ICD NEWS

LAW FOR DEVELOPMENT

INTERNATIONAL COOPERATION DEPARTMENT
RESEARCH AND TRAINING INSTITUTE
MINISTRY OF JUSTICE, JAPAN

January 2015

～Features～

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[1] The author was assigned as the Director General of the Research and Training Institute, Ministry of Justice, as of July 18, 2014.
[2] The author was assigned as the Director General of the Judicial System Department, Minister's Secretariat, Ministry of Justice, as of July 18, 2014.
[3] The author wrote this article during her tenure at the International Cooperation Department.

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Please note that the articles contained in this book were originally written for ICD NEWS NO. 57 through No. 60 (Japanese version) published in November 2013; and February, June and September 2014. Therefore, some mentioned dates and times in the articles may now be past. Please also note that the titles of some individuals may have changed.

[4] Currently he serves as a public prosecutor at the Nagoya District Public Prosecutors Office.

- I. Contributions -

ACTIVITIES OF AND LEGAL TECHNICAL ASSISTANCE BY THE UNITED NATIONS ASIA AND FAR EAST INSTITUTE FOR THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Tomoko AKANE
Former Director
The United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders[1]
(United Nations Training Cooperation Department,
Research and Training Institute, Ministry of Justice)

I. INTRODUCTION

I was assigned to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in July 2013. Since then, I have been working on my third assignment at UNAFEI with the utmost effort to reflect my merits and experience in its activities, including helping provide innovative actions. This is the second time for me to contribute a preface to ICD NEWS, the first one of which I did as Director of the International Cooperation Department (ICD) of the Research and Training Institute (RTI)[2].

UNAFEI was established as a United Nations regional institute by agreement between the United Nations and the Government of Japan. It has been 52 years since UNAFEI organized the first international training course inviting criminal justice practitioners from several countries and regions - mainly in Asia - in 1962. Since then, nearly 4,900 individuals in the criminal justice field from 131 countries and regions in the world have participated in the training courses and seminars organized by UNAFEI. From the proverb, "Endurance makes you stronger," I have realized the great influence UNAFEI has wielded on the improved administration of criminal justice in each country, through capacity-building activities.

[1] The author was assigned as the Director General of the Research and Training Institute, Ministry of Justice, as of July 18, 2014.
[2] See ICD NEWS December 2009, Preface "Encounter with a Dream Through Legal Technical Assistance."

All of this owes to the strenuous efforts by our predecessors and the continued support from the Japan International Cooperation Agency (JICA), Asia Crime Prevention Foundation[3] and many other individuals and entities, which was extended to UNAFEI in organizing international training courses, etc. As a result, strong relations built on trust have emerged among criminal justice practitioners in Japan and other countries, through a UNAFEI network formed by training participants. Such relations serve as vital assets for Japanese practitioners working in the global front lines.

The basic activity of UNAFEI is to organize multi-country training courses in which participants from various countries assemble for training on a range of themes. The topics of training include issues to be addressed not only by a single country but in cooperation among criminal justice institutions in the international community (e.g. measures to prevent and properly prosecute globalized crime, such as transnational organized crime, corruption, etc.) and those shared among institutions related to correction and probation administration in each participating country (overcrowded prisons, improved treatment of juvenile and female offenders, measures for correction of offenders and prevention of recidivism, etc.). The multi-country training courses are carried out through discussions among the participants, together with all UNAFEI faculty members and visiting experts. In doing so, they refer to international treaties such as United Nations conventions, rules and standards used in the international community including the UN, or progressive approaches of Japan and the world to issues dealt with at training courses.

As discussed later, UNAFEI has also regularly organized country-focused training courses and seminars, in order to cooperate with the target country in the improvement of institutional administration, through capacity-building of specific organizations. All the above means that, until now, UNAFEI has provided almost no legislative assistance on specific laws.

Then, are the activities of UNAFEI entirely different from legal technical assistance provided by the ICD? If UNAFEI intends to become involved in such activities, what process should that take? It first appears necessary to examine fundamental questions such as: what position legal technical assistance in the criminal field should hold in the realm of legal technical assistance; and what the basic grounds for legal technical assistance in the criminal field are.

[3] The Asia Crime Prevention Foundation was established in 1982 with the main purpose of supporting UNAFEI activities (in April 2014, it became a public interest incorporated foundation). It cooperates in the improvement and strengthening of UNAFEI's activities by organizing opinion-exchange meetings, networking events, study trips to its branch offices, etc., on the occasion of training seminars at UNAFEI. It was granted the General Consultative Status, which falls under the top category of UN NGO branch (an international non-governmental organization in consultative status within the UN Secretariat). With several branch offices inside/outside of Japan, it organizes seminars and other activities in Japan and overseas.

II. WILL UNAFEI PLAY A ROLE IN LEGAL TECHNICAL ASSISTANCE?

The country where I stayed for the longest period during my tenure at UNAFEI was Kenya[4]. In 2003 and 2004 (at that time, I assumed the position of the Deputy Director of UNAFEI) I was in Nairobi, Kenya, for three weeks each, together with a professor in corrections and another professor in probation of UNAFEI. During our stay, we also traveled to various major provincial cities.

At that time, in collaboration with JICA, UNAFEI provided cooperation to the Children's Department under the Office of the Vice-President and the Ministry for Home Affairs, Heritage and Sports (as a result of an organizational restructuring in the country, currently the Children's Department belongs to the Office of the Vice-President and the Ministry of Gender, Children and Social Development). In terms of the rights and protection of children (juveniles), there exist various UN treaties and standards, including the Declaration of the Rights of the Child (1959), UN Standard Minimum Rules for the Administration of Juvenile Justice (the so-called "Beijing Rules," 1985), Convention on the Rights of the Child (adopted in 1989, and coming into force in 1990). With these treaties adopted by the UN on the rights of children, member countries developed domestic legislation in conformity with the intents and purposes of these treaties.

Kenya ratified said Convention in 1990, thereby completely revising its "Children Act" in 2001 (hereinafter the new act is called "Children Act"). Upon enforcement, a transition was made as to the criminal justice field and welfare policies for children in accordance with the purpose of the Act.

Since 1997, UNAFEI has dispatched professors in correction, probation, etc. to Kenya from three weeks to two months each year. This means that UNAFEI has been offering assistance for over 15 years to the capacity-building of officers of the Children's Department, one of the institutions responsible for the operation of the Act in Kenya. Professors and other officials of UNAFEI dispatched to Kenya supported the Children' Department in its activities to protect children in the administered camps as well as in society. The support was provided in accordance with international standards including the UN standard, from the viewpoint of the administration of juvenile justice of Japan, which is slightly advanced from the global standard. Their activities included: understanding actual practices by conducting detailed on-site surveys at various places including provincial cities, discussions with Children's Department officials, drafting and revising the circulars necessary for the enforcement of the Act, creating manuals on the protection and classification of delinquent children

[4] Although UNAFEI is a UN regional institute, its target countries and regions are not limited to Asia. However, it focuses on cooperation with Asian countries with geographical and cultural proximities to Japan. The project for Kenya was one of the few cooperation examples with African countries.

and correctional education, and providing advice on various matters ranging from the recruitment and training of children's probation officers to daily duties.

In addition to the above-mentioned activities in Kenya, UNAFEI invited executive officers of the Children's Department to Japan annually for 3-week training seminars together with correction and probation officers of UNAFEI (in UNAFEI these activities were called "Kenya Project" in summary). This project continued until 2013, with slight changes in the form, content and involved institutions, and achieved certain results as follows:

- Clues were found in understanding the unified and continual treatment of juveniles through cooperation among children and juvenile justice-related institutions, including courts, the Correction Bureau, etc., as well as the Children's Department;
- The children voluntary officer system was established and took root in Kenya, which was inspired by the voluntary probation officer system of Japan;
- and others.

When I was involved in the Kenya Project, I was never aware that it constituted a part of legal technical assistance activities. Looking back on it now, it was clearly legal technical assistance provided by UNAFEI.

For your information, the Children Act in Kenya modeled after that of England, its former colonial power, and those of the Commonwealth of Nations. In addition, the Children's Department of Kenya cooperated with various donor countries such as Germany and international NGOs, including UNICEF, for the dissemination of said act, etc. Surprisingly, however, at the time I visited Kenya, even judges in charge of criminal cases or protection and rehabilitation of children were not well acquainted with the content of the law.

Furthermore, the law did not match the reality in Kenya, with certain articles unfeasible and partly in conflict with the Criminal Procedure Law of the country. No individuals were able to bring them to light and a few issues were left unresolved. Such was the situation that made us question, if Kenya had aimed at the secure enforcement of the Children Act since its legislative stage. I remember that although at that time I was not very familiar with the methods and detailed activities of legal technical assistance by the ICD, I regretted the situation and thought that with Japanese involvement in the legislation process, things might have worked differently.

In addition to the Kenya project, legal technical assistance by UNAFEI includes the Assistance Project for the National Counter Corruption Commission of Thailand in the capacity-building in investigations (2004 – 2007), the Project for the Parole and Probation Administration of the

Philippines to re-activate its probation officers (2003-2010), etc.

UNAFEI has never been involved in the enactment of laws in the target countries, nor in Kenya. However, in cooperation with JICA, Asia Crime Prevention Foundation, Volunteer Probation Officers Association in Support of UNAFEI's Activities[5], etc. UNAFEI has achieved certain results in improving the administration of relevant systems in the recipient countries. This was done through discussions with local experts, and the holding of seminars and training courses in Japan and abroad for personnel capacity-building. Considering these examples, it can be considered that UNAFEI has played a role in legal technical assistance, at least in the field of criminal justice.

III. UNAFEI'S CONTRIBUTION IN LAYING THE FOUNDATION OF LEGAL TECHNICAL ASSISTANCE

As mentioned above, the basic activity of UNAFEI is the organization of multi-country training courses. This has been done consistently over the past 50 years since the establishment of UNAFEI, even before starting cooperation with JICA. For each training course, each participating country sends at most a few officers. In this sense, it may be difficult to greatly contribute to the capacity-building of specific institutions in the participating countries only through one training course or within a limited timeframe. However, through the accumulation of such extended international training provided by UNAFEI, a network of UNAFEI alumni has been formed in each participating country. This network has contributed to the improvement of criminal justice in each country or has rendered strong support to UNAFEI. For example, in the case of Thailand, as many as 320 individuals have participated in the training of UNAFEI to date. Some individuals have assumed important posts in the Ministry of Justice (Director-General, Attorney-General, Department Director of Correction, Department Director of Probation, etc.) in engaging in legal reforms as key figures and have extended support to UNAFEI. This example is not limited to Thailand. UNAFEI networks, which can be seen all over the world with a sense of respect or feeling of trust towards Japan, may cause a desire of requesting assistance from Japan or UNAFEI when needs arise. These networks also serve to gain criminal-justice-related information in each country, thereby creating an access to trends in criminal justice.

The ICD was established in 2001 as a department specializing in legal technical assistance. Its

[5] This is a voluntary organization established principally by volunteer probation officers who have participated in international training courses organized by UNAFEI. As a sample case of its cooperation with UNAFEI's activities, in the course of the abovementioned Project for Re-Vitalization of Probation Officers in the Philippines, main members of the Association visited the Philippines to work with officers related to the local probation bureau, including probation officers. Through such human contact, the Association has cooperated in promoting activities of probation officers in the country.

assistance activities, which began for Vietnam and Cambodia, have grown in both scope and quality and have expanded to many Asian countries in recent years. Many of the recipient countries with which the ICD currently cooperates, have been participating in UNAFEI's training courses for quite some time and are important members of UNAFEI networks. While assistance activities by the ICD focus on civil- and commercial-related fields, a few executive officers of judicial institutions in the ICD's recipient countries are UNAFEI alumni. Many countries which the ICD works with are still developing with limited human resources. Thus, in quite a few of these countries, a certain number of respected personnel is involved in the decision-making of important issues related to the operation of the legal system in both civil and criminal fields. In this context, UNAFEI networks serve as invisible threads in linking with Japan, creating grounds for smooth cooperation with the ICD. As a note, in recent cooperation activities between the ICD and Nepal, obviously those who once studied at UNAFEI have played active roles in the background in relation-building. Thus, I am proud to state that simply through the organization of multi-country training courses, UNAFEI has contributed to the formation of groundwork for legal technical assistance.

IV. FUTURE LEGAL TECHNICAL ASSISTANCE AND UNAFEI

In the fiscal year 2013, UNAFEI was actively involved in the designing and organizing of a training course for Nepal in the criminal justice field, which constituted part of cooperation activities of the ICD. In doing so, UNAFEI designated one of its professors to be in charge of the program to work in partnership with his counterpart in the ICD. From 2014, training courses for the Supreme People's Procuracy of Vietnam, which have conventionally been organized by the ICD as one sphere of the JICA Project for the country, will be held at UNAFEI entailing its deep involvement. Coupled with this change, UNAFEI is determined to commit itself to the maximum extent possible to capacity-building which forms part of legal technical assistance, using its accumulated experiences and knowledge. Such commitment will be extended to new requesting countries or institutions.

It is my sincere hope that UNAFEI becomes involved to the maximum extent possible in legislative assistance or in the law-enactment process in the criminal field, whenever the needs and requests for assistance arise. Unfortunately, UNAFEI has never enjoyed continuous support from so-called assistance committees or advisory groups composed of law scholars or legal practitioners. Moreover, UNAFEI has never dispatched abroad its professors or other staff members as JICA long-term experts. Thus, we would like to begin with what we can, in cooperation with, and with support from the ICD.

It should be kept in mind, however, that there are various obstacles that need to be overcome in

providing legislative assistance in the criminal field. It appears that needs for such assistance in many developing countries arise from the following external factors:

- Strong demand from the international community, including the UN, "for the rule of law" and "for the purpose of protecting human rights";
- As a result of the above, the necessity of establishing legal systems, and concluding or ratifying international conventions to promote international cooperation; and
- Accordingly, the necessity of enacting domestic relevant laws, etc.

At the same time, establishing such legal systems (as above) may lead to creating an inviting business environment.

It is easily understandable that these external factors may trigger needs for legislative assistance. In such cases, however, it should be questioned whether the country concerned has a will strong enough to "effectively operate" new legislation established through the above process (in other words, it would be meaningless if the new legislation was not actually used). As criteria to assess the wills, the following should constantly be questioned and it should be studied whether these hurdles can be overcome:

- Whether the country intends to establish domestic organizational structure, and obtain and train sufficient human resources which are necessary for legislative enactment;
- The progress of discussions on the consistency between the conventional domestic legal system and newly created legislation;
- Whether UNAFEI's involvement will contribute to the development of the criminal justice system of the country in question.

It is only when meeting these criteria that development can be made. Otherwise, there will be a risk that our assistance will end in vain, providing no merits to the recipient country, or such fruitless assistance will only encourage the country's dependence on UNAFEI or Japan. If so, all physical and human resource input will be useless, contrary to the interests of Japan. Thus, more careful attention and consideration would be necessary in providing legislative assistance in the criminal law field than in the civil and commercial law fields.

Another point of note, needless to say in legal technical assistance, is the necessity of establishing strategic objectives and directions as part of state undertakings, as well as theoretical grounds for assistance (though discussing details of theoretical grounds is far beyond my ability). Discussions in areas called "Theory of legal technical assistance" or "Theory of law and development" are examples of such theoretical grounds. As is well known, many eminent professors including Professor Masanori Aikyo, Vice President of Nagoya University, and Professor Hiroshi Matsuo of Keio University Law School have already achieved significant amount of research results in those fields.

I am afraid to say that those theories are beyond my comprehension, and there are many parts which I cannot come to completely understand. However, when I read them, they touch me deeply, which are rare moments, and provide me certain types of revelations. Discussions in the above-mentioned areas appear to have the potential of further developing and evolving into intriguing legal study areas. At the same time, they are significant as they have been developed as substantively corroborated concepts by scholars. Those scholars who encountered a new study dimension called legal technical assistance (after mastering specific legal areas including the Civil Code, Code of Civil Procedure, Constitution and Administrative Law) have broken new ground through being engaged in actual assistance activities.

Such theoretical grounds, which are backbones on which legal practitioners can count, will become part of the driving force from the above in continuing legal technical assistance or judicial cooperation. Moreover, they will send encouraging messages to younger generations with aspirations for participating in legal technical assistance activities.

UNAFEI is required to provide coherent assistance promoting further development of legal concepts in the recipient country, through legislative assistance founded on an accurate understanding of its criminal legal system. In doing so, it may be extremely important to continually receive assistance from scholars in the criminal-law field (such as the Penal Code and the Criminal Procedure Code). With this in mind, I would like to say a few words to those scholars who have supported us, and also to those who will lend us a hand: “We will do our best, and look forward to your continued support.”

BLOWIN' IN THE WIND OFF THE MEKONG

Osamu HAGIMOTO
Former Assistant Vice-Minister of Justice
(Deputy Director-General for the Civil Affairs Bureau)
Minister's Secretariat
Ministry of Justice[1]

It appears to me that what is required in legal technical assistance is similar to leadership. It may sound bizarre, but this is a simple opinion that I have about legal technical assistance.

In March 2014, I visited Vientiane, the capital of Laos, for the first time in my life. The purpose of my visit was to participate as a JICA short-term expert in a local seminar held for the sub-working group of the Civil Procedure Code. The four-year Project for Human Resource Development in the Legal Sector of Laos commenced in July 2010. In spite of being a member of the advisory group on Civil Procedure Code, my schedule had not coincided with the local seminars held until that time. In the fourth year of my mission, I was finally able to realize my long-awaited dream of visiting Laos. Although it was a short stay of five days and three nights, it provided me with a truly valuable opportunity to envision legal technical assistance again on a firsthand basis.

One of the important roles of a leader is to set a clear goal and share it with other team members. This may be similar to the sharing of beliefs and sense of value. If this is put into practice, even with the turnover of team members - or when confronting obstacles - it is possible to maintain the solidarity of the team as it strives towards the goal.

In legal technical assistance as well, the starting point is in setting an appropriate goal based on a thorough understanding of the needs and challenges of the recipient country. In the course of legal technical assistance to Laos, it was feared on some occasions that the personnel change of Laotian participants would negatively affect the progress of the project. On every occasion, however, JICA's long-term experts overcame the challenges through the communicating and sharing of goals with the Laotian participants.

[1] The author was assigned as the Director General of the Judicial System Department, Minister's Secretariat, Ministry of Justice, as of July 18, 2014.

The leader needs to delegate tasks to his/her team members in good faith. And while team members try but often come up short, their leader must wait patiently. When team members do not appear to be entirely dependable, the leader may want to offer assistance or intervene, often imposing his/her way. However, in doing so, he/she is in effect disqualifying himself/herself as a leader. The leader's duty is to encourage the members to overcome for themselves the challenges they encounter. All the while the leader's support helps them to build confidence and grow through their mistakes and accomplishments. The team's leader needs to remind himself/herself of this and persist in its pursuit.

Similarly in legal technical assistance, the easiest and most effortless way may be for the donor to draft laws on behalf of a recipient country. However, such an imposed law may not properly take root nor be enforced appropriately in the recipient country. Needless to say, proactive and constructive involvement of the recipient country in development endeavors is indispensable for successful results, and thus, in the course of nature the scope of assistance areas has expanded from legislative drafting to the improvement of legal operation systems and human resource development. It may require a long period of time, but it is necessary to support self-help efforts of the recipient country behind the scenes with patience and perseverance. "Give a man a fish and you feed him for a day, teach him how to fish and you feed him for a lifetime." This may be a cliched expression, but how very true!

What is required for a leader in supporting his/her team members is to accurately understand the situation, and to use this in analyzing the cause of, and solutions to the problem, and to present effective alternatives thereto. This appears to apply exactly to the advice to be provided to counterpart organizations in the course of legal technical assistance.

While each player achieves successful results by his/her own, the leader does so through teamwork (in other words, with support from others). What one cannot achieve by himself/herself is done in a team. The duty of a leader is to facilitate his/her team to show performance which is beyond the sum of each member's ability. For this purpose, the building of high-quality relationships among team members is indispensable. People do not act only according to instructions or orders based on a hierarchical relationship. They may try to act, but it is doubtful whether they can overcome a crisis individually. The leader should daily pay a fair amount of attention to each team member; and when the need arises, the leader should support each member, take responsibility for their development, give due consideration to each, and could ultimately win their trust. This trust does create the drive in each of them to persevere and overcome hardships.

The same may apply to legal technical assistance. Assistance from one country to another is based on

person-to-person connections. If individuals from the assisting country behave condescendingly toward people in the recipient country and exhibit an attitude - even if only slightly, as if asking for something in return for the assistance - those in the recipient country would immediately take notice. Then, the originally self-less legal technical assistance would result in something expedient and tenuous. If however, the population in the recipient country come to consider that Japanese individuals involved in assistance were making serious efforts to create effective laws and systems for the development of their country, such a trust and empathy would serve as the basis for fruitful and lasting assistance.

In the abovementioned local seminar on the Civil Procedure Code, I had the opportunity to participate in dissemination activities of the flow chart and model textbook of civil procedure, which were created as part of the outcome of our project. Through this opportunity, I noticed that Laotian participants had grown remarkably in becoming solid and dependable over the past four years. Looking at them, I remembered nostalgically all that had happened over the course of the past four years: at the beginning of the project, participants from both countries were in a strained relationship with difficulties in communicating with each other; it was difficult and took time to understand the characteristics of the civil procedure in Laos (under the inquisitorial system, there were no clear distinctions between arguments and evidence, nor the concept of confession. As focus was placed on the discovery of truth by the court, there were no clear concepts of the final, binding judgment. Thus, even a judgment of the last instance was modified through re-trial, etc. in case errors were found therein, etc.). As time passed, communication improved greatly, and gaps in discussions began to disappear. However, even until today, when seriously questioned by Laotian individuals directly involved in civil procedure, "Why in Japan are prosecutors not involved in civil procedure? Without their involvement, how can fair justice be guaranteed?" I have not been able to give clear and satisfactory answers to them.

In this sense, I feel that legal technical assistance is quite difficult, as is difficult for a leader to unite a team composed of a wide variety of people. However, the more difficult it is, the more interesting and rewarding it also becomes. The feeling of reaching a measure of success, or a bonding with the participants of a recipient country, adds greatly to the satisfaction of the project.

In Laos, which I visited recently for the first time, time seems to pass as slowly as the stream of the Mekong River. Paved but dusty streets; bike drivers wearing masks because of the dust; unpaved rough streets in Vientiane, in spite of it being the nation's capital; intersections without traffic signals where cars and bikes mix chaotically with each other. I regret now not having known such was the reality of Laos when exchanging opinions with Laotian participants on the topic of "delivery". At that time, my opinions were based on my familiarity with the highly-efficient postal system in Japan

with the rules of "delivery" taking the postal system in Laos as a similar given.

On the last night in Laos, two JICA long-term experts: Mr. Kenichi Nakamura (government attorney) and Mr. Osamu Ishioka (private attorney) kept me company at a restaurant along the Mekong River until my departure hour back to Japan. During my trip, I was provided an opportunity to join the survey team for the project's next phase, even though it was for just a brief moment (The survey team was composed of Mr. Naoshi Sato and Ms. Hitomi Maruyama of JICA and Mr. Hiroshi Suda of the International Cooperation Department of the Research and Training Institute).

Feeling the wind along the Mekong River, I renewed my desire of continuing my humble contributions to legal technical assistance activities, with a feeling of gratitude to those individuals who provided me with an opportunity of being involved in this form of legal technical assistance.

JUDICIALIZATION IN ASIA

Shinya IMAIZUMI
Director
Planning and Coordination Division,
Research Planning Department,
Institute of Developing Economies,
Japan External Trade Organization

I have been engaged in the regional study of Southeast Asia, principally Thailand, from the viewpoint of jurisprudence. Currently Thailand is not a recipient country of Japanese legal technical assistance, one of the components of which is legislative assistance of civil code and others. However, from the end of the nineteenth century to the beginning of the twentieth century, when Thailand was seeing the modernization of its country advance (at that time Thailand was called Siam), the Meiji Government of Japan assisted Thailand in the establishment of penal code and other laws, by dispatching Tokichi Masao to the country as a legal advisor. Looking back at this fact, Thailand can be regarded as the first recipient country of Japan's legal technical assistance.

Legal technical assistance has achieved significant results mostly in countries in transition. In considering its future evolvement, it may be necessary to pay attention to the movement of legal reforms in Asian countries, including those which are not currently receiving the assistance. Above all, in the context of judicial reforms which take place as part of democratization efforts, focus should be placed on the increasing leverage of judicial decisions in addressing political issues or in policy formation. First, let me review the case in Thailand.

The modernization of the judicial system in Thailand began with the establishment of the Ministry of Justice and the re-organization of the traditional court system under said Ministry at the end of the nineteenth century. In its centenarian history, the judicial system in Thailand has seen its landscape drastically change through justice reform since the last half of the 1990s.

Through the political reform in 1932, the form of government changed to a constitutional monarchy. In the following years, however, military dictatorships dominated for a period of time, with repeated changes of government through coup d'etat. It was in the 1990s that the democratization process

advanced at an accelerated pace. During this period, I had the opportunity to study at Thammasat University Faculty of Law as a visiting fellow, and was able to observe national discussions for drafting a new constitution after the democratization of the country. What was particularly impressive was seeing a group composed primarily of scholars of public law actively conduct seminars on a new constitution, in which they had exhaustive discussions with local NGOs and activists. I was also given opportunities to attend a few of these seminars, and deeply felt the enthusiasm of the local population for democratization. Awareness campaigns including these seminars were carried out with assistance from the Konrad-Adenauer-Stiftung of Germany. These activities may be referred to when Japan supports institutional reforms in developing countries, etc. after democratization.

The disputes over system reforms in the 1990s led to the enactment of the 1997 Constitution. The new constitution established, along with a Constitutional Court, a continental-law-system type of administrative court, which was independent from the existing judicial court organization. This was conducive to a shift from the traditional mono-dimensional justice to a civil-law type multi-dimensional justice. Moreover, as independent organs under the Constitution, an Election Committee, a Human Rights Committee, an ombudsman, a Counter-Corruption Committee, and an Account Audit Committee were newly established with the aim of strengthening the monitoring functions of the courts and these independent agencies towards the politics and administration. The draftsmen of the Constitution saw the courts playing a driving role behind national democratization.

The Constitutional Court in Thailand consists of justices selected from among experts in jurisprudence, politics, etc., in addition to career judges. While this system was designed to model after those of continental law countries, it is undeniable that behind it was the disappointment of the draftsmen against conventional justice. Afterwards, however, more and more former government officials were appointed as justices of the Constitutional Court, and it was widely believed that the Court had lost its neutrality. As a result, since the eruption of the coup d'etat in 2006 a greater number of career judges have been appointed justices of the Constitutional Court.

The Constitutional Court of Thailand is authorized to exercise abstract regulation control, which is one of the characteristics of continental-law type constitutional courts, and to subject law drafts passed by the Congress to constitutional review. Furthermore, the ombudsman is characterized by its right to request constitutional review of laws in force, and several serious cases have been brought into the Court by the ombudsman.

On the other hand, decisions of the Administrative Court in environmental litigations and other lawsuits have drawn public attention.

The establishment of an administrative court was at first sought by pro-democracy activists in the 1970s. Although the democratic movement in the 1970s ended in failure (due to the coup d'etat), scholars among pro-democracy activists promoted the dispatching of students to France and Germany to learn public law, aiming to nurture future experts in administrative litigation. Many scholars in public law, who supported democratization in the 1990s had studied in France or Germany in the 1980s.

The Council of State in Thailand, which roughly corresponds to the Cabinet Legislation Bureau of Japan, played an important role as a base of public law studies, and its staff members were provided opportunities to study abroad with scholarships offered by France. After the establishment of the Administrative Court, its secretary general has succeeded the above-mentioned functions of the Council.

The Administrative Courts in Europe, including that of France, have supported the Court in Thailand in the form of personnel exchanges, etc. This may be one of the realms in which Japan may explore the possibility of extending legal technical assistance.

As speculated by the draftsmen of the 1997 Constitution, judicial rulings by the newly established Constitutional and Administrative Courts have begun having a major effect in the resolution of political issues or in policy formation.

What is characteristic about the judiciary of Thailand is that the courts play a significant role in the combat against corruption among politics and bureaucrats. This is because, the 1997 Constitution contains provisions, along with those on human rights, on the prohibition of conflicts of interests, assets disclosure procedure, etc., so as to detect wrongdoings and corruptions by assembly members and bureaucrats.

The 1997 Constitution was also rescinded by the coup d'etat of 2006. However, the current 2007 Constitution further intensifies measures against political corruption.

Unfortunately, in recent years democracy in Thailand has gone through an upheaval due to the aggravated political conflict between the clout supporting former Primer Minister Thaksin Shinawatra (who was removed from power) and the other clout. When one party took power, the opposition made noise through non-parliamentary mass actions, in a vicious continuing circle. In the course of these political conflicts, many challenging issues have been subjected to justice. In 2006, in a case brought by the ombudsman on the result of the general election held in April of that year, the

Constitutional Court ruled it invalid. This judgment can be considered to be the starting point of subsequent political changes.

In 2008, the then Prime Minister was disqualified from office as the Constitutional Court ruled he committed a conflict of interest by appearing in a TV cooking show. In addition, subsequently in the same year, the Constitutional Court ordered the dissolution of the pro-Thaksin ruling party on the grounds of election violations, causing a major impact on the entire nation. The pro-Thaksin faction, forced into a disadvantageous position due to successive unfavorable judicial decisions, directed its protest against the courts. The current Constitution provides for a solid guilt-by-association system enabling the dissolution of a political party when election violations have been proven. This provision served as the grounds for the order of party dissolution by the Court.

It can be considered that, across East Asia it has become a trend to establish new courts or strengthen the judicial power through democratic movements. In addition to Thailand, continental-law type constitutional courts have been established in many countries, including Korea, Indonesia, Cambodia and Myanmar. There are also cases where the roles of constitutional courts have been expanded through democratization, as in the case of the Council of Grand Justices in Taiwan. While a few of these do not yet function as expected, the number of cases the constitutional courts have dealt with has steadily increased.

Furthermore, even in countries without constitutional courts (such as common-law countries) the judiciary has played significant and proactive roles on various issues. For instance, in the Philippines, under the 1987 Constitution enacted after national democratization, more and more cases have gone through judicial reviews by the Supreme Court. Modeling itself after the American system, the Philippines has adopted the concrete judicial review system, and many judicial decisions of widely sustaining the standing of plaintiffs have been rendered. For example, in the 1990s the Supreme Court successively ruled the government's economic deregulation policies as being illegal, with some accepting the claims by opposition lawmakers filed in the capacity of tax payers. In another instance, the Court of Final Appeal in Hong Kong, which was newly established on the occasion of the region's return to China, showed its stance of placing importance on international human rights in many judicial reviews. It is another example of courts in active operation. In other countries and regions in Asia as well, a great number of cases over political issues or government policies have been brought to justice.

American political scholars refer to the expansion of realms in which litigations and judicial procedures are resorted to in the resolution of political issues or in the course of policy formation as "(political) judicialization." In the U.S., the Supreme Court was originally the target of political

science for its political clout. However, as the judicial review system has globally expanded, attention has been given to the symptom of judicialization in countries and regions other than in the U.S. In other words, the movement of "judicialization" has become prominent in several countries and regions in Asia as well.

Behind such judicialization there may be heightened expectations for justice. In order for courts to expand the range of their activities, it is crucial that parties to litigations take several actions, by using new authorities and procedures of courts. The expansion of civil societies as represented by NGOs' activities has been often referred to as the background to democratization in various Asian countries. Strengthening the judicial power following democratization may offer new solutions to various types of problems in civil society.

Conversely, it is also true that rapid judicialization has generated new types of problems. For example, as public expectation towards justice grows in many Asian countries, more difficult political problems or important policy issues are being bought to courts. When the judicial system makes decisions on issues on which the public is split, such decisions often stir strong opposition. At the same time, the judiciary has expressed bewilderment at a new role it is expected to play, such as being sought to decide on political issues.

As politically and socially important cases have been brought to courts in modern society, courts have been frequently placed under political and social pressures. In recent years, in several Asian countries the Chief Justices of the Supreme Courts have been impeached and dismissed successively. In the Philippines and Sri Lanka, then Supreme Court Chief Justices were impeached in May 2012 and in January 2013, respectively. As the grounds for dismissal, political landscape, judicial appointment system, etc. vary from country to country, this incident cannot be generalized. However, close attention should be paid thereto. Needless to say, the independence of the judiciary is the base of the judicial system. It appears that whether judges and courts can function in a neutral setting and the ideal way of independence of the judiciary is being questioned anew. How to clearly understand judicialization in East Asian countries and regions is an issue to be addressed by scholars of Asian law henceforth.

The range of judicial review has expanded (a phenomenon which can be referred to as "judicialization") in some recipient countries of Japan's legal technical assistance as well. In designing future assistance schemes, it will be necessary to keep an eye on what is occurring not only in the existing recipient countries but in Asia as a whole. Knowledge of regional studies in the field of politics, economics, etc. in addition to that of Asian law and comparative law, would be useful so as to extend further efficient assistance.

– II. Feature –

AFTER COMMENCEMENT OF THE LEGAL COOPERATION PROJECT WITH MYANMAR

Kosuke YOKOMAKU
Professor and Government Attorney
International Cooperation Department

I. INTRODUCTION

Since its shift to civilian rule in March 2011, the Union Republic of Myanmar has seen steady advancement of democratization and national reconciliation in the country. In response to such efforts, the government of Japan announced, at the Japan-Myanmar summit meeting in April 2012, its intent to assist Myanmar with a focus on three prioritized areas[1]. The purpose of such assistance was to help a broad swath of people benefit from democratization, national reconciliation and economic reform, while continuously observing Myanmar's endeavors towards such aims and sustainable development. Since that time, Japan has actively cooperated with Myanmar through joint initiatives between the public and private sectors.

In line with the above-mentioned national policies, the International Cooperation Department (ICD) performed several preparative activities, as follows, before launching a full-scale assistance project;

- In cooperation with relevant organizations, inviting the Chief Justice of the Union Supreme Court, the Attorney General of the Union Attorney General's Office[2] and other officers;
- Dispatching a high-level survey mission led by Mr. Kunihiko Sakai, former Director General of the Research and Training Institute of the Ministry of Justice of Japan[4].

Through these undertakings, finally in November 2013, the "Project for Capacity Development of Legal, Judicial and Relevant Sectors in Myanmar" was commenced between the Japan International Cooperation Agency (JICA) and the Union Supreme Court (hereinafter referred to as "USC") and

[1] Specifically, a focus was placed on the following three areas: 1) Assistance in improving the people's lives (including assistance to ethnic minorities and the poor, agricultural development and regional development); 2) Assistance in human resources development in support of the economy and society, and in institutional development (including assistance in the promotion of democracy); and 3) assistance in the improvement of the infrastructure and systems necessary for sustainable economic growth. Among these, legal technical assistance is included in 2) above.

[2] In relation to the details of these invitations, see articles contributed by Professor Hiroki Kunii of the ICD News issued in January 2014.

[4] Currently he serves as the Superintendent Prosecutor of the Takamatsu High Public Prosecutors Office of Japan.

the Union Attorney General's Office (hereinafter referred to as "UAGO") (the latter two are acting agencies)[5]. The project aims at promoting the rule of law, democracy and sustainable economic growth in Myanmar. This would be realized through institutional and personnel capacity-building for legal development and operation which would match the social economy of Myanmar and international standards.

The project consists of two pillars: 1) to strengthen the capacity of solving legislative challenges of the times which face Myanmar (assistance in the improvement of legislative drafting and examination capacities)[6]; and 2) to establish the foundation for capacity-building of judges and prosecutors who belong to the above two acting agencies. The ICD has fully committed itself in the implementation of the project through the establishment of an assistance mechanism in Japan in cooperation with JICA. For example, prior to the commencement of the project, in deciding specific activities for these purposes, ICD professors served as facilitators at discussions meetings held in Myanmar[7]. In addition, in May 2014, an ICD professor was dispatched to Myanmar by the Ministry of Justice of Japan as a JICA long-term expert, while in Japan, the first training seminar was held in relation to the project.

Based on the results of the above training seminar in Japan, in July 2014, the first Joint Coordination Committee (JCC) meeting was held in Myanmar[8]. In this meeting, working groups were established for those who would actually engage in project activities in cooperation with Japanese long-term experts, and the outline of future activity policies was officially approved. In addition, open seminars and discussion meetings were conducted in July and August of the same year on intellectual property law[9] and arbitration law[10], respectively. These activities were made possible through cooperation with the Japan Patent Office, and with the participation of Japanese lawyers and experts in arbitration law from the United Nations Commission on International Trade Law (UNCITRAL). Thus, a series of project activities have been implemented in an accelerated manner.

Among several activities conducted by the ICD in relation to the project for Myanmar after its commencement in November 2013, this paper will primarily focus on the local discussion meetings

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[5] The project term is three years.

[6] As a multitude of laws were to be drafted in a rush in Myanmar, laws to be covered in the course of assistance in legislative drafting and examination were not specified in advance and were to be decided in accordance with needs from Myanmar.

[7] At these meetings, discussions were held based on the lectures provided by long-term experts as well as experts dispatched from Japan and ICD professors. For the procedural convenience in Myanmar, such events not open to the public are called "discussion meeting," while those open to the public on a relatively large scale are called "local (open) seminar."

[8] The JCC approves and confirms project activity plans, activity progress, etc.

[9] See the program of the "Seminar on Intellectual Property Laws" on pp. 35

[10] See the program of the "Seminar on Arbitration Law" on pp. 37

held in March and April 2014, and also the first training seminar held in Japan in May 2014.

II. DISCUSSION MEETINGS IN MYANMAR

A. In March 2014

1. Outline

In March 2014, a discussion meeting was held in Myanmar in which ICD professors gave lectures and conducted discussions. The topics of the meeting: "punishment theory," "electromagnetic evidence," and "investigation methods of intellectual property cases," were selected in accordance with the request by the USC and UAGO, respectively. The following are the details of the meeting.

1-a. Punishment Theory from the Viewpoint of Criminal Policies

Professor Kunii of the ICD made a presentation at the UAGO on the types of punishment and criminal policies in Japan, under the title: "The Theory of Punishment from the Viewpoint of Criminal Policy", based on the traditional punishment theories of Japan. Approximately 30 individuals were present at the presentation. Most likely because a large-scale seminar was held on the same topic by United Nations Development Programme (UNDP) at the end of the previous year, the participants appeared to understand the meaning of such terms as "the Code of Hammurabi," "retributive punishment," "reformatory punishment," etc. However, many may have had few opportunities to discuss the background of the creation of these terms, how to put the theory into practice, etc. It was the first time for the participants to learn of the idea of "criminal policy," and all showed a strong interest in that the theory of diversion is reflected throughout the criminal procedure, including the system of suspension of prosecution, suspension of the execution of sentence, parole, etc.,

1-b. Handling of Electromagnetic Evidence in Criminal Cases

I gave a lecture at the USC on the method of electromagnetic evidence collection for investigations and evidence examination at trial in Japan, under the title: "The Evidence of Electromagnetic Recording Media in the Criminal Procedure." As the USC was in the course of drafting amended evidence law at that time, including provisions on electromagnetic recording, the approximately 40 attendees appeared to be particularly interested in this area. Many questions were asked from practical viewpoints, such as: "In cases where the identity is contested between the voice recorded in an IC recorder and the defendant's voice, how can it be proven?" "To whom can you request an expert opinion on the evidence of electromagnetic recording?," etc.

1-c. Investigation Methods in Intellectual Property Right Cases

A discussion meeting was held at the UAGO for two days on the investigation methods of intellectual property right cases. In this session, Professor Kunii explained the outline of criminal cases concerning intellectual property rights in Japan, using model cases of the violation of trademark law and copyright law. The meeting was held through dialogue between the professor and the participants, who actively asked questions from viewpoints as legal practitioners, such as: "Are there any witnesses during searches?" "For what was the time card seized?" etc. As the participants were seated close to the professor, the latter was able to proceed with the meeting while confirming the understanding of the participants based on their facial expressions. In this way, the expected efficiency of a small-group discussion meeting was confirmed.

B. In April 2014

1. Outline

One month prior to the May 2014 training seminar held in Japan, in order to increase its effect, I gave lectures on the Japanese judicial system in advance in Myanmar to the seminar would-be participants.

2. Japanese Judicial System

As discussed later, the first training seminar aimed at informing the participants of the actual system of Japan. Therefore, I widely touched on the general topics of the judicial system, as below, at the USC and UAGO for two days each:

- The reception of Western law in Japan after the Meiji Restoration in 1868;
- The structure of the court system;
- Court jurisdictions;
- Civil and criminal procedures;
- National bar examination;
- Law school system;
- Legal training system, etc.

The participants from the two organizations asked several questions, including: "Is there an outside organization which determines the right or wrong of dispositions by prosecutors?" "Are there any cases in which trials are held without the presence of defense counsel?" "What type of cases does the family court deal with?" "What educational level is required to serve as lay judges?" "What does 'legal philosophy' study?" "Are there any inconveniences when legal apprentices attend negotiations between lawyers and their clients?" "Do you need to get permission from the court to practice law as an attorney-at-law?" [11] "Are there multiple types of attorneys-at-law in Japan?" [12], etc.

[11] No bar qualification is required in Myanmar to practice law as lawyers. Trainees work under experienced lawyers for a certain period of time before obtaining a qualification to practice law with permission from the USC.

Approximately 30 officials from the USC and 10 officers from the UAGO attended the lectures, who were not necessarily planning to participate in the training seminar in Japan. However, it was a good opportunity for a greater than expected number of judicial officials of Myanmar to learn of the judicial system of Japan.

3. Company Law

Upon request from Myanmar, JICA held an open seminar on company law prior to the commencement of the project[13]. Moreover, Mr. Kenta Komatsu, one of the long-term experts dispatched from Japan (who was originally an attorney-at-law)[14], conducted a discussion meeting on this topic after the initiation of the project. Taking advantage of the meeting held in April 2014, Mr. Komatsu held another discussion meeting for UAGO officials on "stocks" (the significance of stocks, stock certificates, list of shareholders, share transfer, etc.). As the concept of "stocks" itself was unfamiliar to Myanmar people, most questions from the participants were on basic matters including; "What relationships are there between the limited liability of shareholders and the responsibility of the company?" "To what extent should company objectives be written in the articles of incorporation?" "What are the effects of acts not included in the articles of incorporation as company objectives?" "Is the number of shareholders limited?" etc. It appears to be extremely useful to provide opportunities to promote a solid understanding on such basic concepts and matters in a step-by-step fashion, for our future project activities.

4. Legislative Examination Work by the Union Attorney General's Office

Ms. May Thu Aung and Ms. Tin Zar Tun, legal officers of the Legislative Vetting Department of the UAGO who later participated in the first training seminar in Japan, gave a presentation on "the legislative examination work of the UAGO." Their presentation included the following contents:

- The Legislative Vetting Department is divided into four sections which deal with: 1) examination of law drafts; 2) examination of subordinate laws, including rules; 3) translation of laws; and 4) handling constitutional issues;
- The Department has 15 staff members under the Department Director;
- There are cases in which one prosecutor takes charge of the examination of five to eight legislative drafts or subordinate laws concurrently;
- Examination is done in accordance with a manual, with a focus on: whether the law is in conformity with government policies, treaties or the actual situation of Myanmar, whether the

[12] In Myanmar, there are two types of lawyers: higher grade pleaders (with the authority to deal with litigations solely at the township courts) and advocates (with the authority to deal with litigations at all courts).

[13] An open seminar was held jointly by JICA and the UAGO in August 2012, on the topic of the legal system on public companies and the reform of corporate governance. In December of the same year, another open seminar was held on the privatization of state companies.

[14] He was dispatched to Myanmar in January 2014.

law contributes to the public interests, etc.

Their explanation on the outline of the legislative examination work of the department helped us better understand its duties.

III. THE FIRST TRAINING SEMINAR IN JAPAN

A. Outline

The first training seminar was held from May 17 – 31, 2014 (including travel days) at JICA Tokyo inviting 12 officials in total; six from the UAGO including Mr. Kyaw San, Director General; and six from the USC led by Ms. Khin Thida Kyaw, Director of the Training Department (for details on the schedule and the participants, see pp. 33. 34)

B. Background to the Training Seminar

This was the first training course held in Japan after the commencement of the project. Based on its results, and through sorting through problems in Myanmar and narrowing down the specific topics to be dealt with in the project, a detailed activity plan was to be formulated. In line with this policy, judges and prosecutors responsible for the project at both organizations were invited with the aim of promoting mutual understanding as well as encouraging the participants to understand clearly the challenges of their current system. With this purpose, the curriculum included visits to relevant institutions, such as courts and a legal training institute, and also an introduction to the actual legal system and situation in Japan.

C. Outline of the Training Seminar

The first training seminar was designed with the above purpose in mind, and in consideration that the project consisted of two pillars: assistance in legislative drafting and examination; and assistance in human resource development. The curriculum was composed of three primary parts: 1) general matters of the Japanese judicial system; 2) legislative drafting and examination; and 3) legal education and training.

1. Program in relation to the Japanese judicial system

a. Lecture

1) The participants heard lectures on the following topics in order to obtain the basic knowledge in understanding the Japanese system:

- The outline of the Japanese judicial system as an introduction to the training seminar by the author of this paper;
- The relationship between the police and the prosecution service in Japan, each stage of criminal

procedure, including case disposition, trial, lay-judge system, etc. by Professor Kazunori Nose of the ICD. The intent of this lecture was to facilitate the participants' understanding of a mock trial and the observation of a trial scheduled for later days;

- The basic principles of civil trial, such as the principle of parties (adversarial system), arguments, burden of proof; civil procedure flow, etc., by taking subject matter jurisdiction and consumption loan as examples, by Professor Tomoya Mori of the ICD.

It appeared that the repetition of explaining Japanese systems was helpful in promoting the participants' understanding.

2) Mr. Kunihiko Sakai, then Director General of the Research and Training Institute of the Ministry of Justice, gave a lecture under the title: "The Justice System Reform of Japan." He explained the social background to the reform, including the expansion of roles of justice associated with the relaxation of regulations; and the three pillars and the outline of the reform, such as the building of a justice system which would meet the expectations of the people. In relation to the introduction of labor tribunal decisions and the reform of administrative litigation procedure, the participants showed a high level of interest, in particular, in the quasi-judicial system of Japan in which judicial decisions by the courts may be ultimately sought. This is because in Myanmar, decisions by administrative agencies may not be overturned by courts. In relation to the improvement and expedition of civil trial as well, questions were asked on the hearing planning in civil cases.

b. Visit and observation

1) During the visit to the Tachikawa Branch of the Tokyo District Court, an explanation was provided on the outline of the duties of the branch office, case management system, etc. In addition to observing a criminal trial and an office of judges, the participants exchanged opinions with Judge Masahiko Hayashi, Director of the Criminal Division. After observing the examination of a witness in favor for the defendant, who had confessed his guilt in the first trial session, the participants somewhat surprisingly asked why witnesses were examined even in a case in which the defendant confessed his guilt. According to the participants, in Myanmar, witnesses were examined solely in relation to corpus delicti. The observation of a judges' office was included in the schedule in response to the request from Myanmar as they wanted to see the on-the-job training of judges and the types of books placed in the judges' office. The participants were keenly interested in the working environment of judges as the office was laid out in such a way to promote exchange of opinions among judges, and also the affluent amount of books in the office. In the exchange of opinions with judges, questions were asked on the practice of judges, such as the manner of reaching an agreement in cases where judges composing a panel hold different opinions.

2) At the visit to the Japan Federation of Bar Associations (JFBA), Mr. Futoshi Toyama, Director of the International Judicial Support Center of the JFBA, explained the organization and operation of the bar associations, roles played by the bar associations in society, cooperation with judges and prosecutors, etc. The participants showed particular interests in the JFBA's authority to qualify and

discipline attorneys-at-law[15], the relationships between the JFBA and its member bar associations, the training system of lawyers, topics of discussions at council meetings among judges, prosecutors and lawyers, etc. Questions were also asked on the legal aid system, including court-appointed defense counsel and civil legal aid, support by the bar associations, etc. Opinions were expressed such as: "It is interesting that the bar associations in Japan are financially independent as well to secure its independence from the state."

2. Program in relation to legislative drafting and examination

a. Lecture

1) Mr. Saburo Sakamoto, then Counsellor at the Civil Affairs Bureau of the Ministry of Justice[16], gave a lecture on the topic of "Theory of Legislative Techniques (Amendment to the Companies Act as an Example), from the viewpoint of a government agency in charge of legislative-drafting. Taking the amendment of the Companies Act as an example, he explained the outline of the legislative amendment (enactment) flow, which goes through the following steps: examination within the Civil Affairs Bureau – examination at the Legislative Council of the Ministry of Justice – consultations with relevant organizations, etc. – drafting of a bill by the Civil Affairs Bureau – examination by the Cabinet Legislation Bureau – deliberation by the ruling party – Cabinet decision, etc., and finally the deliberation by the Diet. In Myanmar, because of its vertically-segmented administrative system, there appears to be a tendency of drafting bills within the government agency with jurisdiction. Thus, the participants were particularly interested in such facts as: staff members of the Civil Affairs Bureau are composed of not only judges and public prosecutors but also lawyers; officials in charge in the Civil Affairs Bureau may be involved in the amendment, etc. of laws under the control of other ministries, the existence of the Legislative Council which examines draft bills with outside experts, etc.

2) Mr. Yasufumi Takahashi, then Executive Secretary of the Administrative Office of the Director-General of the Cabinet Legislation Bureau[17] explained, from the viewpoint of examining bills submitted by the Cabinet, the legislative flow to promulgation, from the legislative work at each government agency, and through the examination of bills by the Cabinet Legislation Bureau, Cabinet decision, and deliberation by the Diet; and the organization and duties of the Cabinet Legislation Bureau, etc. The participants showed an interest in the difference in roles between government agencies in charge of legislative drafting and the Cabinet Legislative Bureau, asking such questions as: "What is the significance of the examination by counsellors of bills submitted by the government agencies which they are from?" In addition, the participants observed the office of counsellors. Through observing the environment where counsellors actually discuss with officials in charge of

[15] As mentioned above, in Myanmar, the USC has the authority to qualify lawyers and to sanction illegal acts of lawyers.
[16] Currently he is a counsellor at the Minister's Secretariat of the Ministry of Justice.
[17] Currently he serves as the Director-General of the Fourth Department of the Cabinet Legislation Bureau.

drafting bills, they appeared to have formed a concrete image of the procedure. One participant said he realized the importance of in-depth discussions with the agency in charge of drafting bills before accepting the bills.

3) Professor Hiroshi Matsuo of Keio University, Law School, gave a lecture under the title "Law and Development in Japan: Legal History and Economic Development" from the viewpoint of Japanese legal history. He spoke on the relationship between Japan's rapid economic growth in the post-war and legal development, and explained the contribution of the legal system to the post-war economic growth as follows: Traditionally in Japan, under the influence of *Ritsu-ryo* (penal rules and administrative rules) introduced from China, there existed a law-abiding spirit deeply rooted among the people. On these grounds, the foundation of legal system has been repeatedly improved after the Meiji Restoration in 1868, and the law has secured the stabilization of post-war policies of promoting economic democratization. The participants expressed such opinions as: "The lecture was extremely informative in considering future development of Myanmar," "The professor's words: 'If the people have a strong will of changing society, they can definitely do it,' truly moved me.'"

b. Visit and observation

1) During the visit to the Japan Patent Office, an explanation was provided on the progress of assistance towards the Ministry of Science and Technology (MOST) of Myanmar, the history of the patent system in Japan, and the organization and structure of the Patent Office. In addition, through an exchange of opinions with Commissioner Hideo Hato[18] and observation of the reception window, the participants deepened their understanding of the roles of the Patent Office in Japan. Such information is expected to be useful in examining intellectual property laws at the UAGO and the establishment of an intellectual property agency in Myanmar in the future. In the exchange of opinions, Mr. Kyaw San, Director General of the UAGO expressed his gratitude to the Patent Office for its cooperation in the drafting of intellectual property laws. In response, Commissioner Hato indicated his intent to continue the cooperation with the UAGO.

2) At the Tokyo Stock Exchange, in addition to observing the facilities, the participants received an explanation from Ms. Mikiko Takara, Manager of the Legal General Administration, Legal Affairs of Tokyo Stock Exchange, Inc. and an attorney-at-law, about the organization, roles, detailed duties of the Tokyo Stock Exchange, undertakings in assisting Myanmar in the formation of a capital market, challenges under the company law of Myanmar in computerizing stock certificates, etc[19]. Prior to the training seminar in Japan, in cooperation with the Tokyo Stock Exchange, a local discussion meeting had been held at the UAGO and USC. In this meeting, Mr. Kensuke Yazu, Manager of the Corporate Strategy Division of the Exchange, gave a lecture on the outline of securities markets and the legal system on capital market. Thus, the participants appeared to quickly understand the explanation

[18] Currently he is a special advisor to the Patent Office.

[19] The current company law contains inappropriate provisions in case stock certificates are computerized. For example, the transfer of shares is effective upon conclusion of a certificate of transfer and registration into the list of shareholders; provisions based on the issuance of stock certificates, etc.

given at the visit. They asked several questions on the types of government agencies suitable to supervise a capital market, a system to secure confidentiality of client information and other practical matters. In the exchange of opinions with Mr. Koichiro Miyahara, Senior Executive Officer of the Exchange, Mr. Kyaw San, Director General of the UAGO expressed the intent to examine the revision of the company law to make it consistent with the Securities Exchange Law.

3. Program in relation to human resource development

a. Lecture

1) Mr. Yukio Nakajima, a government attorney at the Justice System Division of the Minister's Secretariat of the Ministry of Justice, explained the current legal training system under the title: "Overview of the Japanese Law School System and Bar Examination." A focus was placed on the importance placed on, and the outline of the process of legal training as part of the justice system reform, challenges under the current system, etc.. In Myanmar there is an interest in reforming the bar examination system. Their questions on the difference between the bar examination and the preliminary examination, or the necessity of law graduates to enter a law school, etc., made us consider what the bedrock of the legal training system should be, including undergraduate legal courses.

2) Mr. Naoshi Sato, JICA Senior Advisor and an attorney-at-law, talked on detailed curricula, education methods, challenges, etc. of law schools in Japan, in comparison with universities, law schools, examinations and training systems in Western countries, under the title: "System to Nurture the Legal Profession - Characteristics of Law School Education." Based on this, he stated that Myanmar should introduce a unique system which would match the national context. Explaining in a comparative way the systems of various countries appeared to be effective in facilitating the participants' understanding.

3) Mr. Yuji Mizunuma, then Director of the first Training Department of the Research and Training Institute[20], provided a lecture on the outline of the training of public prosecutors in Japan, including the curricula of newly-appointed prosecutors, general prosecutors training and specialized prosecutors training. The participants appeared to have developed a clear image on the actual training of prosecutors, through watching a DVD recording of an actual mock interrogation and mock examination of witnesses, and other training materials. They listened enthusiastically to the lecture, and asked questions on the training of forensic medicine.

4) Professor Tomoya Mori of the ICD explained the outline of training for legal apprentices and junior judges at the Legal Training and Research Institute of the Supreme Court. In relation to the judicial training in Japan focused on on-the-job training, the participants asked about the differences in the roles of associate judges on the right and left of the chief judge composing a panel. As there

[20] Currently he is the chief of Sakai Branch Office of the Osaka District Public Prosecutors Office.

exists solely one type of employment examination for judges in Myanmar, they showed an interest in the existence of judges of the Summary Courts who are recruited through an examination different from the national bar examination. They also asked questions on the qualification and training of summary court judges.

b. Visit and observation

1) At the Urayasu Center of the Ministry of Justice, a mock trial was conducted in a mock courtroom, as a method of legal training, in order to help the participants understand the criminal trial procedure of Japan. In accordance with a mock case record on a sample theft case in which the defendant denied the charge, the participants played the roles of the judge, prosecutor and defense counsel. Through this process, they learned the flow of criminal trial from the opening procedure (including the examination of witnesses) to the pronunciation of judgment. Moreover, the participants observed the training facilities including the training room, library, dormitory, gymnasium, etc. During the mock trial, all participants actively took to their parts and the distance between each participant lessened from the early stage of the seminar. These can be considered as the unique merits of participatory training. Ms. Khin Thida Kyaw, Director of the Training Department of the USC, expressed her desire of using such training method in Myanmar. In fact, the practice method using mock case records has been adopted and included in the training curriculum of newly-appointed prosecutors at the judicial training center in Myanmar. This can be considered as one of the achievements of the first training seminar.

2) At the Legal Training and Research Institute of the Supreme Court as well, the participants observed the training facilities of legal apprentices including lecture halls, a classroom imitating a courtroom, and the library; training facilities for incumbent judges including the large research room, mock courtroom, etc. They also exchanged opinions with Senior Professor Toshiaki Fujii[21], with questions on the types of judicial training, status of trainees during outside training, the selection of lecturers on cases of special matters, including labor cases and intellectual property cases, etc.

3) At the Supreme Court, the participants observed the Grand Bench Courtroom, Petty Bench Courtroom, and the library. An explanation was provided on the outline of the jurisdiction, duties, and the library of the Supreme Court. The participants were particularly interested in the types and number of books stored, and the service of the library which provides necessary materials in response to references from the courts nationwide.

4) During the visit to the Financial Services Agency and the Securities and Exchange Surveillance Commission of the Agency, the participants observed the hearing court, received an explanation on the outline of duties of the Commission, and exchanged opinions with Mr. Kenichi Sado, Chairperson of the Commission. Myanmar is currently in urgent need of appropriate operation of the Securities Transaction Law (enacted in July 2013), which was drafted in cooperation with the Policy

[21] Currently he is the President of the Nagano District Court and Nagano Family Court.

Research Institute of the Ministry of Finance of Japan. This was thus an opportune moment for the group to deepen their understanding of the roles of the Financial Services Agency and the Securities and Exchange Surveillance Commission of Japan. The participants took interest in the statistics of cases handled, qualifications of hearing examiners, etc. During the exchange of opinions, questions were asked on actual operation, including the selection of administrative sanctions or criminal punishment to be imposed in insider trading cases.

4. Presentations and Q&A

At the final stage of the training, representatives of the UAGO and the USC made presentations on the actual situation and challenges, and their expectations towards the project, etc. on the basis of this training seminar. Specifically, their presentations were of the following contents:

i) Presentation by the UAGO

- Myanmar is currently considering the revision of over 300 laws;
- Training in company law as a challenge in legislative drafting;
- Training in the investigation of crimes related to intellectual property, securities, cyber crimes, as challenges in human resource development;

ii) Presentation by the USC

- The USC is currently amending the evidence law and drafting the bankruptcy law;
- As future challenges,
  a) In the field of legislative drafting, the bankruptcy law, the law concerning the organization of an intellectual property court for its establishment, etc.
  b) In the field of human resource development, revising the training curriculum, etc., including mock trial, practice of judgment-writing, etc.
  c) In the field of trial practices, the necessity of providing opportunities to learn the practice of arbitration law, intellectual property laws, securities transaction law, etc.

Following their presentations, the participants from Myanmar and Japan discussed the progress in amending the evidence law and the drafting of the bankruptcy law, and the necessity of selecting target laws to be dealt with in the project.

5. Courtesy call

The participants paid courtesy calls on the following authorities:

- Then Prosecutor-General Hiroshi Ozu
- Vice-Minister of Justice Nobuo Inada
- Chairman Kenichi Sado of the Securities and Exchange Surveillance Commission
- Deputy-Director General Masaharu Kondo of the Cabinet Legislation Bureau
- Commissioner Hideo Hato of the Japan Patent Office
- Director General Manabu Yamana of the Legal Training and Research Institute

- Branch Director Toshio Yamada of the Tachikawa Branch, Tokyo District Court
- Deputy Commissioner for International Affairs Kenji Okamura of the Financial Services Agency

IV. CONCLUSION

Through the discussion meetings held in Myanmar and the training seminar in Japan, we felt the strong will of Myanmar judges and prosecutors to learn as much as possible in order to improve their legal system and its operation. As mentioned above, in July 2014 after the first training seminar in Japan, the first Joint Coordination Committee meeting was held in Myanmar where the outline of activity policies of each working group was presented. In said outline, the company law, intellectual property laws, arbitration law, bankruptcy law, evidence law, and the law concerning the establishment of intellectual property court were selected as the target laws for assistance in legislative-drafting and examination. Their plan also included the revision of training curriculum with the adoption of mock records and mock trial. The UAGO established a new working group to improve the legislative drafting/examination process itself. Their policies thus reflected the learning of Myanmar participants in the training seminar in Japan. From this viewpoint, the objectives of the first training seminar in Japan (which was held after commencement of the project) – to provide the Myanmar participants with the opportunity to widely learn the judicial system of Japan in the hopes of using this knowledge in formulating future activity policies – appear to have been achieved in general. We owe these highly productive results of the seminar to all the individuals involved (including lecturers and those who welcomed the participants during their visits) for sharing time for this training course from its preparation stage in spite of their busy schedules. I would like to take this opportunity to express my sincere appreciation to them all.

As discussed above, we have been able to make a propitious start for future activities through the successful meeting of the first JCC. This success owes not only to related individuals who cooperated with us in its organization but also to the efforts of the three long-term experts. They had only two months preparation before the first JCC after assuming their positions in Myanmar[22]. In spite of their extremely hectic schedule, however, thanks to the relationships of trust they had built, they were repeatedly able to hold close discussions with the two counterpart organizations to formulate detailed plans.

Since the matters discussed at the first JCC are wide-ranging, it will be necessary to prioritize and further narrow them down. In this regard, it can be expected that the next detailed steps will be

[22] Mr. Issei Sakano and Mr. Hiroki Kunii were dispatched to Myanmar in April and May 2014, respectively.

decided through the development of working group activities and further discussions with related parties. The ICD is determined to cooperate to the furthest extent possible for the smooth implementation of project activities.

Last but not least, our special thanks go to all the involved groups and individuals for their collaboration in the project. Their continued support is greatly hoped for. Thank you very much.

Schedule for the 1st Training Seminar for Myanmar

Date		a.m.	p.m.
5／18	Sun.	Arrive at Narita	
5／19	Mon	10:00 JICA Briefing TIC[*1]	13:30 ICD Orientation TIC 14:30 17:00 Lecture on the judicial system and judicial independense of Japan by ICD Professor
5／20	Tue.	9:30 11:30 Lecture on the justice system reform in Japan by Mr. Sakai (Director General of RTI[*2]) at MOJ[*3] HQs 11:50 Exchange of opinions with RTI Director General, group photo-taking	13:30 15:20 Lecture on the law school and bar examination in Japan by Mr. Nakajima (Government Attorney of the Judicial System and Research Department) 15:40 17:30 Lecture on the program of law school in Japan by Mr. Sato (JICA senior advisor)
5／21	Wed	10:00 17:30 Visit to MOJ Urayasu Center (Lecture on :1) criminal trial; and 2) prosecutor's training; facility observation, lecture and practice on the "handling of evidence of electromagnetic recording media [based on actual cases], mock examination of witnesses)	
5／22	Thu.	10:00 12:00 Visit to the Japan Federation of Bar Associations (lecture on the roles of bar associations, exchange of opinions)	14:30 16:50 Visit to the Tokyo District Court, Tachikawa Branch (courtesy call on the Branch Chief, observation of trial and judges's office, exchange of opinions)
5／23	Fri.	9:30 11:30 Lecture on training at the Legal Training and Research Institute (LTRI)[*4] of the Supreme Court by ICD Professor TIC	14:30 16:50 Visit to the LTRI (courtesy call on the Director-General, facility observation, exchange of opinions)
5／24	Sat.		
5／25	Sun.		
5／26	Mon	9:30 11:30 Visit to the Tokyo Stock Exchange (facility observation, explanation of outline, Q&A)	13:30 Courtesy call on Prosecutor-General 14:30 17:30 Lecture on legislative skills (on the revision of the Companies Act as an example) by Government Attorney of the Civil Affairs Bureau MOJ HQs
5／27	Tue.	10:00 Courtesy call on Counselor of Financial Services Agency 10:20 12:00 Visit to the Securities and Exchange Surveillance Commission (facility observation, explanation of outline, Q&A)	13:30 Courtesy call on Vice-Minister of MOJ 14:30 17:30 Lecture on civil trial of Japan by ICD Professor MOJ HQs
5／28	Wed	10:00 12:00 Visit to the Cabinet Legislation Bureau (courtesy call, lecture on the legislative bill examination process [recent model cases])	14:00 17:30 Lecture on the legal history of Japan (in the context of economic development) Professor Matsuo of Keio Univ. Law School TIC
5／29	Thu.	10:00 Preparation for presentations by participants MOJ HQs	14:00 17:00 Presentations by participants (learning through training course, actual situation and solutions to challenges in Myanmar, expections to JICA Project), Q&A, exchange of opinions
5／30	Fri.	9:30 11:00 Visito to the Supreme Court (facility observation) 11:30 12:15 Visit to Japan Patent Office (courtesy call, facility observation)	12:30 13:30 Luncheon hosted by JICA 14:30 Evaluation and closing ceremony
5／31	Sat.	Leave for Myanmar	

1. TIC: JICA Tokyo International Center, 2. RTI: Research and Training Institute, 3. MOJ: Ministry of Justice,
4. LTRI: Legal Research and Training Institute of the Supreme Corut

Participants of the 1st Training Seminar for Myanmar
(Union Attorney General's Office)

1	Mr. Kyaw San Director General
2	Mr. Kyaw Kyaw Naing Deputy Director, International Law and ASEAN Legal Affairs Division
3	Mr. Thet Lwin Staff Officer/Legal Officer, International Law and ASEAN Legal Affairs Division, Legal Advice Department
4	Ms. May Thu Aung Staff Officer/Legal Officer, Legislative Vetting Department
5	Ms. Tin Zar Tun Staff Officer/Legal Officer, Legislative Vetting Department
6	Mr. Moe Wai Phyoe Deputy Staff Officer/Legal Officer, Prosecution Department

Participants of the 1st Training Course for Myanmar
(Union Supreme Court)

1	Ms. Khin Thida Kyaw Director, Training Department
2	Ms. Aye Aye Thein Director, Law and Procedure Department
3	Ms. Khin Linn Assistant Director, Training Department
4	Ms. Marlar Maw Assistant Director, Research Department
5	Mr. Myint Soe Assistant Director, Office of the Union Chief Justice
6	Ms. Khin Myat Tar Staff Officer, Law and Procedure Department

Seminar on Intellectual Property Laws

Nay Pyi Taw, 20 July 2014 13:00 - 18:00

organized by JICA

Moderator: Mr. KUNII Hiroki, JICA Advisor for the Legal Cooperation Project
Interpreter: Myanmar - Japanese (Consecutive Interpretation)

Opening

12:30 - Registrations
13:00 - 13:10 Opening

13:10 - 13:20 Opening Remarks by U Kyaw San, Director General, Union Attorney General's Office

13:20 - 13:30 Guest Remarks by Mr. HATO Hideo, Special Advisor (Former Commissioner), Japan Patent Office

Session 1: Introduction of Intellectual Property

13:35 - 14:15 "Outline of Intellectual Property System" presented by Mr. KUMAGAI Ken-ichi, Professor, School of Law, Meiji University

14:15 - 14:55 "Toward Establishment of IP System" presented by Mr. MATSUTANI Yohei, Deputy Director, International Cooperation Division, Japan Patent Office

14:55 - 15:05 Break

Session 2: Introduction of Copyright Law

15:05 - 15:45 "Outline of Copyright System" presented by Mr. SATO Toru, Director, International Affairs Division, Japan Copyright Office, Agency for Cultural Affairs

Session 3: Myanmar Intellectual Property Laws (Draft)

15:45 - 17:00 Presentation by Dr. Kyi Pyar Moe, Assistant Director, IP Section, Ministry of Science and Technology (Myanmar Language Only)

17:00 - 17:20 Coffee/Tea Break (Collecting Questionnaire)

Session 4: Q&A/Floor Discussion

17:20 - 17:50 Q&A/Floor Discussion
Moderated by Mr. KOMATSU Kenta, JICA Advisor for the Legal Cooperation Project

Closing

17:50 - 18:00 Closing Remarks by H.E. U T. Khun Myatt, Chairperson of the Bill Committee, Pyithu Hluttaw

Expected Participants
(Myanmar)

- Union Attorney General's Office
  - U Kyaw San, Director General
  - U Win Myint, Deputy Director General
  - Daw May Thi Linn, Deputy Director General
  - Daw Khin Cho Ohn, Deputy Director General
  - Daw Nu Nu Yin, Deputy Director General
- Supreme Court of the Union
  - U Sein Than, Director General
  - Daw Aye Aye Kyi Thet, Deputy Director General
- Pyithu Hluttaw
  - H.E. U T. Khun Myatt, Chairperson of Bill Committee
  - H.E. U Saw Mla Tun, Member of Bill Committee
  - H.E. Dr. Soe Moe Aung, Member of Bill Committee
  - H.E. U Aung Mya Than, Member of Bill Committee
  - H.E. U Soe Re, Member of Bill Committee
  - H.E. U Soe Soe, Member of Bill Committee
  - H.E. U Sai Win Khine, Member of Public Affairs Management Committee
  - H.E. U Khin Mg Myint, Member of Rule of Law and Tranquility Committee
  - H.E. U Myint Soe, Member of Judicial and Legal Affairs, Complaint and Appeal Committee
  - H.E. U Sai Boe Aung, Rule of Law and Tranquility Committee
  - H.E. U Tin Htwe, Member of Judicial and Legal Affairs, Complaint and Appeal Committee
  - Dr. Htoo Maung, Director of Committees Department
- Amyotha Hluttaw
  - H.E. U Zaw Myint Pe, Chairperson of Bill Committee
  - H.E. U Myo Myint, Chairperson of National Planning and Development Project Affairs Committee
  - H.E. Dr. Myint Kyi, Chairperson of Workers Rights and Providing Protection Committee
  - H.E. Pro; Dr. Mya Oo, Chairperson of Health, Education and Culture Committee
  - H.E. Dr. Khin Shwe, Chairperson of Relief and Victims Care Committee
- Ministry of Science and Technology
- Myanmar Customs Department
- Myanmar Police Force

Seminar on Arbitration Law

Nay Pyi Taw, 14 August 2014 13:00 - 18:00

organized by JICA

Moderator: KUNII Hiroki, JICA Legal Advisor
Interpreter: U Hang Za Thawn (Myanmar - English / Consecutive Interpretation)

Opening

12:30 - Registrations
13:00 - 13:10 Opening
13:10 - 13:20 Opening Remarks by U Sein Than, Director General, Office of the Supreme Court of the Union
13:20 - 13:30 Photo Session

Session 1: Introduction of Arbitration

13:40 - 14:40 "Arbitration ~ Introduction & Recent Trends ~" presented by Mr. TEZUKA Hiroyuki, Attorney-at-law admitted in Japan & New York, Nishimura & Asahi Law Firm
14:40 - 15:00 Coffee / Tea Break

Session 2: Enforcement of Foreign Arbitral Award

15:00 - 16:00 Presentation by Mr. Changkuk Lim, Legal Officer at UNCITRAL-RCAP (Regional Centre for Asia and the Pacific)

Session 3: Myanmar Arbitration Law (Draft)

16:00 - 16:30 "Overview of Arbitration in Myanmar" presented by Dr. Ei Ei Khin, Assistant Director, Law and Procedure Department, Supreme Court of the Union of Myanmar
(Myanmar Language Only)
16:30 - 16:50 Break (Collecting question sheet)

Session 4: Q&A/Floor Discussion

16:50 - 17:50 Q&A/Floor Discussion
Moderated by KOMATSU Kenta, JICA Legal Advisor

Closing

17:50 - 18:00 Closing Remarks by Mr. OKUBO Akimitsu, Advisor, Law and Justice Team, Governance Group, JICA Headquarters

Expected Participants
(Myanmar)

- Office of the Supreme Court of the Union
- Office of the President
- Union Attorney General's Office
- Ministry of Commerce
- Ministry of Electric Power
- Ministry of Energy
- Ministry of Foreign Affairs
- Ministry of Industry
- Ministry of Labour
- Ministry of Mines
- Ministry of National Planning and Economic Development
- Directorate of Investment and Company Administration
- Union of Myanmar Federation of Chambers of Commerce and Industry

– III. International Study –

JAPAN-VIETNAM JOINT STUDY OF LEGAL SYSTEMS - FIRST VISIT OF THE PROSECUTOR GENERAL OF THE SUPREME PEOPLE'S PROCURACY OF VIETNAM TO JAPAN–

Takeshi MATSUMOTO
JICA Long-Term Expert

I. BACKGROUND

The Research and Training Institute (RTI) of the Ministry of Justice (MOJ) of Japan began country-focused training courses for the Ministry of Justice of Vietnam in 1994. Since the launch of the Project in the Legal and Judicial Field by the Japan International Cooperation Agency (JICA) in 1996, the RTI has continued to provide assistance to Vietnam, primarily through the above project.

The RTI has worked with the Supreme People's Procuracy (SPP) of Vietnam since 1999 as one of the major counterpart organizations of said project. The JICA long-term expert dispatched to Vietnam, who was originally a public prosecutor, had been in charge of the coordination of programs for the SPP before being dispatched, and the RTI has annually implemented its unique personnel-exchange program with the SPP since 2000. In this manner, the RTI as well as the MOJ (including the prosecution service of Japan) have maintained close relationships with the SPP.

In 2013, we were informed by the Project Office for the Legal and Judicial System Reform for Vietnam (Phase 2) that Dr. Nguyen Hoa Binh, the Prosecutor General of the SPP, was hoping to visit Japan to extend his appreciation for the Japanese assistance, on the occasion of the 40th anniversary of the establishment of diplomatic relations between Japan and Vietnam. He also hoped to exchange candid opinions with the relevant organizations in Japan regarding future bilateral cooperation.

Japan and Vietnam celebrated the year of 2013 in a double way as the 40th anniversary of establishing bilateral relations, and also as the 40th anniversary of ASEAN friendly cooperative relations. Thus, it was a great opportunity to deepen the bilateral relations in the field of law and justice as well. Under these circumstances, we deemed it extremely meaningful for Japan to invite Dr. Binh, the Prosecutor General and a key figure in the judiciary of Vietnam, so as to organize the above-mentioned joint study of legal systems and promote direct dialogue between the leadership of

the judiciary in both countries (including the Minister of Justice and the Prosecutor General). Through this invitation, we expected to directly exchange opinions with the chief of one of the major counterpart organizations in Vietnam on future bilateral legal cooperation, with an eye to the common points and differences in the legal systems in both countries. It was also aimed at further strengthening the existing friendly bilateral relations in the legal and judicial field.

This joint study was organized jointly by the RTI and JICA, and the delegation consisted of six participants, in addition to Dr. Binh.

II. SCHEDULE AND OUTLINE OF THE INVITATION PROGRAM

A. Duration

Saturday, 3 August to Thursday, 8 August 2013 (For details, see the attached schedule on pp. 44)

B. Participants

Dr. Nguyen Hoa Binh, Prosecutor General, and other six officials from the SPP (For details, see the attached list of participants on pp. 45)

C. Program Outline

This invitation program was largely composed of two components: the program by the Ministry of Justice, Public Prosecutors Office and the Court; and the program by the Ministry of Foreign Affairs and JICA. The following is a brief outline of the entire program.

1. Program by the Ministry of Justice

The Vietnamese delegation paid a courtesy call on Mr. Sadakazu Tanigaki, Minister of Justice; and Mr. Kunihiko Sakai, Director General of the RTI; and visited the First Training Department and the Research Department of the RTI, to exchange opinions regarding future cooperation.

During the courtesy call, Minister Tanigaki mentioned that for the sound development of a nation, “the rule of law” needed to penetrate into the entire society. He also added that it was quite meaningful that those who bore the responsibility of establishing “the rule of law” in both Japan and Vietnam met and exchanged opinions. Dr. Binh responded to his counterpart with comments that Japan is a trustworthy partner for Vietnam in the economic as well as in the diplomatic and political fields. He also expressed his hope for further development of the judicial relations between both countries. Thus, both mutually confirmed their intentions to strengthen the bilateral friendly and cooperative relationships.

Before the delegation's visit to the Research Department of the RTI, this department had been informed of the SPP's plan to establish a Criminology Research Center (which would collect, accumulate, research, analyze and disseminate criminal information). With this information in hand, Mr. Takao Seki, Department Director, explained the duties of the department and other related matters. This was followed by an active questions and answers session on the functions and rules of the department.

During the meeting for exchange of opinions held on the last day of the program, the participants from both countries openly expressed opinions on future cooperation, thus sharing common understanding on the topics.

2. Program by the Public Prosecutors Office

The program at the Supreme Public Prosecutors Office included a courtesy call on Mr. Hiroshi Ozu, Prosecutor General, an exchange of opinions with prosecutors including the Prosecutor General, a visit to the Tokyo District Public Prosecutors Office (including facility observation), etc.

It was the first time that the chiefs of the prosecution services of both countries had met each other. Thus, during the courtesy call and the meeting with prosecutors, they actively exchanged opinions regarding issues related to common points and differences in the judicial system and criminal justice, the status of public prosecutors, and the reforms of the judicial and prosecution systems of both countries. They also agreed on further strengthening of the mutual relationships between the prosecution services of both countries.

3. Program by Courts

The program related to courts included a courtesy call on Mr. Yoshinobu Onuki, a justice of the Supreme Court, visit to the Legal Training and Research Institute (LTRI) of the Supreme Court, etc.

Mr. Onuki had once been engaged in legal technical assistance to Vietnam, as the Director General of the RTI. Being aware of this fact, Dr. Binh expressed his gratitude for the Japanese assistance, and mentioned that the assistance had contributed to the increased trust of the public towards the judiciary through the establishment of a number of laws and regulations, coupled with improved quality of investigations, trials, etc. In response to this, Mr. Onuki showed his concern for Vietnam, and wished for the smooth advancement of the judicial reform in Vietnam. Thus, the talk between the judiciary leaderships of both countries was conducted in a friendly atmosphere as if re-establishing old ties.

At the LTRI, the delegation was given an explanation on the legal apprenticeship program in Japan, and with a focus on prosecution, the training curriculum and training system designed in collaboration with the RTI and the District Public Prosecutors Offices. Following this, an active question-and-answer session was conducted on the content of the training curriculum, etc.

4. Program by the Ministry of Foreign Affairs and JICA

The delegation paid a courtesy call on Mr. Shunichi Suzuki, Parliamentary Senior Vice-Minister for Foreign Affairs; and Mr. Hideaki Domichi, Senior Vice President of the Japan International Cooperation Agency (JICA). During the two visits, an agreement was reached on the multi-layered development of "strategic partnership," and further enhancement of bilateral relationships in the judicial field, as well as in the economic and social fields.

III. PERSONAL OPINION

Vietnam is currently forging ahead with judicial reform in accordance with Resolutions No.48: "Legal Development Strategies" (strategies on the improvement of the legal system and legal operation/enforcement system of Vietnam by 2020, with the aim of national transition to a modern law-abiding country and the establishment of a market-economy system) and No. 49: "Judicial Reform Strategies" (strategies by 2020), which were issued by the Politburo of the Central Committee, Communist Party of Vietnam in 2005. In order to support these Vietnamese efforts for judicial reform, the Ministry of Justice of Japan will continue to cooperate with the country in full scale through the aforementioned Project for the Legal and Judicial System Reform. The SPP is a state institution with enormous mandates, including the enforcement of the prosecution power and supervision of other judicial institutions (civil and administrative cases). It also has jurisdiction over criminal-related laws. Hence, it is one of the important counterpart organizations which determine the success or failure of the above Project.

The purpose of this joint study was to deepen the friendly relationships between the SPP and Japanese relevant institutions in the legal and judicial fields, as well as to discuss future legal cooperation activities between two countries. During the joint study, Dr. Binh and other delegates showed great enthusiasm for active learning of Japanese knowledge and experience to be used for judicial reform in Vietnam. At the same time, their repeated words of appreciation made us realize the high evaluation of, and trust in the assistance and cooperation of Japan.

It may be no exaggeration to say that in the course of legal technical assistance, the ownership of the recipient country determines the success or failure of assistance activities. Through this joint study, it

was made clear that the counterpart organizations including the SPP voluntarily took the initiative in advancing the judicial reform with definite goals. Considering these proactive approaches in Vietnam, it appears that their reformatory efforts will produce fruitful results, and the Ministry of Justice of Japan has pledged full cooperation in the reform process.

IV. CONCLUSION

This joint study program was extremely meaningful in the sense that it was conducted in a commemorative year in the bilateral relationships between Japan and Vietnam, inviting for the first time the Prosecutor General of Vietnam. Last but not least, I would like to take this opportunity to express my gratitude to all the related institutions and individuals who offered their contributions to this program, including the Supreme Court, Ministry of Foreign Affairs, Embassy of Vietnam in Japan, JICA, Supreme Public Prosecutors Office, and the Tokyo District Public Prosecutors Office. Our thanks also go to two interpreters, Mr. Kamu Onuki and Mr. Takashi Hashimoto, who showed immeasurable dedication throughout the program.

Schedule for the 2013 Joint Study of Legal Systems in Japan and Viet Nam

Date		10	11	12	13	14	15	16	17	18	19	Place
8/3	Sat									[HAN 23:30 - NRT 06:55(JL752)]		Plane
8/4	Sun	[HAN 23:30 - NRT 06:55(JL752)]										Plane
8/5	Mon	9:50 10:30 Briefing at MOJ*1	11:00 11:30 Courtesy call on RTI*2 Director General	12:00 14:00 Courtesy call on Prosecutor General, luncheon and exchange of opinions on experience in judicail reform			14:10 16:00 Visit to Tokyo District Public Prosecutors Office and facility observation			17:30 Courtesy call on Minister of Justice		Tokyo
8/6	Tue	10:00 11:30 Explanation on duties of RTI 1st Training Dep., exchange of opinions on training of prosectuors at MOJ		12:00 13:30 Luncheon hosted by RTI Director General			14:30 16:30 Facility observation at Urayasu Center, explanation on duties of Research Dep., exchange of opinions on criminal policy studies					Tokyo
8/7	Wed	10:00 11:30 Facility observation at LTRI*3, exchange of opinions on legal training		12:50 14:30 Lunch			15:00 16:00 Courtesy call on and facility observation at Supreme Court		16:30 Courtesy call on Parliamentary Senior Vice-Minister for Foreign Affairs	17:30 Courtesy call on JICA Senior Vice President		Tokyo
8/8	Thu	10:00 12:00 Exchange of opinions on future cooperation at MOJ		12:30 Lunch							NRT 17:55 - 21:40(JL751)	

*1 MOJ: Ministry of Justice *2 RTI: Research and Training Institute *3 LTRI: Legal Training and Research Institute

List of Participants in the Joint Study of Legal Systems in Japan and Viet Nam

1	**H.E.Dr. Nguyen Hoa Binh**
	Prosecutor General of the Supreme People's Procuracy (SPP)
2	**Mr. Nguyen Viet Hung**
	Director of the Department of General and Administrative Affairs, SPP
3	**Mr. Nguyen Minh Duc**
	Director of the Personnel Department, SPP
4	**Mr. Le Thanh Duong**
	Director of the Department of Public Prosecution and Suprevision over Appeal Proceedings in Hochiminh City, SPP
5	**Mr. Le Tien**
	Director of the Department of International Cooperation and Mutual Legal Assistance in Criminal Mattters, SPP
6	**Mr. Le Trung Muu**
	Chief Prosecutor of the People's Procuracy of Thai Binh Province
7	**Mr. Tran Anh Tuan**
	Vice Director of the Department of General and Administrative Affairs, Secretary of the Prosecutor General, SPP

【Officials in charge】

Professor Takeshi MATSUMOTO, Professor Hiroshi SUDA

Administrative Officers: Ms. Harumi ISHIHARA, Mr. Hideitsu NAKAMURA

PROJECT FOR STRENGTHENING THE CAPACITY OF COURTS IN NEPAL (CASE MANAGEMENT AND JUDICIAL MEDIATION), REPORT ON THE PROJECT DETAILED PLANNING SURVEY

Yasuko MIURA
Judge of the Osaka Family Court[1]
Former Professor and Government Attorney
International Cooperation Department

I. INTRODUCTION

A new project was initiated to work with the Supreme Court of Nepal in September 2013. The official title of the project is "The Project for Strengthening the Capacity of Court for Expeditious and Reliable Dispute Settlement." However, it is often referred to with abbreviated titles such as "Nepal Court Project" or "Nepal New Project."

Before beginning a description of the project, I would like to briefly refer to the actual situation of Nepal and the history of Japanese legal technical assistance to Nepal.

II. INFORMATION ON NEPAL

Nepal (its official name is "Federal Democratic Republic of Nepal") is a geographically narrow country sharing borders with India in the north, west and south, and with the Tibet Autonomous Region of China in the north. It is famous for the Himalayan Mountains in the north where Mt. Everest is located. With these geographic conditions and other factors intertwined (being a multiethnic country, the caste system of the Hinduism, the principal religion of the country), Nepal is based on a very complex social structure.

[1] The author wrote this article during her tenure at the International Cooperation Department.

Against the above-mentioned background, the Maoists began an armed struggle in 1996, which led to the 10-year civil war ending with the signing of the comprehensive peace agreement in 2006.

Following the end of the civil war, the Constituent Assembly election was held in 2008 under an interim constitution. As a result, the Maoist won the largest number of seats. With the abolition of the monarchy, which was decided by the Constituent Assembly in May 2008, the transition to a federal democratic republic was declared.

The constitution-drafting process which followed, stagnated due to political conflicts. In spite of extending the term four times, the Constituent Assembly was dissolved in May 2012 at the end of its tenure. In March 2013, an interim election council came into being with Supreme Court Chief Justice Khilraj Regmi as the head. In order to hold another constitutional assembly election on November 19th of this year, coordination is ongoing among parties.

III. HISTORY OF LEGAL TECHNICAL ASSISTANCE TO NEPAL

In parallel to the constitution enactment process, basic laws have also been targeted for review and improvement. As a basic law, the national code Mulki Ain (which covers four legal areas: civil substantive law, civil procedural law, criminal substantive law and criminal procedural law) is still in effect in spite of being enacted approximately 150 years ago. It has lagged far behind global standards, which has forced the government of Nepal to seek its revision and its division into civil law, civil procedure law, penal law and criminal procedure law. This has led to working drafts.

With regard to the revision of civil law - in reference to the Civil Code of Japan - the government of Nepal requested legal technical assistance from Japan. In response to this, relevant assistance was provided to Nepal through several forms including:

- JICA country-focused training: “Seminar on Civil Code and related laws” (held intermittently) from April 1, 2009 to March 30, 2012.
- JICA country-focused training: “Commentary on Civil Code” (held intermittently) from April 1, 2012 to March 31, 2013.
- Providing comments on the draft revised civil code and draft commentary on civil code, which were prepared by Nepalese participants.

Following the above activities, JICA country-focused training in civil related laws is being conducted periodically from April 2013 to March 2014. The International Cooperation Department (ICD) assisted with these activities through organizing training seminars in Japan and participating in the meeting of advisory groups established in Japan, etc. In addition, as the original cooperation

activities of the Ministry of Justice of Japan, the ICD has organized joint studies inviting prosecutors from Nepal.

Since July 2010, Attorney Katsumune Hirai has been dispatched to Nepal as a legal expert on a long-term basis, to support the above-listed training courses. He has also been charged with exploring potential legal areas which would need Japanese assistance and where Japan could provide effective assistance. As a result of such exploration, it was decided to target the area of case management and judicial mediation in the new project.

IV. BACKGROUND TO THE PROJECT

The Supreme Court of Nepal selected 12 legal areas to reform in its ongoing second 5-year plan. Based on this selection, the Court has been engaged in judicial reform with a steering committee established for each area.

In spite of its efforts, according to the result of the survey conducted in June 2012, just over 40% of cases received by courts each year were concluded with another 40% requiring more than three years to reach conclusion. The judiciary in Nepal thus faces an extremely serious situation of backlogged cases. The inability to solve legal disputes expeditiously is a factor in the eroding trust of the public toward the judicial system.

In an effort to solve this problem, the Supreme Court has actively taken, through its strong leadership, several measures as follows:

- The introduction of a calendar system;
- Case management reform through the creation of guidelines;
- Improvement in the judicial mediation system, including the establishment of a mediation center in each court; etc.

Among the above, the “improvement of the case management system” and “encouragement of dispute resolution through judicial mediation” have been determined as being the challenging areas in the above-mentioned second 5-year plan.

Japan has also experienced a backlog of cases as former Prime Minister Koizumi expressed when reviewing the Japanese experience, “The Supreme Court tries cases of memories.” To solve this problem, several approaches were taken, including: the enactment of a law for the expedition of trials; planning of civil trials; the introduction of the pre-trial conference procedure in criminal procedure, etc.

Dating back to earlier days, under the old Code of Civil Procedure, a method of reaching a settlement through oral argument was created by frontline judges, which led to the introduction of the current preparatory proceedings upon enactment of a pertinent law. Such Japanese experience may be useful in improving the case management system in Nepal.

In the field of judicial mediation, Japan boasts a 90-year history of conciliation, which commenced on land-and-building leases in 1992 under the "Act on Land and Building Leases". Along with its history, several efforts have been attempted at training mediation committee members at each court throughout Japan.

Accordingly, Attorney Hirai selected these two fields - the backlog of cases and mediation- as the areas in which Japan should attempt to provide assistance.

V. SEMINAR ON CASE MANAGEMENT

Against the above-mentioned background, country-focused training on case management was conducted on several instances from April 1, 2012 to March 30, 2013. During this time, a training seminar was also held in Japan (September 2012), inviting ten judges and court officials from Nepal, including two justices from the Supreme Court. Through this seminar, the attendees deepened their understanding of the outline of the judicial system and approaches taken for the expedition of trials in Japan. I was provided an opportunity to join the first half of the seminar to explain the civil procedure and civil summary procedure of Japan. The Nepalese participants appeared genuinely amazed at the high percentage of cases resolved through settlement in Japan.

VI. DETAILS OF THE PROJECT

A project detailed planning survey was conducted in Kathmandu, capital of Nepal, and provincial areas including Pokhara and Tanafun, from March 13th-22nd, 2013. (I also participated in the survey in Kathmandu.)

Through discussions held with relevant organizations (including the Supreme Court) during the survey, an outline of the project was decided as follows:

- Period: September 2013 – March 2017 (3 years 7 months), during which long-term experts would be dispatched;

- Implementation structure: three working groups on "criminal case management," "civil case management" and "judicial mediation."

Several inventive measures were taken for the formation and activities of the working groups. For example:

- Each working group was composed of not only judges but also other stakeholders including attorneys-at-law and prosecutors, to learn and accept various perspectives;
- The results of discussions by the working groups would be incorporated seemlessly into legal practices.
- Each working group would be supervised by a Supreme Court justice in charge, to procure approval from the Supreme Court.

It appeared quite uncommon for multiple justices of the Supreme Court to proactively participate in a legal cooperation project.

As an output from Japan, two long-term experts (one attorney-at-law and one project coordinator) would support project activities on a daily basis. An advisor on legal technical assistance would also be involved in assistance activities in the field of judicial mediation. An advisory group was established in Japan to provide advice in each of the three target areas of implementation.

VII. COMMENTS ON THE SURVEY AND PERSPECTIVES ON THE PROJECT

As mentioned in IV above, the Supreme Court of Nepal does not rely on assistance donors but proactively engages in judicial reform. The court of last resort has traditionally been viewed with awe by other judicial institutions, and has been given high marks for fairness. The appointment of Chief Justice Regmi as the head of the interim election council can be considered as a symbol of respect towards the Supreme Court.

At present, there exist five justices in the Supreme Court, including Acting Chief Justice Damodar Sharma (this is excluding Chief Justice Regmi)[2]. Considering that the quorum is 15, the justices must all be extremely busy. However, each kindly accepted our courtesy call during our survey.

The strong ownership of the Supreme Court and its high expectations towards the project were extremely impressive.

What is important, however, is the details of the judicial reform to be implemented through this

[2] Since October 9, 2014, the post of acting Chief Justice of the Supreme Court has been held by Rt. Mr. Shri Ram Kumar Prasad Shah.

project, which are to be discussed by each working group. For example, such measures as follows can be assumed:

- In the field of case management, the introduction of a fast track system for expeditious decisions in simple cases, improvement in the arrangement of points at issue;
- In the field of judicial mediation, strengthening the training of mediators, etc.

Through the project details planning survey, in which we had the opportunity to observe trials and exchange opinions with judges, the following three points appeared to require extra attention for future activities:

First is that "fairness" is given particular importance. This is represented by the fact that judges read case records in courtrooms. It is a point that judges should read case records in open courtrooms and not in closed chambers. The manner of distributing cases to judges varies from court to court but it appears that cases are primarily distributed for every court session (or every month) by lot.

While the philosophy of "fairness" is shared by Japanese judges as well, the idea that it is compromised by reading case records prior to court sessions is a difficult concept for us to understand. We would rather consider that perusing case records in advance enables judges to conduct trials effectively and expeditiously, thereby gaining the trust of parties. It is expected that future discussions will reveal whether reading case records in the courtroom is an unnegotiable practice for the Nepalese judiciary or if the practice can be altered in consideration of efficiency.

The second point (which also relates to the first point) is that the role of judges as a "person who makes judgment" is emphasized.

The judicial system has been designed based on the idea that judges should make judgments on impartial grounds and they shall entrust mediators to resolve disputes when negotiations are necessary between parties. Thus, when I explained that Japanese judges generally recommend parties come to a settlement, the Nepalese judges were quite surprised.

Mediation assisted by mediators has a merit that parties' arguments are unlikely to affect the content of judgment. In the settlement system of Japan, judges in charge of making judgments express perspectives on possible judgments in encouraging parties to discuss settlement. This practice may lead to the success of judicial mediation.

During the training seminar held in Japan in September 2012, the participants learned (with surprise) of the high success rate of reaching settlements in Japan. Based on their reaction, I felt uncertain

whether Nepalese judges would be able to succeed in arranging settlements.

Contrary to my concern, however, Attorney Hirai explained that in Nepal there were also judges who actively encouraged parties to arrange a settlement in disputes, based on legal grounds. He theorized that so few judges engage in this practice simply as a lack of custom, and therefore it would not be impossible to put in place.

Although it still remains to be seen whether the practice of seeking a settlement is eventually accepted by judges and parties in Nepal, I find it meaningful in simply collecting information extensively on, and thoroughly discussing the possibility of, introducing such innovative approaches.

As the third point, it appears that individual judges and court officials nationwide are taking their own approaches to promoting mediation. What our survey found is that officials in charge at courts where judicial mediation has been successful actively disseminate their experiences to promote the understanding of stakeholders (attorneys-at-law, etc.) on the mediation process. It may be of importance in effectively embracing such individual efforts and bring them up in the discussions of the working groups.

It may be an advantage for the project to have adopted such a system of working groups in which not only judges but also prosecutors and lawyers may participate in such discussions as mentioned above. No matter how many efforts courts make independently, a legal system may not work without gaining the understanding of parties. The judicial institutions we visited during our survey (the Office of the Attorney General, the Nepal Bar Association, etc.) stated that approaches taken solely by the Supreme Court do not give sufficient consideration to this point. In this regard, they accepted our project favorably for being flexible in listening to stakeholders other than courts, and expressed their intention of actively cooperating.

VIII. CONCLUSION

The first training seminar of the project will be held in Japan in December 2013, soon after the commencement of the project. It is hoped that the participants will be able to form a concrete picture of the direction of future discussions by observing court practices in Japan at an early stage of the project.

It will be the second time that I participate in a training seminar for Nepal, following the first in 2012. I would like to offer my own contribution in making the seminar as productive as possible, using the

knowledge and experiences gained in Nepal through the project detailed planning survey.

It is my sincerest hope that the problem of the backlogged cases will be solved and the trust towards the judicial system will be further developed in Nepal through our project.

LOCAL SEMINAR ON CRIMINAL PROCEDURE CODE AND FORUM ON PENAL CODE IN LAOS

Hajime KAWANISHI
Professor and Government Attorney
International Cooperation Department

I. OUTLINE OF THE TRIP

The Ministry of Justice (MOJ) of Japan began legal technical assistance to Laos in 1998. Since then, it has organized training seminars in Japan inviting judicial officers from Laos, and has dispatched legal experts to Laos. In the Legal and Judicial Development Project for Laos (administered by JICA from 2003 to 2007), assistance was provided in creating textbooks of the Civil Code and Corporate Law, a judgment writing manual, and a prosecutor's manual. In the ongoing project since 2010: JICA Project for Human Resource Development in the Legal Sector (hereinafter "the project"), which aims to improve executive, judicial and legislative practices through personnel and institutional capacity-building, assistance has been provided to support the creation and dissemination of law textbooks. The MOJ has collaborated in these legal technical assistance projects with Laos, through the dispatching of long-term and short-term experts, holding local seminars, organizing study-trips to Japan, participating in advisory groups, etc.[1]

I participated, as a short-term expert, in the local seminar on the Criminal Procedure Code held in December 2013, and in the forum on the Penal Code (together with Mr. Ryo Shirai, an administrative officer of the ICD) which was held as part of assistance activities by the MOJ for legislative drafting of the Penal Code. Below is the outline of these activities.

II. LOCAL SEMINAR ON CRIMINAL PROCEDURE CODE

A. Project

[1] For your reference, see project features and training seminars held in the project in ICD NEWS No. 44, 47, 50, 51, 53, 57 and 58 (in Japanese).

In Laos, legal education and training have not traditionally included systematic disseminations on legal theories. Problems in legal practice have been handled without their interrelating with legal theories. Against this background, the project commenced in July 2010 with the aim of personnel and institutional capacity-building in the legal sector to improve legal practices, through legal education and training associated with legal theories. The ICD has cooperated in this project through the dispatch of long- and short-term experts, the organization of local seminars and study trips to Japan, participation in the advisory groups, etc. One of the outcomes projected has been to systematically analyze and examine issues in theory and in practice in relation to the Criminal Procedure Code. It was further sought to compile the results into "a model textbook," and ultimately disseminate its contents among officers and faculty members of judicial institutions and legal educational institutions in Laos.

B. Dissemination Seminar

The sub-working group (SWG) of the Criminal Procedure Code in this project had already completed and published a criminal procedure chart by 2012 (hereinafter referred to as "procedure chart"). As the chart was revised upon revision of the Code in 2012, the SWG has been engaged in the dissemination of the revised Code using the new procedure chart. As part of such activities, in December 2013, a dissemination seminar was held in Luang Prabang in northern Laos. The seminar program consisted of presentations by SWG members on the revised Criminal Procedure Code using the procedure chart, and presentations on evidence rules by Japanese legal experts. Together with two JICA long-term experts, Mr. Kenichi Nakamura and Mr. Hiroyuki Ito, I participated in the seminar as a short-term expert.

The dissemination seminar was held in the conference room of the Department of Agriculture and Forestry of Luang Prabang Province from December 16 - 17, 2013. In addition to the 11 attending SWG members, approximately another 60 individuals, who were representatives from judicial institutions and law educational institutions in seven northern provinces, attended the seminar.

At the seminar, SWG members gave a presentation on the revised Criminal Procedure Code, with a focus on the investigation procedure, roles of the court and defense counsel, etc., using the procedure chart. Following this, Japanese experts gave presentations on the comparison of evidence rules between Japan and Laos, an outline of evidence rules in Japan, and judging the credibility of confessions.

In giving the presentation, SWG members possessed a greater deal of confidence as they completed the procedure chart through repeated discussions. Their explanations were simple but appropriate with the following characteristics:

- Reference to statutory provisions;
- Explanation on matters not covered by statutory provisions and the practical operation of such;
- Comparison of the procedure with those of neighboring countries.

Although this seminar was held just a few months after the study trip to Japan that summer, SWG members had further developed their capacity within a very short period of time.

Seminar participants also held fruitful discussions with proactive proposals on issues to be improved and future amendment of the chart. Many of the proposals were very constructive and SWG members responded to such proposals without the need of asking for help from Japanese experts. Thus, it appeared that the ripple effect of the project had been reaching not only SWG members but a broad range of individuals in the legal and judicial sector.

At the same time, participants from investigation authorities asked such questions as to whether it was possible to obtain retroactive permission for search and seizure dated a few days back, in cases where it was conducted in an emergency. Considering this, there appeared to be a gap in the understanding of criminal procedure among participants, especially in the local areas.

Laotian people have a custom of singing songs during breaks or after breaks at meetings. At this seminar they mostly sang folk songs of the northern part of Laos and I was provided an opportunity to sing a song by myself. Singing songs certainly eases the atmosphere and appeared to be quite typical of Laos.

C. Local Seminar

As mentioned above, while SWG members were engaged in dissemination activities of the revised Criminal Procedure Code, they were also aiming at completing a "model textbook" of the Code. For this purpose, they formulated systematic chapters of the Code through detailed analysis and examination of the statute, and each member was assigned to drafting a chapter of the textbook. At the time of this seminar, solely a half year remained before the end of the project. Their drafting process was therefore also in the final stage, reflecting in the draft comments and advice provided from the Japanese advisory group on the Criminal Procedure Code, and also through study trips to

Japan or JICA-Net meetings. In order to effectively and efficiently complete the final draft of the "model textbook" with rich assortment of contents, properly reflecting statutory revisions, another local seminar was held following the above-mentioned dissemination seminar. In this seminar, Professor Mitsuo Shumi of Doshisha University Law School, a member of the advisory group on the Criminal Procedure Code of Laos, gave comments and advice on the draft prepared by each SWG member. Upon this, intensive discussions were held on each point at issue. Moreover, instructors from the Northern Law College were invited to the discussions to be given an opportunity of not only being informed of the revised Code but also of learning ways of thinking in jurisprudence.

Following the dissemination seminar referred to in B above, a local seminar was held at the conference room of the Department of Agriculture and Forestry of Luang Prabang Province on December 17 in the afternoon, and at the Northern Law College in Luang Prabang City on the 18 and 19. In addition to the nine members of SWG on the Criminal Procedure Code who also participated in the dissemination seminar, eight law instructors from the Northern Law College also attended.

In the seminar, Professor Shumi and other Japanese experts provided comments on the drafts of the chapters on investigation, prosecution, appeal instance, cassation instance and retrial of the "model textbook." Based on this, discussions were held on each point at issue. As the first version of most drafts had already been examined at the training seminar held in Japan, discussions were updated from those held at the time. It appeared that the contents of discussions were also upgraded as the participants were able to present opinions on the interpretation of the tenor and purposes of statutory provisions.

There was an issue on which the opinions of scholars and legal practitioners including judges and public prosecutors did not coincide with each other. While scholars showed consequences based on legal theories, legal professionals explained the actual situation in practice. The scholars' opinions were correct according to the literal interpretation of provisions, but the operation in practice appeared appropriate. Regarding this issue in controversy, discussions were held to link theory and practice, which showed steady progress of the project.

It was impressive that junior members of the SWG, who had seldom expressed their opinions during the study tour in Japan, actively participated in the discussions at the local seminar.

III. FORUM ON PENAL CODE

The Penal Code of Laos was enacted in 1990, and underwent partial amendments in 2001 and 2005. The government of Laos aims at a drastic revision of the current Penal Code and its approval by the National Assembly in 2015. Under this plan, its revising process has been fully in progress since 2013. The project, which commenced in July 2010, includes assistance in drafting the Civil Code as part of its activities[2]. With regard to assistance on the Penal Code, however, it was not included in the project, and thus the long-term experts decided to accommodate the needs themselves to the furthest extent possible. To this end, the "Forum on the Penal Code" was held jointly with the MOJ of Laos in May and November 2013, which received high marks by Laotian participants. Thereafter, Laos requested further assistance from Japan in order to bring its Penal Code in conformity with international treaties and up to global standards. In response to such a pressing request, the MOJ of Japan considered further provision of Japanese knowledge and experience would be beneficial for Laos to enact a new Penal Code in accordance with international treaties, etc., which would be appropriate as a member of the global community. As a tool for this, the "3rd Forum on Penal Code" (hereinafter referred to as the "Forum on Penal Code") was organized in cooperation with the project and the MOJ of Laos.

This event took place from December 20 - 21, 2013 at the conference hall of Don Chan Palace Hotel in Vientiane. On the first day, approximately 50 individuals attended, including Mr. Inthapanya Khieovongphachanh, Deputy Director General of the Department of Legislation of the MOJ; Penal Code drafting committee members; officers in charge of legal affairs at each ministry; SWG members, etc. On the second day, in spite of it being a holiday, approximately 30 individuals participated in the forum including H.E. Professor Ket Kiettisak, Vice Minister of Justice; Ms. Bouphone Heuangmany, Director General of the Department of Legislation of the MOJ; Penal Code drafting committee members and SWG members. Among Japanese participants, Professor Shumi also attended this forum after participating in the above-mentioned local seminar on the Criminal Procedure Code. In addition, Mr. Shirai, an ICD international cooperation training officer, and myself, together with three JICA long-term experts, Mr. Ito, Mr. Nakamura and Mr. Hitoshi Kawamura, participated in the event.

At the beginning of the forum, Professor Shumi gave a lecture on the basic principles and doctrines on penal code under the title "Criminal-related Legislation – from the Comparative Law Viewpoint – ," which was followed by Q&A. Afterwards, Laotian participants gave a presentation on the draft Penal Code, and Q&A and an exchange of opinions continued.

[2] In response to the request from Laos, assistance in drafting the Civil Code was added to project activities through the mid-term review (in August 2012).

Professor Shumi provided input on the basic principles of criminal law, offering numerous suggestions on the global standard, through a concise and detailed lecture. His explanations covered the thought background of the basic principles, including *nulla poena sine lege* (no penalty without a law), its relevant principle of clarity, the prohibition of analogical application, etc. Based on his research experience in the U.S. and Germany, the professor provided a comparative-law standpoint in consideration of the Model Penal Code of the U.S. and the Penal Code of Germany.

During the Q&A session and exchange of opinions, the participants actively expressed opinions. Most were very constructive, suggesting problems of the Penal Code of Laos, in relation to the basic principles of the statute covered in the professor's lecture. For example, regarding the relationship between the prohibition of analogical application and theft, it was asked whether theft is applicable when seizing others' objects in their presence. Their question was based on the Penal Code of Laos, according to which seizing others' objects "without their awareness" is one of the constituent requirements of theft. In addition to this, the participants actively discussed many issues at point, including: the relationship between the principle of clarity and the provisions of the Penal Code; the relationship between the function of protecting legal interests and each provision of the Penal Code; the principle of punishing crimes of intent; the relationship between laws under the jurisdiction of each ministry and the Penal Code; the right or wrong of incriminating adultery; provisions on determining the punishment aggravated or reduced from statutory penalty; and removal from the list of offenders.

At the forum on the Penal Code, Penal Code drafting committee members and officials in charge of legal affairs at each ministry gathered to ask questions and exchange opinions regarding problems for the enactment of the Penal Code. It appeared that the forum provided a valuable opportunity to the MOJ of Laos to gather highly pertinent information and exchange opinions as they were able to obtain comments on the draft Penal Code from not only drafting committee members but also law officers from each ministry.

IV. CONCLUSION

The project ended as scheduled in July 2014. Thus, the local seminar discussed in this paper was the last local seminar for SWG members of the Criminal Procedure Code. It is considered that an appropriate administration of SWGs and the creation and dissemination of model textbooks among judicial officers and law teachers are the most significant results achieved through this project. As a proof of such, I was able to confirm at firsthand through my participation in the dissemination seminar at Luang Prabang, that the SWG members had sufficient capacity to independently administer dissemination seminars, explain the criminal procedure, and handle Q&As.

With regard to the model textbook, almost all the drafts had already been reviewed at the time of the study trip to Japan in August 2013. Therefore, at the local seminar mentioned earlier, more thorough discussions on each point at issue was able to be held. Moreover, in terms of the quality of discussions, while scholars expressed opinions based on law theories, practitioners responded from the standpoint of practical legal operation. Thus, legal theories and practices were linked during their discussions.

The SWG required a lengthy period of time for preparation of the model textbooks. However, thanks to their repeated discussions in the process, and patient support by the long-term experts, the members who participated from each relevant institution have obtained common recognition of Laotian law and have reached very close to the level at which they are able to aim at overcoming issues in theory and practice. Considering such, the method adopted in this project appeared to be the most effective as a project oriented to self-sustainable development of Laotian legal practitioners.

Upon completion of the first phase in July 2014, the second phase of the project began successively. However, the model textbooks need revision and the Civil Code and the Penal Code, which are the core of legal technical assistance, are still under revision (both of which are scheduled to be enacted in 2015). In order to strengthen the judicial system and improve public trust toward the legal system in Laos, an appropriate enactment and dissemination of these basic legal norms is essential, and continual support thereto would be necessary hereafter.

Against this background, it is quite meaningful that assistance in revising the Penal Code is included in the next phase of the project, primarily owing to the steady and patient support of the long-term experts for the Penal Code, in spite of limited resources available.

Let me remind you that to date the project has solely assisted SWG members in developing fundamental skills. Unless such achievements are proliferated and further developed, it will be

difficult for the project's achievements to take root in Laos. The ICD intends to continue its full support to Laos.

– *V. Introduction to Foreign Laws* –

REGISTRATION OF IMMOVABLES IN CAMBODIA

Miha ISOI

JICA Advisor, Attorney-at-law

(This paper compiles the information I obtained during my involvement in the JICA Legal and Judicial Cooperation Project of Cambodia, from January 2009 – March 2014, in the capacity of JICA expert and advisor. As the contents of laws quoted are based on the unofficial English and Japanese translations of the originals in Khmer, and unsourced information is based on what I heard or saw through my services, the accuracy of the information contained here is not guaranteed. I undertake the full responsibility for the content of this paper. Should you have any comments, please contact me through e-mail at Isoi.Miha@jica.go.jp. Many thanks go to relevant JICA advisors and related organizations in Cambodia for their cooperation with the collection of information).

Content

I. Determination of Land Ownership

All existing documents concerning rights over immovables were discarded during the civil war, and all information on ownership and possession went missing due to forced migration. Thus, all rights in and before 1979 became void[1].

Against this background, based on the Sub-Decree on the Granting of House Ownership to the

[1] Article 1 of the Sub-Decree on the Granting of House Ownership to the Citizens of Kampuchea (April 22, 1989)

Citizens of Kampuchea of 1989, the Land Law 1992 (which was at that time under the jurisdiction of the Ministry of Agriculture) and others, the registration process commenced with the issuance of Titles of Possession of Immovable, etc.[2]

Later, in accordance with the Land Law 2001 (under the jurisdiction of the Ministry of Land Management, Urban Planning and Construction[3][hereinafter referred to as "the Ministry of Land"]), the ownership-recognition process began under the Systematic Registration[4] procedure towards individuals who had possessed immovables peacefully and openly for over five years until 2001. These processes continued with support from donors, including ADB, World Bank, Finland, GIZ, etc., through the LMAP (Land Management and Administration Project, from March 28, 2002 – December 31, 2007. Later the project period was extended until December 31, 2009), and its succeeding project LASSP (Land Administration Sub-Sector Program, 2010 – 2013).

i) Systematic Registration: Adjudicate a parcel of land and determine the border of the land using air photos, etc. Through interviews on the possession status of the land and the relationship with possessors of adjacent parcels, public notice on the land is posted for 30 days. Upon this, land ownership is registered in the Land Registry Book and an Ownership Title is issued[5].

ii) Sporadic Registration[6]: This type of registration replaced the request-basis registration process in the 1990s. With regard to land parcels not adjudicated through Systematic Registration (upon request by owners/possessors) rights are registered in the Immovable Property Registration Book, with the issuance of Ownership Titles or Titles of Possession of Immovable[7] (Article 18 of the Sub-Decree on Sporadic Registration No. 48).

According to this registration procedure, rights are determined through interviews with possessors of adjacent parcels and public notice on the parcel concerned for over 30 days, etc. (Article 13 of the Sub-Decree on Sporadic Registration No.48). However, in cases where systematic registration has been done through adjudication of parcels at a later date, the

[2] Under the sub-decree in footnote 1, Ownership Titles on House, Titles of Possession and Use of Land, Titles of Possession of Immovable, etc. were issued in Phnom Penh, at the provincial level, or at the central level, respectively.
[3] The Ministry was established in June 1999 (under the Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction [June 23, 1999]).
[4] The Sub-Decree on the Procedures to Establish Cadastral Index Map and Land Register (No. 46 ANK.BK/May 31, 2002). Prior to this, the Anukret on the Procedure of Establishing of Casatral Index Map and Land Register (March 22, 2000) governed.
[5] Same as footnote 4.
[6] The Sub-Decree on Sporadic Land Registration (No.48 ANK.BK/May 31, 2002). When supplementary registration is done as to the land which did not go through the registration procedure under the Systematic Registration, such registration is also included in Sporadic Registration. In this case, the registration is entered into the Land Registry Book and an ownership title is issued.
[7] However, in most cases, titles of possession of immovable have been issued in consideration of the relation with systematic registration.

sporadic registration may be overturned (the systematic registration shall prevail, Article 40 of the Land Law 2001). Upon performance of systematic registration, the registration book of sporadic registration shall be closed and issued titles of possession of immovable, etc. shall be withdrawn.

According to the Ministry of Land, as of the end of March 2014, the following registrations of land have been completed:

Systematic registration	- Approximately 2,300,000 parcels
Registration according to Directive 01[8]	- Approximately 500,000 parcels
Sporadic registration	- Approximately 600,000 parcels
In total	Approximately 3,400,000 parcels

Based on the above figures, it has been reported that approximately 32% of Cambodian residents dwell on the registered parcels on the population basis (approximately 14,000,000 individuals)[9].

The Ministry of Land aims to complete the registration of parcels with 57 – 65% of residents by 2015, and with 70% by 2018[10].

II. Registry

1. Land Registry Book

Cambodia has adopted the principle of registration per property. In Cambodia in principle, buildings are regarded as objects comprising a part of land, not as independent immovable properties (Article 122 of the Civil Code). Therefore, both registry books and titles of rights are created on the basis of land parcels, in principle.

However, in Phnom Penh, there are some areas[11] where registry books were created on buildings based on the possession of buildings between 1989 and 2001. With regard to these buildings, the registration of the buildings substitutes land registry books. In addition, regarding co-owned buildings to be discussed later, they are registered in a different way.

[8] Ownership titles were issued using student volunteers, etc. from 2012 under an order by the Prime Minister called "Directive 01."
[9] According to the results of interviews with donors.
[10] According to the results of interviews with the Ministry of Land on August 23, 2013.
[11] This may be in accordance with the Sub-Decree on the Granting of House Ownership to the Citizens of Kampuchea (April 22, 1989).

For sporadic registration, Immovable Property Registration Books are handwritten and the registrations of two parcels are entered in each page (Photo 1 in pp.75). Regarding systematic registration, at the determination of ownership, an electronic database entry is created. However, according to the Ministry of Land, the Land Registry Book is the official one where systematic registrations in electronic database entries are printed out and compiled in a book. Any alterations to registered matters after the determination of ownership are entered in electronic database, and also are handwritten in the Land Registry Book.

The Cadastral Office of the Ministry of Land in charge of registration has three levels of office: central, capital / provincial and Municipal / Khan / District, with registry books (hereinafter "registry book" refers to both Immovable Property Registration Book and Land Registry Book) and a computer database of each jurisdiction. In cases where there are any changes in registered matters, the provincial-level office rewrites the entry or makes a new entry in the registry book, and forwards the data to the central and district-level offices for the new data to be copied. Due to this, the provincial-level registry book can be considered as the original, and if there is any variance between the provincial-level and other level registry books, the entry in the provincial-level book shall prevail.

The computer database of various levels of cadastral offices is not connected through network. Thus, updating data at three-level offices is done by sending media including CD, or documents. Moreover, the data at other provinces or districts cannot be accessed.

2. Title of Rights

In both systematic and sporadic registration procedures, a certificate containing the same matters as those entered in the registry book (an Ownership Title or a Title of Possession of Immovable) is issued and delivered to the concerned parties. The title of right, issued through systematic or sporadic registration, is called "hard titles", in practice.

In contrast, so-called "soft titles" are also distributed. It seems that there are several types of soft titles, including a document in which a commune chief certifies the possession of immovable by a concerned party (as a precondition for registration procedure), "certificate of receipt" of sporadic registration, etc.

Regarding parcels not registered at the cadastral offices, there appears to exist practices to create a security interest in the parcel or transfer the ownership over the land through delivery of soft titles. However, these practices have caused conflicts as they are unstable and insecure, involving multiple individuals claiming rights over the same parcels, etc.

After the determination and registration of ownership, when registering changes in registered matters due to the transfer of land ownership, etc. the entry in the registry book shall be changed and the same shall be entered into the title of rights submitted by its former owner to the cadastral office[12].

III. Other Real Rights and Their Registry Books

1. Usufructuary Real Rights

Regarding usufructuary real rights, the Civil Code of Cambodia provides for perpetual lease, usufruct, right of use, right of residence and easement, following the provisions of the Land Law 2001,[13] in principle.

Perpetual lease replaced the long-term lease provided for in the Land Law 2001. While long-term lease covers a lease for 15 years or more without maximum time limit (Article 106 of the Land Law 2001), the perpetual lease shall govern a lease from 15 to 50 years (Article 247, paragraph 1 of the Civil Code). Under the Civil Code, it is not allowed to create lease with more than 50 years.

As mentioned above, in principle buildings are regarded as objects comprising a part of land, not as independent immovables (Article 122 of the Civil Code). However, in cases where an individual with a right in relation to another person's land enforces his/her right upon any constructed buildings or structures, those objects shall be regarded not as components of said land but as components of said right to the land of another party (in cases involving perpetual leases, buildings are regarded as objects comprising a part of perpetual leases) (Articles 123 and 124 of the Civil Code). The current Code does not provide a land tenant's right to purchase a building on the land.

Among the above-mentioned usufructuary real rights, separate registry books are to be made with regard to perpetual lease, usufruct and easement, the conditions of perfection against a third party of which is registration. However, there are some cadastral offices without registry books of these rights as no such rights have been created under their jurisdictions. Prior to the application of the Civil Code, a registry book of long-term lease was created in lieu of a registry book of perpetual lease.

When the above rights are established, a statement thereof shall be entered in the column of burden in a registry book , as well as details of the rights in their corresponding registry books.

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[12] According to the Circular on Subsequent Registration (No. 01 DNS;AKTD/SRNN, May 28, 2004); provided, however, it does not provide for the handling of registration of the transfer of ownership.

[13] The Land Law 2001 contains many substantive-law provisions concerning ownership, usufructuary real rights, and security rights. As most of them are provided in the Civil Code, many provisions of the Land Law were abolished under Article 80 of the Law on the Application of the Civil Code.

2. Security Rights

Regarding security rights on immovables, the Civil Code of Cambodia provides for statutory lien, pledge, hypothec and revolving hypothec. Separate registry books are not created on these security rights. Instead, a statement as to their existence and the contents thereof are entered in the column of burden of Land Registry Books, or Immovable Property Registration Books where ownerships and rights of possession are registered. In case of security rights created over usufructuary real rights, such security is registered in corresponding registry books of usufructuary real rights, such as perpetual lease, etc.

3. Co-owned Building

Registry books of co-owned buildings are created in lieu of registry books of the premises. Details thereof will be explained later.

IV. Subsequent Registration after Determination of Ownership

The application of the Code of Civil Procedure commenced in June 2007, the Civil Code and the Law on the Application of the Civil Code in December 2011. For their implementation, a Inter-Ministerial Prakas (Ordinance) on the Registration of Immovables (of the Ministry of Justice and the Ministry of Land) (No.59 PK.LMUPC/11) in Relation to the Code of Civil Procedure, and another Inter-Ministerial Prakas on the Registration of Immovables in Relation to the Civil Code (No.30 MOJ, MOL, PK/13) were issued in May 2011[14], and January 2013[15], respectively.

1. Inter-Ministerial Prakas on the Registration of Immovables in Relation to the Code of Civil Procedure

The Joint Prakas on the Registration of Immovables in Relation to the Code of Civil Procedure provides for the registration of attachment or preservative relief of immovables, based on the provisions concerning execution and preservative relief in the Code of Civil Procedure (Books 6 and 7 of the Code of Civil Procedure)[16].

Prior to the issuance of said Joint Prakas, when there was a petition for the execution of an immovable, the court notified the competent cadastral office thereof to suspend de facto new

[14] Its application commenced six months after issuance in November 2011.
[15] The application of provisions on security rights commenced upon issuance, while other provisions began to be applied in July 2013, six month later.
[16] According to a Cambodian judge, it previously took over six months to register the attachment of an immovable through its execution, but in a recent case the attachment was registered within two months.

registrations on the immovable in question until the completion of the execution procedure.

During the drafting process of said Prakas, discussions were held on accepting new registrations after the preservative relief or attachment of an immovable has been registered; and whether to regard the effect of prohibiting the disposition of an immovable after its attachment as definitive or relative. The Code of Civil Procedure adopts the theory of relative effect, as indicated in Article 515, paragraph 1, proviso; Article 519, proviso, etc. which are based on the acceptance of new registrations as to attached immovables. However, the Cambodian counterparts initially strongly requested the adoption of definitive effect according to their conventional practice.

In response to this request, as a result of discussions between the Ministry of Land and the Ministry of Justice in July 2010, an eclectic agreement was signed stating that: "attachment, provisional attachment and provisional disposition of immovables shall have relative effect. In light of the actual situation of Cambodia, the registration office with jurisdiction shall adopt the stance of not accepting subsequent applications for registration, except for those commissioned by the court."

Nevertheless, the content of the agreement has not been widely shared within the Ministry of Land, courts and among the general public. I have heard that recently, based on the original intent of the Code of Civil Procedure, opinions are becoming stronger within the Ministry of Land that registrations should be handled based on the theory of relative effect.

Regarding the registration of unregistered immovables under Article 417 of the Code of Civil Procedure, it has become a problem as detailed handling methods thereof have not been decided yet at the cadastral offices. Thus, currently a joint Prakas (of the Ministry of Land and the Ministry of Justice) is being drafted concerning the registration of execution or preservation of unregistered land.

2. Joint Prakas on the Registration of Immovables in Relation to the Civil Code

The Joint Prakas on the Registration of Immovables in Relation to the Civil Code provides in detail for the registration of the creation, transfer, alteration, etc. of various types of real rights under the Civil Code. Among them, points requiring special attention, including co-ownership, security rights, etc. will be discussed later.

The Joint Prakas also provides for general rules of registration. Under these rules, immovable property registration books shall assign a number to each registration, and registrations shall be accepted according to the order of applications for them (Article 7 of the Joint Prakas). Provisions on principal registration and accessory registration are also included (Article 8, paragraph 2; and Article 79 of the Joint Prakas).

The Prakas provides for the principle of joint application by a person entitled to registration and another required to register (Article 10 of the Joint Prakas).

3. Conditions for Perfection, Conditions for Effect and Notarial Document

Under the Civil Code of Cambodia, the registration of immovables shall be the conditions for perfection of creation, transfer and alteration of real rights (Article 134 of the Civil Code).

Regarding the transfer of title by agreement pertaining to an immovable, the registration thereof is a requisite as the transfer of the right may not come into effect unless it is registered (Article 135 of the Civil Code). This provision was included in the Civil Code through a compromise agreement with ADB and other donors. These donors provided assistance in relation to the Land Law and in building the land registration system and demanded during the drafting process of the Civil Code that registration of immovables should be a requisite.

According to Article 336, paragraph 2 of the Civil Code, "a contract in which one of the parties bears an obligation to transfer or to acquire ownership of an immovable" shall come into effect only upon such contract having been executed in the form of a notarized document.

Regarding the creation of hypothec, a contract of creation of hypothec itself shall come into effect through an agreement reached between a creditor and the hypothecator (Article 844). In order to assert a hypothec against a third party other than the hypothecator, the instrument creating the hypothec shall be notarized and registered in the land registry (Article 845).

The disposal of a hypothec, including sub-hypothec, the transfer or waiver of hypothec; transfer, waiver or change of the ranking of hypothec shall be null unless it is notarized and entered in the registration thereof (Article 862, paragraph 1 of the Civil Code).

These provisions shall apply *mutatis mutandis* to statutory lien (Article 815) and pledge (Article 839) of immovables.

As mentioned above, a notarized instrument is required in many land transactions. However, in light of the actual situation of Cambodia with no notary act enacted so far and a limited number of notaries[17], the Law on the Application of the Civil Code adopts provisional measures, such as the

[17] As of March 2014, there were three notaries in action. Under the Prakas of the Ministry of Justice No.72 of May 2012, 41 individuals were appointed as notaries and each was assigned to each province. However, they do not appear to be functioning as expected as most of them are officials of the Ministry of Justice residing in Phnom Penh. In the Royal

inclusion of "a document made by a competent officer for registration process" as a notarized instrument (Article 9, paragraphs 1 and 2 of the Law on the Application of the Civil Code)[18].

The "document made by a competent officer for registration process" refers to a document certified by the chief of a commune or district as to the specification of parties and the immovable concerned[19], in a contract of sale of the immovable, a contract of creation of a security rights, etc.[20] This is based on the Joint Prakas (of the Ministry of Land and the Ministry of Interior issued on July 6, 2005) concerning the roles and responsibilities of the management organization of a *commune* and *sangkat.*

4. Other Issues

In Cambodia, there exists the problem that, once ownership is determined, the transfer or alteration of the ownership[21] is rarely registered. This is attributable to the fact that: the people are not aware of the purposes of the registration procedure; the people consider the tranfer of title sufficient in the transactions of immovables; or the people tend to avoid bureaucratic procedures, including the registration procedure, due to high official/unofficial commissions or taxes, etc.

V. Registration of Undivided Ownership

1. Property of Husband and Wife, and Ordinary Undivided Ownership

Cambodia adopts the common property system for the property of husband and wife. In determining the title of land, the property of a married couple is registered as the common property of the husband and wife, in principal.

The common property of husband and wife is of a nature different from that of other types of undivided ownership. For example, the share of husband or wife of common property shall not be

School for Notaries under the Royal School for Judicial Professions, 15 students of the first class have been trained since January 2014.

[18] Article 9, paragraph 2 of the Law on the Application of the Civil Code may read as not including original notarized documents. According to the current practice in Cambodia, however, both original notarized documents and documents created by authorized offices are regarded as notarized instruments.

[19] Article 9 of said Joint Prakas.

[20] In Cambodia, the Code of Civil Procedure requires "a title of execution" and the grant of an execution clause for the enforcement of security right as to an immovable as well. However, with regard to the "document created by an authorized government office," different from final judgments or ordinary notarized documents, it has not been made clear whether such a document can be regarded as the title of execution; and if so, who is the authority to grant an execution clause. To resolve this, the Ministry of Justice and the Ministry of Land are currently drafting a joint Prakas.

[21] A spot survey conducted in Kampong Cham Province reports that, among 55 transactions of the transfer of titles, application for the registration thereof have been filed in just three cases ("Access to Land Title in Cambodia," The NGO Forum on Cambodia, November 2012).

disposed of without the consent of the other spouse (Article 976 of the Civil Code), etc. In the registry book as well, an indication of "common property of husband and wife" is entered under the name of the owners.

Contrary to this, in the case of ownership by a sole owner, an indication of "single person" or "the spouse of XXX" (though the owner is married, the property concerned is not a property of husband and wife) shall be entered under the name of the owner; and the indication of "undivided ownership" in the case of ordinary "undivided ownership".

2. Registration of Undivided Ownership

In cases of ordinary undivided ownership, conventionally the name of solely one representative was registered due to the limited space in the registry book with no registration of the share of each undivided-owner. Such information had to be confirmed through access to attached documents with detailed descriptions on the inheritance or sales of the immovable concerned.

However, such a registration method did not appropriately cope with the needs for public notices. Thus, through the Joint Prakas on the Registration of Immovables in Relation to the Civil Code, all undivided-owners shall be registered. In cases where there are three or more undivided-owners, in addition to the registration of one representative, a statement on undivided-ownership shall be entered, and all other undivided-owners shall be registered by way of creating an undivided right holder's name table (Articles 80 and 81 of the Joint Prakas on the Registration of Immovables in Relation to the Civil Code).

The share of undivided properties shall also be registered[22].

VI. Registration of Security Rights

Regarding security rights on immovable properties, the Civil Code of Cambodia provides for statutory lien, pledge, and hypothec (including revolving hypothec). The use of hypothec has gradually been on the rise, and it appears that pledge is being used to some extent as a security where the possession of land is also transferred to the creditor.

The registration of these types of security rights is provided for in the Joint Prakas on the Registration of Immovables in Relation to the Civil Code.

[22] In the conventional practice, percentage was widely used to indicate shares. However, as it is inconvenient in indicating the share of one-third, registration of shares in fractions is being recommended.

One of the changes from the conventional practice is that claim amount, terms on interests and damage charges need to be registered as well. Users have opposed to it, so efforts are being made for the dissemination of new items to be registered, by explaining the reasons for their necessity on the occasions of seminars, etc.[23]

Regarding revolving hypothec, as it is a new concept for Cambodians, registration officers and other relevant officers have mentioned it is difficult to understand.

The substantive-law provisions of the Land Law 2001 provide for security by *gage*, in addition to hypothec and *anticrese* (pledge). Through *gage,* a title of right is provided to the creditor at the moment of registration of the security, and it has been mostly widely used. However, the Civil Code abolished it, as this method has demerits, for not being able to create subordinated securities, etc.[24], and the previously offered *gages* are regarded as hypothec under the Law on the Application of the Civil Code (Article 55 of the Law). The law provides that the titles of rights previously offered to the creditors through *gage* shall be returned to obligors (Article 55, paragraph 3 of said law[25]), causing opposition from banking institutions.

Behind the opposition from the banking industry there exist such problems as:

- Registration not being done smoothly;
- The registration system not being trusted;
- In some cases it requires an inordinately large period of time and amount of money for investigation:

In order to enable creditors to maintain certain documents, the Joint Prakas on the Registration of Immovables in Relation to the Civil Code provides that a certificate of security right similar to a title of right shall be issued (Article 140 of said Prakas).

In the first place, a right of possession or ownership is registered on less than half the land parcels in Cambodia. A security right, such as hypothec, which is based on the registration system, may not be created on unregistered land. However, it appears that a security right is created *de facto* by

[23] It appears that the public opposes the new registration items because claim amount, etc., are entered in the title of rights at hand, as well as in the registry book. Conventionally, such items were not entered in the registry book or titles of rights. Banking institutions insisted the access to detailed information was enough under conventional practice as cadastral offices keep contracts and other documents, submitted upon application for registration, which can be accessed by the public.

[24] However, banking institutions argue that, in the conventional practice as well, when there were requests from the obligor and subordinated creditors, with the consent of higher-ranked creditors, it was possible to create subordinated security rights upon temporary return of the title of right.

[25] The Ministry of Land strongly requested the deletion of Article 55, paragraph 3 from the Law on the Application of the Civil Code as the opposition from creditors was anticipated. The Japanese working group members agreed to it. However, ultimately the provisions remain in the law in Khmer version, which passed the National Assembly of Cambodia.

transferring the above-mentioned soft titles.

VII. Access to Registered Information

According to the explanation by the Ministry of Land, registered information is accessible to all. Articles 138 and 139 of the Joint Prakas on the Registration of Immovables in Relation to the Civil Code also provide that access to registered information and the issuance of a Document Certifying Security Rights Registration may be requested. In practice, however, it has been reported that access has not been allowed unless concerned interests are proven with a title of right, etc.

Furthermore, while Article 139 of the Joint Prakas provides that a certificate may be issued within three days upon application, in reality it requires much more time.

VIII. Co-owned Buildings

With regard to co-owned buildings, a separate Sub-Decree No. 126 on Management and Use of Co-owned Buildings, August 12, 2009; and the Law on Providing Foreigners with Ownership Rights in Private Units of Co-owned Buildings, May 24, 2010, have been issued.

When constructing a co-owned building, upon application by the builder, a new registry book is created on each building. One page is used for the registration of each unit constituting the building, and each registry book has 200 pages. At first, the ownership of a co-owned building is registered in the name of the builder. When it is sold in lots, the name of the new owner of each unit is registered with the issuance of a title of right.

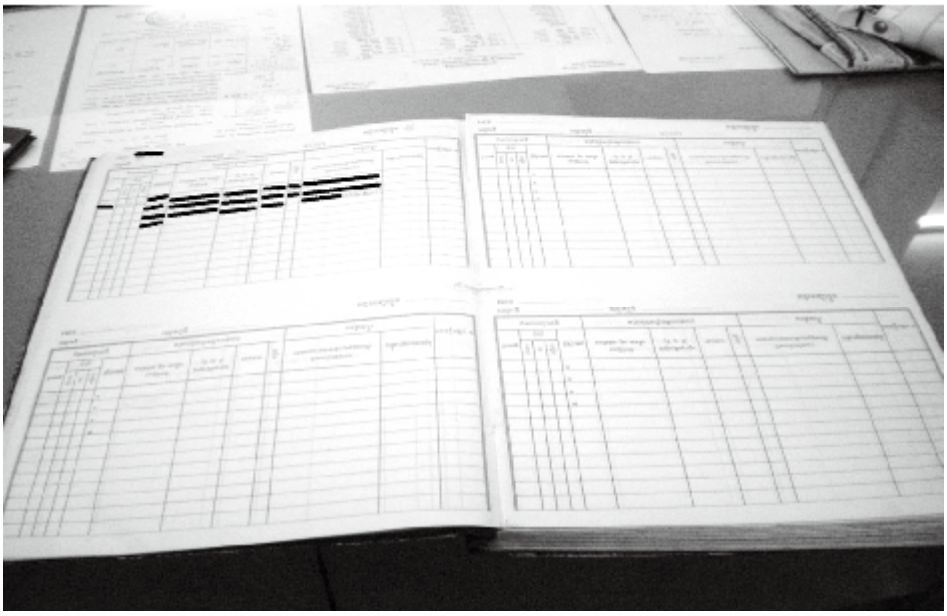
The registry book of the land on which co-owned buildings have been built shall be closed to not accept the posterior alterations of rights over the land. Similar to this is the case of co-owned buildings on the leased land with a perpetual lease or other lease rights. In this case, a statement on the existence of the perpetual lease is entered in the column of burden of the book. The details of the perpetual lease are registered in the registry book of perpetual lease, and the book is closed for the registration of a co-owned building. A registry book on the co-owned building shall then be created.

It is made obligatory to apply for the creation of registry books when constructing co-owned buildings. However, it has not always been pursued. Even in Phnom Penh, there have been instances of sales of condominiums without titles of rights (hard titles).

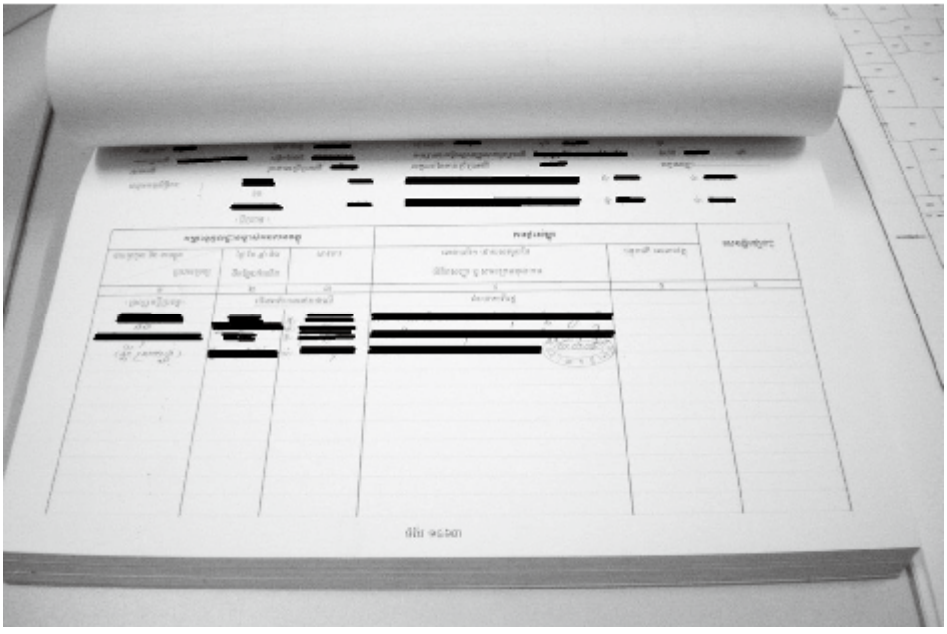
In Cambodia, the ownership of the land on which co-owned buildings are built belongs to the owner of the 1st floor of the building. This may be the reason for which foreign nationals are not allowed to own a unit on the 1st floor of a co-owned building, as the Constitutions prohibits them from owning land. Whether the owners of units on the 2nd floor and upper floors of co-owned buildings own certain rights over the land when the buildings are demolished is not clear according to legal interpretation.

Reference:

[Immovable Property Registration Book according to Sporadic Registration]



[Land Registry Book according to Systematic Registration]



DECISION ON REVISING THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROTECTION OF CONSUMER RIGHTS AND INTERESTS

Hiroyuki SHIRADE

JICA Long-Term Expert

I. INTRODUCTION

A. Background to the revision[1]

At the 5th session of the Standing Committee meeting of the 12th National People's Congress (hereinafter "NPC") held on October 25, 2013, a decision was made on revising the Law of the People's Republic of China on the Protection of Consumer Rights and Interests. This led to the enforcement of the revised law on March 15, 2014, the World Consumer Rights Day.

The Office for Civil Law of the Legislative Affairs Commission (legislative body of China) of the

[1] As part of the JICA Legal Technical Assistance Project to improve the Civil Procedure Law and Civil-Related Laws of China, which began in 2010 through partnership with the Office for Civil Law of the Legislative Affairs Commission (hereinafter "Civil Law Office") of the Standing Committee of the NPC, three training courses were held in Japan in relation to the revision of the Law on the Protection of Consumer Rights and Interests. In cooperation with the International Cooperation Department, Research and Training Institute, Ministry of Justice of Japan, the first training course was held in January 2012 with support from Professor Toshio Uehara, Professor Koichi Miki, Professor Toshiya Bando, and the Osaka Prefecture Consumer Center; the 2nd training course in January 2013 with support from Professor Tsuneo Matsumoto, Professor Toshiya Bando, the Consumer Affairs Agency, the Osaka Bar Association, and the Osaka City Consumer Center; and the 3rd training course in May 2013 with support from Professor Tsuneo Matsumoto, Professor Chizuko Mura, the Supreme Court and the National Consumer Affairs Center of Japan. In August 2013, a symposium was held jointly by the Academic Society on the Law of the Protection of Consumer Rights and Interests of China, JICA Office in China and others, with the participation of Civil Law Office officials. In this manner, Japan continuously provided its knowledge and experience to China for the revision of the Chinese law. The issues dealt with during the training courses in Japan were completely compiled into reports by the Chinese participants after return to China, which were shared among the Civil Law Office and Law Committee members, promoting an understanding of the topics covered at the training courses among individuals concerned. The reports, etc. created by the Civil Law Office have been published, after the decision on the law revision was made, under the title, "The Law on the Protection of Consumer Rights and Interests: Legislation Background and Point on Protection of Consumer Rights and Interests" (edited by the Office for Civil Law, Legislative Affairs Commission, December 2013, Falu Chubanshe Co.). Through reading this literature as well as "The Interpretation of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests" (edited by the Legislative Affairs Commission and mainly edited by Li Shi Shi, November 2013, Falu Chubanshe Co. [hereinafter referred to as "Literature 1"]), (which was published as a commentary on the revised law written by the officials of the Civil Law Office); and "Reading and Understanding of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests" (written and edited by the Civil Law Office and edited mainly by Jia Dongming, November 2013, Zhongguo Falu Chubanshe Co. [hereinafter referred to as "Literature 2'], it can be inferred that the Japanese knowledge and experience provided through the above project was effectively used as a base for the law revision (The newly established consumer public interest litigation system is an example thereof.)

Standing Committee of the NPC (hereinafter "Civil Law Office"), had begun the revision process in October 2011, in parallel to the revision work of the Civil Procedure Law. After a decision was made on revising the Civil Procedure Law in August 2012, focus has been shifted to the revision of the Law on the Protection of Consumer Rights and Interests as the overriding legislative issue. The first draft on which the 1st deliberation was conducted at the 2nd session of the Standing Committee of the 12th NPC on April 23, 2013, was posted on the website of the NPC (wwwlnpc.gov.cn). Following this deliberation, public opinions were sought from April 28 to May 31 of the same year. The 2nd deliberation was held at the 4th session of the Standing Committee of the 12th NPC on August 26, 2013. As the 2nd draft dealt with innovative issues from the viewpoint of the protection of consumers, careful steps were taken by inviting the public to offer their opinions on this draft as well. During the deliberations for law revision, several issues, including the strengthening of provisions on punitive compensation, the e-commerce goods return system without justifiable reasons, the joint-and-several liability of Internet platform providers, etc. caused conflicts of opinions with companies and business operators. However, it was true that they were facing new types of consumption problems and consumer damages emerged along with the rapid social and economic development. Thus, an agreement was reached on the strengthened protection of the legitimate rights and interests of consumers, and the stricter liability of business operators through revision of the law. Against this background, through the 3rd deliberation which began on October 21, 2013, the decision on the revision of the law was made on October 25, 2013.

In this paper I will first discuss the purposes of the law revision, 31 items revised, and in relation thereto, explanations provided by the Civil Law Office on important new systems. For your reference, I will include all the articles of the revised law at the end of this paper.

B. Points and Purposes of the Revision, etc.[2]

The Law on the Protection of Consumer Rights and Interests has been effective for nearly 20 years since its enactment in 1993. During this period of time, it has played important roles in the protection of the legitimate rights and interests of consumers, maintenance of social and economic order, and the protection of the sound development of a socialist-market economy.[3] However, in the course of

[2] According to the explanations on the 1st draft provided during the 1st deliberation at the 2nd session of the Standing Committee meeting of the 12th NPC held on April 23, 2013 (pp. 342 and onward of Literature 1 above, and pp. 327 and onward of Literature 2 above).
(http://www.npc.gov.cn/npc/lfzt/xfzqybhfxza/2013-04/28/content_1793840.htm[the 1st draft],
http://www.npc.gov.cn/npc/xinwen/lfgz/2013-09/06/content_1805745.htm [the 2nd draft].)

[3] As to the Japanese literature on the current Law on the Protection of Consumer Rights and Interests, see Kojiro Nishimura, *Gurobaruka no nakano gendai chugoku-ho* [Current Chinese Law in the Globalization], 2nd ver., pp. 117 and on (written by Wang Chen) (Nov. 2009); Shoji Kawakami, Wang Lengran, *Chugoku no Shohisha Ken'eki Hogo-ho to Chobatsu-teki Songai Baisho* [the Law on the Protection of Consumer Rights and Interests of China and Punitive Compensation for Damage], NBL No. 841 & 842 (Sep. Oct, 2006); Zhou Yongbing, *Shohisha Shiho no Hikaku-ho-teki Kenkyu – Nichu no Hikaku wo Tsujite* [Comparative Law Study of Consumer Private Law – through Comparison between Japan and China], Daigaku-Kyoiku Shuppan-sha (Nov. 2011).

constant socio-economic development, the consumption method, structure and concept have greatly changed in China, creating a new environment and problems to be addressed in the field of the protection of consumer rights and interests. Against this background, an urgent need has arisen to immediately revise the law to improve the legal system for the protection of consumer rights and interests.

In recent years, various opinions and proposals have been submitted from several representatives of and individuals related to the National People's Congress for the revision of the law. Based on the legislative work plan and annual legislative work plan of the 11th NPC, the Legislative Affairs Commission began studying the law revision in October 2011.

During the revision process, attention was paid to the following points:

1. Strictly adhere to the people-oriented legislative philosophy; comprehensively summarize the experience in the enforcement of the current law; and thereby properly strengthen the protection of consumer rights and interests;
2. Focus on the resolution of new significant consumer problems which greatly interest many citizens; and realize the consumer rights and interests protection system as completely as possible;
3. Construct a proper law-abiding environment in response to the needs for a change in economic development methods and enhance the people's confidence in consumption, which may lead to rational consumption for resource-saving and environmental protection;
4. Based on the necessity of strengthening social management and innovation, further enhancing the influence of consumer associations and strengthening the functions and duties of related organizations in supervision and management for the protection of consumer rights and interests; These points aim to reduce and prevent the number of consumer conflicts.[4]

Based on the complete understanding of this work, the Legislative Affairs Commission finally created the Draft Law on the Protection of Consumer Rights and Interests. This was done after repeated interviews with related organizations including representatives of the NPC, consumer associations, experts, lawyers, the courts, administrative departments for industry and commercial of the people's governments, Commercial Department, Industrial Information Department, etc.; field surveys in various provincial regions; and repeated examinations on the revision.

[4] At the 1st deliberation stage, the following points were raised as the main purposes of the revision: 1) improvement and subdivision of provisions on the protection of consumer rights and interests; 2) strengthening of the obligations and responsibilities of business operators: 3) standardizing new consumption methods, including shopping on the Internet; 4) enhancing the functions of consumer associations; 5) further concretization of the supervisory and managerial functions and duties of administrative organizations (See pp. 343 and on of Literature 1 above and pp. 328 and on of Literature 2 above).

II. DECISION ON THE REVISION OF THE LAW ON THE PROTECTION OF CONSUMER RIGHTS AND INTERESTS[5][6][7]

The decision on the revision of the Law of the People' Republic of China on the Protection of Consumer Rights and Interests, made on October 25, 2013, consists of the following 31 items:

[Functions of the state in protecting the legitimate rights and interests of consumers][8]

I. A new paragraph shall be added to Article 5 as paragraph 3 to provide:

"The State shall advocate a consumption method for cultural and healthy resource-saving and environmental protection, and oppose wastes."

[Respect for human dignity and the right to the protection of personal information]

II. Article 14 shall be revised as follows:

"Consumers shall, in their purchasing and using commodities or receiving services, have the right that their human dignity, national customs and habits be respected, and further have the right to the protection of their personal information according to law.

[Obligations of business operators]

III. Article 16, paragraph 1 shall be revised as follows:

"Business operators shall, in their supply of commodities or services to consumers, fulfill their obligations stipulated in this law and other laws and regulations concerned."

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[5] The decision on the law revision dated October 25, 2013 is posted on the website of the NPC at http://www.npc.gov.cn/npc/xinwen/2013-10/26/content_1811764.htm

[6] With regard to the press conference held by the General Office of the Standing Committee of the NPC immediately after the decision on the law revision, see http://www.npc.gov.cn/npc/zhibo/zzzb31/node_4249.htm. During the press conference, the Director of the Civil Law Office and other relevant officials referred to, as the reasons for the necessity of the law revision, great changes in the consumption style, consumption structure and the concept of consumption value. They explained that in drafting the revised law, the following was considered as the philosophy of the revision: 1) summarize experiences in practice; 2) materialize the protection of consumer rights and interests through resolution of newly emerging consumer problems with focus on the areas of the interests of the people; 3) in response to the demands of the present age of making a shift in the economic growth model, create a desirable law-abiding environment, and thereby promote a sense of trust among the general public toward consumption.

The following were raised as the main points of the decision on the law revision: 1) intensified building of social credibility; 2) concretization and improvement of consumer rights and interests; 3) strengthening the obligations of business operators; 4) responding to the new consumption style, including Internet transactions; 5) strengthening the roles of consumer associations; and 6) strengthening management and supervision by the administration. The 1st point, i.e., intensified building of social credibility, which was not considered at the stage of the 1st draft as mentioned in footnote 4 above, was emphasized at the stage of the 2nd deliberation and afterwards (See pp. 349 and on of Literature 1 above, and pp. 333 and on of Literature 2 above).

[7] Hereinafter Roman numerals shall refer to the number of articles of the decision on the law revision, and Arabic numerals shall refer to the number of articles of the revised law.

[8] With regard to the concretization of the right to the protection of personal information and details on the guarantee of rights, see Article XII of the decision.

One paragraph shall be added to Article 16 as its paragraph 3 to provide:

"Business operators who supply commodities or services to consumers shall safeguard public and social morals, run businesses in accordance with faith and trust, protect the legitimate rights and interests of consumers, and shall not set up unfair or irrational transaction conditions, nor force transactions."[9]

[Safety obligations]

IV. One paragraph shall be added to Article 18 as its paragraph 2 to provide:

"Business operators who run businesses of hotels, malls, restaurants, banks, airports, stations, ports, movie theaters, etc. shall fulfill their safety obligations to customers."

Article 18, paragraph 2 shall be Article 19 and be revised as follows[10].

"Business operators shall, upon discovery of serious defects of the commodities or services they supply which may be liable to harm personal or property safety, immediately report to the administrative departments concerned and inform the consumers, and adopt measures including the discontinuation of sales, warning, recall, detoxifying disposition, scrapping, discontinuation of production or services, etc. Upon adoption of recall measures, the business operators shall bear the necessary costs incurred by consumers due to the recall of commodities."

[Obligations to provide authentic and entire information]

V. Article 19 shall be Article 20 and its paragraphs 1 and 3 shall be revised as follows:

"Article 20 Business operators shall provide consumers with accurate and complete information concerning the quality, functions, usage, term of validity, etc. of the commodities or services they supply, and may not make any false or misleading propaganda.

"Business operators who supply commodities or services shall mark clearly their prices or

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[9] It was indicated at the 2nd deliberation that some business operators ran illegal businesses, and infringed on the rights and interests of consumers by producing and selling defective commodities or through false propaganda, which was caused by the low faith and trust and derogation from public and social morals; and that the revised Law on the Protection of Consumer Rights and Interests should emphasize the importance of strengthening the building of faith and trust in society. The Law Committee argued that the added paragraph shall be embodied with the spirit of constructing a society of faith and trust, lead business operators to consciously perform their statutory obligations and accept their social responsibilities, and shall be advantageous in creating a consumption environment according to the principle of faith and trust, and in strengthening the consumption spirit of the people. With the intent to build and enhance social trust, relevant provisions were added (Article 16, paragraph 3 of the revised law. See pp. 61 and on of Literature 1 above and pp. 60 and on of Literature 2 above. Article 56, paragraph 2 [on the publication system of the list of business operators who have lost credits] has the same purpose as the above).

[10] This new provision is based on an opinion that the obligations of business operators should be concretized, and new provisions on the obligation of business operators to recall defective commodities, etc. have been established by unifying existing statutory provisions, including Article 53 of the Food Safety Law on the food recall system, etc. (Article 19 and Article 56, item 7 of the revised law. See pp. 75 and on of Literature 1 above, and pp. 75 and on of Literature 2 above.)

fees."

[Obligations to produce documents]

VI. Article 21 shall be Article 22 and the term "invoices for purchases or documents of services" shall be changed to "invoices for purchases or documents of services, including receipts, etc."

[Obligations to guarantee quality, and the burden of proof of defects][11]

VII. Article 22 shall be Article 23 and the provisions of paragraph 1, "except that consumers are aware of the defects before they buy the commodities or receive the services" shall be changed to "except that consumers are aware of the defects before they buy the commodities or receive the services, and the existing defects do not violate the compulsory provisions of the law."

A third paragraph shall be added to Article 23 to provide:

"With regard to durable commodities including automobiles, microcomputers, televisions, refrigerators, air-conditioners, washing machines, etc., or services such as decoration or interior decors supplied by business operators, when defects have been found within six months after the consumers received the supply of the commodities or services, and conflicts have occurred, the business operators shall bear the burden of proof of relevant defects."

[Obligations of accepting the return, replacement and repair of commodities][12]

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[11] In order to address the challenge of "difficulties in proof" in the protection of consumer rights and interests, the decision accepted, through the above provisions, a shift in the burden of proof of defects from consumers to business operators. The shift in the burden of proof of defects is admitted only when the defects attributable to business operators are difficult to be proven by consumers, and are found in durable commodities of certain types or services such as decoration or interior decors, etc., within six months after the supply of such commodities or services (Article 23, paragraph 3. See pp. 92 and on of Literature 1 above, and pp. 94 and on of Literature 2 above). It was explained (at the abovementioned press conference) that "etc." in said paragraph includes, but is not limited to, listed commodities or services.

[12] Traditionally there existed provisions on three responsibilities: return, replacement and repair, in relation to the guarantee of home electric appliances produced by the state. On August 5, 1995, the State Economic and Trade Commission, State Technical Supervision Bureau, State Industrial and Commerce Bureau and the Ministry of Finance abolished them to newly enact the "Provisions on the Responsibility of Partial Repair, Replacement and Refund" to impose said three responsibilities on certain commodities (See Hidero Chimori, *Chugoku Minsho-ho hen (5) Chugoku no Shohisha Ken'eki Hogo-ho* [Civil and Commercial Law of China (5) the Law on the Protection of Consumer Rights and Interests], JCA Journal No.504 (Jun. 1999) pp. 28-29). The quality of commodities and services relate to the daily life of consumers, affecting their personal and financial safety. The majority of complaints received by industry and commerce organizations and consumer associations are related to the quality of commodities and services. Thus, strengthening the provisions on the three responsibilities guaranteeing the refund, replacement and repair is an effective measure in promoting the guarantee of the quality of commodities and services. In relation to these, Articles 23 and 45 of the current law include relevant provisions. The decision has unified these provisions to provide: "In cases where the commodities or services supplied by business operators do not fulfill quality requirements, consumers may demand the business operators carry out obligations of accepting the return of commodities, replacement or repair of the commodities or services,

VIII. Articles 23 and 45 shall be unified into Article 24 to revise as follows:

"In cases where the commodities or services supplied by business operators do not fulfill quality requirements, consumers may demand the business operators carry out obligations of accepting the return of commodities, replacement or repair of the commodities or services, according to State regulations or agreements between the parties. In cases where no state regulations or agreements between the parties exist, the consumers may return the commodities within seven days from the date of receipt of the commodities. In cases where statutory contract cancellation requirements are fulfilled seven days after receiving the commodities, the consumers may immediately return the commodities. In cases where the statutory contract cancellation requirements are not met, the consumers may demand the business operators carry out obligations of accepting the replacement, repair, etc. of the commodities.

Business operators who accept the return, replacement or repair of commodities according to the provisions of the preceding paragraph shall bear any costs necessary, including transportation fees, etc. of the commodities."

[Return without cause system]

IX. One article shall be added as Article 25 to provide:

"Article 25 In cases where business operators sell commodities using the Internet, television, phone, mail orders, etc., consumers shall have the right to return the commodities within seven days from the date of receipt of the goods, without being required to explain; provided, however, this shall not apply to the following commodities:

(1) made-to-order goods;
(2) perishable fresh goods;
(3) digitalized goods, including audio products, computer software, etc., unsealed by consumers;
(4) already issued newspapers and printed publication.

In addition to the commodities listed above, in cases where consumers have confirmed, at the time of purchase, the quality of other commodities and that such commodities are not

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according to State regulations or agreements between the parties," and "In cases where no state regulations or agreements between the parties exist, the consumers may return the commodities within seven days from the date of receipt of the commodities. Thereby, it expanded the scope of commodities subject to guarantee to allow the return of commodities within seven days even when there are no state regulations or agreements between the parties, making clear the relations with relevant provisions in the Contract Law on the disposition after seven days (Article 24 of the revised law). While the number of items covered by the abovementioned provisions on the three responsibilities has increased from 18 to 23, the decision is significant in allowing the return of other items not listed within 7 days. See pp. 95 and on of Literature 1 above, and pp. 97 and on of Literature 2 above).

suitable for being returned, the return of commodities without cause shall not apply.

Consumers shall return commodities in their entirety. Business operators shall return the price of the commodities to the consumers within seven days from the date of receipt of returned goods. The consumers shall bear the freight costs for returning the commodities. In cases where otherwise agreed between business operators and consumers, the agreements shall prevail."[13]

[Limitation of format contracts][14]

X. Article 24 shall be Article 26, and one paragraph shall be added as the first paragraph of Article 26, and the original first and second paragraphs of Article 24 shall be the second and third paragraphs of Article 26, respectively, to provide:

"Article 26 Business operators who use format provisions in their business activities shall bring to the attention of customers in a clear way the matters with a substantial interest to the customers, including the quantity and quality, price or costs, contract performance period and method, warning of risks, after-sale services, civil liability, etc. of commodities or services they provide, or shall explain such matters where consumers demand.

Business operators may not impose unfair or unreasonable rules on consumers, or force

[13] In order to guarantee the consumers' right of free choice in Internet shopping, etc. (Art.9), in reference to successful experiences abroad and the actual practice status in China, the decision has granted consumers the right to unilaterally cancel a contract within a reasonable period of time. Moreover, the decision established a new provision that: In cases where business operators sell commodities through such methods as the Internet, television, phone, mail orders, etc., (except for certain cases where the commodities are not suitable for being returned due to their nature), consumers may return the commodities within seven days from the date of receipt of the commodities; and that: business operators shall return the price of the commodities to the consumers within seven days from the date of receipt of returned goods (Article 25 of the revised law). During the deliberation process, the following was pointed out: while the return without cause system is significantly constructive in maintaining and protecting consumer rights and interests, consideration should be given to the development degree of markets including the Internet shopping (which is a new consumption method) and the influence of the system on the sound development of new markets and business operators; measures to prevent the abuse of rights; inappropriate commodities to be returned; the issue of the burden of return-shipping costs; and the definiteness of law application and the strengthening of legal operability. Thus, heated debates were held in determining commodities not returnable, to finally decide to provide the proviso of paragraph 1 and the following paragraphs (See pp. 98 and on of Literature 1 above and pp. 100 and on of Literature 2 above).

[14] On this point, Article 24 of the current law establishes abstract provisions on the prohibition and invalidity of reducing or escaping civil liability of business operators through "imposition of unfair or unreasonable rules on consumers." The Contract Law enacted in 1999 also sets forth relevant provisions on the regulation of format provisions (conditions or standardized clauses) (Articles 39, 40, 41, 52 and 53 of the Contract Law). However, in practice there are more than a few cases in which business operators unilaterally infringe on the rights and interests of consumers by using format contracts under unfair conditions. In order to seek thorough protection of consumer rights and interests through appropriate disposition of problems, such as "clauses by supreme rulers" which are conspicuous in practice, the decision imposes the obligation of bringing attention and providing explanations to customers upon business operators who exclude or limit the rights of consumers using format provisions, etc. (Article 26, paragraph 1 of the revised law). Moreover, the decision articulates the content of abstract provisions of Article 24 of the current law on the "unfair or unreasonable rules on consumers" as "by excluding or limiting the rights of consumers, reducing or escaping the liability of business operators, or aggravating the responsibilities of consumers, etc." (Article 26, paragraph 2 of the revised law. See pp. 109 and on of Literature 1 above, and pp. 111 and on of Literature 2 above).

transactions by using format provisions and technical measures, by excluding or limiting the rights of consumers through format provisions, notices, announcements, entrance hall bulletins and so on; reducing or escaping their liability; or aggravating the responsibilities of consumers, etc.

Format provisions, notices, announcements, entrance hall bulletins and so on with contents mentioned in the preceding paragraph shall be invalid.

[Obligation of the provision of information by business operators in specific fields][15]

XI. A new article shall be added as Article 28 to provide:

"Article 28 Business operators who supply commodities or services through the Internet, television, phone, mail-order, etc., and business operators who supply financial services including securities, insurance, banking, etc., shall supply consumers information on their business places, contact methods, quantity, quality, price or costs of commodities or services, period and method of performance, warning of risks, after-sale services, civil liability, etc."

[Obligations in collecting and using personal information of consumers][16]

XII. A new article shall be added as Article 29 to provide:

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[15] In order to solve the problem of false information provided by business operators in supplying the Internet shopping or financial services, and of no-existence of protective provisions for customers, the decision newly provides for the obligations of business operators who supply commodities or services through the Internet, television, phone, mail-order, etc., and who supply financial services including securities, insurance, banking, etc., to supply consumers true and necessary information on their business places, contact methods, quantity, quality, price or costs of commodities or services, period and method of performance, warning of risks, after-sale services, civil liability, etc., and thus to protect the consumers' right to obtain true information (Article 8 of the current law) (Article 28 of the revised law [See pp. 117 and on of Literature 1 above, and pp. 120 and on of Literature 2 above]). It has also been explained that this Article includes individuals engaged in the trade of financial services such as securities, insurance, etc. as "consumers" under protection by this law (at the press conference mentioned above).

[16] In practice, certain business operators collect and use the personal information of consumers, leak or supply the personal information of consumers to others illegally and without prior consent thereof, and thereby infringe on the legitimate rights and interests of consumers, seriously affecting their daily life. Under these circumstances, various quarters of society have requested additional provisions on the protection of personal information of consumers in the law. In response to the request, the decision establishes new provisions from the following four perspectives:

First, the decision clearly stipulates the consumer's right to the protection of personal information (Article II of the decision; Article 14 and Article 56, item 9 of the revised law);

Second, it is provided that business operators who collect and use personal information of consumers shall abide by the principle of legality, fairness and necessity; clearly indicate the purposes, methods and scope of the collection and use of the information, and obtain the agreements of the consumers (Article XII of the decision; Article 29, paragraph 1 of the revised law);

Third, business operators and their employees shall strictly preserve the confidentiality of the collected personal information of consumers, and shall secure the safety of the information through technical measures and any other necessary measures (Article 29, paragraph 2);

Fourth, business operators shall not transmit electric business information to customers without their agreements or requests, or when they clearly manifest their refusal to it (Article 29, paragraph 3). Each provision above is consistent with the relevant provisions of the "Decision on Strengthening the Protection of Internet Information by the Standing Committee of the National People's Congress" approved at the 30th session of the Standing Committee meeting of the 11th National People's Congress (See pp. 126 and on of Literature 1 and pp. 129 and on of Literature 2.)

"Article 29 Business operators who collect and use personal information of consumers shall abide by the principle of legality, fairness and necessity, and obtain the agreements of the consumers by indicating the purposes, methods and the scope of the collection and use of the information. Business operators who collect and use personal information of consumers shall publish the rules of collection and use, and shall not violate the provisions of laws and regulations, and the agreements between the two parties on the collection and use of information.

Business operators and their employees shall strictly preserve the confidentiality of the collected personal information of consumers, and shall not leak, sell or illegally supply the information to others. Business operators shall secure the safety of the information through technical measures or any other necessary measures, to prevent the leakage or loss of the personal information of consumers. In cases where the information has been, or may be leaked or lost, the business operators must immediately take corrective actions.

Business operators shall not provide business information to consumers without their agreements or requests, or when they clearly manifest their refusal to do so.

[Hearing of opinions of consumers]

XIII. Article 26 shall be revised as Article 30 to provide:

"Article 30 The State shall heed opinions from consumers and organizations including consumer associations, etc. when making laws, rules, regulations, and mandatory standards concerning consumer rights and interests.

"And their social association" in Article 28, paragraph 2 shall be changed to "and organizations including consumer associations, etc." (Article 32, paragraph 2).

[Functions and duties of people's governments at various levels]

XIV. Article 27 shall be Article 31 and its first paragraph shall be revised as follows:

"Article 31 People's governments at various levels shall strengthen their leadership, organize, coordinate and supervise the administrative departments concerned to do their work well in the protection of the legitimate rights and interests of consumers, and exercise their duties of protecting the legitimate rights and interests of consumers.

A new article shall be added as Article 33 to provide:

"Article 33 Administrative departments concerned shall regularly or irregularly conduct sampling inspections of the commodities or services of business operators within the scope

of their functions and duties, and promptly publish the results of the sampling inspections to society.

Administrative departments concerned shall, upon discovery of defects in the commodities or services of business operators, which may be liable to harm the personal or property safety of consumers, immediately order the business operators to adopt measures such as the discontinuation of sales, warning, recall, detoxifying disposition, scrapping, discontinuation of production or services, etc."[17]

[Characteristics and assignments of consumer associations and consumer organizations][18]

XV. Article 31 shall be Article 36 to revise as follows:

"Article 36 Consumer associations and other consumer organizations are social organizations formed according to law to exercise social supervision over commodities and services and to protect the legitimate rights and interests of consumers.

The term "social association" in Article XII shall be changed to "social organization."

Article 32 shall be Article 37 and the phrase "Consumer associations shall perform the following functions" in paragraph 1 shall be changed to "Consumer associations shall

[17] Chapter II of the Product Quality Law "Supervision of Product Quality" provides for the supervisory inspection system through sampling inspection of the quality of products as the primary method (Article 15), disposition of rejected quality (Article 16), issuance of inspection results and certificates of approval (Article 21), publication of quality status, etc. (Article 24), etc. In order to make clearer the responsibility of administrative departments concerned for management and supervision, the decision newly provides that: administrative departments concerned shall regularly or irregularly conduct sampling inspections of the commodities or services of business operators within the scope of their functions and duties, and promptly publish the results of the sampling inspections to society (Article 33, paragraph 1 of the revised law); Administrative departments concerned shall, upon discovery of defects in the commodities or services of business operators through said inspections, which may be liable to harm the personal or property safety of consumers, immediately order the business operators to adopt measures to eliminate dangers, such as the discontinuation of production and sales, etc. (Article 33, paragraph 2 of the revised law. See pp. 146 and on of Literature 1 and pp. 151 and on of Literature 2 above.)

[18] In order to properly protect the legitimate rights and interests of consumers, consumer associations need to further strengthen their functions. Therefore, based on the provisions of the current law, the decision has added and strengthened the functions of consumer associations, i.e., 1) to provide consumption information and consultative services to consumers and to lead them to a rational consumption method appropriate for resource-saving and environmental protection, thereby enhancing their ability to protect their own legitimate rights and interests (Article 37, paragraph 1, item 1 of the revised law); 2) to participate in the enactment of laws, regulations, and mandatory standards in relation to the rights and interests of consumers (Article 37, paragraph 1, items 2 and 4 of the revised law); 3) The Consumer Association of China and consumer associations established by provinces, autonomous regions and municipalities may institute legal proceedings for public interests of consumers before the People's Courts against infringement upon the legitimate rights and interests of many consumers (Article 37, paragraph 1, item 7; and Article 47 of the revised law. See pp. 168 and on of Literature 1 and pp. 174 and on of Literature 2). The decision has changed the definition of "consumer association" from "social association" to "social organization" with functions and duties for public interest. In reality, however, consumer associations have been established at the initiative of the government, have no members and no fees are collected from anybody for these associations (at the abovementioned press conference). According to the statistics of the Consumer Association of China, consumer organizations received 120,089 766 consumer complaints nationwide between 1994 and 2012, and the consumers have recovered 1,126,368,000 yuan of property damages, with 94.8% of dispute-resolution rate.

perform the following functions and duties for the public interest."

Item (1) shall provide "(1) to provide consumption information and consultative services to consumers, enhance their capacity of protecting their own legitimate rights and interests, and lead them to a consumption method for cultural and healthy resource-saving and environmental protection."

A new item shall be added as the second item to provide,
"(2) to participate in the enactment of laws, rules, regulations, and mandatory standards in relation to the rights and interests of consumers."

Item (3) shall be Item (4) to provide,
"(4) to make reports, inquiries and suggestions to relevant administrative departments about issues relating to the legitimate rights and interests of consumers."

Item (5) shall be Item (6) to provide,
"(6) where complaints are about the quality of commodities or services, consumer associations may commission appraisement of issues of complaints to qualified experts who shall inform them of their expert conclusions."

Item (6) shall be Item (7) to provide,
"(7) to render support to consumers in their legal proceedings against infringement upon their legitimate rights and interests; or institute legal proceedings in accordance with the law."

Paragraph 2 shall be revised as follows:
"People's governments at various levels shall give support to consumer associations in the performance of their functions and duties through payment of necessary expenses."

Two paragraphs shall be added as paragraphs 3 and 4 to provide:
"Consumer associations shall earnestly perform their functions and duties to protect the legitimate rights and interests of consumers, listen to the opinions and proposals of consumers, and accept supervision by the general public.

Other consumer organizations established by law shall develop activities to protect the legitimate rights and interests of consumers in accordance with laws, regulations and other provisions."

Article 33 shall be Article 38 to revise as follows:

"Article 38 Consumer organizations may not be engaged in commodity transactions or profit-making services, and may not recommend to consumers commodities or services by way of collecting fees or obtaining other profits."

[Dispute-resolution measures]

XVI. Article 34 shall be Article 39 and its item 2 shall be revised as follows:

"(2) to make a request for mediation to consumer associations or any other mediation organizations established by law."

Item 3 shall be revised as follows:

"(3) to file a complaint to relevant administrative departments."

[Responsibilities of Internet platform providers][19]

XVII. A new article shall be added as Article 44 to provide:

"Article 44 Consumers whose legitimate rights and interests are infringed upon in purchasing commodities or receiving services using an Internet platform may demand compensation from the sellers or suppliers of the services. In cases where the Internet platform providers cannot supply the true names, addresses, and effective contact methods of the sellers or suppliers of the services, the consumers may also demand compensation from the Internet platform providers. In cases where the Internet platform providers have obtained an authorization more useful for consumers, they shall perform the content of the authorization. The Internet platform providers shall, after paying compensation, have the right to recover the compensation from the sellers or suppliers of the services.

[19] In the 1st draft, in order to protect the right to claim damage of consumers whose legitimate rights and interests have been infringed upon through Internet transactions, the scope covered by Article 38 of the current law providing for the responsibility of sellers, etc. at trade fairs, etc. has been expanded to Internet transactions. Moreover, the 1st draft provided that, when sellers or suppliers of services stop using the platform for Internet transactions, consumers may demand compensation from the Internet platform providers as well. Contrary to this, the 2nd draft and the decision provided for the promotion of measures to protect consumer rights and interests, including the liability of platform providers who cannot supply the information of suppliers of commodities or services on Internet transactions, as mentioned above in Article 44, paragraph 1; the actually adopted method of advance payment of compensation by platform suppliers, etc. Moreover, in order to thoroughly protect consumers on Internet transactions, Article 44, paragraph 2 newly provides for cases in which Internet platform providers bear joint and several responsibilities with sellers or suppliers of services through Internet transactions (Article 44 of the revised law. See pp. 190 and on of Literature 1, pp. 198 and on of Literature 2). Article 36, paragraph 3 of the Tort Law provides, "where a network service provider knows that a network user is infringing upon a civil right or interest of another person through its network services, and fails to take necessary measures, it shall be jointly and severally liable with the network user concerned." In order to protect consumers on Internet transactions, Article 44 of the revised law has expanded the scope of, and strengthened the liability referred to in relevant provisions of the Tort Law, according to the decision.

Internet platform providers who do not take the necessary measures in spite of clearly knowing or being required to know that sellers or suppliers of services infringe upon the legitimate rights and interests of consumers using the Internet platform, shall bear the joint and several responsibilities with said sellers or suppliers of the services according to law."

[Responsibilities of individuals related to false advertisement]

XVIII. Article 39 shall be Article 45, paragraph 1 and the phrase "by means of false advertisement" shall be changed to "by means of false advertisement or any other false advertising methods," "the advertising agents" to "the advertising agents or advertisement issuers," and "real names and addresses" to "real names, addresses, and effective contact methods."

Two new paragraphs shall be added to Article 45 as its paragraph 2 and 3 to provide:

"Advertising agents or advertisement issuers who have caused damages to consumers by designing, producing and issuing false advertisement of commodities and services which are liable to harm the life or health of the consumers, shall bear the joint and several liability together with the business operators who supply the commodities or services.

Social associations or any other organizations or individuals who have caused damages to consumers by recommending commodities or services through false advertisement or any other false advertising methods thereof, which are liable to harm the life or health of the consumers, shall bear the joint and several liability together with the business operators who supply said commodities or services."[20]

[Filing of complaints][21]

XIX. A new article shall be added as Article 46 to provide:

"Article 46 In cases where consumers have filed complaints to administrative departments concerned, said departments shall dispose of the complaints within seven days from the date

[20] Advertising agents and advertisement issuers (presenters, media, etc.) have been causing more serious damages and results to consumers, by designing, producing and issuing false advertisement of food and medicines. Thus, it is necessary to seek severe liability of them. Against this background, the decision newly provides as above that advertising agents and advertisement issuers, such as the media, who have published said advertisement shall, regardless of their knowledge of the truth of the advertisement contents concerned, bear joint and several liabilities with the business operators (advertisers) (Article 45, paragraph 2; Article 56, item 6 of the revised law). In addition, at the 2nd deliberation, a recommendation was adopted that advertisement promoters (advocates or advertising characters), who have a powerful influence on consumers in practice, bear civil liability for false advertisement (Article 45, paragraph 3 of the revised law. See pp. 199 and on of Literature 1 and pp. 207 and on of Literature 2).

[21] In order to enable the effective protection of consumer rights and interests, the decision has added a new obligation to the rules of disposition of complaints by administrative departments concerned, by providing that in cases where consumers have filed complaints to administrative departments concerned, said departments shall dispose of the complaints within seven days from the date of receipt of the complaints and inform the consumers thereof (Article 46 of the revised law. See pp. 211 and on of Literature 1 and pp. 220 and on of Literature 2).

of receipt of the complaints and inform the consumers thereof."

[Consumer associations' right to file a lawsuit and lawsuits for public interests by consumers][22]

XX. One article shall be added as Article 47 to provide :

"Article 47 The Consumer Association of China and consumer associations established in provinces, autonomous regions, and municipalities may file a lawsuit to the people's courts against acts infringing upon the legitimate rights and interests of many consumers."

[Situation in which business operators should bear liability]

XXI. Article 40 shall be Article 48, paragraph 1 and the phrase "in accordance with the provisions of the Law of the People's Republic of China on Product Quality and other relevant laws and regulations," shall be changed to "in accordance with the provisions of other relevant laws and regulations."

Item (1) shall be changed to "there existing defects in the commodities or services."

One paragraph shall be added as paragraph 2 of Article 48 to provide;

"Business operators who do not fulfill their safety obligations to customers shall bear the

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[22] Article 55 of the revised Civil Procedure Law which came into effect in January 2013 provides, "In relation to acts which harm social public interests, including environmental pollution, infringement of legitimate rights and interests of many consumers, etc., institutions and related organizations provided by law may bring a lawsuit in the people's court." In accordance with these provisions, the public interest lawsuit system was established. With regard to the application scope of this system, it was considered that the scope should not be expanded overly as this system was still at its initial structuring stage. Thus, environmental pollution and the fields in which many customers had suffered damage were selected as the starting point in structuring the public interest lawsuit system, based on the facts that: in these fields many cases had occurred; relatively serious damages had been caused to social public interests; demands for public-interest lawsuits were relatively pressing; and the recognition thereof was shared between the academic and business circles.

Article 47 of the revised law provides that the Consumer Association of China and others may file a lawsuit. These provisions are based on the following discussions held in the course of revision of the Civil Procedure Code; i.e., Article 55 of the Civil Procedure Code provides that the subjects which file public-interest lawsuits are limited to institutions and related organizations provided by the law. This is from the viewpoint of the current administration system of China and for the purpose of reducing the risk of the abuse of lawsuits – the provisions make it possible to develop the public-interest lawsuit system in moderation, and at the same time, in order to develop the system in an orderly manner, the scope of the subjects of public-interest lawsuits should not be expanded overly. Administrative departments and other related organizations are suitable subjects of lawsuits as the main defenders of public interests and public office administrators. They can proactively promote administration according to law and also supplement a lack of administrative measures by using remedies through lawsuits. At the same time, organizations which file public-interest lawsuits need to have relevance to the public interests which suffered damages, in principle. In order to avoid confusion among the relatively large number of organizations existing in China, the law provides that "the organizations provided by the law" shall be the subjects of lawsuits, and that organizations filing public-interests lawsuits must base their lawsuits on clear legal grounds. ("The Civil Procedure Law of the People's Republic of China: Interpretation and Application" edited by the Office for Civil Law of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, September 2012, Jinmin Hoin Shuppan-sha, pp. 68-78. See pp.213 and on of Literature 1 and pp. 222 and on of Literature 2 above).

As sample cases of "the infringement of legitimate rights and interests of many consumers" assumed by the system of public interests lawsuits by consumers, 1) the unfair and irrational use of formal provisions or formal contracts; and 2) the infringement of consumer rights and interests by means of false advertisement; were raised (in the abovementioned press conference).

tort liability for the resulting damages."

[Liability for compensation for personal damage]

XXII. Articles 41 and 42 shall be integrated into Article 49 to revise as follows:

"Article 49 Business operators shall, if the commodities or services they supply have caused personal injuries to consumers or other victims, pay for the victims' medical expenses, nursing expenses, transportation fees and other reasonable expenses incurred during medical treatment or rehabilitation, and the reduced income for loss of working time. Business operators shall, if the commodities or services they supply have disabled the consumers, also pay the victims' expenses on self-help devices and compensation for disability. Business operators shall, if the commodities or services they supply have caused death of the consumers or other victims, pay funeral expenses and death compensation as well.

[Liability for compensation for violation of human dignity]

XXIII. Article 43 shall be Article 50 to revise as follows:

"Business operators who violate the human dignity, personal freedom, or the right to the protection of personal information of consumers in accordance with the law, shall stop the violations, rehabilitate consumers' reputations, eliminate the bad effects, make apologies and pay compensation thereof.

[Liability for compensation for mental damages]

XXIV. A new article shall be added as Article 51 to provide:

"If business operators have committed an act infringing upon the rights and interests of consumers or other victims, including insults, defamation, body search, limitations on personal freedom, causing significant mental damages, the victim may claim compensation for mental damages.

[Liability for compensation for financial damages]

XXV. Article 44 shall be Article 52 to revise as follows:

"Business operators shall, if the commodities or services they supply have caused damage to the properties of consumers, bear civil liabilities by means of repair, re-manufacture, replacement, return of goods, makeup for the short commodities, return of payment for goods and services, or compensation for losses and so on, in accordance with the provisions of the law or agreements between the parties.

[Deletion of provisions on the liability for non-performance in mail-order]

XXVI. Article 46 shall be deleted.

[Punitive compensation][23]

XXVII. Article 49 shall be Article 55, paragraph 1, to revise as follows:

"Article 55 Business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the compensation for victims' losses; the increased amount of the compensation shall be three times that the consumer paid for the commodities purchased or services received. When the increased amount is less than 500 yuan, said amount shall be determined to be 500 yuan. In cases where it is otherwise provided by law, those provisions shall prevail."

A new paragraph shall be added to Article 55 as its paragraph 2 to provide:

"In cases where consumers or other victims have died or their health have been severely damaged due to the fraudulent activities of business operators who have supplied commodities or services with clear knowledge that such commodities or services were defective, the victims shall have the right to demand compensation from the business operators in accordance with the provisions of Articles 49, 51, etc., of this law, and have the right to demand punitive compensation of not more than double the costs of the damages the victims have suffered.

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[23] In practice, there are cases where certain business operators commit frauds or fraudulent acts, infringing upon consumer right and interests, and sometimes causing serious damages to the life or health of consumers. Against these acts, various quarters have demanded that the level of sanctions be elevated. The major opinion was that compensation of double the costs of losses consumers suffered (as provided for in Article 49 of the current law) were not enough as sanctions against malicious business operators. In response to such opinion, the decision has strengthened sanctions against fraudulent acts by increasing the amount of compensation to three times the costs or expenses, and also by fixing the minimum amount of compensation, providing that business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the amount of compensation for victims' losses; "the increased amount of compensation shall be three times the costs paid by the consumers for the commodities purchased or services received," and "when the increased amount is less than 500 yuan, said amount shall be determined to be 500 yuan." (Article 55, paragraph 1 of the revised law. See pp. 260 and on of Literature 1 and pp. 265 and on of Literature 2 above).

Moreover, in cases where serious damages have been caused to the life or health of consumers due to the fraudulent activities of business operators, not only the right to demand compensation in accordance with the provisions of Articles 49, 51, etc. of the law, but also the right to demand punitive compensation of not more than double the costs of the damages have been granted to victims, thereby intending to maintain the effect of deterrent and sanctioning functions of said provisions against fraudulent acts (Article 55, paragraph 2). It is said that paragraph 2 models after the system of limiting the maximum amount of punitive compensation in various states of the U.S. More specifically, in China, in determining compensation for death, the standard amount is twenty times the disposable income per capita in cities of the previous year. The average amount in 2012 was over 24,500 yuan. This would calculate out to be approximately 500,000 yuan. Adding this to double the amount reaches approximately 1,500,000 yuan (for your reference, the equivalent amount in Shanghai is 2,400,000 yuan; in Beijing, 2,100,000 yuan; in Yunnan, 1,200,000 yuan; in Qinghai, 1,000,000 yuan). It has been explained that keeping this in mind, the limitation of the maximum amount of compensation has been provided in order to maintain balance between the functions of punitive compensation in controlling and sanctioning illegal acts and maintaining the effect of said provisions (according to the explanation provided at the above press conference. See pp. 277 and on of Literature 1 and pp. 282 and on of Literature 2 above).

[Administrative liability of business operators violating legal duties][24]

XXIIX. Article 50 shall be Article 56 and the phrase, "if the Law of the People's Republic of China on Product Quality and other laws and regulations have provided for punitive organs and forms thereof" shall be changed to "they shall bear the corresponding civil liability. In cases where other related laws and regulations have provided for punitive organs and forms thereof," and "administrative departments for industry and commerce" shall be changed to "administrative departments for industry and commerce or any other administrative departments concerned," "imposition of a fine not less than double but not more than five times the value of the unlawful earnings" shall be changed to "imposition of a fine not less than one time but not more than ten times the value of the unlawful earnings," "a fine of 10,000 yuan or less" shall be changed to "a fine of 500,000 yuan or less."

Item 1 shall be revised to provide:
"commodities or services supplied failing to meet the requirements for the protection of personal and property safety.

Item 4 shall be revised to provide:
"forging the origin of commodities, forging or counterfeiting the names and addresses of other factories, falsifying the date and time of production, and forging or counterfeiting the qualification marks or authentication marks."

Item 6 shall be revised to provide:
"making false or misleading propaganda about their commodities or services.

One item shall be added as Item 7 to provide:
"refusing or delaying in taking measures such as the discontinuation of sales, warning, recall, detoxifying disposition, scrapping, discontinuation of production or services."

Item 8 shall be Item 9 to revise as follows;
"violating human dignity, personal freedom or the right to the protection of personal information of consumers in accordance with the law."

One paragraph shall be added to Article 56 as its paragraph 2 to provide,
"In cases where there exists circumstances concerned with business operators as provided in

[24] The decision intends to adequately protect consumer rights and interests by elevating the extent of administrative punishments against acts infringing upon consumer rights and interests according to related provisions of the current law, and also by increasing the costs of illegal acts of business operators (Article 56, items 1, 4, 6, 7 and 9 of the revised law. See pp. 280 and on of Literature 1 and pp. 285 and on of Literature 2 above).

the preceding paragraph, in addition to the punishments provided by laws and administrative regulations, the department concerned shall enter them into the list of credits and publish the list publicly.

[Criminal responsibility of business operators]

XXIX. A new article shall be added as Article 57 to provide:

"Business operators who supply commodities and services in violation of the provisions of this law, and thereby infringe upon the legitimate rights and interests of consumers, which constitute a crime, shall be investigated for criminal responsibility according to law.

[Principle of the priority of civil compensation liability]

XXX. A new article shall be added as Article 58 to provide:

"In cases where business operators should bear civil compensation liability, a fine and penalty for violating this law, and their assets are not sufficient to pay them, they shall first bear the civil compensation liability.

[Appeal and action against administrative punishment]

XXXI. Article 51 shall be Article 59 to provide:

"Any business operators who are not satisfied with the decision on administrative punishment, may bring an administrative appeal or an administrative action according to laws and regulations."

The order of relevant articles of the Law on Protection of Consumer Rights and Interests shall be coordinated accordingly based on this revised law draft. The decision shall come into force on March 15, 2014.[25]

[Reference Material]

The New Law on the Protection of Consumer Rights and Interests[26]

*****Underlines are revised parts.

[25]As this revision is partial, not complete, the date of enforcement provided for in the current law is set forth in Article 63 of the revised law without modification (according to an explanation by the Office for Civil Law of the Legislative Affairs Commission).

[26] This is an unofficial translation based on the Japanese translation of the original Chinese version, and shall be used for reference only. In the case of any discrepancy between the meanings or wordings of this translation, the meaning and wording of the original Chinese language version shall prevail.

Chapter I. General Provisions

Article 1 The present law is formulated for the protection of the legitimate rights and interests of consumers, maintenance of the socio-economic order and promotion of the healthy development of the socialist market economy.

Article 2 The rights and interests of consumers in purchasing and using commodities or receiving services for daily consumption shall be under the protection of the present law, or under the protection of other relevant laws and regulations in absence of stipulations in this law.

Article 3 Business operators shall, in their supply of commodities produced and sold by them or services to consumers, abide by the present law, or abide by other relevant laws and regulations in absence of stipulations in the present law.

Article 4 In transactions between business operators and consumers a principle of voluntariness, equality, fairness, honesty and credibility shall be followed.

Article 5 The State shall protect the legitimate rights and interests of consumers from infringement.

The State shall adopt measures to safeguard consumers' exercise of their rights in accordance with the law and to maintain the legitimate rights and interests of consumers.

The State shall advocate a consumption method for cultural and healthy resource-saving and environmental protection, and oppose wastes.

Article 6 It is the common responsibility of the whole society to protect the legitimate rights and interests of consumers.

The State shall encourage and support all organizations and individuals to exercise social supervision over acts infringing upon consumer rights and interests.

Mass media shall conduct propaganda defending the legitimate rights and interests of consumers and, through public opinion, exercise supervision over acts infringing upon the legitimate rights and interests of consumers.

Chapter II. Rights of Consumers

Article 7 Consumers shall, in their purchasing and using commodities or receiving services, enjoy

the right of the inviolability of their personal and property safety.

Consumers shall have the right to demand business operators supply commodities and services up to the requirements for personal and property safety.

Article 8 Consumers shall enjoy the right to obtain true information of the commodities they purchase and use or the services they receive.

Consumers shall have the right to demand business operators, in light of the different conditions of commodities or services, to provide their prices, origin, manufacturers, usage, functions, standards, grades, main ingredients, date of production, term of validity, certificates of inspection, operation instructions, after-sale services or information relating to contents, standards and costs of the services.

Article 9 Consumers shall enjoy the right of free choice of commodities or services.

Consumers shall have the right to make a free choice of business operators for supply of commodities or services, select freely among varieties of articles or forms of services and decide independently to buy or not to buy any kind of commodities, or to accept or not to accept any item of services.

Consumers shall have the right to make comparisons, differentiations and selections when they make a free choice of commodities or services.

Article 10 Consumers shall enjoy the right of fair deal.

Consumers shall, in their purchasing commodities or receiving services, have the right to obtain fair deal prerequisites such as guarantee of quality, reasonable prices and correct measurement, and have the right to refuse any compulsory transaction of business operators.

Article 11 Consumers suffering from personal injury or property damage resulting from their purchasing or using of commodities or receiving of services shall have the right to demand compensations in accordance with the law.

Article 12 Consumers shall have the right to form social organizations for the maintenance of their own legitimate rights and interest according to law.

Article 13 Consumers shall have the right to acquire knowledge concerning consumption and protection of consumer rights and interests.

Consumers shall make efforts to master the knowledge of their necessary commodities or services and the skill in operation thereof, apply the commodities in a correct way and raise their consciousness of self-protection.

Article 14 Consumers shall, in their purchasing and using commodities or receiving services, have the right that their human dignity, national customs and habits be respected, and further have the right to the protection of their personal information according to law.

Article 15 Consumers shall have the right to exercise supervision over commodities, services as well as the work of protection of consumer rights and interests.

Consumers shall have the right to inform and charge against the infringement upon consumer rights and interests and the breach of law or neglect of duty on the part of State organs and their functionaries in the work of protection of consumer rights and interests, and have the right to raise criticism of or proposals for the work of protection of consumer rights and interests.

Chapter III. Obligations of Business Operators

Article 16 Business operators shall, in their supply of commodities or services to consumers, fulfill their obligations stipulated in this law and other laws and regulations concerned.

In cases where an agreement is reached between business operators and consumers, the business operators shall fulfill the obligations agreed upon in the agreement; but the agreement between the two parties shall not contravene the provisions of laws and regulations.

Business operators who supply commodities or services to consumers shall safeguard public and social morals, run businesses in accordance with faith and trust, protect the legitimate rights and interests of consumers, and shall not set up unfair or irrational transaction conditions, nor force transactions.

Article 17 Business operators shall listen to the consumers' opinions on the commodities and services they supply and accept consumers' supervision.

Article 18 Business operators shall guarantee that the commodities and services they supply meet the requirements for personal or property safety. As to commodities and services liable to harm

personal or property safety, business operators shall give consumers truthful explanations and clear-cut warnings, and shall explain or indicate the correct ways of using the commodities or receiving services as well as the methods of preventing damage.

2. Business operators who run businesses of hotels, malls, restaurants, banks, airports, stations, ports, movie theaters, etc. shall fulfill their safety obligations to customers.

Article 19 Business operators shall, upon discovery of serious defects of the commodities or services they supply which may be liable to harm personal or property safety, immediately report to the administrative departments concerned and inform the consumers, and adopt measures including the discontinuation of sales, warning, recall, detoxifying disposition, scrapping, discontinuation of production or services, etc. Upon adoption of recall measures, the business operators shall bear the necessary costs incurred by consumers due to the recall of commodities.

Article 20 Business operators shall provide consumers with accurate and complete information concerning the quality, functions, usage, term of validity, etc. of the commodities or services they supply, and may not make any false or misleading propaganda.

Business operators shall give truthful and definitive replies to inquiries from consumers about the qualities of the commodities or services they supply and the operation methods thereof.

Business operators who supply commodities or services shall mark clearly their prices or fees.

Article 21 Business operators shall indicate their real names and marks.

Business operators who lease counters or grounds from others shall indicate their own real names and marks.

Article 22 Business operators who supply commodities or services shall make out for consumers invoices for purchases or documents of services, including receipts, etc., in accordance with relevant regulations of the State or commercial practices; business operators must produce such invoices or documents, including receipts, where consumers so demand.

Article 23 Business operators shall guarantee the quality, functions, usage and term of validity which the commodities or services they supply should possess under normal operation or acceptance, except that consumers are aware of the defects before they buy the commodities or receive the services, and the existing defects do not violate the compulsory provisions of the law.

Business operators who employ advertisements, product instructions, samples or other ways to display the quality state of their commodities or services shall guarantee that the actual quality of the commodities or services they supply is in conformity with that demonstrated.

With regard to durable commodities including automobiles, microcomputers, televisions, refrigerators, air-conditioners, washing machines, etc., or services such as decoration or interior decors supplied by business operators, when defects have been found within six months after the consumers received the supply of the commodities or services, and conflicts have occurred, the business operators shall bear the burden of proof of relevant defects.

Article 24 In cases where the commodities or services supplied by business operators do not fulfill quality requirements, consumers may demand the business operators carry out obligations of accepting the return of the commodities, replacement or repair of the commodities or services, according to State regulations or agreements between the parties. In cases where no state regulations or agreements between the parties exist, the consumers may return the commodities within seven days from the date of receipt of the commodities. In cases where statutory contract cancellation requirements are fulfilled seven days after receiving the commodities, the consumers may immediately return the commodities. In cases where the statutory contract cancellation requirements are not met, the consumers may demand the business operators carry out obligations of accepting the replacement, repair, etc. of the commodities.

Business operators who accept the return, replacement or repair of the commodities according to the provisions of the preceding paragraph shall bear any costs necessary, including transportation fees, etc. of the commodities.

Article 25 In cases where business operators sell commodities using the Internet, television, phone, mail orders, etc., consumers shall have the right to return the commodities within seven days from the date of receipt of the goods, without being required to explain; provided, however, this shall not apply to the following commodities:

(1) made-to-order goods;
(2) perishable fresh goods;
(3) digitalized goods, including audio products, computer software, etc., unsealed by consumers,
(4) already issued newspapers and printed publication.

In addition to the commodities listed above, in cases where consumers have confirmed, at the time of purchase, the quality of other commodities and that such commodities are not suitable for being

returned, the return of commodities without cause shall not apply.

Consumers shall return commodities in their entirety. Business operators shall return the price of the commodities to the consumers within seven days from the date of receipt of returned goods. The consumers shall bear the freight costs for returning the commodities. In cases where otherwise agreed between business operators and consumers, the agreements shall prevail.

Article 26 Business operators who use format provisions (conditions and standard contracts) in their business activities shall bring to the attention of customers in a clear way the matters with a substantial interest to the customers, including the quantity and quality, price or costs, contract performance period or method, warning of risks, after-sale services, civil liability, etc. of commodities or services they provide, or shall explain such matters where consumers demand.

Business operators may not impose unfair or unreasonable rules on consumers, or force transactions by using format provisions and technical measures, by excluding or limiting the rights of consumers through format provisions, notices, announcements, entrance hall bulletins and so on; reducing or escaping their liability; or aggravating the responsibilities of consumers, etc.,

Format provisions, notices, announcements, entrance hall bulletins and so on with contents mentioned in the preceding paragraph shall be invalid.

Article 27 Business operators may not insult or slander consumers, may not search the body of consumers or the articles they carry with them, and may not violate the personal freedom of consumers.

Article 28 Business operators who supply commodities or services through the Internet, television, phone, mail-order, etc., and business operators who supply financial services including securities, insurance, banking, etc., shall supply consumers information on their business places, contact methods, quantity, quality, price or costs of commodities or services, period and method of performance, warning of risks, after-sale services, civil liability, etc.

Article 29 Business operators who collect and use personal information of consumers shall abide by the principle of legality, fairness and necessity, and obtain the agreements of the consumers by indicating the purposes, methods and the scope of the collection and use of the information. Business operators who collect and use personal information of consumers shall publish the rules of collection and use, and shall not violate the provisions of laws and regulations, and the agreements between the two parties on the collection and use of information.

Business operators and their employees shall strictly preserve the confidentiality of the collected personal information of consumers, and shall not leak, sell or illegally supply the information to others. Business operators shall secure the safety of the information through technical measures or any other necessary measures, to prevent the leakage or loss of the personal information of consumers. In cases where the information has been, or may be leaked or lost, the business operators must immediately take corrective actions.

Business operators shall not provide business information to consumers without their agreements or requests, or when they clearly manifest their refusal to do so.

Chapter IV. Protection of the Legitimate Rights and Interests of Consumers by the State

Article 30 The State shall heed opinions from consumers and organizations including consumer associations, etc. when making laws, rules, regulations, and mandatory standards concerning consumer rights and interests.

Article 31 People's governments at various levels shall strengthen their leadership, organize, coordinate and supervise the administrative departments concerned to do their work well in the protection of the legitimate rights and interests of consumers, and exercise their duties of protecting the legitimate rights and interests of consumers.

People's governments at various levels shall strengthen supervision to prevent occurrence of acts damaging the personal or property safety of consumers and promptly check any such acts.

Article 32 Administrative departments for industry and commercial of the people's governments at various levels and other administrative departments concerned shall adopt measures to protect the legitimate rights and interests of consumers within the scope of their respective functions and duties in accordance with the provisions of the laws and regulations.

Administrative departments concerned shall listen to the complains of consumers and organizations including consumer associations, etc. as to the transactions of business operators and the quality of their commodities and services, and carry out timely investigation and disposition.

Article 33 Administrative departments concerned shall regularly or irregularly conduct sampling inspections of the commodities or services of business operators within the scope of their functions and duties, and promptly publish the results of the sampling inspections to society.

Administrative departments concerned shall, upon discovery of defects in the commodities or services of business operators, which may be liable to harm the personal or property safety of consumers, immediately order the business operators to adopt measures such as the discontinuation of sales, warnings, recall, detoxifying disposition, scrapping, discontinuation of production or services, etc.

Article 34 State organs concerned shall, in accordance with the provisions of laws and regulations, punish any law-breaking or criminal activities of business operators infringing upon the legitimate rights and interests of consumers in their supplying commodities or services.

Article 35 The people's courts shall adopt measures to facilitate consumers to take legal proceedings and must entertain and handle without delay cases of disputes over consumer rights and interests that meet the conditions for a lawsuit specified in the Civil Procedure Law of the People's Republic of China.

Chapter V. Consumer Organizations

Article 36 Consumer associations and other consumer organizations are social organizations formed according to law to exercise social supervision over commodities and services and to protect the legitimate rights and interests of consumers.

Article 37 Consumer associations shall perform the following functions and duties for the public interest:

(1) to provide consumption information and consultative services to consumers, enhance their capacity of protecting their own legitimate rights and interests, and lead them to a consumption method for cultural and healthy resource-saving and environmental protection.
(2) to participate in the enactment of laws, rules, regulations, and mandatory standards in relation to the rights and interests of consumers.
(3) to participate in supervision over or inspection of commodities and services conducted by relevant administrative departments;
(4) to make reports, inquiries and suggestions to relevant administrative departments about issues relating to the legitimate rights and interests of consumers;
(5) to accept complaints of consumers and offer investigations and mediations with respect to issues of complaints;
(6) where complaints are about the quality of commodities or services, consumer associations may commission appraisement of issues of complaints to qualified experts who shall inform them of their expert conclusions;
(7) to render support to consumers in their legal proceedings against infringement upon their

legitimate rights and interests; or institute legal proceedings in accordance with the law.

(8) to expose and criticize through mass media the acts infringing upon the legitimate rights and interests of consumers.

People's governments at various levels shall give support to consumer associations in the performance of their functions and duties through payment of necessary expenses.

Consumer associations shall earnestly perform their functions and duties to protect the legitimate rights and interests of consumers, listen to the opinions and proposals of consumers, and accept supervision by the general public.

Other consumer organizations established by law shall develop activities to protect the legitimate rights and interests of consumers in accordance with laws, regulations and other provisions.

Article 38 Consumer organizations may not be engaged in commodity transactions or profit-making services, and may not recommend to consumers commodities or services by way of collecting fees or obtaining other profits.

Chapter VI. Settlement of Disputes

Article 39 In cases involving disputes with business operators over consumer rights and interests, consumers may settle the disputes through the following approaches:

(1) to consult and conciliate with business operators;

(2) to make a request for mediation to consumer associations or any other mediation organizations established by law;

(3) to file a complaint to relevant administrative departments;

(4) to apply to arbitral organs for arbitration according to the arbitral agreements with business operators;

(5) to institute legal proceedings in the people's court.

Article 40 Consumers whose legitimate rights and interests are infringed upon in their purchasing or using commodities may demand compensation from the sellers concerned. In cases where the liability is on the manufacturers or other sellers who supply the commodities to the said sellers, the said sellers shall, after paying the compensation, have the right to recover the compensation from the said manufacturers or the other sellers.

Consumers or other victims suffering personal injuries or property damage resulting from defects of commodities may demand compensation either from the sellers or from the manufacturers. If the

liability is on the manufacturers, the sellers shall, after paying the compensation, have the right to recover the compensation from the manufacturers; if the liability is on the sellers, the manufacturers shall, after paying the compensation, have the right to recover the compensation from the sellers.

Consumers whose legitimate rights and interests are infringed upon in receiving services may demand compensation from suppliers of the services.

Article 41 Consumers whose legitimate rights and interests are infringed upon in purchasing or using commodities or receiving services may, if the enterprises supplying the commodities or services have been split-up or merged, demand compensation from the enterprises succeeding to the rights and obligations of the original ones after the modifications.

Article 42 In cases where a business operator unlawfully uses another's business license to supply commodities or services and infringes upon the legitimate rights and interests of consumers, the consumers may demand compensation either from such business operator or from the holder of the business license.

Article 43 Consumers whose legitimate rights and interests are infringed upon in purchasing commodities or receiving services at trade fairs or leased counters may demand compensation from the sellers or suppliers of the services. In cases where the fairs are over or the lease of counters expires, they may also demand compensations from organizers of the fairs or lessors of the counters. Organizers of the fairs and lessors of the counters shall, after paying the compensation, have the right to recover the compensation from the sellers or suppliers of the services.

Article 44 Consumers whose legitimate rights and interests are infringed upon in purchasing commodities or receiving services using an Internet platform may demand compensation from the sellers or suppliers of the services. In cases where the Internet platform providers cannot supply the true names, addresses and effective contact methods of the sellers or suppliers of the services, the consumers may also demand compensation from the Internet platform providers. In cases where the Internet platform providers have obtained an authorization more useful for consumers, they shall perform the content of the authorization. The Internet platform providers shall, after paying compensation, have the right to recover the compensation from the sellers or suppliers of the services.

Internet platform providers who do not take the necessary measures in spite of clearly knowing or being required to know that sellers or suppliers of services infringe upon the legitimate rights and interests of consumers using the Internet platform, shall bear the joint and several responsibilities

with said sellers or suppliers of the services according to law.

Article 45 Consumers whose legitimate rights and interests are infringed upon on account of commodities or services supplied by business operators by means of false advertisement or any other false advertising methods, may demand compensation from the business operators. Consumers may demand the relevant administrative departments to punish the advertising agents or advertisement issuers who make false advertisements. Advertising agents or advertisement issuers who cannot provide the real names, addresses, and effective contact methods of the business operators shall be liable for compensation.

Advertising agents or advertisement issuers who have caused damages to consumers by designing, producing and issuing false advertisement of commodities and services which are liable to harm the life or health of the consumers, shall bear the joint and several liability together with the business operators who supply the commodities or services.

Social associations or any other organizations or individuals who have caused damages to consumers by recommending commodities or services through false advertisement or any other false advertising methods thereof, which are liable to harm the life or health of consumers, shall bear the joint and several liability together with the business operators who supply said commodities or services."

Article 46 In cases where consumers have filed complaints to administrative departments concerned, said departments shall dispose of the complaints within seven days from the date of receipt of the complaints and inform the consumers thereof.

Article 47 The Consumer Association of China and consumer associations established in provinces, autonomous regions, and municipalities may file a lawsuit to the people's courts against acts infringing upon the legitimate rights and interests of many consumers.

Chapter VII. Legal Responsibility

Article 48 Business operators shall, if the commodities and services they supply involve any of the following circumstances, bear civil liability in accordance with the provisions of other relevant laws and regulations, except as otherwise provided in the present Law;

(1) there existing defects in the commodities or services;
(2) not possessing the properties for use they should possess and no declaration thereabout is made at the time of sale;
(3) not conforming to the standards indicated on the commodities or on the packaging thereof;
(4) not conforming to the state of quality indicated by the product description or by physical

samples;

(5) producing commodities that have been formally declared by the State to be eliminated or selling commodities that are no longer effective or deteriorated;

(6) commodities sold being short of weight or quantity;

(7) contents and costs of services being not in conformity with the agreements;

(8) deliberately delaying or unreasonably refusing consumers' requests for repair, re-manufacture, replacement, return of goods, makeup for the short commodities, return of payment for goods or services, or compensation for losses;

(9) Other circumstances infringing upon consumer rights and interests as specified by laws and regulations.

Business operators who do not fulfill their safety obligations to customers shall bear the tort liability for the resulting damages.

Article 49 Business operators shall, if the commodities or services they supply have caused personal injuries to consumers or other victims, pay for the victims' medical expenses, nursing expenses, transportation fees and other reasonable expenses incurred during medical treatment or rehabilitation, and the reduced income for loss of working time. Business operators shall, if the commodities or services they supply have disabled the consumers, also pay the victims' expenses on self-help devices and compensation for disability. Business operators shall, if the commodities or services they supply have caused the death of the consumers or other victims, pay funeral expenses and death compensation as well

Article 50 Business operators who violate the human dignity, personal freedom or the right to the protection of personal information of consumers in accordance with the law, shall stop the violations, rehabilitate consumers' reputations, eliminate the bad effects, make apologies and pay compensation thereof.

Article 51 If business operators have committed an act infringing upon the rights and interests of consumers or other victims, including insults, defamation, body search, limitations on personal freedom, causing significant mental damages, the victim may claim compensation for mental damages.

Article 52 Business operators shall, if the commodities or services they supply have caused damage to the properties of consumers, bear civil liabilities by means of repair, re-manufacture, replacement, return of goods, makeup for the short commodities, return of payment for goods and services, or compensation for losses and so on, in accordance with the provisions of the law or

agreements between the parties.

Article 53 Business operators who supply commodities or services in the form of advance payment shall provide their commodities or services according to the agreements. Business operators who fail to provide their commodities or services according to the agreements shall fulfill the agreements or return the advance payment on the demand of the consumers, and shall also bear the interest of the advance payment and other reasonable expenses that the consumers have to pay.

Article 54 Business operators shall, on the demand of consumers, be responsible for the return of goods determined to be substandard commodities by administrative departments concerned according to law.

Article 55 Business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the compensation for victims' losses; the increased amount of the compensation shall be three times that the consumer paid for the commodities purchased or services received. When the increased amount is less than 500 yuan, said amount shall be determined to be 500 yuan. In cases where it is otherwise provided by law, those provisions shall prevail.

In cases where consumers or other victims have died or their health have been severely damaged due to the fraudulent activities of business operators who have supplied commodities or services with clear knowledge that such commodities or services were defective, the victims shall have the right to demand compensation from the business operators in accordance with the provisions of Articles 49, 51, etc. of this law, and have the right to demand punitive compensation of not more than double the costs of the damages the victims have suffered.

Article 56 If business operators are under any of the following circumstances, they shall bear the corresponding civil liability. In cases where other related laws and regulations have provided for punitive organs and forms thereof, the provisions of the laws or regulations shall be applied; in absence of such provisions in the laws or regulations, administrative departments for industry and commerce or any other administrative departments concerned shall order them to make corrections, and may, in light of the circumstances, punish the offenders exclusively or concurrently with warning, confiscation of unlawful earnings, or imposition of a fine not less than one time but not more than ten times the value of the unlawful earnings; in cases involving no unlawful earnings, the offenders shall be punished with a fine of 500,000 yuan or less, and if the circumstances are serious, they shall be ordered to suspend business for rectification, and their business licenses shall be revoked:

(1) commodities or services supplied failing to meet the requirements for the protection of personal

and property safety;

(2) mixing adulterations into their commodities, or passing fake commodities off as genuine, or passing defective commodities off as good, or passing substandard commodities off as standard;

(3) producing commodities which have been formally declared by the State to be eliminated, or selling commodities no longer effective or deteriorated;

(4) forging the origin of commodities, forging or counterfeiting the names and addresses of other factories, falsifying the date and time of production, and forging or counterfeiting the qualification marks or authentication marks;

(5) selling commodities not inspected or quarantined against the requirement therefor, or forging the result of inspection or quarantine;

(6) making false or misleading propaganda about their commodities or services;

(7) refusing or delaying in taking measures such as the discontinuation of sales, warning, recall, detoxifying dispositions, scrapping, discontinuation of production or services;

(8) deliberately delaying or unreasonably refusing consumers' demand for repair, remanufacture, replacement, return of goods, makeup for the short commodities, refund of payment for goods or services, or compensation for losses;

(9) violating human dignity, personal freedom or the right to the protection of personal information of consumers in accordance with the law;

(10) Other circumstances wherein punishment shall be given for infringement of consumer rights and interests as stipulated by laws or regulations.

In cases where there exist circumstances concerned with business operators as provided in the preceding paragraph, in addition to the punishments provided by laws and administrative regulations, the department concerned shall enter them into the list of credits and publish the list publicly.

Article 57 Business operators who supply commodities and services in violation of the provisions of this law, and thereby infringe upon the legitimate rights and interests of consumers, which constitute a crime, shall be investigated for criminal responsibility according to law.

Article 58 In cases where business operators should bear civil compensation liability, a fine and penalty for violating this law, and their assets are not sufficient to pay them, they shall first bear the civil compensation liability.

Article 59 Any business operator who is not satisfied with the decision on administrative punishment, may bring an administrative appeal or an administrative action according to laws and regulations.

Article 60 Anyone who, by means of violence or threats, hinders functionaries of the administrative departments concerned from performing their duties according to law, shall be investigated for criminal responsibility according to law; and those who refuse or hinder functionaries of the administrative departments concerned from performing their duties according to law, without resorting to violence or threats, shall be punished by public security organs in accordance with the stipulations of the Regulations of the People's Republic of China on the Administrative Penalties for Public Security.

Article 61 Any functionary of the State organs, who neglects his duties or shields any business operator guilty of infringement of the legitimate rights and interests of consumers, shall be given administrative sanctions by the unit he belongs to, or by an organ at a higher level; if the circumstances are serious enough to constitute a crime, he shall be investigated for criminal responsibility according to law.

Chapter VIII. Supplementary Provisions

Article 62 The present Law shall be applicable mutatis mutandis to peasants' purchase or application of means of production used directly in agricultural production.

Article 63 The present Law shall go into effect as of January 1, 1994.

COMPLETING MY TENURE AS A JICA LONG-TERM EXPERT IN VIETNAM

Takeshi NISHIOKA[1]
Former JICA Long-Term Expert/Chief Advisor
Project for the Legal and Judicial System Reform

I. INTRODUCTION

I was dispatched to Hanoi City, Socialist Republic of Vietnam, as a JICA long-term expert from April 1, 2010 to September 30, 2013 (three and half years). My mission was to engage in legal technical assistance as the chief advisor for the Project of Technical Assistance for the Legal and Judicial System Reform, which had been administered by JICA.

The first phase of this project ran from April 1, 2007 to March 31, 2011. The second phase commenced on April 1, 2011 and is scheduled to end on March 31, 2015. I was pleased to see the transition between phases during my tenure in Hanoi.

Based on my experience presiding over the project as the project chief advisor over the two phases, I will report the results of my activities during my three-and-half year tenure in Vietnam.

II. OUTLINE AND GOALS OF THE PROJECT

The project aims to see the operation of judicial practices and enforcement unified and their fairness and transparency secured. For this purpose, the project activities include assistance in **drafting basic laws and regulations**, and in the **capacity-building of legal professionals**. We work with, as counterpart organizations of the project[2], the Ministry of Justice, the Supreme People's Court, the Supreme People's Procuracy, and the Vietnam Bar Federation. Through capacity-building activities of legal practitioners, we aim to extract problems which are found in practice in relation to the laws in force, and ultimately, enact and amend basic laws in a way that solves such problems. In order to

[1] Currently he serves as a public prosecutor at the Nagoya District Public Prosecutors Office.
[2] "Counterpart organization" refers to the national agencies and organizations which administer JICA project activities.

do so, it is necessary to clearly understand the actual situation throughout the country. To this end, we have strenuously implemented surveys and law dissemination activities in various regions.

In other words, we have undertaken the enactment and revision of legal normative documents, including basic laws, through experiences gained in local regions. Thus, this project intends to, as one of its main features, interface activities for capacity-development of legal professionals and assistance in drafting legal norms.

The target basic laws in this project include: civil code (including mortgage law and international private law fields); procedural laws such as civil procedure code, criminal procedure code, administrative procedure code, etc.; civil judgment execution law; bankruptcy law; state compensation law; the people's court organization law and the people's procuracy organization law. And assistance in capacity-building is intended for legal officers of the Ministry of Justice (bailiffs, officers in charge of family registration, registration of secured transactions, state compensation, etc.), judges, prosecutors and private attorneys.

Each counterpart organization is in charge of the following target laws:

- Ministry of Justice (MOJ): Civil Code, Civil Judgment Execution Law, State Compensation Law, Decree on the Registration of Secured Transactions;
- Supreme People's Court (SPC): Civil Procedure Code, Administrative Procedure Code, People's Court Organization Law, Bankruptcy Law;
- Supreme People's Procuracy (SPP): Criminal Procedure Code, People's Procuracy Organization Law.

My principal mission was to preside over the project as the project chief advisor. As I was primarily in charge of the coordination with the MOJ and SPP, this paper focuses on the results of activities with these counterparts.

III. FEATURES OF ACTIVITIES IN THE PROVINCE

As explained above, we developed project activities with a focus on local regions. I will thus briefly discuss the features of our activities in those regions.

A. Ministry of Justice

From the first to the second phase, we visited each region in Vietnam to develop law dissemination

activities (training courses[3]) and survey the status of law implementation (survey in the province). In addition, in drafting several types of legal normative documents, we held seminars in major local cities (Ho Chi Minh, Da Nang, etc.) to acquire feedback on drafts. In this process, we interviewed officials of national agencies as well as private legal practitioners.

B. Supreme People's Procuracy

First, areas were limited to implement activities for capacity-building of legal professionals, including prosecutors (the People's Procuracy in Bac Nihn Province was designated as the pilot area and the People's Procuracy in Hai Phong City as the advanced activity area[4] in the first and second phase, respectively). Thereafter, target areas were expanded throughout the nation (for instance, seminars were organized in local cities, including Lao Cai Province, Hai Duong Province, Quang Binh Province, etc.), in which we used our previous experiences in Bac Nihn and Hai Phong.

In each of the activities developed in provincial cities, a large number of people participated, which included not only legal professionals (judges, prosecutors, private attorneys, etc.) but officers from a broad range of institutions, including security police officers, people's assessors, customs officers, Communist Party members, etc. As for public prosecutors, across-the-board capacity-building was conducted for not only those from provincial-level procuracies but also those from district-level procuracies and other end officials. Moreover, in the process of revising the Criminal Procedure Code and the People's Procuracy Organization Law, seminars were actively held to acquire feedback from officials of the provincial-level people's procuracies on the issues of the laws in force.

IV. DETAILS OF PROJECT ACTIVITIES AND RESULTS

The following are detailed development and achievements of project activities.

A. Ministry of Justice

The Ministry of Justice is composed of several departments and bureaus. The Department of

[3] In law dissemination activities through training courses, officers of the Ministry of Justice, one of the national central agencies of Vietnam, served as lecturers to explain the State Compensation Law, legal instruments related to the registration of secured transactions, practices of family registration, etc., to judicial officials in the province. There were some occasions on which Japanese experts were requested to briefly introduce the Japanese legal system during the training courses. However, in principle concerned Vietnamese officers took the initiative throughout the whole activities.

[4] The "advanced activity area" refers to an area where further developed activities (for example, joint activities with other agencies, capacity-development of legal professionals from both provincial- and district-level institutes) are implemented based on the results of activities in the pilot area in the first phase. For your information, the administrative subdivisions of Vietnam are composed of centrally-controlled municipalities, provinces (which are equivalent to prefectures in Japan), and districts (which are equivalent to municipalities in Japan). The Supreme People's Court and the Supreme Procuracy are located in the central area, and there is a provincial-level procuracy (court) and a district-level procuracy (court) in each province and district, respectively (63 provincial-level procuracies and 700 district-level procuracies, in total).

International Cooperation served as the liaison office in implementing project activities in the areas under the jurisdiction of each department involved in the project; namely: the Department of Civil and Economic Legislation, the Department of National Registry of Secured Transactions, the General Department of Civil Judgment Execution, the Department of State Compensation, and the Department of Judicial Administration and the Judicial Academy.

1. Department of Civil and Economic Legislation (in charge of the Civil Code)

(a) Outline of activities

In order to revise the Civil Code to adequately serve the country's transition to a market economy, the following activities were conducted:

- Organization of several working sessions, workshops[5], etc. with JICA long-term experts;
- Local seminars[6] with JICA short-term experts (Japanese scholars in civil code) (twice);
- Training program in Japan for officials of the Ministry of Justice (MOJ) of Vietnam (in March 2012).

Through these activities, basic information on the following topics was provided to the MOJ:

- The basic structure of civil code (*Pandecten* and *Institutiones*);
- The structure and general provisions of the Civil Code of Japan (the system of capacity to act, corporation system, agent system, prescription system, etc.);
- The meaning of real rights and claims, system of possession and various types of real rights (usufruct, security interest), etc.

Moreover, approximately two months after the training program in Japan, a seminar was held within the MOJ of Vietnam to share the results of the training program with officials who had not participated in the training in Japan.

(b) Major deliverables

- A report on the direction of the revision of the Civil Code (already submitted to the government of Vietnam)
- Draft Civil Code (books on general provisions, real rights and claims)

(c) Sub-conclusion

The MOJ of Vietnam initially considered partial amendment of the Civil Code in force. However, in around 2010 it hammered out a complete and drastic revision of the Code and adopted a clear policy of introducing the real rights system under the *Pandecten* method[7]. I consider that, through each of

[5] A working session refers to a round-table-talk type of meeting with a dozen people, while a workshop refers to a meeting with approximately 50 participants (according to the author's opinion).

[6] A seminar refers to a large-scale conference with approximately 100 participants (according to the author's opinion).

[7] The current Civil Code of Vietnam does not adopt the real right system, and its structure does not belong to either the *Pandecten* or *Institutiones* method.

the abovementioned activities, we provided to some extent the basic information necessary for the MOJ to revise the Civil Code. However, in reality it is difficult to say that the MOJ of Vietnam smoothly drafted the revised code reflecting the information provided from Japan. This is due to the fact that:

- The Department of Civil and Economic Legislation in charge of revising the Civil Code gave priority to the Marriage and Family Law before the Civil Code; and
- Because of the above, main personnel in the Department were assigned to draft the Marriage and Family Law.

Another attributable point was the extensive amount of time spent preparing the abovementioned report on the direction of the revision of the Civil Code, rather than on the drafting of the Civil Code itself.

According to the explanation given by the MOJ, it has completed the draft Marriage and Family Law and a report thereon, and has already submitted these to the government (in July 2013). Hence, focus should shift towards the revision of the Civil Code and hopefully the drafting process would accelerate.

The MOJ of Vietnam intends to introduce the real rights system into the revised Civil Code. As preconditions for this, several problems must be addressed:

- In Vietnam, land is held by the entire population (the nation), and each parcel of land is assigned or rented to the people by the nation granting a land-use right. Accordingly, the type of possible transactions of land is also limited based on the type of land (transfer, exchange, inheritance, security, etc.). Therefore, granting the real rights system were to be introduced, each type of real right would be established on an unstable and incomplete land-use right, whose effect quite limited. A question necessarily follows as to whether the real right established on such an unstable and incomplete land-use right can secure its absoluteness and exclusiveness;
- The law which governs the land-use right is the Land Law, which is under the jurisdiction of the Ministry of Natural Resources and Environment (MONRE). In order to establish real rights -- such as usufruct and security interest -- on a land-use right, the Land Law needs to include provisions to that effect. However, no agreement has been reached so far between the MOJ and the MONRE regarding the introduction of the real right system, and no information has been provided so far about the inclusion of provisions on real right in the Land Law;
- The same type of problem as that of the land-use right exists in relation to residence. The ownership of residence is granted to an individual, different from the case of land. This is provided for in the Residence Law, under the jurisdiction of the Ministry of Construction. To enable the establishment of a usufruct or security interest on residence, it must be prescribed in the Residence Law. However, said Ministry and the MOJ have not moved closely together on

this.

Thus, the abovementioned underlying issues in the land system and a lack of cooperation among Ministries have impeded the introduction of the real rights system in Vietnam.

Furthermore, there is also an issue of insufficient understanding on the relations between general law and special law. For example, regarding a corporation which is a for-profit organization, the Corporate Law (which is a special law of the Civil Code) provides for its establishment, organization, liquidation, etc., in detail. Nevertheless, consideration is currently being given to include detailed provisions on a for-profit organization in the chapter of corporation in the Civil Code as well. This fact casts doubt on the Vietnamese understanding of relations between general law and special law.

In spite of the above problems, the Vietnamese participants in the project have made the following efforts which are to be extolled:

- Approximately two months after the training course in Japan, a workshop was held within the MOJ to share the achievements of the training course among its officials. In this workshop, the participating officials presented the knowledge and experience gained in Japan;
- The MOJ has made pragmatic efforts for revising the Civil Code, including the creation of a report (in March 2011) on the survey conducted in provincial cities, so as to understand the problems in the Civil Code in force (though this activity was not within the framework of cooperation with JICA).

I regularly used our TV-conference system (JICA Net) to most effectively conduct daily activities in the field, training courses in Japan and local seminars by short-term experts. More specifically, when JICA long-term experts reported their activities to Japan through JICA Net, they requested MOJ officials to join to explain problems and interests to the advisory group in Japan[8]. In this way, JICA Net was used efficiently as a place for discussion between the advisory group and MOJ officials. Especially prior to the organization of training courses in Japan and local seminars with short-term experts from Japan, we often used JICA Net to accommodate requests from Vietnamese participants for training courses and local seminars.

The Civil Code is one of the basic laws of a nation in the civil field. Its revision cannot be achieved overnight and it is quite natural for the process to require an extended period of time. The concerned officials of the MOJ have advanced the revision work with a limited period of time and manpower. Though the process is behind schedule (the revised draft was to be submitted to the National Assembly by the end of 2013), the draftsmen have devoted themselves to the work, even putting in

[8] The advisory group is a study committee formed in Japan to support the revision of the Civil Code of Vietnam. It is composed of several scholars in civil code, including Professor Emeritus Akio MORISHIMA, and an ICD professor.

time on weekends. I would like to pay my appreciation to their untiring efforts.

2. Department of National Registry of Secured Transactions (DNRST) (in charge of laws on secured transactions)

a. Outline of activities

Several workshops and training courses were conducted for drafting legal normative documents on secured transactions, and for capacity-building of officials in charge of the registration of secured transactions in local regions. Specifically, workshops were held in the north, central region and south of Vietnam to help draft Decree No.11 on secured transactions, and a joint circular concerning the disposition of secured assets, etc. In the workshops, Vietnamese experts (from government agencies, banks, etc.) were interviewed on the draft prepared by the DNRST, and Japanese experts also gave comments on the draft, as well as introducing the mortgage system in Japan.

b. Major deliverables

- Enactment of Decree No.11 on secured transactions (February 2012)
- Joint circular on the disposition of secured assets (last draft)

c. Sub-conclusion

Decree No.11 on secured transactions is a partial revision of Degree No. 163 concerning secured transactions enacted in 2006. These decrees have been issued for proper operation of secured transactions as provided for in the Civil Code. Decree No.11 clearly prescribes several points not included in the Civil Code or Decree No.163, such as the principle of priority of secured transactions with registered collateral (mortgage), the principle of the equality of creditors in guarantee obligations.

The Civil Code of Vietnam does not clearly distinguish between a real right and a claim, nor the difference between physical and personal collateral, nor the relative merits among secured parties. To an extent, these were made clear in Decree No.11; provided, however, these principles being prescribed in the Civil Code.

Decree No.11 introduces a system similar to so-called revolving mortgage, which secures obligations to accrue in the future. However, as these provisions are largely abstract, Japan should continue to provide information on the revolving mortgage system to Vietnam.

Regarding the joint circular on the disposition of secured assets, the MOJ should take pride in working on the drafting of the circular in a manner that reflects the feedback from various bankers in Vietnam, so as to make the circular more practical.

At the same time, it should also be noted that in Vietnam the disposition of secured assets is performed privately, in principle. Expressly, in cases where a debtor does not voluntarily deliver the secured asset to creditors (banks, etc.) the creditors have no other options than filing a lawsuit to the court for the delivery of the secured asset. As the disposition of a secured asset (foreclosure, sale and conversion into cash) may take years, a drastic system reform (the introduction of the summary trial procedure and a system to foreclose secured assets by public execution agencies) may be necessary for expeditious disposition of secured assets.

Currently JICA cooperates in the drafting of a joint circular on the registration of security established on a residence to be constructed in the future. In relation to this type of registration, Decree No.71 on the enforcement of the Residence Law provides that the Central Bank shall draft a circular thereon. Conversely, a decision by the Prime Minister provides that the MOJ is in charge of secured transactions. Thus, there appears to exist variance between these legal norms. Under these circumstances, the MOJ should reach an agreement with the Ministry of Construction and the Central Bank, but its approaches have not proven successful.

Although the Deputy Director of the DNRST is young (30 years of age), she has significantly improved her capacity through such occasions as listed below, and is considered a very promising officer:

- During a training course in Japan[9], she primarily studied the mortgage system;
- In a local seminar held in Vietnam after the above training course, she presented her knowledge of the mortgage system gained in Japan;
- She served as a lecturer in a training course held in local regions.

Although it has been deemed that the outcome of capacity-building efforts cannot be measured quantitatively, through working in the field we have been able to observe several junior officials improve their capacities. This may be considered to be one of the positive impacts of our project.

3. General Department of Civil Judgment Execution (GDCJE)

a. Outline of activities

Our activities aimed at improving practices in the execution of civil judgments, by helping draft relevant legal normative documents. Concretely, we organized such events as:

- Local surveys to understand the actual status of civil judgment execution;
- Seminars to improve practical operations;
- Workshops to revise Decree No.58 concerning civil judgment execution; and

[9] This training course held on civil code in March 2012 also dealt with mortgage.

- A training course in Japan in January 2013, in which MOJ officials of Vietnam surveyed civil execution practices in Japan.

b. Major deliverables

- An assessment report on the Civil Judgment Execution Law three years after its enforcement;
- Draft revised Decree No.58 on civil judgment execution (final draft)

c. Sub-conclusion

The GDCJE actively conducted surveys in provincial cities to obtain direct feedback from bailiffs in the field (at the province and district levels), and to understand any problems occurring at the forefront[10]. In order to do so most efficiently, the General Department had requested the executing department in the target area prepare a report on practical issues ahead of time. On the date of the survey, the regional execution departments were then able to present problems in practice in accordance with the report they had prepared in advance, thereby facilitating the understanding of such problems by the GDCJE.

Local surveys targeted each province in the southern part of Vietnam. In the surveys, officials of the GDCJE of the MOJ – a central agency - as well as chiefs of several regional execution departments (four or five) in the north and central parts, joined in presenting their own problems in practice. As a result, the local surveys provided a venue for exchanging information on the actual situation of execution in the northern, central and southern regions of Vietnam. Thus, it can be taken that the local surveys offered opportunities for the central agency to gain extensive understanding of the actual situation of execution practices in the province.

The abovementioned assessment report on the enforcement of the Civil Judgment Execution Law has been created incorporating practical issues extracted through the above activities. Thus, it is of a practical content and organized point-by-point. For example, the report clearly shows whether each problem should be addressed by amending laws, decrees, or improving practices. And in order to solve problems found through the abovementioned local surveys, etc., Decree No.58 on the concrete operation of the Civil Judgment Execution Law was also revised. In the course of its revision, workshops were held to gain feedback on the revised draft from bailiffs and other legal practitioners in the north and south of Vietnam. Taking these opportunities, Japanese experts also provided

[10] Through these surveys, several problems were made clear: 1) difficulties in assessing the conditions of judgment debtors' properties (confirmation of conditions for execution), in collecting execution fees, in assessing properties to be attached, etc.; 2) the lack of detailed guidelines on the disposition of properties in co-ownership; 3) unsuccessful auction of properties attached, making it impossible to dispose of the properties; 4) difficulties in simultaneous disposition of land and a residence thereon due to different timings of the transfer of the ownership of the residence under the Residence Law (at the time of notarization) and of the transfer of the right to use land under the Land Law and the Civil Code (at the time of registration); 5) not being able to hold a dissolved company accountable; etc.

comments on the draft.

Currently the GDCJE is undertaking the revision of said law in full scale. It is expected that the General Department will work on the revising process making full use of practical issues found through the abovementioned local surveys and the knowledge gained from Japanese experts at training courses in Japan, etc.

4. Department of State Compensation (DSC)

a. Outline of activities

Activities with the DSC included the organization of training courses to promote the dissemination of the State Compensation Law; workshops to draft a circular on the operation of said law; a training course in Japan; and a local seminar to share the results of the training course in September 2012.

b. Major deliverables

- Establishment of the State Compensation Law
- Several types of draft joint circulars

c. Sub-conclusion

The State Compensation Law was enacted in June 2009 and was put into force in January 2010. In relation to this, activities to promote the dissemination of the new law (including training courses) were aggressively developed, in addition to the preparation of a government decree and various types of circulars for the enforcement of the law. As a result, Decree No.16 as well as six joint circulars have been created and the number of claims for compensation has steadily increased[11].

It should be noted that JICA was not responsible for drafting all six joint circulars. This may mean that the DSC of the MOJ has not requested across-the-board assistance from JICA, but has intended to draft legal normative documents through its own efforts. Moreover, in drafting joint circulars, in order to obtain opinions from as the widest range of individuals as possible, workshops have been held in the north and the south.

The DSC, which includes a compensation resolution office and a compensation resolution center, was established within the MOJ in July 2011. Thus, an organizational basis has been laid for the smooth operation of state compensation practices. Although JICA did not actively cooperate with the MOJ in the establishment of the department, it can be regarded that the department is a positive result of the enactment of the State Compensation Law.

[11] In the training course organized by the Department of State Compensation of the MOJ (in June 2013), it was reported that since January 2010, 182 cases had been received with 137 already reaching resolution.

The law has steadily been disseminated in Vietnam through training courses held annually. In this process, both senior and junior officers of the Department who participated in training seminars in Japan have served as lecturers in explaining the law, and have offered useful information and knowledge gained in Japan to judicial officers in provincial cities. In this way, the personnel in the central agency related to the law have seen their capacity steadily develop through the dissemination of the law.

As in the case of the Civil Code, seminars were held by the MOJ to share the information and knowledge obtained in Japan in relation to the State Compensation Law. Thus, their efforts for the promotion of information-sharing should also be given high marks.

5. Department of Judicial Administration (family registration)

This department is in charge of family registration control and dispatches its officers to local regions to organize training courses for local judicial officers in charge of family registration control. JICA has cooperated in the organization of these training courses. Furthermore, in October 2010, a training seminar was also held in Japan on the topic of family registration practices in Japan.

In Vietnam, family registries are made on each registration item, including birth, marriage, adoption, divorce, death, etc., which is different from Japan where one registry includes entries of all relevant information. Moreover, I was unable to introduce the Japanese family registration system in detail in the capacity of a long-term expert. Due to these circumstances, our assistance focused primarily on financial support for the organization of training courses organized by the MOJ.

6. Department of Legal Aid (on notary)

No particularly notable activities have been conducted nor achievements made, except for a seminar and a training course for draftsmen of the Notary Law.

7. Judicial Academy

The Judicial Academy is a training institute under the MOJ for MOJ legal officers (bailiffs, notaries, etc.) and legal professionals (judges, private attorneys, etc.). JICA provided assistance to this institute in the preparation of textbooks including a lawyer's handbook, criminal cases resolution manual, civil cases resolution manual, etc. However, JICA's primary assistance was financial support for the publication of these textbooks. In drafting and revising textbooks, at the stage when their outlines were formulated, their draftsmen exchanged opinions with Japanese experts to at least partially

reflect Japanese views in the textbooks[12].

I myself conducted seminars to introduce the Code of Criminal Procedure of Japan to students and instructors in the judicial training course at the Academy.

8. Overview of Activities with the MOJ

I deem that the goals of JICA's assistance to the MOJ – completing a duty performance flow of drafting and revising legal normative documents based on problems in practice, and unifying activities to support legislative drafting and to improve legal practices – have been achieved to certain extents.

At the same time, however, there still exist several problems as listed below:

- Insufficient information-sharing within the MOJ and with other Ministries. For example, in the revision of the Civil Code, in spite of the important relevance of the mortgage system, officials in the department in charge of security did not participate in activities for revising the Civil Code. There were also cases in which officers involved in the revision of the Civil Code did not participate in the activities for drafting legal normative documents on secured transactions. Thus, a mechanism for mutual cooperation between both departments has not been completely established. The MOJ was fully aware of this problem with its in-house cooperation mechanism working on occasions but not regularly.
- In regards to problems which should be solved through legislation, not through decrees or circulars, there is a tendency to prefer the latter solution. This may be attributable to the fact that judges are not granted the authority to interpret laws, and have no other choices but de-facto interpretation under circulars. Moreover, the judges may lack basic juristic knowledge as to matters to be governed by law;
- Concurrently, some issues were beyond the ability of long-term experts. For example, in assisting in legislative drafting of basic laws, including the Civil Code, in addition to information provision on the basic principles and general rules of the Civil Code of Japan, long-term experts were able to offer quite substantial advice and information with support and direct guidance from the advisory group in Japan. However, in conducting workshops for drafting circulars for the operation of decrees, etc., on the State Compensation Law and secured transactions, extremely detailed issues in practice were brought for discussions. In such cases, Japanese experts were unable to offer sufficient comments or information, or provided unsatisfactory comments for a lack of knowledge on legal practices in Vietnam. Drafting appropriate circulars for proper legal

[12] According to an interview to the Deputy Director of the Judicial Academy, manuals were revised to reflect Japanese comments on the necessity of supplementing the cooperative relationships between prosecutors and investigation agencies including the public security agency, and the appeal system for defense counsels at the investigation stage.

operation is crucial in Vietnam, and it is meaningful to cooperate in the drafting of circulars for fair and uniform legal operation. At the same time, however, the more long-term experts try to deeply understand local practices, the greater risk they run of seeing the scope of their work expand indefinitely. In assisting in the drafting of circulars, to what extent and how JICA should cooperate is an issue to be discussed in the future.

B. Supreme People's Procuracy

1. Supreme People's Procuracy (SPP)

a. Outline of activities

During the first phase of the project, working sessions were held several times to draft the Prosecutors' Manual, Volume 2, and comments were given on the final draft. The manual was completed and published in March 2011 and distributed to the people's procracies, prosecutors' training center, etc. nationwide. In this way, the manual has been used as a reference material for the prosecution service.

In the second phase of the project, seminars for revising the Criminal Procedure Code and the People's Procuracy Organization Law were held at the People's Procuracies in Hai Phong and Hue. A working session was also conducted at the SPP for revising the latter law, with Japanese experts briefly introducing the criminal justice system of Japan, etc.

In addition to the above activities, training courses were held in Japan inviting officers from the SPP in December 2010 and December 2012. In August 2013, in collaboration with the MOJ of Japan, JICA, etc., Dr. Nguyen Hoa Binh, Prosecutor General of the SPP, was officially invited to Japan.[13]

b. Sub-conclusion

In the second phase of the project, our activities with the SPP were limited in scope as we moved our focus to the People's Procuracy in Hai Phong City. However, whenever necessary, we did our best to accommodate requests from the SPP, such as: providing information in English regarding the organization of Japan's prosecution service, authorities of public prosecutors, etc.; organizing seminars twice to introduce the legal aid system in the criminal field in Japan, though the latter was not within the framework of PDM[14].

[13] It was the first time that a Prosecutor General of the SPP officially visited Japan.

[14] PDM stands for Project Design Matrix. It is a project outline chart showing several critical factors of a project, such as: activities to be conducted in the project, input, output, goals, outside conditions, indexes, etc., and logical relations among them. It is created based on an agreement between JICA and counterpart organizations and project activities are developed in accordance with PDM.

2. People's Procuracy in Hai Phong City

a. Outline of activities

At the People's Procuracy in Hai Phong City, several seminars and training courses were conducted on criminal cases, civil cases, administrative cases and commercial cases. For example, with regard to criminal cases, seminars were held with the aim of improving the capacity of relevant officers, on a wide variety of themes including: cooperative relationships between police and the prosecution service, handling of complaints and accusations, questioning of suspects, on-site inspection, corpse inspection, institution of prosecution, stay and suspension of cases, activities at the stage of trial preparation (supplementary investigation), attendance at trials, handling of the appeal instance, etc.

In Vietnam, prosecutors are required to participate in civil and administrative trials, etc., as the representatives of public interest (in the capacity of supervisors of judicial activities). In line with this, training courses were held to improve prosecutors' interrogation and argument presentation skills. These training courses were held with support from other relevant institutions in Vietnam. For example, the Deputy Director of the Institute for Procuratorial Science, investigators of the public security police, instructors of the Public Security Police Academy, etc. were invited to give lectures.

Furthermore, at the People's Procuracy in Hai Phong a survey on the summary criminal procedure was conducted (targeting district-level people's procuracies and people's courts). After extracting and analyzing problems in practice through the survey, a seminar was conducted to report the results of the analysis.

Through the summary procedure under the Criminal Procedure Code, the investigation period may be shortened but the trial procedure remains the same as in the ordinary procedure. In the above survey, interviewed prosecutors and investigators in the field made practical comments, such as: "The shortened investigation period shall only pressure investigators in their activities"; "The summary procedure should make the trial procedure simpler and for this purpose, single-judge trials should be made possible."

In the course of conducting the survey, criminal trials under the summary procedure were observed. After the observation, working sessions were held among judges, prosecutors, investigators and defense counsels involved in the trials to discuss problems found in relation to the trials observed. In this manner, the People's Procuracy in Hai Phong City collected and summarized opinions collected from provincial-level and district-level prosecutors, investigators, judges and private attorneys in the field, and submitted a report on the entire course of action (including the results of the survey and opinions obtained) to the SPP as a proposal for the revision of the Criminal Procedure Code.

In relation to Draft Revised Constitution and Draft Revised Criminal Procedure Code, seminars were held on each subject to hear opinions from provincial- and district-level prosecutors. Their opinions were summarized and a report on the analysis of the opinions was also submitted to the SPP. In a seminar on Draft Revised Constitution, several opinions were presented. For example:

- With regard to the omission of judicial review on detention in Draft Revised Constitution, it should not be omitted:
- Criminal defense should be provided not only to defendants but to suspects as well.

In the training course held in Japan in December 2012, six prosecutors from the People's Procuracy in Hai Phong City participated and studied the Code of Criminal Procedure of Japan, criminal practices, etc., After returning to Vietnam, they served as lecturers at a workshop held for the presentation of their studies in Japan (in March 2013), to share with other officers the knowledge gained in Japan. They also conducted a criminal mock trial, as they had experienced in Japan[15].

A joint seminar was also held among the People's Procuracy, People's Court, Bar Association, Public Security Police, people's assessors, etc. of Hai Phong City in October 2012, under the leadership of the Judicial Reform Committee of the said city, to help improve the criminal procedure. Each attending institution presented problems they had experienced in the course of criminal procedure[16], with the Deputy Prosecutor General of the SPP observing their presentations.

The current Criminal Procedure Code of Vietnam has been adopted from the inquisitorial system and the adoption of the adversarial system is being examined in order to facilitate arguments by parties. To serve this purpose, seminars were held to introduce the Code of Criminal Procedure (in which I myself served as a lecturer), and Professor Yutaka Osawa of the University of Tokyo gave a lecture on the topic: "Background to the transition from the inquisitorial system to the adversarial system in the Code of Criminal Procedure of Japan after World War II."

b. Sub-conclusion

As mentioned above, the People's Procuracy in Hai Phong developed project activities very aggressively in which quite high-level opinions were presented.

In the abovementioned activities, executive officers (department director or deputy director) from

[15] The mock trial dealt with a case in which four co-defendants, after conspiring with each other, assaulted two victims and inflicted injuries on them. One of the co-defendants was a minor and a violation of the procedure was also disputed as defense counsels were not assigned to the defendants during their detention. The used mock case record had a white cover as the one used at the Legal Training and Research Institute of Japan, and the entire performance was of a high perfection level.

[16] The seminar roughly corresponded to the first-instance council of Japan, and the participants presented their opinions directly.

SPP departments related to the themes of the seminars and training courses also attended to observe discussions and give comments as necessary. For example, prior to the seminars held nationwide in the beginning of September 2013 on the handling of appeal instance, the People's Procuracy in Hai Phong City organized a seminar on the same topic in the middle of August. On this occasion, the Director of the Appeal Instance Department of the SPP joined and expressed his hope of implementing national seminars in reference to the results of, and feedback gained through, the seminar in Hai Phong. In this way, experiences in Hai Phong have been transmitted and developed nationwide through the SPP, leading to the creation of significant results.

Moreover, as mentioned above, the prosecutors who participated in the training course in Japan conducted several activities (a seminar and a mock trial) to disseminate and share their learning in Japan. These efforts for institutional sharing of individual achievements are to be highly commended.

In addition to the abovementioned activities with JICA, the People's Procuracy in Hai Phong City demonstrated excellent performance in the ordinary prosecution services. For these splendid achievements, it was awarded the first-grade independence decoration by the President. It was a quite rare case that a People's Procuracy in local regions was accorded such high honor and it was the second or third case nationwide (there are 63 provincial-level people's procuracies in Vietnam).

3. Activities with People's Procuracies in Local Regions

Based on the experiences in Bac Ninh Province, a pilot area in the first phase, and Hai Phong City, an advanced activity area in the second phase, we organized Japan-Vietnam Criminal Procedure Code Comparative Seminars in the People's Procuacies in Lao Cai Province, Hai Duong Province and Quang Binh Province. All these seminars were attended by a wide-spectrum of relevant people, including executive officers of the Communist Party in each Province (Deputy-Secretary level), judges, private attorneys, public security police officers, provincial- and district-level prosecutors, etc. Their interests ranged from the investigative authorities of Japanese public prosecutors, to the principle of discretionary prosecution, principle of indictment-based prosecution, cross-examination at trial, lay judge system, roles of the High Public Prosecutors Offices, its relations with the District Public Prosecutors Offices, etc. We were informed that the People's Procuracies in the above provinces would make recommendations on the revision of the Criminal Procedure Code and the People's Procuracy Organization Law, by use of the knowledge and experiences gained through activities with JICA. It deserves acclaim that experiences in designated areas: Bac Ninh and Hai Phone Provinces, have gradually been applied nationwide.

C. Activities Worthy of Special Mention

1. Organization of the Joint Coordination Committee (JCC)

Until my assumption of office as a JICA long-term expert, no meeting had even been held among each counterpart organization and JICA (JCC meeting). In January 2012, the first JCC meeting was held and subsequently in May of the same year and February 2013 JCC members met to share information on their activities. It should also be noted, however, that the main agenda in JCC meetings was simply presentations of activities by each counterpart, and no active exchanges of opinions or substantial discussions were held.

2. Collaboration with the Legal Development Project in Laos (South-South Cooperation in the Legal Field)

a. Acceptance of the Working Group of the Criminal Procedure Code of Laos in Vietnam

Currently a legal development project is ongoing in Laos as well, in which assistance is being provided for the revision of the Criminal Procedure Code. Laos, same as Vietnam, is a socialist country and its criminal procedure is similar to that of Vietnam. Thus, in response to a request from Laotian participants in the project for studying the Criminal Procedure Code of Vietnam, we invited fifteen members of the Criminal Procedure Code Working Group of Laos (to Hanoi) in January 2013.

The invitation program included the following activities:

- A lecture on the direction of the revision of the Criminal Procedure Code of Vietnam at the SPP;
- Presentation of teaching materials and teaching programs on the Criminal Procedure Code at the Judicial Academy of the MOJ;
- A lecture on the criminal defense system in Vietnam at the Vietnam Bar Federation;
- Observation of a criminal trial at the Bac Ninh People's Court and a meeting with the Vice President of the Court.

In spite of being a very short program of four days, each lecture and activity was of a high level and met the expectations of the Laotian participants. Questions were actively put forth to the lecturers and very productive discussions were held[17].

b. Dispatch of Vietnamese Experts to the Seminar for Revising the Penal Code of Laos

As the revising work of the Penal Code in Laos was fully in progress, a kick-off seminar was held in May 2013. On this occasion, in response to a request from the MOJ of Laos, three prosecutors were dispatched from the SPP and the People's Procuracy of Hai Phong City. They gave lectures on the outline of the Penal Code of Vietnam, the direction of the Code's revision, and characteristics of

[17] ICD NEWS No.55 (in Japanese) (published in June 2013) includes an article on this program.

property offenses in Vietnam.

3. Activities for Constitutional Revision

In July 2012, a delegation composed of high-level officers[18] visited Japan to study the Constitution of Japan in an effort to amend the Constitution of Vietnam. In the study, focus was placed on the separation of powers, popular sovereignty, local autonomy, the basic human right protection system, judicial precedent system, etc[19]. The curriculum consisted of lectures by Professor Yasuo Hasebe of the University of Tokyo, Professor Katsutoshi Takami of Sophia University, etc., and visits to the Supreme Court, Ministry of Justice, Aichi Prefectural Government Office, Nagoya University, etc.

The acceptance of this delegation in Japan was requested by Mr. Ha Hung Cuong, Minister of Justice, when I had a meeting with him in August 2011. Approximately two years later, it was carried out with the cooperation by Mr. Motonori Tsuno, then JICA Vietnam Office Chief Representative, Professor Yoshiharu Tsuboi of Waseda University, etc[20].

4. Acceptance of the MOJ Leadership of Japan

In June 2010, I arranged for the acceptance of a delegation led by Mr. Kotaro Ono, then Vice-Minister of Justice of Japan; in January 2012, Mr. Hideo Hiraoka, then Minister of Justice; and in August 2013, Mr. Kunihiko Sakai, Director General of the Research and Training Institute. All visits were completed with great success owing to the cooperation by the Embassy of Japan in Vietnam and others.

5. Acceptance of Japanese interns

Since before my dispatch to Vietnam, the JICA Project Office in Vietnam had accepted intern students from Chuo University and Kansai University. In addition to continuing to receive these students, we began to accept one to three Vietnamese students from the Research and Education Center for Japanese Law of Nagoya University, which is located within Hanoi University of Law, in 2010.

[18] The delegation was composed of 24 delegates, including four minister-level officers: Mr. Nguyen Xuan Phuc, Vice Prime Minister; Mr. Truong Hoa Binh, Chief Justice of the Supreme Court; Mr. Ha Hung Cuong, Minister of Justice; and eight vice-minister level officers.

[19] The results of the study were published in ICD NEWS No.52 (in Japanese) in September 2012.

[20] After the visit of the Vietnamese delegation to Japan, the JICA Project Office continued cooperation in the amendment of the Constitution for a period of time, in cooperation with the Law Committee of the National Assembly, etc. However, as this activity affected our original project activities, its suspension was necessary.

V. CONCLUSION

As explained above, my activities in Vietnam over a period of approximately three and half years progressed smoothly for the most part. This success owes to, rather than solely my efforts but the collective effort of all the JICA long-term experts involved in this project, JICA Project Office local staff, JICA HQs, JICA Vietnam Office, legal scholars in Japan including those of the advisory group, the Ministry of Justice of Japan (especially the International Cooperation Department), the Supreme Court, the Japan Federation of Bar Associations, the Ministry of Foreign Affairs (Embassy of Japan in Vietnam), interpreters, etc.

The creative efforts exerted by the Vietnamese counterpart organizations for the effective pursuit of project activities cannot be ignored. It was not as though I fulfilled my mission by giving instructions to the counterpart organizations, but counted on their ownership and I simply lent a helping hand for the smooth performance of project activities. In this sense, I keenly felt the importance of an environment creation in which the counterpart organizations are able to demonstrate their ownership. In particular, the duty of the project chief advisor is to preside over the progress of the project from a broader perspective of the situation, and requires constant consideration on the smooth performance of project activities. While the legal information I provided to Vietnam was quite limited, the achievement of positive results during my tenure could be attributed to the successful management of the project.

Last but not least, I would like to express my sincere gratitude to the opportunity provided to me to become involved in such a large-scale project, as well as to the great support extended from a multitude of people concerned. Thank you very much.

INTERNATIONAL COOPERATION DEPARTMENT
RESEARCH AND TRAINING INSTITUTE
MINISTRY OF JUSTICE

Address : 1-1-60 Fukushima, Fukushima-ku, Osaka 553-0003 Japan
Tel : +81-6-4796-2153/2154
E-mail : icdmoj@moj.go.jp
Web-site : http://www.moj.go.jp/ENGLISH/MEOM/meom-01-05.html

Edited by the International Cooperation Department
Research and Training Institute
Ministry of Justice, Japan
Published in January 2015