembly Standing Committee, through giving the power of review to the Law Committee of the National Assembly, or through establishment of some form of Constitutional Court.

14. In terms of legal aid and the awareness of citizens of their rights, which is another vital component of building the rule of law, much work remains to be done. A recent UNDP survey showed that only about one-third of those surveyed were aware of legal aid services, while only 5% of poor people surveyed (and only 3% of the poorest people surveyed) had actually consulted legal aid offices for advice[26].

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[23] 1992 Constitution, art. 91.3. The recent Danang ban on registering people in rented accommodation (see paragraph 11 above) is reportedly also to be referred to the National Assembly Standing Committee for a decision as to its constitutionality and legality, see *Sài Gòn Tiếp Thị* 06.01.12, reported at http://sgtt.vn/Goc-nhin/157868/Ho-khau-bao-hien-va-giac-mo-chinh-quyen-do-thi.html (in Vietnamese)

[24] See Political Report of the Xth Central Executive Committee of the Party presented at the XIth Congress, section XI.1 (available in Vietnamese at http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=989&id=BT531160752)

[25] See National Assembly Standing Committee No. 11/TTr-UBTVQH13 *Tờ trình Quốc hội về việc triển khai thực hiện chủ trương nghiên cứu sửa đổi bổ sung Hiến pháp năm 1992* 2 August 2011, adopted by National Assembly Resolution 06/2011/QH13 of 6 August 2011 (available in Vietnamese at http://thuvienphapluat.vn/archive/Nghi-quyet/Nghi-quyet-06-2011-QH13-sua-doi-Hien-phap-Viet-Nam-nam-1992-do-Quoc-hoi-ban-hanh-vb127965t13.aspx)

[26] UNDP Viet Nam, *Report of Survey on Access to Justice from the People's Perspective* (2012, not yet published, copy available from author). More information about this survey and UNDP Viet Nam's other recent access to justice assessments can be found in

While quantitative data is available for the number of legal cases handled by state legal aid offices and so on, qualitative data assessing the impact of legal aid is much harder to come by.

III. JUDICIAL REFORM 2005-2011

15. Some significant judicial reforms were accomplished during the period. The Judiciary Committee was established within the National Assembly; the Vietnam Bar Federation was established; administrative courts were placed on a statutory footing with the enactment of the Law on Administrative Procedures [27]; the jurisdiction of district courts was expanded.

16. However, in the view of most stakeholders (including Party and Government stakeholders), the pace of judicial reforms has been slow[28]. For instance, although the Judiciary Committee was established within the National Assembly, the appropriate role of parliamentary oversight bodies over the judiciary remains unclear. In fact, there has been a setback in this area, with the introduction of new powers for the National Assembly, the President of the Supreme People's Procuracy (SPP) and the President of the Supreme People's Court (SPC) to request the highest court, the Judicial Council of the
SPC, to reconsider its own final and binding decisions[29]. These reforms have been criticized by observers and even by some state officials for jeopardizing the finality of judicial decision-making, prolonging court proceedings, and damaging public trust in the judicial system[30].

17. In the area of institutional reform within the judicial sector, progress remains uncertain. No clear plans for the reform of the court system and the introduction of regional courts (a clear direction in the Judicial Reform Strategy) have been

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UNDP's recently-published volume "Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region" (UNDP 2011) available for free download at http://www.snap-undp.org/elibrary/Publication.aspx?id=597

[27] Law No. 64/2010/QH12 of 24 November 2010

[28] See for instance the report of Mme. Lê Thị Thu Ba, Standing Vice-Chair of the Central Judicial Reform Steering Committee to the Legal Partnership Forum (co-chaired by Ministry of Justice and UNDP) on 14 December 2011 (copies available from author)

[29] See Law on Administrative Procedure (footnote 26 above), Articles 239-240; Civil Procedure Code, Articles 310a-310b (as amended by Law no. 65/2011/QH12 of 29 March 2011 Amending and Supplementing a number of Articles of the Civil Procedure Code)

[30] See for instance Nguyễn Văn Hiện (then Standing Vice-Chair of the Central Judicial Reform Steering Committee), "*Comparative Experiences in Considering, Resolving the Decisions made by the Supreme Court and Observation related to Mechanism Applied in Vietnam"*, presented at MOJ-UNDP Second Policy Dialogue on Administrative Procedures, March 2011 (copy available from author)

presented; no clear decision has been made about the future role and functions of the procuracy; and although discussions on the reform of the criminal procedure code have been in progress for some years, no clear policy direction has emerged.

18. Most fundamentally, little appears to have taken place to support the most fundamental directions of Resolution 49, under which the court was to be placed at the centre of judicial reform, with the trial as the central activity. Despite the principle that cases should be based on the arguments at trial, observers have detected no real difference in the trial system in Viet Nam. In criminal cases, in particular, it is reported that the judge, prosecutor and criminal investigators continue to meet to decide the outcome of the case in the absence of the accused or counsel[31].

19. In addition, in both criminal and civil cases, internal regulations requiring judges to discuss cases and receive guidance from a Judges' Council in advance of the trial further undermine the principle that court decisions should be based on arguments at the trial itself. A judge who failed to comply with this regulation in a recent murder case was subject to professional discipline[32].

20. In the area of judicial reform, also, the ongoing reform of the Constitution presents an opportunity for taking a step forward. Constitutional reforms are in any case necessary before the new four-tier court system and the new Regional courts can be introduced; and the guidance to the Constitutional amendment drafting committee also includes deciding on the future role of the Procuracy.

21. Importantly, the constitutional definition of the 'socialist rule-of-law state' will be revised. The definition in Article 2 of the current Constitution when last amended in 2001 provides that state power in Viet Nam is "unified and allocated to state bodies which coordinate amongst one another in the exercise of executive, legislative and judiciary powers". The recent Party Congress of January 2011 added the notion that each branch of state power has a role in controlling (*kiểm soát*) the powers allocated to the other two branches[33]. This takes us a step closer to the

[31]See for instance Phạm Hồng Hải, *"Renovating Organisation and Performance of the System of Institutions Practising Public Prosecution In Response to Judicial Reform"*, paper presented at the workshop on the Criminal Procedure Code reform organized by the Supreme People's Procuracy in Hanoi, September 2008 (copy available from author)

[32] See http://sgtt.vn/Thoi-su/151292/Chanh-an-tinh-Khanh-Hoa-tran-tinh-ve-"bao-an".html (12.08.11), http://sgtt.vn/Thoi-su/151404/"An-vang-loi"-va-an-luong-tam.html (16.08.11) (both reports in Vietnamese)

[33] See *Cương lĩnh xây dựng đất nước trong thời kỳ quá độ lên chủ nghĩa xã hội (Bổ sung, phát triển năm 2011)* (Party Political Platform) Section IV.2 available at

notion of checks and balances, although the reference to 'unified state power' reminds us that the doctrine of separation of powers is not accepted. The question of the proper limits to state powers – and in particular to executive power – and to the role of the other state powers in enforcing those limits – has been increasingly discussed in academic circles over the last few years. This change gives official legitimacy to this discussion.

22. This discussion is of considerable importance to judicial reform, and underlies all the issues discussed in this section. Defining the scope of legislative oversight over the judiciary, for instance, will give a clearer mandate and role for the Judiciary Committee of the National Assembly. A constitutional role for the courts in controlling the executive could lead to more visibility and effectiveness for the administrative courts. And a system in which the courts stand more autonomously between state prosecution and investigation on one hand, and the citizen on the other, will also be one which more effectively protects the rights of the accused in criminal cases. However, it remains to be seen how the notion of 'control of powers' will be understood in the context of 'unified state power', and how much clarity (if any) the amended constitution will provide on this fundamental question.

IV. UNDP'S EVOLVING STRATEGY TO SUPPORT LEGAL AND JUDICIAL REFORM

23. Governance issues are at the core of UNDP's mandate, and accordingly UNDP has always prioritized support to legal and judicial reform in Viet Nam. UNDP supported the first development project on legal reform after *đổi mới* with the Ministry of Justice in 1992, followed by the first development projects on parliamentary development with the National Assembly, and on judicial reform with the Supreme People's Court and Supreme People's Procuracy in 1995. Other donors were swift to follow and by 2000 a strong core of bilateral and multilateral donors were supporting multiple projects.

24. In that first decade of supporting legal and judicial reforms, the priority area of support for UNDP, as for other donors, was legal reform, with a particular focus on key legislation such as the civil and criminal codes and procedure codes, and the

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http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=989&id=BT531160562, also Political Report (see footnote 23 above) at section XI.1

legal framework for the new economic regime. Institutional reform mainly focused on technical assistance, helping the judicial agencies understand the different justice systems around the world, providing training and also helping modernize the information technology and other resources within what was then still a very poor country.

25. At the start of the new millennium, the emphasis moved to strategic planning, with a comprehensive donor-supported legal needs assessment in 2001 which led in turn to the 2005 legal and judicial reform strategies of the Politburo.

26. In 2006 UNDP took stock of its support to governance in Viet Nam, including legal and judicial reform, and concluded that just as Viet Nam and the challenges facing it continued to change, UNDP would also need to change the way it supported Viet Nam.

27. In the first 20 years of *dổi mới*, as remarked above, Viet Nam was a lower-middle income country which needed to establish a basic legal framework and some legal institutions (such as the legal profession) from 'scratch' and to transform and professionalise the other legal and judicial institutions at the same time. Technical and financial challenges were the priority, and there was a strong community of interest between the development community and the state, and between the state institutions themselves. Despite the fundamentally political nature of the reforms in question, donors' strategies relied on the conviction that technical solutions could be found to achieve them. The better Vietnamese institutions understood the outside world, the more successfully they would adopt international notions of the rule of law, including separation of powers and an independent judiciary: or so donors believed.

28. However, after the initial restructuring of the institutions, it became clearer that in the next stage of reforms, there would be 'winners and losers' and that further reforms would be harder to achieve. As procuracy, police investigators, judges and lawyers become more competent, professional and self-confident, they naturally seek to strengthen their authority - at the expense of other agencies. Each will naturally focus on those aspects of foreign models which favour their own institution.

29. The Judicial Reform Strategy gives the Communist Party the leadership of judicial

reforms[34], and indeed it alone can resolve those questions on which different agencies have conflicting interests. However, the growing strength of the institutional culture within each body also gradually weakens the Party's authority in practice, or rather results in conflicting views within the Party as to what the appropriate resolution should be. While the Party maintains a clear and united front to the outside world, multiple different interests and views can be found within it. Judges, prosecutors, police and even some lawyers are, after all, also members of the Party and will seek to advance their own interests within it.

30. Shortly after the adoption of the Judicial Reform Strategy, and in line with the directions of that strategy, the Internal Affairs Committee within the Party, which had previously directed judicial reform within all the agencies at both central and local levels, was disbanded, and the direction of judicial reform was instead confided to a new Judicial Reform Steering Committee, on which the head of each judicial and legal body was represented, so that future directions from the Party would represent the consensus decisions of all agencies. Predictably, it has proved harder for the Judicial Reform Steering Committee to direct judicial reform than its predecessor.

31. A further observation is that cultural and historical factors become more important at this stage of judicial reforms. They were not a hindrance to the first tasks of building a basic legal framework, providing basic training for judges and prosecutors, and rebuilding the legal profession. But the historical weakness of the judicial power and its subservience to the executive, together with the absence of a public culture of trusting the courts as impartial and effective arbiters to resolve disputes, present more serious challenges to the next phase of objectives, such as placing courts and trials at the centre of the justice system. In such cases, merely understanding how other countries have built the rule of law, although an essential first step, does not answer the more difficult question of how to implement such reforms in a different cultural and economic context. How do courts gain judicial power so that they have the confidence to render decisions against the executive, and ensure their enforcement? How to persuade citizens to entrust their decisions to the courts when an informal, personalized approach to local government officials has proved to be more effective for decades or perhaps even centuries? Increasingly, the Vietnamese are asking not so much what the goals of judicial reform should be,

[34] JRS I. 2.1

but rather how to get there from their current political, institutional, cultural and historical context.

32. These factors go some way towards explaining why judicial reforms seem to have 'slowed down', and why it proved easier to construct a legal framework than to resolve the remaining systemic issues of internal conflicts and inconsistencies. They also illustrate the shortcomings of UNDP's traditional project model as a vehicle for supporting judicial reform. UNDP projects are multi-year engagements with a single implementing partner, with clear objectives and outcomes defined at the start within a clear logical framework of expected results and required resources. Technical expertise, both international and national, is under the control of the implementing partner. Such a framework is ideal for a project with clear identity of interest between the donor and the host country, where the policy objective is clear, and there is an agreed path of technical assistance to achieve it. But where the path ahead is not clear, and reform is essentially political and contested between different institutional actors, this framework is less well suited. Whichever agency is chosen as the implementing partner will be likely to favour its own institutional interests, and international experience may itself be used selectively for that purpose. Furthermore, deciding at the outset of a project which reforms will be achieved and within which timeframe is a risky enterprise. Even the simplest element of a reform process – supporting a particular law which has been scheduled in the legislative calendar – may fail if conflicting interests cannot be resolved, as was the case recently for the Law on Associations and the Law on Access to Information. And in fact achieving a new law or policy direction may be the 'easy part' – implementing reforms that require changes to the political economy and the culture is the real challenge, as the experience of judicial reform in the last decade clearly demonstrates.

33. Reflecting on this changing environment, the 2006 review of UNDP's work in the governance field concluded that UNDP needed to complement its governance project portfolio with a new policy advisory team, comprising resident full-time international and national expertise, reporting to UNDP itself rather than under particular projects, and supported with its own separate budget. The newly-recruited policy advisors would have the flexibility to work with a broad spectrum of counterparts – Party and state agencies, lawyers and civil society – identifying emerging opportunities to support strategic policy change in governance, including rule of law and access to justice. Accordingly, in 2007 UNDP Viet Nam recruited its

first Policy Advisor for Rule of Law and Access to Justice, the first and to this day still the only example of such a post at the country office level[35].

34. The Policy Advisory function in no way replaced UNDP's project portfolio. Projects remain fundamental as a vehicle for cooperation with state agencies in Viet Nam. However, the Policy Advisory capacity enhances and complements projects, for instance by:
    - Identifying emerging opportunities for supporting policy change with existing partners and ensuring that the project work plan is amended to accommodate this;
    - Commissioning research in areas not currently covered in project frameworks, in order to highlight a 'missing dimension' of key governance issues which can then be integrated into project frameworks or in newly formulated projects.

35. At the same time, Viet Nam was also selected as one of eight countries to undertake a pilot "One UN" initiative under which all UN agencies would function under one UN leader, with one budget and one overall country programme. A key dimension of this reform was to focus each UN agency on its area of comparative advantage. This placed a special responsibility on UNDP's rule of law and access to justice work, since UNDP leads on governance issues within the UN system. Therefore, the policy advisor would be responsible not only for UNDP, but to help ensure coherence and impact for the UN's engagement on rule of law and access to justice as a whole, and as a result to act as a resource for other agencies to ensure that the law and justice dimensions of their work are also fully realized in our programme.

36. Responding to the country situation analysis above, UNDP defined the following strategic priorities for the post of Policy Advisor for Rule of Law and Access to Justice:
    - Maximising UN comparative advantage, focusing on areas which the UN is better placed to address;
    - Using the UN's convening power to support better policy dialogue between the international donor community as a whole and Vietnamese counterparts, and improved aid effectiveness;

[35] Another Governance Policy Advisor was also recruited to address public administration reform and anti-corruption, to which similar considerations apply. The head of the Economics Cluster became the Policy Advisor on Economics; later a new Policy Advisor on Climate Change was appointed, recognizing the importance of supporting policy change in this field.

- Ensuring engagement along the law and justice dimensions of the UN's programme as a whole, including in those areas on which other agencies take a lead;
- Working both with state agencies and with civil society to enhance the role of the latter in enhancing access to justice and in advocating with state bodies on behalf of the poor and disadvantaged;
- Ensuring engagement along the law and justice dimensions of the UN's programme as a whole, including in those areas on which other agencies take a lead;

V. THE NEW APPROACH IN PRACTICE: A BRIEF OVERVIEW OF UNDP's WORK ON RULE OF LAW AND ACCESS TO JUSTICE SINCE 2008

A. Judicial Reform

37. UNDP in 2009 began a cooperation based on comparative research with the secretariat of the central Judicial Reform Steering Committee within the Communist Party of Viet Nam, the first and still the only international development partner to do so. As discussed above, different stakeholders have conflicting interests in the main judicial reform issues now facing Viet Nam. The Party is in the strongest position to resolve those issues and determine the directions which should be taken in the interests of the country's development, and to do that, it needs impartial expert analysis which is able to bring foreign expertise to bear in a way which can be applied practically in the context of Viet Nam.

38. Our first joint research with the Party brought international experts on five jurisdictions – China, Russia, Japan, the Republic of Korea and Indonesia – to Viet Nam to present on the way that those countries have organized their justice systems, their achievements and the challenges facing them in establishing the Rule of Law.

39. The next research project focused on the critical linkages between judicial independence and the management of the judiciary. For this research, China was chosen as a comparator, because although China is still a transitional economy which has neither an independent judiciary nor the rule of law in the sense that those terms are understood in Western systems, its political and cultural context bears many similarities to Viet Nam. The solutions and strategies it has adopted, and the

problems it has faced, therefore offer useful guidance to Viet Nam in how to make the transition from a centrally-planned Leninist political economy based on 'socialist legality' and democratic centralism to the ideologically very different structures of a constitutional republic under the rule of law. This illustrates our approach to the issue highlighted above – focusing not so much on rule of law 'best practices' from Western countries, but on the more difficult issue of the immediate path forward for Viet Nam from its current vantage point.

40. Effective comparative research requires not only a clear understanding of the world beyond Viet Nam, but also a clear and objective picture of the situation in Viet Nam itself. In fact, conducting objective policy research on the situation in Viet Nam is a key priority for UNDP support, because the culture of evidence-based policy making is not yet sufficiently entrenched in Vietnamese practice, with the attendant danger that a flawed situation analysis will lead to flawed policy solutions.

41. For this reason, the comparative research project on judicial administration also includes in-depth research within Viet Nam, and accordingly a questionnaire designed by independent legal experts has been sent to all of Viet Nam's judges. Some 2,400 responses have been received (about half the total judiciary), and this data will provide the most complete picture of the views and experiences of the judiciary themselves that has ever been collected in Viet Nam.

42. The forthcoming revision of the Criminal Procedure Code presents another key strategic opportunity for reform, especially from the perspective of strengthening the accused's fair trial rights in line with international standards. Complementing the support offered by other donors to the Supreme People's Procuracy, which is drafting the amendments to the Code, UNDP has chosen to support the Vietnam Bar Federation (VBF) in its submissions on behalf of criminal defence lawyers, since improved access to counsel and strengthened rights for defence counsel are of key significance in relation to human rights. In addition, UNDP commissioned independent research on Access to Counsel in Criminal Cases based on surveys and interviews with practicing lawyers and others, highlighting a number of critical issues which the VBF has used as the basis for wider debates and discussion[36]. In 2012, UNDP will work with other donors to support the VBF in addressing key issues facing lawyers under the current system in dialogue with international experts

[36] UNDP Viet Nam, *Report on the Right to Counsel in Criminal Law and Practice in Vietnam* (2012, not yet published, draft copy available from the author)

from a number of countries, to help the VBF provide strong evidence-based policy advocacy to strengthen the role of lawyers through the current reforms.

B. Rule of Law

43. UNDP has prioritized support to debates on constitutionalism and the relationship between state powers. As discussed above, the emerging dialogues on limitation of state powers, controls between state powers, and reviewing constitutionality of state acts are of central importance in transitioning from 'rule by law' to 'rule of law', and to bring systematization and coherence to the body of legal norms in Viet Nam. UNDP has supported leading scholars to publish advocacy in favour of a more effective mechanism for constitutional review, and now that the constitutional amendment process includes clear directions towards the establishment of such a mechanism as well as the realization of controls between state powers, UNDP is preparing to support multiple stakeholders – the National Assembly, the Government, the Party, academics and civil society – to engage more deeply in this debate.

C. Access to Justice

44. The legal system cannot function as an effective accountability mechanism unless citizens are empowered to realize their rights and make the law work for them in practice. Lawyers are concentrated in the big cities and are unaffordable for most of Vietnam's citizens. Ensuring that the poorest and most vulnerable have access to legal advice which empowers them to improve their lives through protecting their rights will always be one of our highest priorities.

45. Currently we work with two main partners. The Vietnam Lawyers' Association (VLA) is a non-governmental organization with thousands of legally-trained members throughout the country, and it has been progressively establishing free legal consultancy centres in most of Viet Nam's provinces. We have been helping these centres to think more strategically about the key legal issues facing the poor and disadvantaged and how they can help address them. In 2011, for instance, the Binh Thuan Lawyers' Association helped people whose land had been compulsorily required for state projects to gain compensation, while the Lam Dong Lawyers' Association helped ethnic minorities to enjoy more secure tenure of their land by acquiring official land certificates.

46. In 2012, we will add a new focus area of environmental enforcement. Environmental

pollution is a growing threat both to human health and human livelihoods, and the state enforcement agencies have become overstretched and proved unable to meet the needs for effective environmental protection. In other countries, like China, non-governmental organizations have helped victims of pollution to claim compensation against polluters in mass tort claims, and more recently to bring public interest litigation to strengthen environmental protection. This has only recently begun to happen more in Viet Nam, and UNDP will seek to support the VLA and other civil society organizations to engage more effectively in this role in future.

47. We have also recently begun to work with universities, which are increasingly establishing legal advice clinics in their law schools. These programmes expose law students to social justice and give them practical experience of explaining the law to ordinary people, listening to their problems and helping to solve them. At the same time, they provide an important new source of legal advice and assistance to poor and disadvantaged communities. We are helping eight law schools across the country to establish clinical legal programmes (we may add more to that number this year) and to carry out legal awareness-raising and advice.

48. In addition to our programmatic work, we maintain a strong programme of policy dialogue and aid effectiveness initiatives. Since 2008, UNDP has convened regular meetings of donors active in the legal and judicial sector to ensure better coordination of our aid support and a clearer strategic focus to our joint work. Complementing this, UNDP and the Ministry of Justice co-chair an annual Legal Partnership Forum as the main policy dialogue in our sector, which has been recently complemented with quarterly thematic policy dialogues covering issues such as administrative detention, administrative courts and the ongoing constitutional reform process.

VI. SUPPORTING RULE OF LAW IN MIDDLE INCOME COUNTRIES: SOME REFLECTIONS ON THE VIET NAM EXPERIENCE

49. Four years on, the Policy Advisory Team has become an established part of the country office structure in Viet Nam. It has demonstrated the benefits of full-time resident expertise, international and local, directly accountable to UNDP and is able to establish good connections with all stakeholders and to take advantage of emerging opportunities, both through and outside the existing project portfolio.

50. Although the impetus to create the policy advisory team arose in the specific context of Viet Nam, we believe that many countries are likely to experience a similar change in their development trajectory once they reach middle income status. UNDP, in common with many development agencies, is paying more attention to the particular characteristics of development assistance in middle income countries. Traditionally, aid was reserved for the poorest countries and donors would begin to withdraw as countries entered middle income status (as indeed is beginning to happen in Viet Nam, with Sweden making no new commitments and DfID announcing the end of aid within the next five years). This makes sense in areas where the main need is for financial or technical expertise, as the country can increasingly afford to pay for its own development. But in areas like governance, the political challenges become greater as we have seen. The need is not so much for money, but for expertise which can establish a bridge between the successes of other countries and the particular social, cultural, institutional and above all political factors at home.

51. UNDP's mission is to build those bridges, and that is why our corporate strategy worldwide now requires us to be, first and foremost, a knowledge organization, based on the provision of policy advice which empowers our counterparts to find their own paths through the complex challenges in governance and similar fields. While the institution of policy advisors at country office level is, for the moment, a Vietnamese innovation, we in UNDP Viet Nam believe that it deserves serious consideration elsewhere, particularly in middle income environments. At the same time, if the international community is genuinely committed to good governance, it needs to understand more clearly that, at least in that area, middle income status does not signal the end of a country's need for development assistance. Rather, it signals the beginning of a new phase in which, if anything, it will ask more of its development partners than before – in terms of expertise and flexibility, if not in terms of money.

PROGRESS AND CHALLENGES OF THE RESEARCH AND EDUCATION CENTERS FOR JAPANESE LAW

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I. INTRODUCTION

The Nagoya University Graduate School of Law (GSL) and the Center for Asian Legal Exchange (CALE) have been implementing different legal education assistance projects in cooperation with other Japanese and foreign universities, the Ministry of Justice, JICA, and the Ministry of Education, Culture, Sports, Science and Technology of Japan, to assist legal reforms in transitional countries in Asia by means of human resources development. In the last few years, the GSL and the CALE added some new features to their assistance projects for legal education development in some Asian countries. This paper briefly describes some of these new features, with particular focus on the Research and Education Center for Japanese Law (CJL) projects that have been established since 2005 in different parts of Asia, and on the relevance of these projects to the capacity building aspect of legal assistance in general.

The following section will review these projects in the context of GSL/CALE's approach to legal assistance in Asia. The third and fourth sections will briefly describe some of the latest progress and existing challenges of the projects.

II. AN OVERVIEW OF THE GSL/CALE APPROACH TO ASSISTANCE IN CAPACITY BUILDING

Perhaps there is no need to argue that legal assistance should be understood as more than technical advisory services or legislative development cooperation. A sustainable regulatory or legislative measure requires not only the adoption of a suitable regulatory or legislative framework, but also aftercare in the form of assistance in the

implementation, application and dissemination of information regarding these measures. It is arguable though that aftercare can be politically sensitive in some contexts and not appropriate for external inputs. However, some of these arguments may simply go too far. It may better be debated carefully in terms of the degree of engagement, the level of responsibility from the donors' perspective, and the long-term efficiency of legal assistance projects. So long as aftercare does not go beyond technical advisory assistance and the donors' responsibility is to secure an appropriate usage of technical knowhow and information which has been transferred to recipient countries, at least for an initial period of time, aftercare is not only necessary but may also be somehow mandatory. In a cooperation project through which knowledge is transferred from the donor to the recipient, the two partners should have shared responsibilities to ensure that proper transfers have occurred and the new usage of the knowledge serves for the original, or at least related, purposes for which the knowledge was meant to be used in the first place.

Capacity building as a form of aftercare within the limits of technical cooperation or assistance should be considered appropriately and technically necessary in a legal education assistance project. Promoting capacity building in the acquisition of legal knowledge and application in a broader sense is therefore an indispensable part of legal education assistance. As a powerhouse for academic research and education, universities are primary sources of partnership for these types of capacity building projects.

For more than one decade, Nagoya University has been expanding its education programs to admit foreign students or organizing short-term and long-term training courses for young professionals working in legislative development or legal reform in transitional and developing countries as an important part of its contribution to legal cooperation activities at the regional and global levels. Nagoya University has developed English lecturing programs for foreign students who come to pursue advanced education in comparative studies in law and political science. These are long-term degree programs normally lasting for two to three years. The University has also been working closely with JICA and other Japanese aid agencies to develop short-term training programs for legal professionals and government officials from other Asian countries to take part in intensive lectures and field work in Japan. These programs aim to provide trainees with first-hand information about Japanese experiences in legal and institutional reforms and techniques in legislative and regulatory development.

The short-term training programs are usually conducted in Japanese and are interpreted or translated into the native language of trainees. For example, in autumn, the CALE has

frequently organized one short training program with the Ministry of Justice of Uzbekistan to discuss with trainees the latest draft Law on Administrative Procedure which the Government of Uzbekistan has developed with technical assistance from the Japanese government. The CALE is working directly with JICA in implementing this technical assistance project for Uzbekistan together with the Ministry of Justice of Uzbekistan. The CALE has also conducted, jointly with JICA, a two-week training program in Nagoya and Tokyo for young judges and prosecutors and other legal professionals from Iran for five consecutive years. All these training programs were implemented in Japanese with interpretation into the native languages of trainees. All relevant documents were also translated into the participants' native languages for their easy reference.

Despite the relative successes and importance of these short-term training and long-term education programs, we know very well that they are technically inadequate and cannot take up real challenges. The greatest challenge of short-term training programs is the warranty of an effective and technically accurate translation and interpretation services. The immediate handicap is an effective use of short time-limits to produce the greatest results. Good quality translation and interpretation services between different languages to accurately convey the meanings of technically sensitive legal terminologies are not easy. Much time is needed to prepare trainees with minimum understanding and knowledge about some basic concepts of a different legal system before technical niceties and relevant details in that legal system can be effectively transmitted and become useful for trainees to introduce into their work back home. Preparations are never sufficient in most short-term intensive training courses.

The same challenges exist in long-term non-Japanese education programs for foreign students. Foreign students can have only limited access to Japanese legal and academic resources. As most materials and research outputs are published in Japanese, there are serious hurdles which they cannot overcome in pursuit of high quality academic knowledge in Japanese law and political thoughts by relying exclusively on materials written in English. Thus, the latest effort has been to prepare potential graduate students with sufficient Japanese language skills and basic background knowledge about Japanese legal, political and social systems early enough before they come and pursue advanced legal education in Japan. In cooperation with counterparts in some recipient countries, Nagoya University has set up Research and Education Centers for Japanese Law (CJL) in law universities or faculties abroad. At the Center, a small number of selected capable students can have mostly free access to Japanese materials and training in the language

and social studies. They do this as an additional curriculum and not as a replacement of their routine curriculum to be completed at the undergraduate level of their home universities.

III. AN OVERVIEW OF THE PROGRESS

Students in these CJL courses start taking intensive Japanese language lessons in the first and second years of their undergraduate study, with the focus being shifted gradually from general Japanese to “Japanese for social sciences”. Japanese lecturers will be dispatched or recruited by Nagoya University as coordinators for these courses. These Japanese language teachers will teach side-by-side with a few local lecturers recruited as assistant lecturers in Japanese language classes. In the third and fourth years, students will be given lessons in basic Japanese law. The number of language-oriented classes for these juniors and seniors will be gradually reduced and partly replaced by law-oriented classes, particularly in the fourth year. One Japanese lawyer or young Japanese legal scholar will be based in each of the CJLs to coordinate these law-oriented classes. Additional intensive law lectures are also delivered several times a year by Japanese professors who visit the centers on an *ad hoc* basis.

This program design is useful in two ways. First, intensive training in Japanese reading and writing skills helps enhance the students’ direct access to technical knowledge about the Japanese legal system and political thoughts and make their post-graduate research in Japan more useful after returning home. Second, by operating directly inside the recipient countries, Nagoya University is able to develop very specific curriculum and academic instructions to train a specific group of high-potential foreign students for their post-graduate research projects in Japan. The University is trying to adjust its activities to specific country or regional contexts to help students of different linguistic and cultural backgrounds gain equal access to Japanese language and technical knowledge about Japanese legal and political systems.

However, assistance in the operation of these projects is by no means open-ended. The plan is to hand over the whole operation to a local partner institution, once sufficient local human resources have been made available. It is expected that some of most successful graduates from further studies in Japan will return to their home country as scholars in Japanese law and replace Japanese lecturers in the long-run. The same BOT principle used in most development aid logics can therefore be equally applicable in the

context of legal technical cooperation.

IV. SOME CHALLENGES AHEAD

Four Research and Education Centers for Japanese Law have been established so far in Uzbekistan (2005), Mongolia (2006), Vietnam (Hanoi, 2007) and Cambodia (2008). A fifth one was established most recently on January 7, 2012 in Ho Chi Minh City, Vietnam. The first generations of students have successfully graduated from the former three Centers. Some are in the process of completing their LL.D. and LL.M. degrees, and a smaller number have successfully done so in Nagoya. The first group from the Center in Cambodia will also graduate this fall, and the best one or two students are expected to pursue their further education in Japan under Japanese governmental scholarships. By then, there will be a full picture of the four earlier results of this project. Fair assessments of successes and failures of the courses in each Center will only be possible some more years down the road, but experiences of the last five years have given rise to a few important observations about the promises and challenges of these projects.

The four-year intensive Japanese language training in the Centers has been very successful in producing a group of young Japanese-speaking law students in the partner universities. Those who managed to finish the four-year course have generally become able to communicate and discuss academic themes with their Japanese peers and advisors with few difficulties. They are able to gain direct access to knowledge about Japanese law and politics from a vast number of sources written in Japanese when they come to pursue further education in Japan. The facilities at the Centers, including libraries and other equipment necessary for the development of their language and comprehensive skills have also proved to be very helpful for their four-year intensive pursuit of Japanese language and basic knowledge about Japanese law.

Moreover, the advantages of their Japanese skills have also given rise to new expectations for their academic achievements in Japan. Since they have to take courses and write their thesis in Japanese when they come to pursue post-graduate degrees in Japan, they may end up having to compete with their Japanese peers in producing quality dissertations. In order to achieve this, they need more than a mere capacity to read and write in Japanese. They need also the capacity and devotion to do research and analyses in a way compatible with the standards normally required of Japanese graduate students in Japan. But in many cases, students from other Asian

countries were not given the same kind of research training at their home universities as that offered at Japanese universities. They are not used to exactly the same way of doing research or analyses that their advisors may expect them to do after they have come to Japan. In other words, there exist some fundamental differences among Asian university education systems with regard to the culture of research and analyses. Some of the differences may be caused by large material gaps, in terms of library services and availability of references. Others may be due to differences in the attitude of scholars in Asia towards an appropriate approach to research and education or analyses in the field of social sciences. The peculiar ways of teaching and training in different countries, universities, and social contexts give birth to different perceptions about education and academic research. Although it is important to keep this diversity in academic development, it is also important to make sure that certain common denominations are developed as the minimum requirements of a general standard of academic pieces of work to be produced by students that are acceptable by the larger majority in academic circles. The Research and Education Centers for Japanese Law may have to confront this problem of academic differences and diversity in a sensible and healthy way. This is undoubtedly one of the major challenges awaiting the Centers for many years to come.

Another challenge of the CJL projects is the future smooth transfer of their whole management and operation to the local partner institutions. Human and budgetary resources are the key to this transfer. The Center at Ho Chi Minh City University of Law is a new attempt in this direction. Unlike the other four earlier Centers, students do not have completely free access to the education at this Center. They have to pay a small additional amount of tuition for their studies at the Center. The Ho Chi Minh City University of Law also pays the salaries of local and other lecturers recruited locally from the very beginning of the project. Nagoya University mainly focuses its assistance on curriculum development, program coordination, and dispatches of coordinators and *ad hoc* professors as may be needed. The transfer of expertise in education and management knowhow is expected to be easier in the future.

This paper is based on the memos taken by Professor MATSUO Hiroshi of Keio Law School, and the minutes of meetings prepared by Mr. MATSUMURA Shota (Faculty of Letters, Keio University) and Ms. SUGITA Ayako (Faculty of Law, Keio University) in video conferences, a training course in Japan, a local seminar, etc. held for the Project for Laos. Professor MATSUO takes the final responsibility for the wording and content of this paper.

ASSISTANCE IN THE DRAFTING OF THE "BASIC EXERCISE BOOK ON THE CIVIL CODE" IN THE PROJECT FOR HUMAN RESOURCE DEVELOPMENT IN THE LEGAL SECTOR IN LAOS

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I. INTRODUCTION

As part of the Project for Human Resource Development in the Legal Sector in Laos[1], the drafting of the "Basic Exercise Book on the Civil Code" is ongoing[2]. This is considered as preliminary work for drafting a "Model Teaching Material (Textbook)" which will cover the whole Civil Code[3]. The work will be performed by the counterpart organizations of the Project, namely: the Ministry of Justice, People's Supreme Court, Supreme People's Prosecutor Office, and the National University of Laos, with the aim of helping establish jurisprudence in Laos. The work began in July 2009 by first drafting six basic questions on the major areas of the Civil Code[4] and preparations were made to draft solutions to those questions when applying Laotian law and Japanese law[5]. For this purpose, a working group composed of the

[1] See WATANABE Shoko, Raosu Houritsu Jinzai Ikusei Kyouka Purojekuto Kaishi-madeno Keii Oyobi Purojekuto no Gaiyo Shoukai [Background to the Commencement and Introduction of the Outline of the Project for Human Resource Development in the Legal Sector in Laos]. ICD NEWS No.44 (2010) at 4-27; SATO Naoshi, Raosu Houritsu Jinzai Ikusei Kyouka Purojekuto Tachiage ni okeru Kyoutsuu Rikai no Keisei – Hon'anken Keisei Purosesu no Gan'i to Kyoukun [Formation of Common Understanding in Launching the Project for Human Resource Development in the Legal Sector in Laos – Implication and Lesson of the Formation Process of this Project]. ibid. at 28-34.

[2] See ITO Hiroyuki, Raosu Houritsu Jinzai Ikusei Kyouka Projekuto Dai-ikkai Honpou Kenshu [The 1st Training Course for the Project for Human Resource Development in the Legal Sector in Laos]. ICD NEWS NO. 47 (2011) at 194-199, esp. 195-197.

[3] Prior to this project, assistance was given in drafting a textbook on the Civil Code. See KOMIYA Yumi, Kakkoku Houseibi Shien no Joukyou – Raosu – [Situation of Legal Technical Assistance in Each Recipient Country – Laos -]. ICD NEWS No.16 (2004) at 11-16; TANAKA Kazuko, Raosu Houseibi Shien Purojekuto no Jisshi Gaiyou to Sono Seika ni tsuite [Outline and Results of the Implementation of the Legal and Judicial Development Project in Laos]. ICD NEWS No.30 (2007) at 14, 20-21; MATSUO Hiroshi, Raosu Minpou Kyoukasho Sakusei Shien ni tsuite – 1. Kaiko to Tenbou – [Assistance in Drafting a Textbook on the Civil Code of Laos – 1. Retrospect and Prospect -]. ibid. at 40-56; NOZAWA Masamichi, ditto – 2. Saikenhou ni tsuite – [ditto – 2. on Claims Act]. ibid. at 57-66; KOZUMI Kenzaburo, ditto – 3. Tampohou ni tsuite – [ditto – 3. on Mortgage Act]. ibid. at 67-70.

[4] See [Appendix] at the end of this paper. The draft was prepared by Professor MATSUO Hiroshi and the final version was completed in consultation with Ms. WATANABE Yoko, former government attorney of the International Cooperation Department (ICD). Comments from Ms. AKANE Tomoko, former Director of the ICD were also reflected in the final version.

[5] Sample answers when applying Japanese law were prepared by Professor MATSUO Hiroshi, translated into Laotian and forwarded to the WG in Laos.

representatives of the above-mentioned four counterpart organizations (hereinafter referred to as "WG") and an advisory group on the Civil Code (hereinafter referred to as "AG")[6] were organized in Laos and Japan, respectively. They elaborated on the content of questions and answers through video conferences using JICA-Net, a training course in Japan and a local seminar[7].

In this working process, meaningful exchange of legal information was provided between Japan and Laos, such as: the status quo of Laotian law, unique legal concepts, ideas and law interpretation methods in Laos and comparison between Laotian and Japanese law. This exchange of information itself seems instrumental for future legal cooperation between both countries. In the following section, the paper focuses on important issues found and points discussed during the course of exchanging legal information.

II. STUDY OF INDIVIDUAL ISSUES

A. Immovable Property Transactions

1. Concept of ownership of land

[Question 1] is related to the legal system of immovable property transactions. As its precondition, the concept of ownership of land becomes an issue. The Constitution of Laos (revised in 2003) provides, "Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws" (Article 17)[8]. Based on this provision, it can be also construed that an individual citizen (private person) is able to obtain the "right to use" land upon permission by the State[9]. The draft answer by the WG reads that an individual citizen (private person) holds "ownership" of land, which can be sold, purchased and transferred between private persons. According to the WG, in the enactment of the Constitution, land ownership was discussed, and they concurred that the concept was that the people as a nation own the land. The Property Law also prescribes that land is owned by the whole State and that individuals are granted the right to use it and the right of inheritance under the control of the government[10].

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[6] The Japanese AG is composed of Professor NOZAWA Masamichi of Rikkyo Law School; Mr. SETO Hiroyuki, researcher at the Center for Southeast Asian Studies, Kyoto University; Mr. NAKAMURA Ken'ichi, government attorney of the ICD, and the author of this paper.
[7] The training course in Japan was held from March 14 to 22, 2011 (See ITO, [supra note 2]) and the local seminar from August 24 to 26, 2011.
[8] Article 3 of the Land Law (ownership of land) provides to the same effect.
[9] The legal concept of all the people's ownership of land and the right to use land by private persons is also found in socialist laws, such as Chinese law and Vietnamese law.
[10] "Land, water, forests, aquatic animals and wildlife which are natural resources belong to the national community represented by the state, [and] the State may grant the right of possession, use, transfer and inheritance [in respect of such natural resources] to other organisations,

Currently it is deemed that Laotian citizens also hold ownership of land, based on the concept similar to that of the ownership of land in The Commonwealth such as England, etc. (formally the King owns land, but in practice the public may own it).

Such a change in the concept of ownership of land is reflected in the amendments of the Property Law and Land Law. Originally, under Article 20 of the Property Law, no free use of land, sale or purchase of land was permitted[11]. However, along with the introduction of a market economy, in the (revised) Land Law 2003 the provision exempting land from being sold or purchased was deleted, though there was no clear provision that it was possible to sell land. Later, through a circular of the government, it was made possible to buy land and acquire its ownership. Some are of the opinion that, in concert with such changes in legal consciousness and the circular, the Property Law itself should be revised. Regarding [Question 1], the WG ultimately confirmed that, as a terminology on land transactions in Laos, the term "ownership" of private persons over land can be used.

2. Documents necessary for immovable property transactions

In the practice of land transactions in Laos, in order to transfer ownership of land, 1. a sales contract; 2. a certificate of transfer; and 3. a land registration certificate are necessary. However, even after the enactment of the Land Law, land transactions were not registered, and ownership of land used to be proven by alternative documents, such as a certificate issued by a village chief, instead of a land registration certificate. Nowadays, it is becoming more common to register transfer of ownership of land[12], and a notarized certificate of transfer and a land registration certificate are required for this transaction. A notary needs to confirm not only the land registration certificate (its authenticity, existence or non-existence of a security interest in the concerned land, etc.), but also the propriety of the contract (for example, whether or not the parties are intending to create a security interest in the concerned land to secure a small loan; condition of interest ; in case of a rice field, whether the subject is only the land in question or includes rice cropped; whether or not the secured claim amount exceeds the land price, etc.). It is possible to place several mortgages on the same piece of land[13] under the condition that the total amount of secured claims does not exceed the land price.

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economic units and individuals." (Article 4, paragraph 2 of the Property Law)

[11] Other organisations, economic units or individuals "….. do not have the right to sell land." (Article 4, paragraph 3 of the Property Law)

[12] The land registration system in Laos was established with technical assistance by GTZ (Gesellschaft für Technische Zusammenarbeit) of Germany, and is administered by the Land Management Office (under the Office of the Prime Minister, not by the Ministry of Justice).

[13] This point has been confirmed in a circular of the Land Management Office.

In the WG it is understood that those registered as owners in the land registry have ownership. It seems that they do not differentiate between the idea of a notional right (substance) and registration (form), which are conceptually separated.

3. Relations between land and building (characteristics of buildings as independent immovable property)

Laotian law does not clearly provide the relations between land and buildings or the characteristics of buildings as independent immovable property[14]. **The Secured Transaction Law, Article 22 (Determination of the Nature of Immovable Property and Evaluation of Price)** provides that "a security contract over immovable property must include an assessment of the value and a clear description of the characteristics of the immovable property, such as the category, type, size, quality, quantity, and location of the immovable property used as security." However, this provision does not clearly set forth whether or not a building constructed on a piece of land is considered immovable property independent from the piece of land. The WG was divided into the following two opinions: (a) in case a security interest is created on land, unless it is clearly prescribed in the contract document that the building on the land shall be included in the secured immovable property, the building shall be excluded; and (b) even when the contract document does not clearly provide, building and other objects attached to the land shall be naturally included in the secured immovable property. It is deemed that the latter opinion is based on the understanding that, since an independent registration system of buildings does not exist in Laos, interests are arranged on a case-by-case basis, on the premise that in legal practices land and buildings thereon are regarded as a unit.

4. Acquisition of land by prescription

Acquisition of land by prescription is permitted under Laotian law as well. It is an "acquisition of a property right through possession in good faith of another individual's property." Article 42 of the Property Law provides: 1. A person who possesses another individual's asset in good faith as his own shall gain the right of ownership of such asset if such possession is for a continuous period of twenty years in the case of fixed assets, or for a continuous period of five years in the case of movable assets. Such possession in good faith is reflected in its openness, continuity and stability. Beyond this period of time, the original owner shall have no right to

[14] This is also pointed out by ITO, supra note 2, at 197.

make claims over such property; 2. If the concerned person has possessed the asset for a period less than the time limit mentioned in the first paragraph, but hands the asset over to another individual to possess in good faith, the period of time required to gain the right of ownership shall start from the day the asset was received by the first individual. Beyond such period, the new holder shall gain the property; 3. State property and collective property can never become the property of holders, even in good faith, even if the period mentioned in the first paragraph has been completed.

This provision is characterized by its requirement of continuation of good faith during the period necessary for acquisition by prescription. For example, if B, who received a piece of land from A, was demanded by S, the real owner of the piece of land, to surrender the land after 19 years and 10 months since commencement of B's possession of the piece of land, and later S filed an action against B after the elapse of 20 years and 6 months since commencement of B's possession, acquisition by prescription shall not be established for B on the ground that the requirement of B's good faith is not satisfied.

According to the WG, there is no time limit for S to file an action against B after demanding surrender of the piece of land. However, as it is difficult for S to prove that he has made the demand against B before elapse of prescription, unless such a demand is made in writing, there are cases, for example, where traditionally a village chief prepares a written demand on behalf of S.

Laotian law provides prescription for filing an action. In case the subject matter is a right based on a contract, the prescription to institute a lawsuit expires after three years from the end of the contract period or the time of occurrence of damage, in principle (Article 102 of the Law on Contractual and Non-contractual Obligations).

5. Sale and purchase of another individual's property

Laotian law does not clearly provide whether or not a sales contract of another individual's property is invalid or not[15]. According to the WG's understanding, though a sales contract causes transfer of ownership, ownership of the other individual's property cannot be transferred. Therefore, when a seller sells land which he does not own, the sales contract is invalid, and the buyer shall make a claim for the

[15] Article 39 of the Law on Contractual and Non-contractual Obligations provides, "A sales contract is an agreement by the parties in which the seller shall have the obligation to transfer the ownership of the concerned property to the buyer, and the buyer has the obligation to receive the property and pay the purchase money according to the price agreed." In the language it seems that a sales contract is similar to a claim contract provided in Article 555 of the Civil Code of Japan (thus, the sales contract of another individual's property itself is valid).

return of the purchase money[16].

On the other hand, the subsequent acquirer of the land from a person who bought a piece of land from a seller, who was not the owner, may be protected if he/she bought the land in good faith under Article 42, paragraph 1 of the Law on Contractual and Non-contractual Obligations, and if he bought the land in bad faith, he shall comply with Article 42, paragraph 2 of the same law[17].

B. Transaction of Movables

1. Rightness or wrongness of acquisition in good faith from no-right holder

[Question 2] is related to the basic rules of transaction of movables. The question in (1) of [Question 2] deals with the protection of a buyer who bought a property from a no-right holder. There are two statutory provisions on this issue in Laotian law.

Property Law, Article 58 (Illegal Occupation of Property in Good Faith)

1) An illegal occupant who possesses property in good faith is a person who does not know and who could not have known (by the exercise of due diligence) that such assets are the property of other individuals.
2) In this case, if the original owner demands his property back, the occupant must return it, but the owner must compensate him according to the value of the assets to the occupant. The original owner also has the right to demand compensation for damages from the person who has illegally handed over the property.
3) If the occupant has received the property through a grant or inheritance, there will be no compensation for the value of the property or for any damage.

Law on Contractual and Non-contractual Obligations, Article 42 (Purchase of Illegally Acquired Property)

1) The good faith purchaser of a property is a person who believes that he has legally purchased the property and such purchase in good faith is reflected in the fact that the person purchased the property for an appropriate price in the market at the time of the purchase and in the openness, continuity and peace of the purchase and use of the property. The owner of the property may reclaim the property only when he reimburses the purchaser for the price the latter paid.

[16] Based on the Law on Contractual and Non-contractual Obligations, Article 22 (claim to cancel an invalid contract)
[17] This issue is dealt with in [Question 2] and is to be discussed later.

The owner of the property shall have the right to file a lawsuit against the person who illegally sold the owner's property.

2) The bad faith purchaser of a property is a person who bought the property, with knowledge that he was buying the property against the law or was in a situation where he could have known it. Such a purchase in bad faith is reflected in the fact that the person bought the property for an inappropriate price compared to the market price at the time of the purchase, and in his purchase and use of the property in secrecy, with no-continuity and in spite of criticism. The owner of the property shall have the right to demand the return of the property without paying any compensation. The purchaser may demand that the seller return the purchase money of the property, but has no right to file a lawsuit to the court.

What should be noted first here is the fact that buyer X who bought a property from seller Y, a no-right holder of the property is protected, not based on so-called "immediate acquisition", but 1) in order for real owner A to demand the return of the subject, the obligation of compensating the purchase price is imposed on A; and 2) unless A performs this obligation of compensating the purchase price, X may be exempted from the burden of returning the subject and may acquire it. This two-staged explanation may answer one of the fundamental questions that will face persons who study the immediate acquisition system for the first time, that is: "Why can the buyer acquire ownership through transactions with the seller who is not a right holder?" – in other words, why can a right be created from a situation where no right exists?[18] Thus, the limitation of the real owner's right to demand return seems to be the primordial mode of protection of a good-faith person[19].

However, if you first study the current Civil Code of Japan, as the obligation of reimbursing the price paid (Article 194 of the Civil Code) is considered to be an exception (requiring the owner to compensate the price paid to the person who purchased goods in a public market or from a merchant) of the exception of the recovery of stolen or lost goods (Article 193 of the Civil Code) against the principle of immediate acquisition (Article 192 of the Civil Code), you may come to deem that immediate acquisition – in other words, a right is created out of nothing - itself is the principle. Such an effect of legal technical assistance, that is, to re-discover principles

[18] As in the case of many Japanese law students, if it is taught from the beginning that the immediate acquisition system exists on the ground of "protection of transaction security", such fundamental questions may not occur to them. However, in legal technical assistance, convincing explanations based on principles are constantly required.

[19] For example, Articles 7 and 10 of the Code of Bavaria II (2) of Germany, Articles 295, 314, 315 of the Civil Code of Saxony, Article 44 of the General National Law for the Prussian States, etc., provided protection of good-faith acquirers on the ground that a real owner may not claim the return of his property unless he compensates the good-faith and paid acquirer for the purchase price. It is considered that the protection of the good-faith acquirers also derives from the Town Privileges of Antwerp in the 17th century.

and return to explanations on the raison d'etre of systems based on principles, cannot be downplayed.

Next, the provisions of Article 58 of the Property Law, and Article 42 of the Law on Contractual and Non-contractual Obligations (Article 40 of the old Contract Law provides to the same effect) seem to overlap in almost their entirety. On the other hand, regarding the amount that the owner should reimburse to the possessor, while Article 58, paragraph 2 of the Property Law provides, “the owner must compensate him according to the value of the assets to the occupant”, Article 42, paragraph 1 of the other law provides, “the owner must compensate the price paid by the occupant”, and the difference in these provisions becomes an issue.

According to the WG, in practice both provisions are construed uniformly[20], based on the interpretation that the “value of the assets” in Article 58, paragraph 2 of the Property Law means the “purchase price based on the market price” at the time of acquisition, and therefore it refers to the price paid by buyer X to seller Y.

For example, in [Question 2], (i) X paid Y 700,000 Kips as the purchase price of a buffalo. In this case, even if when A claimed return of the buffalo against X, the price of the buffalo increased to 1,000,000 Kips, X may get the buffalo returned by paying 700,000 Kips. As it can be inferred that X has benefited by using the subject property, it will be equitable that X gets just 700,000 Kips reimbursed. On the other hand, (ii) even when the price of the buffalo was 500,000 Kips at the time when A claimed return of the buffalo against X, if A had to reimburse 700,000 Kips to X, it would benefit X more. Especially in the case of an asset which is depreciated, X may obtain both the benefit of use and the original value of the asset. In this case, it may be equitable that A reimburses X the market value at the time of claiming return of the asset. This issue is also discussed in Japan and is an interesting topic for comparative discussion. The WG’s opinions are divided into two as follows: when the asset’s value has decreased, the owner must pay the price paid by the buyer, which is (a) the price paid by X to Y at the time of signing the contract between X and Y; and (b) the price first paid by X to Y should be converted to the current price. Thus, it seems that interpretation on this issue is not yet fixed in Laos. As these two statutory provisions may be unified through legislation of a new law in the future, it is meaningful to discuss this issue in this paper.

[20] This is the same as provided for in Article 194 of the Civil Code of Japan.

2. Assertion of good faith, burden of proof

It is construed that "good faith" (Article 58, paragraph 1 of the Property Law; Article 42 of the Law on Contractual and Non-contractual Obligations) needs to be proven by buyer X. However, as there is no provision regarding presumption of possession in good faith (see Article 186 of the Civil Code of Japan), in a lawsuit it is necessary for both parties to produce evidence of good faith of the buyer[21].

3. Return of produce

Regarding the question of whether or not, when X, after acquiring a buffalo from seller Y, returns it to its real owner A, X should return the buffalo's calf born after the acquisition of the buffalo and before returning it, the WG's opinion was that (a) in case the buffalo was pregnant when X acquired it, the calf should be returned to A, and if the buffalo got pregnant after X acquired it, he does not need to return the calf. They also presented another opinion that (b) regardless of whether the buffalo got pregnant before or after X acquired it, if the calf is considered as a produce "generated" from the buffalo (Article 60, paragraph 2 of the Property Law), X shall have ownership of the calf which was born before A demanded return of the buffalo in exchange of compensation of the value of the buffalo. Thus, whether or not acquirer X should return the calf or not to owner A shall depend on the interpretation of the term "generated"[22].

C. Creation of Security Interest

1. Procedure to create a security interest

[Question 3] intends to make clear the requirements for, procedure and effects of the creation of a security interest over immovable property. A security interest over immovable property shall be established, in order to guarantee the debtor's repayment of a debt or performance of other obligations to a creditor, in the debtor's immovable property or the debtor's right to use another individual's immovable property, such as a piece of land, a building or a factory, or by placing documents that certify the debtor's ownership or his right to use the aforementioned property[23]. The creation of a security interest must be made in writing in the presence of 1) a village chief

[21] According to the WG's understanding, Article 20 of the Law on Civil Procedure of Laos provides that both litigants have obligations to present evidence and if the evidence presented by both litigants is insufficient, the court may, before handing down a judgment, collect evidence on its own initiative or ask an expert to examine evidence (Article 31 of the Law on Civil Procedure).

[22] Article 60 of the Property Law (Produce and Income Generated from Illegal Occupation)
"1. The produce or income generated from an asset occupied by an illegal occupant with ill intentions will be returned to the owner in full. In the event that the concerned person has consumed, sold or [otherwise used it up], he has to compensate for damages incurred or refund the value of the produce or income to the owner. 2. The illegal occupant of property in good faith is not liable to return the produce or income generated by the asset as provided in Article 58 of this law".

[23] In order to create a security interest in the debtor's right to use another individual's immovable property, it is necessary to obtain prior consent from the owner of the concerned property (Article 20, 2nd sentence of the Secured Transaction Law).

together with a notary or three witnesses, or 2) three witnesses[24], and clear descriptions of the features of the secured immovable property, such as an assessment of its value, category, type, size, quality, quantity, location, etc. must be included[25]. In theory it is possible to create multiple security interests in the same immovable property, but in reality the creation of subordinated security interests is difficult as the certificate of land registration is held by the creditor with preferential rights (except for cases where the latter allows the creation of subordinated security interests). There is also a constraint that the total amount of secured claims must not exceed the value of the subject immovable property[26].

For your information, security interests may be created in movables such as, 1) material (tangible) items[27]; 2) documents such as certificate of ownership, share certificates, bonds, etc.; 3) goods in a warehouse; 4) intangible assets including intellectual property, bank saving accounts, contractual rights and receivables, benefits under any approval, permission or right to conduct business operations; and 5) assets or gains from any project or activity which can occur in the future[28].

Among these movables, the legal nature of 2), 4) and 5) above should be considered as pledges of rights. Moreover, it is construed that 3) is transferable[29], and 5) includes the right to sell, exchange or deposit such assets or gains with another party[30].

Regarding 1) above, both a) the creditor's no-possession of the subject movable which is possessed by the debtor[31] and b) possession of the subject movable by a third party to which the creditor or both parties have agreed[32], are considered as "security interests over movables". In case the debtor fails to repay his debt within the period agreed by both parties, the material items shall become the property of the creditor. If the value of material items is higher than the debt, the creditor may pay the difference, sell the material items as agreed with the debtor or auction them[33].

What is important is that no matter whether the secured property is immovable

[24] Article 21, paragraph 1 of the Secured Transaction Law
[25] Article 22 of the Secured Transaction Law
[26] This kind of constraint draws attention as it controls secured transactions depending on the economic situation.
[27] What is referred to here is tangible items.
[28] Article 11 of the Secured Transaction Law
[29] Article 17 of the Secured Transaction Law. It refers to a security interest in an inventory in a warehouse.
[30] Intangible assets and gains from any project or activity that may occur in the future may be pledged (Article 19 of the Secured Transaction Law).
[31] Article 12; and Article 14, paragraph 1 of the Secured Transaction Law
[32] Articles 12; 13; Article 14, paragraph 1. In this case, the secured creditor or the third party shall not be entitled to use material items unless they are authorized in writing by the debtor (Article 14, paragraph 1 of the same law).
[33] Article 14, paragraph 2 of the Secured Transaction Law

property or movables, a security contract must be registered at a registration office of the government sector responsible for finance, and a security contract over immovable property shall be registered at the land management office where the concerned property is located. Attention should be paid to the fact that a security contract has legal effect from the date of its registration (principle of the requirements for effect)[34].

On the other hand, there are cases where a sale with a special agreement on redemption is used to secure performance of obligations[35]. In this case, the secured property shall be possessed by the creditor.

2. Effect of a security interest

When the debtor fails to repay his debt within the stipulated period, 1) the creditor has the right to claim the repayment of the debt including interest, and for this purpose has the right to propose an action in order for the person who created a security interest (owner) to sell the secured property[36]. When an action is carried out, the secured creditor has preferential rights to repayment of debts over other secured creditors who have established a security contract with the same asset at a later time or unsecured creditors.

Moreover, 2) the creditor has the right to acquire the right of ownership over the secured property, and when he exercises this right, the person who created a security interest in the property shall lose his ownership over the property. In addition, 3) the creditor may, as agreed in the contract, sell or take possession of the secured property[37].

On the other hand, the debtor shall not be entitled to sell or transfer the immovable property subject to be secured, and even when the debtor may possess the concerned immovable property according to the terms of the contract on the creation of security interest, the debtor shall "properly use, protect and keep the concerned immovable

[34] Article 31, paragraph 1. An unregistered security contract shall be applicable between parties, but shall not have preferential rights in priority to any registered security. The register of security contracts with the office of the government sector responsible for finance or the land management office shall be open to the public, and such offices shall ensure that the public has access to the information without any request in advance (Article 31, paragraphs 2 and 3 of the Secured Transaction Law).

[35] Articles 53 through 55 of the Law on Contractual and Non-contractual Obligations. According to the WG, there are cases where the value of the subject is considerably higher than the proceeds (in effect, loan), and there are no restrictions on the addition of interests to the redemption price, and therefore so-called black-market lenders take advantage of these.

[36] Article 25 of the Secured Transaction Law

[37] Article 34 of the Secured Transaction Law. In cases of 2) and 3) in the main text, when the proceeds of the secured property are higher than the debt, the creditor shall pay the difference (in the case of 2)), or return the balance to the debtor after deducting the debt and interest from the proceeds. If the sum obtained from the sale of the pledged or secured property is insufficient to repay the debt, the debtor must make up the outstanding amount in full.

property in its original condition" according to the contract conditions, and "may not cause devaluation of such immovable property without approval from the creditor.[38]"

When owner Y's right over the secured property is violated by third party Z who possesses the secured property illegally, first Y is entitled to demand the surrender of the property[39], and if Y does not exercise this right, X may exercise the right to demand the return of the property using the creditor's subrogation right[40].

D. Contractual Obligation

1. Breach of contract and warrantee against deficiencies

[Question 4] is a question to make clear, based on a sales contract of a movable, the relationships between the responsibility of breach of contract and warranty against deficiencies, which are contract liabilities. Regarding this question, Articles 33 and 40 of the Law on Contractual and Non-contractual Obligations provide as follows:

Law on Contractual and Non-contractual Obligations, Article 33 (Effect of Default, Article 33 of the Old Contract Law)

1. A breach of contract means non-performance of contractual obligations, in whole or in part, or unreasonable performance of obligations by either contracting party, such as low quality performance of obligations, untimely performance or performance not according to locations as specified by the contract.
2. If either contracting party breaches a contract, that party must be liable to compensate the other party for damages which arise, except if the contract breach occurred as a result of force majeure.

Law on Contractual and Non-contractual Obligations, Article 40 (Quality of assets sold. Article 38 of the Old Law)

3. The quality of assets sold must conform to the contents of the contract. If the assets sold are not of the quality provided for in the contract, the seller must be liable for such assets.
4. In the event that the buyer knows that such assets are of poor quality, the buyer has the right to request an exchange of the assets sold for the same kind of assets which are of the expected quality or to request a price reduction or to terminate

[38] Articles 24 and 25 of the Secured Transaction Law
[39] Article 57 of the Property law
[40] Article 32 of the Law on Contractual and Non-contractual Obligations. Exercised by way of subrogation admitted in a judicial proceeding.

the contract while also demanding compensation for damages.

5. The buyer has the obligation to inspect the quality of the assets being purchased and must inform the seller urgently in the event that deficiencies are discovered in the assets being purchased. Otherwise, the buyer must be responsible for such deficiencies himself.

In these provisions, (i) regarding deficiencies in the subject assets of a sale and purchase, the subjective concept of deficiencies is adopted. As a result, (ii) the seller's warranty against deficiencies is considered as a responsibility for breach of contract. And (iii) as a method to relieve the buyer, it is provided that: 1) against a breach of contract, compensation for damages (however, in case of "emergency", the seller shall be exempted from compensation for damages[41]); as a warranty against deficiencies, 2) request for substitute goods (request for subsequent completion); 3) price reduction; and 4) termination of the contract (the seller shall not be exempted from 2) to 4) even in case of "emergency") may be possible. These articles provide to the same effect as Articles 36 and 38 of the old Contract Law, and it is deemed that they in effect conform to Articles 45, 46 through 52, and 74 through 77 of the United Nations Convention on Contracts for the International Sale of Goods. If so, these provisions can be considered as being globalized. It should be noted, however, that regarding 1) above, there are no provisions on the scope of compensation for damages, which should be addressed in the future[42].

2. Mistake, fraud

According to the Law on Contractual and Non-contractual Obligations, it is provided that a contract by mistake is a contract which lacks voluntary intention of the contracting parties (Article 11, paragraph 1 and 2 of the same law), which constitutes one of the grounds for nullity of the contract (Articles 10 and 18 of the same law). However, it is not clear under the provisions whether or not it is a definite cause or an indefinite cause for nullity. This is because a contract by mistake is not included in the indefinite causes for nullity enumerated in Article 19, paragraph 2 of the same law. According to the WG, it is understood that a contract by mistake is an indefinite cause for nullity as the latter applies to the "invalid contract related to the right of private persons" (Article 19, paragraph 1 of the same law), while definite causes for nullity apply to the "invalid contract related to the right of the state or society" (Article 20 of

[41] Article 3, item 17 of the Law on Contractual and Non-contractual Obligations provides, "An emergency is an unpredictable and uncontrollable situation, such as a flood, thunder, an earthquake, etc., and is a situation which makes it impossible for the debtor to perform his obligation." The question is whether "emergency" in effect refers to force majeure, or it can be interpreted more broadly, referring to the contracting parties' impossibility of performance due to grounds attributable to the parties.

[42] As for tort, Articles 83 through 85 of the Law on Contractual and Non-contractual Obligations provide for it.

the same law).

On the other hand, a contract by fraud also lacks voluntary intention of parties, which constitutes one of the grounds for nullity of the contract (Articles 10 and 18 of the same law), and it is one of the indefinite causes for nullity (Article 19, paragraph 2 of the same law).

In any case, in the case of an invalid contract, a party may demand the recovery of the original state of the subject asset, such as the return of the property, etc., by demanding termination of the contract (in case the other party does not respond to it, the demand shall be brought to the court)[43].

With regard to the asset performed by the party who committed fraud to the other party, the state shall confiscate it (Article 23, paragraph 2). It is considered that in a contract by fraud or tort, the criminal and civil procedures are closely related to each other.

E. Tort

1. Requirements and effects of a tort

[Question 5] is a question to confirm the requirements and effects of a tort. According to the Law on Contractual and Non-contractual Obligations, a person who has caused damages to others by his own actions, shall be liable for the damages caused (Article 83; provided, however, this shall not apply when damages have been caused due to self-defense, legitimate performance of duties, or by the victim's mistake).

It is provided that "damages" must be definite, such as those which have already arisen or will certainly arise in the future," and "damages that may or may not arise in the future is not considered as definite damages" (Article 84). It draws attention that under this law, it is considered that "damages" includes not only 1) damages on property but also 2) damages to life or health and 3) non-economic damages (Article 85).

While any person shall be liable for damages as long as there is a "causal relationship" between his tortuous act and the damages caused, the cause of damages is an indispensable event for the damages to arise, and shall occur before the occurrence of damages and shall be the direct grounds for damages (Article 87).

[43] Articles 22 and 23 of the Law on Contractual and Non-contractual Obligations

The calculation of compensation for actual and future damages[44] shall be conducted in line with the perpetrator's negligence" (Article 91, paragraph 1)[45].

"Negligence" is an action or inaction which violates the laws, and intentionally or negligently causes damages to another person (Article 86).

In a tort as well, the civil and criminal procedures are closely related to each other. For example, in order for the victim of a traffic accident to claim damages against the perpetrator, police plays a major role in preparing documentary evidence for the victim. In Laos, even in the civil court, judges have the authority to collect evidence, and for such purpose they refer to the result of the criminal trial of the case.

2. Joint tort

Laotian law also provides for joint tort[46]. According to the WG's view, joint tort is premised on an act committed by multiple persons "in collaboration." Thus, in cases where a) a traffic accident caused by drunken driver Y and b) a medical malpractice caused by physician A's mistake in an operation at Hospital Z occurred in succession, the negligence of Y, A, and Z does not constitute joint tort and should be considered separately.

F. Family Law

1. Property relations between husband and wife

[Question 6] is intended to confirm the basic principles of the Family Law which mainly deals with legal relationships between husband and wife, and the Inheritance Law.

With regard to property relations between husband and wife, the Laotian law is featured by its provisions that both husband and wife, or either husband or wife shall be liable for a loan consumption, not only 1) when husband and wife have jointly got the loan; and 2) when either husband or wife has got the loan "to use it for family expenses", but also 3) either husband or wife "has got a monetary or property loan for

[44] It is explained that "future damage" refers to the victim's lost earnings or additional expenses caused by an illegal act (Article 91, paragraph 2 of the Law on Contractual and Non-contractual Obligations). For example, as for aftereffect or loss of capacity to work, its proof by a physician is necessary.

[45] Therefore, "In cases where the victim was negligent, the victim shall be partly liable for damages or lost earnings" (Article 91, paragraph 3 of the Law on Contractual and Non-contractual Obligations).

[46] "Multiple persons who have jointly caused damages shall be jointly and severally liable for the damages each of them has caused. The court may render a judgment ordering one or several persons among those who have caused damages to compensate all damages. The person who paid compensation shall have the right to claim the payment of the compensation to others in lieu of whom he has paid." (Article 90 of the Law on Contractual and Non-contractual Obligations).

his/her individual interest.[47]"

It cannot be overlooked that the strong joint and several liabilities of husband and wife are reflected, on the other side of the coin, in the strong co-ownership of property between husband and wife. In other words, "the assets built or acquired by a married couple during their marriage" (except for commodities for personal use, assets of low value, assets belonging to the husband or wife prior to their marriage, assets received through inheritance or granted specifically to the husband or wife during their marriage, and clothing or other items for personal use, excluding valuable assets, such as precious stones, gold, and other valuable jewelries) shall be called "matrimonial property" and "husband and wife have equal rights over matrimonial property, regardless of who actually acquired the asset"[48]. Therefore, in case of divorce, matrimonial property shall be "equally divided"[49].

On the other hand, the Family Law[50] provides that the income acquired by husband or wife in common through their labor shall be considered as the property acquired after their marriage, and each spouse has equal rights over matrimonial property regardless of who actually acquired the property (Articles 26 and 27).

As mentioned above, attention should be paid to the strong joint and several liabilities between husband and wife that are deemed as being inextricably associated with the equal right of husband and wife to matrimonial property or the property acquired after their marriage.

2. Inheritance

The Inheritance Law[51] is characterized by its provisions in which different principles of distribution of inheritance are adopted to the separate property and property held in co-ownership of the decedent. (i) In case of separate property of the decedent, the surviving spouse and children shall receive one quarter and three quarters of the property, or the surviving spouse and lineal ascendants, one third and two thirds, respectively; and (ii) in case of the property held in co-ownership, both the surviving spouse and children shall receive one half of the property, or the surviving spouse

[47] Article 57 of the Law on Contractual and Non-contractual Obligations. In the case of 3) in the main text, when husband or wife has paid the debt using his/her own money or joint property, he or she shall have the right to be compensated in the distribution of property held in co-ownership.
[48] Article 26 of the Property Law
[49] Article 27 of the Property Law. The husband or the wife who is responsible for the break in the matrimonial relationship shall receive only one third of the matrimonial property (paragraph 3 of the same article). Article 28, paragraph 1 of the Family Law provides to the same effect.
[50] The 2008 revised Family Law
[51] The 2008 revised Inheritance Law

shall receive the whole share of the property, and lineal ascendants shall receive no share[52].

On the other hand, there are no clear statutory provisions on the distribution of property when it is not clear whether the husband or the wife died first. The WG understands that in such a case there will be no inheritance of property between husband and wife, and the property of each of them shall be inherited in the order of their children, lineal ascendants, etc.[53]

III. CONCLUSION

This paper has given just a glimpse of some features of legal concepts, statutory provisions, legal interpretation, etc., in relation to the Civil Code of Laos. Even so, by taking a brief look at these features you may have perceived that there are many differences between the Civil Code of Laos and Japan in their rules of solving the same issues. It seems that those Laotian rules partly reflect the economic and social situation, etc. of Laos, and that is the corollary of the Laotian government's policy of introducing principles of rules in accordance with their actual situation, and of gradually revising such rules when necessary. It may be also the fruits of their policy of conforming their domestic rules to globalizing standards.

In the future, after the completion of the "Basic Exercise Book on the Civil Code", we may be able to make new findings useful in promoting legal cooperation, by accumulating comparative sample cases when applying not only Japanese but also other Asian and Western countries' civil-related laws.

[52] Articles 12 and 13 of the Inheritance Law

[53] In [Question 6](4), it is interpreted that X's property (his separate property and one half of the property in co-ownership) and Y's property (ditto) are inherited by A, X's father, and B, Y's mother, respectively.

[Appendix] Questions in the “Basic Exercise Book on the Civil Code”

[Question1] (Law on Real Right: immovable property)

B bought and received a piece of land from A. He built his house on the land and placed a stone statute of his ancestors in the garden. Later, S claimed the ownership of the piece of land and demanded that B remove the building and stone statute, and surrender the piece of land. In this case, does B need to remove the building and stone statute, and be ejected from the place?

(1) On what grounds does S claim the piece of land? If S proves his ownership over the piece of land based on what kind of fact, can S’s claim be justified?
Examine cases when: (i) S argues that he acquired the piece of land from A; and when (ii) S argues that he acquired the piece of land from a person other than A. Also examine cases when the piece of land is registered in A’s name, B’s name and S’s name.

(2) Land is immovable property. What about the building and stone statute? In case B has placed a mortgage on the piece of land for T to get a loan from him, does the effect of mortgage reach the building and stone statute as well? How shall the building be registered?

(3) What about a case in which S made the claim against B, 21 years after B received the piece of land from A?

(4) In case B had to accept S’s claim, what kind of claim can B make against A?

(5) In a case where, after S sold and delivered the piece of land and transferred its registration to A, he cancelled the sales contract signed with A on the grounds of the latter’s fraud. However, if B has already sold the piece of land, building and stone statute, transferred the registration and delivered them to C, is S entitled to demand that C remove the building and stone statute, and surrender the piece of land?

[Question 2] (Law on Real Right: movable)

X bought a buffalo from Y, which had been stolen from A. When Y stole it from A, the buffalo was pregnant and a calf was born after X bought the buffalo from Y.

(1) In case A claims the return of the buffalo against X, does X have to return it? What about the calf?

(2) In addition to the return of the buffalo, is A entitled to claim the return of the use benefit X enjoyed after receipt of the buffalo from Y till its return to A?

(3) In cases where, while A entrusted Y with the buffalo, Y sold it to X asserting his ownership of the buffalo, may A claim the return of the buffalo and the calf against X?

[Question 3] (Law on Real Right: security interest)

X loaned 10,000,000 yen to Y, and in order to obtain security for the loan, he placed a mortgage on Y's rice field and registered the mortgage.

(1) Explain the mechanism of the placement of mortgage and its registration.

(2) In cases where Z uses the rice field owned by Y without any title, what kind of claim can X make against Z?

(3) Z cut down trees in the rice field owned by Y, carried them out from the rice field and sold them to A. May Y be able to recover these trees from A? Examine both cases in which A was aware, and was not aware of these circumstances.

(4) As Y was unable to repay the debt of 10,000,000 yen at the arrival of the due date for payment, X wants to foreclose on the mortgage on the rice field owned by Y. Explain the procedure for it. In this case, may the trees which were in the rice field since before the placement of the mortgage and its registration and the pump installed after the placement of the mortgage and its registration be sold together with the rice field?

[Question 4] (Law of Obligations: contract)

X purchased a DVD for 3,000 yen at a store run by Y, because there was an indication at the store that the DVD can be played both domestically and abroad, and he wanted to view it both at his home and during his business trip abroad. However, he found during his business trip abroad that the DVD was made to be played only in his country. In this case, what kind of claim based on what legal grounds can X make against Y? Examine possible legal configurations.

[Question 5] (Law of Obligations: tort)

X was hit by Y, a drunk driver, was severely injured and as a result he required treatment in hospital for half a year, was paralyzed on one side of his body, and had to quit working at his company.

(1) When X claims damages against Y, what does X need to assert and prove?

(2) Within the scope of damages X can claim against Y, what kind of damages is included?

(3) In cases where X was an excellent employee with special skills, and the accident has caused damages to his company as well, can the company claim damages against Y?

(4) X deems that one of the causes for which X suffers aftereffects is a malpractice in the operation performed by physician A at Z Hospital, where X was hospitalized after the accident. In this case, can X claim damages against Z and A, in addition

to Y? If so, within what scope?

[Question 6] (Family Law)

X's husband, Y, borrowed 100,000 Kips from A. However, after three months, the payment period, Y was unable to repay the debt to A. Y has no assets and there are no prospects for him to repay. The following questions (1) and (2) are separate questions.

(1) Y borrowed 100,000 Kips from A to cover the cost of living with X. In this case, may A claim the repayment of 100,000 Kips against X?

(2) Y borrowed 100,000 Kips from A to buy golf gear, as he likes playing golf. In this case, may A claim the repayment of 100,000 Kips against X? Examine both cases in which A was aware, and was not aware of Y's purpose of the loan.

Later, X and Y worked and saved money in cooperation, bought land and built a building thereon. The land and building were registered in Y's name for the sake of convenience. In this case, study the following two separate questions, (3) and (4).

(3) In case X and Y divorce, may A claim some rights on the land and building against X and Y?

(4) X and Y died in an accident during their trip abroad, but it is not clear who died first. They had no children or siblings, but X's father and Y's mother are alive. In this case, who will own the land and building?

JICA'S COOPERATION FOR CAPACITY DEVELOPMENT IN THE LEGAL AND JUDICIAL SECTOR WITH SPECIAL REFERENCE TO COOPERATION IN CAMBODIA

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This short article will briefly review JICA's cooperation in the legal and judicial field with reference to its core elements and key characteristics. The concept of "capacity development" is emphasized as a guiding principle for cooperation, which derived from Japan's own development experiences. Then, cooperation with Cambodia since 1990s will be elaborated as an example of cooperation in a post-conflict country from the viewpoint of capacity development.

I. OVERVIEW OF JICA'S COOPERATION IN THE LEGAL AND JUDICIAL FIELD

A. Countries and Areas of Cooperation in the Legal and Judicial Sector

JICA is an implementing agency of Japan's Official Development Assistance (ODA), and its mission is to support efforts of developing countries in addressing various development objectives such as poverty reduction and improvement of livelihood of people.

To this end, "good governance" is considered to be of vital importance for the stable social and economic development of developing countries, and legal and judicial cooperation is in this context regarded as an important means of realizing good governance, as stated in Japan's ODA Charter[1].

JICA's involvement in legal cooperation is comparatively new. JICA started cooperation in this area in the form of technical cooperation project in 1996 in Vietnam. Since then, with full cooperation from prominent Japanese law scholars and practitioners of such

[1] Japan's ODA Charter refers to legal assistance as a means of realizing good governance and states that support to developing countries' self-help efforts is "the most important philosophy of Japan's ODA".

institutions as the International Cooperation Department (ICD) of the Ministry of Justice (MOJ), the Japan Federation of Bar Associations (JFBA) and the Supreme Court of Japan, JICA has been supporting efforts of developing countries in their pursuit of the "rule of law". Technical cooperation in this field has expanded mainly to countries in transition to a market economy (e.g. Vietnam, Laos, China, Mongolia and Uzbekistan) as well as post-conflict countries (e.g. Cambodia, Nepal and East Timor).

JICA's cooperation in this field can be illustrated as follows: a) supporting development of rules and regulations, such as the Civil Code and/or the Civil Procedure Code (Vietnam, Uzbekistan, Cambodia, Nepal and China), economic laws (Vietnam, China and Indonesia), and administrative laws (Uzbekistan and Vietnam); b) supporting improvement of public organizations that implement or apply laws for dispute resolutions (Vietnam, Cambodia, Laos and East Timor); c) supporting legal empowerment of people and society including strengthening mediation systems (Mongolia, Indonesia and Nepal) and capacity building of bar associations (Vietnam and Cambodia); and d) supporting development of legal professionals (Vietnam, Cambodia, Laos and etc.).

B. Key Characteristics: Emphasis on Capacity Development [2]

As mentioned above from a) to d), JICA's cooperation in this field rests on the four core elements. Among them, development of legal professionals serves as a foundation for the other three core elements, and it refers not only to narrowly defined training and education of legal professionals, but also to on-the-job training through the whole process of cooperation activities.

In order to promote the establishment of the "rule of law" to achieve social stability and development in developing countries, JICA respects each country's ownership over the process and supports their self-help efforts. The choice of legal systems and the path to "rule of law" promotion are matters of state sovereignty, and the appropriateness of various options is the sole purview of the state itself. Thus, the ownership and efforts of the people who have deep understanding of their own culture and existing systems are crucial to the effective use of external support.

Legal development is an ongoing national task, and any given law or system will face continuous pressure for revisions to better reflect the country's development level,

[2] The perception of "capacity development" varies in each aid agency; however, it can be said that the term refers to the process in which individuals, organizations, institutions, and societies develop "abilities" either individually or collectively to respond to issues to perform functions, solve problems, and set and achieve objectives.

changing social conditions, and new emerging priorities among other issues. The end objective of capacity development for legal and judicial sector in developing countries must be to enable recipient nations to independently develop and improve their laws through this process and amend systems in the future, as necessary, to reflect changing social conditions. Human resource development is, accordingly, a fundamental issue for the capacity development of legal and judicial sector and must be tackled with a long-term perspective.

It should be made clear that there is a difference between "legal development" as a continuous national task on one hand and "legal development assistance" on the other. "Legal development assistance" by nature means certain time-bound activities to support the efforts of developing nations to enhance their capacity. At the same time, it should be noted that the timeframe necessary for legal development assistance should be well-considered taking into account the circumstances of respective countries. For instance, a post-conflict country, which often suffers from the loss of legal professionals and the destruction of a legal and judicial system, may require longer-term support to nurture core groups of legal practitioners who can be a key to building a greater pool of human resources.

II. THE CASE OF CAMBODIA: CAPACITY DEVELOPMENT FOR LEGAL AND JUDICIAL SECTOR IN A POST-CONFLCT COUNTRY

A. Background

Cambodia is one of the countries which JICA has provided legal development assistance for a long period.

It experienced two decades of civil war during the 1970s and 80s. Especially under the Pol Pot regime, large numbers of intellectuals were slaughtered in the massacre, all the existing laws and regulations were repealed, legal documents and records were discarded, and thus their legal and judicial system was totally destroyed. It was said that the number of legal professionals who survived the Pol Pot regime inside the country fell to single digits.

The civil war continued even after the fall of the Pol Pot regime. Finally, in the 80s a small number of laws and regulations began to be promulgated gradually, and Cambodia restarted towards reconstruction of its legal and judicial system with support provided by international donors after the Paris Peace Agreement in 1991.

In late 1990s, built upon the preceding research and communication between Japanese law scholars and the Cambodian authorities, JICA started project-type cooperation with Cambodia to support drafting of the Civil Code (hereinafter referred to as "CC") and the Code of Civil Procedure (hereinafter referred to as "CCP") with tremendous contribution made by prominent pioneers. It was of course a very urgent task to draft lacking laws and regulations and to reconstruct the destroyed judicial systems; however, at the same time, JICA put an emphasis on capacity development and cultivation of human resource.

JICA had previous experience in technical cooperation in Vietnam, which started in 1996. With the principle of respecting developing countries' ownership, instead of merely providing information of the Japanese legal system, JICA provided advice on the legal systems and philosophies of Japan and other countries as a point of reference and supported Vietnam in constructing a legal system tailored to its own circumstances. In this process, Vietnamese legal professionals and officials in charge were fully involved in discussions on the kind of legal and judicial system necessary and suitable for the society of Vietnam.

The same principle was applied to the cooperation in Cambodia; however, differences in terms of initial conditions, such as scarce legal professionals and destruction of legal systems in Cambodia, were given special consideration. Efforts were put into advancing dialogues and encouraging active participation of Cambodian legal professionals in the discussions to draft bills, and the Cambodian language was used in discussions and drafting. As such, cooperation projects in Cambodia did/do not only aim at drafting bills and determining legal terminology, but also at developing capacity of legal professionals through discussions.

It can be said that such an approach derived from Japan's own history and experience of developing its own legal and judicial system. While borrowing basic concepts from Continental Law following the Meiji Restoration in the late 19th century and becoming influenced by the American legal tradition after the Second World War, Japan has customized and adapted those laws to the cultural, and societal factors present within the existing Japanese system as opposed to simply 'importing' foreign legal traditions[3].

B. Drafting Assistance of the Civil Code and the Code of Civil Procedure: Legal and Judicial Development Project (Phase 1) (1999-2003)

As mentioned, JICA started technical cooperation in the legal and judicial field in Cambodia with the launch of the "Legal and Judicial Development Project" in 1999 to

[3] Going through this process, Japan has strived for capacity development of its own legal professionals and institutions by sending selected public officials and academics abroad and by inviting foreign advisors at national expense.

support the effort of Cambodia in drafting the CC and CCP.

The Civil Code and the Code of Civil Procedure of Cambodia

To support the drafting process, JICA established two Working Groups (hereinafter referred to as "Japanese WG") in Japan, one specialized on the CC and the other specialized on the CCP, comprised of prominent academics and practitioners in these fields (judges, government attorneys of the MOJ and lawyers). In the Cambodian side, a Working Group (hereinafter referred to as "Cambodian WG") was formed, composed of about twenty members including judges, lawyers from the Bar Association of the Kingdom of Cambodia (hereinafter referred to as "BAKC") and officials from the Ministry of Justice (hereinafter referred to as "MOJ") of Cambodia, the Ministry of Land Management, Urban Planning and Construction (hereinafter referred to as "MLMUPC") and the Ministry of Commerce (hereinafter referred to as "MOC").

The preliminary drafts were initially prepared by the Japanese WGs, then the Cambodian WG discussed article by article with full support of the Japanese WGs and JICA long-term experts. A series of workshops in Cambodia and training programs in Japan were organized frequently at which members of the Japanese WGs explained the intent and purport of each article, answered questions from the Cambodian WG. Then, drafts were revised reflecting the actual circumstances of the society of Cambodia. Long-term experts played an important role in providing day-to-day advice to the Cambodian WG. It should be noted that this method was adopted in consideration of the then circumstance in Cambodia where legal professionals were scarce and laws and regulations were repealed after the conflict. This marked a contrast to the case of JICA's cooperation in Vietnam, for which bills were first drafted by the Vietnamese counterparts and then forwarded for consultation with Japanese WG members and experts.

The JICA's method adopted for cooperation in Cambodia required much more time compared to the method in which foreign experts drafted bills, as it involved series of discussions and feedback between both sides. It took about four years to finish drafting the CC and CCP[4]. There was some criticism about the length of time, considering the urgency of developing laws in the process of reconstruction of the post-conflict country. However, it

[4] The draft CC and CCP were finalized in March 2003 and submitted to the Council of Ministers in June 2003.

was recognized that these processes were indispensable for the drafts to be understood properly by Cambodian counterparts and take root in the society of Cambodia.

In the drafting process, bills were prepared through discussions between Japanese WG members and Cambodian WG members by using Cambodian-Japanese translation. It was in fact a very challenging and time-consuming process as translation of legal terms requires special knowledge and careful consideration with deep understanding of the differences in the legal systems of Japan and Cambodia. It was also a big challenge to find and allot proper words in Cambodian language to the concepts or ideas which were new or forgotten since long time ago in the society of Cambodia. In addition to the preparation of the drafts, special meetings to discuss and determine terminology were often held.

C. Assistance in Legislation Process and Preparation of Ancillary Laws: Legal and Judicial Development Project (Phase 2) (2004-2008)

After the completion of the bills, they were submitted and discussed at the Council of Ministers, then the National Assembly and the Senate. The MOJ of Cambodia requested Japan for assistance in dealing with questions and demands for revisions in these legislation processes. Based on the request, the "Legal and Judicial Development Project (Phase 2)" was conducted from April 2004 to March 2008 in order to support capacity development necessary for legislation processes and drafting of ancillary law bills.

In this project, with consideration of sustainability and respect for ownership, the guiding principle was made clear that the Cambodian side should take more of a leading role in dealing with questions and requests raised during the legislation process, while the Japanese side would support the MOJ of Cambodia on necessary explanations on the bills.

In this phase, ancillary law bills such as the Law on Non-Litigation Civil Procedure, Law on the Procedure of Litigation relating to Personal Status, Law on the Procedure of Civil Penalty, Law on Bailiff, Law on Application of the Civil Code and some ordinances including the Ordinance on Court Deposit Procedure were drafted. These drafts, as in the Project Phase 1, were also prepared first by the Japanese WGs and the Cambodian WG examined each of them with close communication with Japanese long-term experts.

During the period of Phase 2, the CCP was promulgated in July 2006 and came into effect in July 2007. The CC was promulgated in December 2007, while its application was

suspended until the Law on Application of the CC is prepared[5].

D. Assistance in the Preparation of Ancillary Laws and Dissemination of Promulgated Laws and Regulations: Legal and Judicial Development Project (Phase 3) (2008-2012)

Built on the achievement of the Legal and Judicial Development Project (Phase 1 and Phase 2), Phase 3 of the Project was implemented from April 2008 to March 2012 to support legislation of ancillary laws and dissemination of promulgated laws and regulations. Through the previous two phases, understanding of Cambodian WG members on the CC and CCP was enhanced and Cambodian WG members, who were senior judges and officials at the beginning of Phase 1, were promoted to higher positions such as the Minister of Justice, the State Secretary of the MOJ, judges of the Supreme Court, the Chief Judge of the Appeal Court, and judges of Extraordinary Chambers in the Courts of Cambodia, literally representing the Cambodian legal society.

Meeting of the Drafting Group in MOJ

It should be noted that, in the view of sustainability and capacity development of the MOJ, it was agreed by both sides that in Phase 3 the Cambodian side would take more of a leading role in drafting bills. Unlike the previous two phases, at which the Japanese WG drafted bills first, the Committee and Drafting Groups formed in Cambodia were given the task to draft bills with support of the Japanese WG and experts.

The six Drafting Groups, comprising mainly of young MOJ officials, were formed to draft the Inter-ministerial Prakas (ordinance) on Immovable Registration, Prakas on Registration of Juristic Persons, Prakas and Order related to Bailiff, Law on Deposit and so on. It was expected that the members of the Drafting Groups would prepare each article of these ordinances to implement the CC and CCP with support and advice by Cambodian WG members who enhanced their knowledge on the CC and CCP through discussions with Japanese WG members throughout earlier project activities. However, it was later found difficult for the members of these Drafting Groups to prepare each article of these ordinances partly because these young MOJ officials did not have enough knowledge and understanding of the basic structure and functions of the CC and CCP in the beginning, and

[5] The Civil Code finally came into effect on December 21, 2011.

partly because WG members became too busy in their promoted positions to find time to help the Drafting Groups, with a few exceptions such as the two MOJ State Secretaries. Important lessons were drawn that in a post-conflict country where a pool of human resources is often not sufficient, measures should be taken to promote capacity development at multiple levels over generations.

Though facing such challenges, the Drafting Groups made tremendous efforts to prepare draft articles by themselves little by little, under the leadership of the MOJ Secretaries, with relevant input on the CC and CCP by Japanese experts. Young MOJ officials were apt to understand laws in the abstract as they had few opportunities to be involved in the practice of court procedures or registration. However, they gradually accumulated knowledge related to the regulations they worked on and recognized practical necessities of each article.

Among these ordinances, the Inter-ministerial Prakas related to Immovable Registration pertaining to the CCP and the Inter-ministerial Prakas related to Immovable Registration pertaining to the CC were drafted in collaboration with the MOJ and MLMUPC[6]. The MLMUPC officials also accumulated their knowledge on the CC and CCP, especially in relation to property.

E. Capacity Development of Legal Professionals:
Assistance for Lawyers and the Bar Association (2001-2002, 2002-2005, 2007-2010)

With the recognition that roles of lawyers and bar associations are very important for the development of a legal and judicial system, JICA's cooperation included Cambodian private lawyers in the WG membership and as participants of training programs from the beginning.

In partnership with the Japan Federation of Bar Association (hereinafter referred to as "JFBA"), since July 2001, lectures on topics such as the role of lawyers in the civil procedure and lawyers' ethics were provided as part of continuous legal education for existing Cambodian lawyers. These lectures were conducted in coordination with the Canadian Bar Association and the Bar of Lyon that also supported the BAKC.

In addition, after the Cambodian government decided to establish the Lawyers' Training Center (hereinafter referred to as "LTC") inside the BAKC in September 2001, the JFBA

[6] The Inter-ministerial Prakas related to Immovable Registration pertaining to the CCP was promulgated on March 31, 2011, while the Inter-ministerial Prakas related to Immovable Registration pertaining to the CC is still under the drafting process.

and JICA started support for the BAKC and the LTC by providing advice on the management of the LTC, continuous legal education and education for prospective lawyers.

Since then, many Japanese private lawyers were dispatched to seminars held in Cambodia as short-term experts of these projects, in addition to long-term experts dispatched for "the Project for Legal and Judicial Cooperation for the Bar Association" (June 2007- June 2010).

Through these assistance activities, the capacity of existing local lawyers was improved to some extent and many new lawyers were trained on civil matters. The total number of new lawyers trained at the LTC after Japan started support for the BAKC reached about 520.

There are still challenges that only a limited number of lawyers understand the functions of the CC and CCP very well. It would not be easy to provide education at the LTC on a constant basis; however, there is also a prospect that a few young lawyers, who have been trained during the project, will work as trainers on civil matters at the LTC and other institutions in the future.

F. Capacity Development for Legal Professionals: Assistance for the Royal School for Judges and Prosecutors (2005-2008, 2008-2012)

As mentioned earlier, Cambodia suffered from extreme lack of legal professionals immediately after the Pol Pot regime, and people without any legal background, such as school teachers, were appointed as judges to fill the vacuum. They did not have opportunities to receive enough legal training or education, and consequently, judicial practices often got confused with inappropriate legal decisions and lagged procedures.

Mock Trial at RSJP

In response to the urgent needs to nurture judges, prosecutors and other legal professionals, the Cambodian government established the Royal School for Judges and Prosecutors (RSJP) by a Royal Decree in February 2002, and based on which training was started for fifty five student judges of the first intake in November 2003. The RSJP became one of the four schools under the Royal Academy for Judicial Professions (RAJP) established by another Royal Decree in January 2005, together with the schools for court clerks, bailiff and

notaries.

In supporting the drafting process of the CC and CCP, Japanese stakeholders strongly felt the necessity of capacity development of judges and prosecutors for proper implementation of laws and regulations, and JICA started dispatching Japanese judges and prosecutors as short-term experts soon after the RSJP started operation. This initiative was followed by the technical cooperation project titled “The Project for the Improvement of Training on Civil Matters at the RSJP” (Phase 1 and Phase 2) from November 2005 to March 2012.

Some active judges, many of whom are members of the Cambodian WG to draft the CC and CCP, assumed roles of trainers on civil matters at the RSJP.

As of the end of 2011, 290 new judges and prosecutors have been trained at the RSJP on the new CC and CCP, which account for over seventy percent of the total number of 396 judges and prosecutors in Cambodia.

At the beginning of the project, the RSJP suffered a lack of trainers and a well-established training curriculum, and thus Japanese experts were sometimes requested to give lectures to student judges, in addition to providing advice on the management of the school and developing curriculum and teaching materials. Practice of civil mock trial was also introduced in the project from June 2005 in order for students to have a clear image of the new civil procedure.

The main activity of the project has been trainers’ training for prospective trainers who were selected from among graduate student judges. Forty prospective trainers were trained so far in the RSJP and participated in WG activities to prepare teaching materials on the CC and CCP. Some of them are now capable of giving lectures as assistant trainers at the RAJP, and also play a role in disseminating their knowledge on the CC and CCP to their colleagues while working as active judges in local courts. They are indeed legal practitioners facing day to day practical issues on the ground, and therefore it is expected that they develop legal theories and practices which reflect the actual circumstances of, and suitable for the society of Cambodia.

G. Next Step

As explained above, the current projects for the RSJP and for the MOJ will be over in March 2012. The next challenge is to ensure that the CC and CCP will be properly implemented and deeply rooted in Cambodian society. The CC and CCP should function

well within Cambodian society and be actually utilized, and for this purpose, the development of a core group of legal professionals with comprehensive understanding of the CC and CCP is necessary for proper implementation of these laws according to the actual situation of the society of Cambodia, and for dissemination of their knowledge and experience to their colleagues and younger generation.

Accordingly, the concerned Cambodian authorities and JICA agreed to continue cooperation to further disseminate the fruits of the past projects. The new project, which is planned to begin in March 2012, will involve not only the MOJ and RAJP but also the BAKC and the Royal University of Law and Economic Sciences (RULE), with the aim to deepen comprehensive understanding of legal professionals, including lecturers at the university, on the CC and CCP, and to enhance the capacity of MOJ officials.

The agreed project plan anticipates four main outputs; 1) the capacity of the core people of each related organization (MOJ, RAJP, BAKC, and RULE) for understanding and implementing the CC and CCP is to be enhanced; 2) knowledge concerning the CC and CCP and perceptions on both theoretical and practical issues are to be shared among legal practitioners and academics over boundaries of each organization; 3) the individual and institutional capacity of the MOJ is to be enhanced to respond to inquiries on the CC and CCP from both internal staff and other ministries to draft and revise laws and regulations related to civil matters; and 4) the Inter-ministerial Prakas on Immovable Registration pertaining to the CC is to be drafted and the knowledge necessary for its proper implementation is to be disseminated.

A working group (WG) will be formed in each four organization, which is expected to study, discuss and interpret CC and CCP articles based mainly on case studies. In doing so, Cambodian WG members should understand that there can be several ways and conclusions in the interpretation of law and in the selection of persuasive reasons in the application of laws to cases. Common topics will be set for WG activities, though actual activities of each WG may vary according to the duty of respective organization and experiences of members. They are also expected to share the results of their respective studies and discussions in the Joint Working Group, comprised of WG members of respective organizations.

As such, priorities will be given to building comprehensive understanding on the fundamental structure of civil laws among relevant legal practitioners and academics, since sustainable development of legal systems would not be possible without such understanding.

In addition, upon request from the MOJ for further assistance in preparing drafts of laws and regulations, and based on the understanding that the drafting of lacking laws and regulations is still an urgent task in Cambodia, JICA will continue to support the MOJ in preparing the Inter-ministerial Prakas on Immovable Registration pertaining to the CC. Moreover, as the CC came into effect last year, the number of inquires related to the CC and CCP is expected to increase. The MOJ is required to play more active roles to make sure laws and regulations drafted by the MOJ and/or other ministries are consistent with the CC and CCP. In this respect, further capacity development of the MOJ to implement the CC and CCP properly will be pursued.

Built on the achievements made so far, we believe that Cambodia will make a further step toward capacity development for drafting effective laws and its appropriate implementation. We would like to continue cooperation for better future for Cambodia where human rights are properly guaranteed through the “rule of law”.

GREAT MEMORIES OF OSAKA

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I. INTRODUCTION

The Working Group on the Criminal Procedure Code of Laos (hereinafter referred to as "WGCPC") visited Osaka from October 16 to 29, 2011, to participate in a training seminar organized under the JICA Human Resource Development Project (hereinafter "Project") in the Legal Sector for Laos.

The Project for the Lao People's Democratic Republic (hereinafter "Laos") was signed between the Japan International Cooperation Agency (hereinafter "JICA") and four legal/judicial institutions in Laos in June 2010.

The Project focuses on the capacity building of institutions and officials/lecturers of four organizations, namely: the Ministry of Justice, the People's Supreme Court, the Supreme People's Prosecutor Office, and the National University of Laos. The Project commenced in the latter half of 2010 and lasts for four (4) years. As the main actors of the Project, three working groups were formed on the Civil Code, Civil Procedure Code and the Criminal Procedure Code.

The WGCPC, which consists of 13 members, including the author of this article, from the above-mentioned four organizations, joined a 14-day study trip to Osaka funded by JICA. The main objectives of the study trip were: 1. understand the basic principles of the Code of Criminal Procedure and practices of the criminal procedure in Japan; 2. study and analyze legal theories and practices in Laos in comparison with those of Japan; and 3. discuss the basic concepts and targets of the model handbook to be developed in reference to the Japanese one.

II. STUDY TRIP TO OSAKA

A. Outline

During the study trip in Osaka, the WGCPC held thorough discussions on crucial issues in the process of investigations by police and prosecutors with Japanese experts. After a comparative study between the Laotian and Japanese criminal procedures, the WGCPC exchanged viewpoints on legal histories, and learnt that it took over a century for Japan to develop its current legal system by adopting several factors of the different legal systems of France, Germany and the U.S. By observing Japanese practices of criminal procedure first hand and learning its legal thought, the participants recognized differences in the criminal procedures between Laos and Japan.

One of the major differences between Laos and Japan is the period of investigations and the process of evidence collection. In Laos, the investigation period is limited to 60 days from the date of an order to open an investigation and public prosecutors may extend the period if there is a need to continue the investigation. On the other hand, in Japan there is basically no limit in the investigation period and the maximum period for a suspect to be kept in custody before being indicted is only 23 days. In relation to the warrant of arrest or detention, while only the courts have the power to issue warrants in Japan, in Laos not only judges but also public prosecutors and chiefs of the investigation organizations have the power to do so.

In addition to lectures by, and exchange of opinions with Japanese experts, opportunities were offered to visit some state and private legal institutions, such as the Osaka District Public Prosecutors Office, Osaka District Court, Osaka Prefectural Police, Doshisha University, Osaka Bar Association and the International Cooperation Department (ICD) of the Research and Training Institute, Ministry of Justice in Osaka. While the visits to legal institutions accelerated the process of solving key issues and greatly influenced the designing of the WG's activities, the visit to the ICD, a very important legal cooperation organization, was also very impressive for the participants because of their great hospitality and well-equipped facilities for effective learning.

The training seminar was conducted in a friendly atmosphere, based on the spirit of mutual interaction and exchange of legal information and theories. It was honorable for the participants to be invited to lunch with high-ranked officials of the ICD. They also had chances to go sightseeing in Nara and Kyoto, ancient capitals of Japan.

B. Visit to the Osaka District Public Prosecutors Office

During the visit to the Osaka District Public Prosecutors Office, Professor and ICD attorney, Mr. Ken'ichi Nakamura briefly explained the criminal procedure operated by the judicial police, public prosecutors offices and courts. His explanation included the profile and functions of the prosecutors offices, relationships between prosecution and police, as well as the differences in investigations by prosecution and by police, and how judges decide cases.

Mr. Nakamura's lecturing through case studies was very effective for the WGCPC to clearly understand the Japanese criminal procedure.

C. Visit to the Osaka District Court

In the Osaka District Court, which is located in beautiful and safe buildings, the participants were given an opportunity to observe a trial. It was very instructive in that they were able to see the real practices of court procedure, including the judge's way of conducting a trial and the evidence production method by the prosecutor and defense counsel for the legal fight. They were especially impressed by the court's excellent case management, court system, including a single-judge and three-judge trial system, high-standard security system and good court services.

D. Visit to the Osaka Prefectural Police Headquarters

At the Osaka Prefectural Police Headquarters, a brief presentation was given on the profile of the Police and its working system. There was also a chance to observe several detention rooms. The participants were amazed to learn how well the police carry out their functions, how effectively the police use its investigation methods, their good case management and criminal records filing system.

In the Traffic Department an explanation was given on the traffic control in Osaka Prefecture, as well as the establishment of an excellent traffic mobile force system all over Japan.

In the Osaka Forensic Science Laboratory, it was an eye-opening experience for the participants to observe the modern truth proof system, such as the DNA test, false test, face comparison and car number plate control. Through such systems to keep perfect evidence, any data you search for, no matter if the data is over a century old, can be easily found and the staff of this laboratory assume heavy responsibilities.

E. Visit to Doshisha University

After enjoying the friendly atmosphere in Osaka Prefecture for a few days, the WG members visited Doshisha University, which is located in the unique, historical and cultural Kyoto city. This university was founded in 1912 by the Doshisha Private School Group and is one of the oldest private schools in Japan. They have a beautiful campus and great law professors. The participants exchanged legal viewpoints with Professor Katsuyoshi Kato and Professor Mitsuo Shumi, who were the main lecturers in the training seminar. They discussed not only legal points but also the types of model book to be selected and they were shown many kinds of books such as text books, casebooks, commentary books, study books and handbooks. Moreover, the professors guided the participants around the school library to take a look at those model books. It was meaningful for the participants to receive instructions from eminent law professors as it is very important for them to learn how to choose the most appropriate model book.

Due to time constraints, just a brief visit was paid to the Osaka Bar Association. An explanation was given about the association's profile and their staff gave us a warm welcome.

III. PERSONAL IMPRESSION AND ACKNOWLEDGMENT

Osaka is a beautiful, friendly and unique city with a long history, and is a nice place to visit. In this city people from around the globe join hands in harmony. Particularly JICA Osaka International Center (OSIC) is an excellent place to receive training, because training participants can not only enjoy their studies but also share their experiences and learning with people from other countries. The WG members as well not only received legal training but also learned and experienced other cultures. They were encouraged to share their knowledge about legal thoughts or fields of training with other training participants during meals.

For me, the study trip to Osaka was very useful not only because it enabled me to absorb wide-ranging legal knowledge but also because I was able to observe the realities of Japanese legal community. It helped me form certain legal thoughts and I carried back home a whole set of concrete ideas on how to move forward with WG activities.

It was especially meaningful to be trained by many great and famous professors, such as Professor Katsuyoshi Sato, Professor Mitsuo Shumi and Mr. Shunji Miyake, an attorney-at- law and a member of an advisory group for Laos. The great help extended by the friendly ICD staff members, rich information resources available at their library and excellent facilities cannot be underestimated, either.

Another thing that impressed me very much was the well-equipped facilities of the training venue, including the internet connection. Thanks to their equipment, the participants were able to search any information necessary during seminar hours. Valuable materials and handouts were also distributed during lectures and visits.

I would like express my great gratitude to all the ICD staff members related to the Project for their kindness and assistance, especially NAKAMURA Sensei, who devoted his valuable time to be side-by-side with us all the time, and who encouraged the WGCPC to experience the real Japanese life style, which left us with sweet and unforgettable memories of Osaka.

My thanks go to JICA as well, especially Mr. Hiroyuki Ito, a JICA long-term expert who always stands by us and strongly encourages us to gradually develop the Laotian legal system.

I am sure that the experiences and precious memories gained in Osaka will be of great help for us in our performance of WG activities and valuable assets for our future career. All the great assistance received from professors and ICD and OSIC staff will stay in my heart forever.

E~MAIL

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From : Indonesia

IF I WERE A GAYUS TAMBUNAN

Almost every day you can find newspaper articles on corruption cases in Jakarta, Indonesia. Among so many corruption cases, there is one man about whom a song was created for what he did.

Gayus Tambunan used to be a tax officer. Tax offices in Indonesia often impose a huge amount of transfer tax, which may amount to several years of profits of taxed companies.

Taxed companies are allowed to bring time-consuming lawsuits against the decisions of tax authorities and may get a refund if they succeed in convincing tax court judges who are personnel of the Ministry of Finance. Gayus Tambunan induced such companies to pay bribes to avoid such a time-consuming legal process.

Thanks to the strenuous efforts by the famous Corruption Eradication Commission (KPK), Gayus Tambunan got caught after making a fortune by receiving bribes and was imprisoned. This is what people believed.

On November 5, 2010, a man who was identical to Gayus Tambunan was spotted by news photographers when he was sitting in a stadium in the Bali Resort Center where an international tennis championship was being held. Later, it turned out he was Gayus Tambunan himself.

Bona Paputungan, a singer who was previously jailed, composed a song called “Andai Ku Gayus Tambunan [If I were a Gayus Tambunan]”(Its music video can be found on Youtube).

The lyrics of the song are as follows;

If I were a Gayus Tambunan, I would be able to go to Bali.

All wishes would come true.

One of the strange things of this country is that punishments can be bought by money.

While only we, the poor, are puppets of fate…

Anyway, Gayus Tambunan is still in jail. The warden who let Gayus go to Bali in exchange for a bribe was replaced.

Corruption cases are not tolerated and they are denounced by the majority of the people of Indonesia today. There is much more openness against corruption today compared to the situation 15 years ago.

Hopefully, the Indonesian people have realized that they can be more prosperous in a corruption-free society in the coming 15 years.

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BACI CEREMONY

It is an ancient belief in Laos that everything has a spirit or components of a soul. A human body has also a spirit and Lao people call it "**Kuan**". A human body is the home of **Kuan**.

Kuan can roam anywhere or stay outside of the human body for any period of time. If it happens, it will make the person unhappy, unhealthy and harm his/her well-being. The concept is that the spirit, or **Kuan,** which has left a human body must be brought back to the body because the person is "injured" or is suffering from something; The person who has scared **Kuan** off or been shocked by something let **Kuan** go; Or the person did something wrong, so **Kuan** left them. Also, even if the person seemingly didn't do anything wrong, **Kuan** may leave him/her for many reasons. For example, if you have travelled, maybe your spirit will stay at the place where you traveled. Therefore, in order to re-establish equilibrium in yourself, **Kuan** must be called and returned to your body. To call back **Kuan**, the "**Baci**" ceremony is held.

Baci is celebrated on several occasions and in different ways throughout the country, and varies from region to region. It is performed in weddings, upon returning home, leaving for a long trip, starting a new business, by birth, by death, or when accidents occur. In some regions it is traditional to celebrate **Baci** for elephants or trees in holy places. The **Baci** ceremony consists of **Phra-Kuan** and **Mor-Phone**. It is often practiced either in the morning before noon, mostly after 9:00 a.m., or in the afternoon, mostly after 4:00 p.m.

Pha-Kuan consists of a dish or bowl, often in silver, which contains, from the top, sprouts of a cone or horns made of banana leaves, flowers, and white cotton threads. Flowers often have evocative meanings and symbols, such as dok huck (symbol of love), dok sampi (longevity), dok daohuang (cheerfulness/brilliance), dok champa, etc. Cotton threads are cut long enough to wrap around adult wrists. They are attached to a bamboo stalk and give the impression of a banner. **Mor-Phone** is a master of the ceremony who can be a male or a female, but is

usually the oldest male of a family or a community, and is someone who has good skills to call **Kuan**. Around the base of **Pha-Kuan** there are some foods, usually boiled eggs and chicken (symbols of fetus), local fruits like bananas and oranges (symbols of prosperity) and traditional sweets, a stalk of bananas, khaotom - boiled sweet rice wrapped in banana leaves (symbols of unity), a bottle of rice liquor or **Lao Khao** and drinking water. These foods and beverages are offered to welcome **Kuan**.

Pha-Kuan is placed on a white cloth in the center of a room, or where the ceremony is held, sometimes near a rice paddy field, near a river, etc. **Mor-Phone** sits facing Pha-Kuan, and participants sit around **Pha-Kuan**. At the end of the ceremony white cotton threads are bound around the wrists of participants, which is called "**Mat Khaen**", wishing that **Kuan** will return to the participants through white cotton threads. The threads should be kept for 3 or 7 days in order for **Kuan** to resettle in human bodies or its home.

The **Baci** ceremony is normally followed by traditional meals, rice liquor **Lao khao** and group dancing called "**Lam Vong**". This is a very cheerful and meaningful ceremony for Lao people. In fact, it is a good combination of animism and Buddhism's practices.

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