ICD NEWS

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～Features～

Features

THE 16TH ANNUAL CONFERENCE ON TECHNICAL ASSISTANCE IN THE LEGAL FIELD

Keynote Speech by Dr. David M. Malone, Rector of the United Nations University and the UN Under-Secretary General, and a Talk with Dr. Yozo Yokota, Special Adviser to the Ministry of Justice of Japan

NEW PROJECT IN VIETNAM

Commencement of a New Project for Vietnam – The Project for Harmonized, Practical Legislation and Uniform Application of Law- Targeting Year 2020 -

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Please note that the articles contained in this book were originally written for ICD NEWS NO. 61 through No. 64 (Japanese version) published in December 2014, March, June and September 2015. Therefore, some of the future dates and times referred to in the articles may now be in the past. Please also note that the titles of some individuals may have changed.

- I. Contributions -

WHEN ICD NEWS WAS FIRST PUBLISHED – EXPECTING FURTHER DEVELOPMENT OF LEGAL TECHNICAL ASSISTANCE

Michiaki OZAKI

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I. INTRODUCTION

The International Cooperation Department (hereinafter "ICD") of the Research and Training Institute (RTI) of the Ministry of Justice (MOJ) was established on April 1st, 2001, in the very first year of the 21st century. This year, 2015, marks its 15th anniversary.

I was appointed as the first director of the ICD at the time of establishment. The initial staff of the ICD comprised only about 10 members, including faculty members and administrative officers. Establishing the ICD was a challenging endeavor with numerous difficulties in such matters as budget and personnel. It was thus an epoch-making event for not only the MOJ but also for the entire nation in that an independent department was established within the MOJ specializing in "international cooperation for the maintenance and improvement of legal systems in foreign countries."

A full 14 years has passed since the establishment. Its staff, as well as the scope of its activities, has expanded exponentially. In July 2014, I was appointed Superintending Prosecutor of the Osaka High Public Prosecutors Office and was posted again in the Osaka Nakanoshima National Government Building (where the ICD is located) after an 11-year period. I was able to attend the ICD's 16th annual conference on technical assistance in the legal field, at the main Osaka venue held on January 23rd, 2015. A panel discussion was held at the conference among officers specializing in legal technical assistance, who were invited from the UNDP, the World Bank and the EU. Observing the discussion, I was impressed that the legal technical assistance by Japanese government has much increased its significance in the international community.

I was here provided with an opportunity to contribute a foreword to the latest issue of ICD NEWS,

ICD's departmental journal. As legal technical assistance activities have developed significantly since I left the ICD, it is beyond my capacity to comment on the present status of, or make proposals on its recent activities. Accordingly, I would like to assume my responsibility by referring to my thoughts at the time I worked for the ICD until 2003. Though this may be considered my personal memoir, it would be my pleasure if my words could be of any use for further development of legal technical assistance in the future (As a memoir around the time of establishment of the ICD, see Terutoshi Yamashita, Shinshihosha no kankei – Utsuwa wo kangaeru – [Relations of Mutual Dependence – Improving Capacities] , ICD NEWS No.38, pp. 23 [in Japanese]).

II. WHEN ICD NEWS WAS FIRST PUBLISHED

A. Basic Policies of Legal Technical Assistance and Free Discussions

The ICD did not embark on legal technical assistance activities without bases. The Japan International Cooperation Agency (JICA), the MOJ, law scholars, private attorneys, etc. had already been providing assistance to Vietnam, Cambodia, and other countries, an example of which was the assistance in drafting the Civil Procedure Code in Cambodia. Study trips to Japan and local seminars for judicial officials in those countries had also being conducted. Against this background, the ICD was required, not only to continue such activities as had already been implemented by the MOJ, but to find answers to such questions as: what fields of activities the ICD should newly explore; and what roles it should play in the legal technical assistance community of Japan as a whole, in which a sphere of individuals were involved.

Japan has received a number of requests for assistance from abroad. In responding to such requests, the ICD had to seek solutions day-by-day to the following questions:

- What priorities should be considered in selecting requests to accept;
- To what extent we should consider such universal values as democracy and human rights in providing legal technical assistance:
- What benefits Japan would gain through legal technical assistance, which requires government expenditure;
- In what way the ICD should cooperate with those involved in legal technical assistance, including law scholars, judges, private attorneys, etc.

These questions could not be answered all at once. However, we considered it essential trying continuously to find the answers through trials and errors, and discussions, in order to secure consistency in developing our activities.

What I put much value on, for this purpose, were free discussions which could rectify our mistakes and guarantee creative discoveries. I endeavored to encourage as frank and thorough discussions as possible among staff members in planning and implementing assistance activities. One of the points I emphasized as ICD Director was that free discussions could not be realized in an atmosphere where participants were afraid of expressing opinions unless absolutely certain. We could not undertake new challenges without new ideas. I joined discussions at the ICD, expecting to change my conventional ways of thinking.

The method of PCM (Project Cycle Management) - which is widely used in the planning and implementation of assistance to developing countries and in the examination of its effects - is based on an idea similar to the above. This method requires thorough discussions among those involved in development assistance in both donor and recipient countries. Upon a proposal by an ICD professor at that time, all ICD faculty members and administrative officers together received training in this method. I remember having taken a practice course on the subject of planning an assistance project for securing a water supply system. In the practice, each of us was required to: 1) write down our ideas on large-size post-it notes regarding causes for the inability of securing a water supply system in an imaginary country; 2) similarly write down ideas on the reasons for such causes, solutions, project proposals, and the like; and 3) paste them on a large sheet of paper.

Based on the ideas presented in this manner, discussions were advanced. It appeared to me that not only learning the PCM method itself but the simple fact of being trained in it was effective in inspiring our minds.

B. Form of Effective Assistance

Then, what types of assistance should be planned and implemented?

The form of assistance provided by the MOJ until that time was basically holding study trips to Japan; namely, organizing training seminars in Japan by inviting individuals concerned as trainees. Most of such seminars dealt with general or introductory legal matters. Needless to say, training seminars in Japan are important and effective in explaining the legal system of Japan and showing its actual operation, and these programs still account for a large part of assistance activities. To date, several attempts should have been made to improve the contents and methods of such study trips, and the organic cooperation with other assistance projects. However, in part because the study trips in those days covered general or introductory legal issues as main topics, it was not rare that the same trainees were selected several times by counterpart organizations. We faced problems, such as:

- Whether the most appropriate trainees had been selected for each seminar topic;

- As there was a tendency that the trainees ended up gaining solely general legal knowledge, it was questionable whether the information learned through the seminars was truly useful in helping improve the legal systems of their countries.

However, the ICD could not evaluate sufficiently the effectiveness of its assistance.

Looking back on those days, I would say that the ICD was in transition in pursuit of new and more effective ways of assistance.

In order to find ideal ways, a local survey is of the utmost importance. I visited Cambodia and Laos to interview officials of the Ministry of Justice, courts, prosecution offices, private attorneys, economy-related ministries including the Ministry of Commerce, the Politburo of the Central Committee of the Communist Party, donors including the UNDP, etc. concerning their actual situations. In these countries, almost every aspect of society was governed by the ruling party through political and administrative orders. In order to introduce and develop a market economy, it was necessary to renovate such social systems and create a realm of autonomous civil society. To this end, civil activities including economic transactions needed to be promoted, with the participation of individuals and entities through the foundation of legal infrastructure. Such infrastructure would enable free and safe transactions. However, when observing the reality on the ground, I had become aware of the lack of sufficient legal norms suited for this purpose. Moreover, the judiciary was not well functioning in ensuring the effectiveness of the existing legal norms and in realizing the legal rights. Above all, there was an undeniable lack of human resources supporting such functions of the judiciary.

Based on this experience, I began considering that the training of legal professionals including judges would be crucial and that assistance in this area, which is based on our experience and knowledge acquired through the education at the Legal Training and Research Institute of Japan, would be beneficial.

Coincidentally when I visited Cambodia, the first President of the Royal School for Judges and Prosecutors (which provides legal education to candidate judges and prosecutors) requested assistance in education at that school. It appeared to me that this request would pave the way for a new kind of assistance. Though I had to leave the ICD just after proposing this idea, a series of ICD professors were afterwards dispatched to Cambodia to assist legal education at the school. I have been delighted to see their efforts and remarkable results.

I heard that recently in Vietnam, awareness has increased regarding the necessity of training individuals capable of drafting laws with a level of consistency, as is done by the Cabinet

Legislation Bureau in Japan, and that Vietnam requested assistance in this field from Japan. I remember that Mr. Akira Mikazuki, former Special Adviser to the MOJ and Professor Emeritus of the University of Tokyo, showed a deep appreciation of ICD activities, constantly providing us with valuable suggestions. With regard to the establishment of legal systems, he pointed out three aspects therein: legal norms, legal institutions and legal professionals. Since early on, he had stressed the difficulty and importance of training legal professionals ("Ajia Shokoku no Hoseibi ni taisuru Shien to Kyoryoku – Hogakusha niyoru Jakkan no Kanso to Tenbo – [Assistance to Asian Countries in Improving Legal Systems – Comments and Perspectives of a Law Scholar]" Horitsu no Hiroba, Vol.54, No.10, pp.44-46, October 2001). I realized anew the significance of this remark.

C. Collaboration and Transmission

In order to create effective interactions among those concerned, a forum and medium were necessary.

What impressed me first working at the ICD was that a wide range of involvement and contributions by law scholars and private attorneys had led to significant results in legal technical assistance. The ICD also implemented important assistance activities as a national organ. Still, it was necessary not only to further enhance ICD's own activities, but also to consider contributions which the ICD could make to the entire legal assistance activities of Japan, as a national agency continuously engaged in assistance.

All ICD faculty members and administrative officers put our heads together to realize a way of improving our annual conference as a forum for the above-mentioned purposes. We made particular efforts in integrating the information of all entities and individuals concerned, and in formulating a venue for exchanging information and opinions.

For the same purposes, we also decided to publish a medium – ICD NEWS (which was then bi-monthly). Through publication of this departmental journal, we aimed at:

- creating a medium full of contents on the present situation of, and challenges facing the legal systems of the recipient countries and legal technical assistance activities;
- Through the above, helping collaboration among those involved in assistance, and the planning and implementation of their activities;
- Offering information to those interested in the legal systems of the recipient countries and in the actual status of assistance activities, beginning with those involved in the activities of the International Civil and Commercial Law Centre Foundation (ICCLC) – a public interest corporation engaged in the administration of training seminars, etc.

I remember those days in which we discussed the title, format, etc. of the journal. Considering also

the limited staff available, we intended to expeditiously provide firsthand and concrete information to the maximum extent possible, and to provide and expand space for articles by outside contributors. With these purposes, we aimed at creating a medium for the entire legal technical assistance community of Japan, and not a solely in-house journal of the MOJ.

In the first issue of ICD News published in January 2002, Mr. Ichiro Sakai, then Director General of the RTI, referred to the above intent of the publication in the preface: "We are hoping to continue improving this journal with contributions from outside and with support by a wide variety of people, and not to make it simply a departmental journal within the MOJ." In fact, many articles, including research results, have been contributed from outside contributors and JICA long-term experts afterwards, with some having been quoted in research papers by scholars. An English version of this journal has also been published. Soon after the publication of the first issue, we obtained an ISSN (International Standard Serious Number) for our journal and subtitled it as "Law for Development" with the same intent. It was also for the same reason that I titled this foreword: "When ICD NEWS was first published."

III. CONCLUSION

It is said that teaching is learning. Though I worked for the ICD for just two years, I was able to learn a great deal myself. It is my sincere hope to continue my humble contributions to legal technical assistance in some form or another. May I conclude by wishing further development of the ICD, enhancement of Japanese assistance activities, and their further contribution to the rule of law.

ILO AND LEGAL TECHNICAL ASSISTANCE

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INTRODUCTION

The author served as a member of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (hereinafter "ILO Experts Committee") for nearly 12 years from 2003 to the end of 2014. His experience may offer valuable suggestions applicable to the philosophy and practice of "legal technical assistance." The government of Japan is currently emphasizing the importance of legal technical assistance, as part of Japan's Official Development Assistance (ODA) activities. In particular, the International Cooperation Department (ICD) of the Research and Training Institute of the Ministry of Justice has been committed thereto in recent years.

I. WHAT IS ILO?

The ILO is an international organization created along with the League of Nations (LN), as a result of the Paris Peace Conference (1919) that ended World War I. The LN was a general and political body with the aim of the peaceful resolution of disputes and the prevention of war. In the meantime, the ILO was a specialized and functional international organization for the realization of world peace, through international cooperation in a functionally limited field, by guaranteeing the rights and improving lives of workers.

Of these two organizations, the LN ended its roles with the outbreak of World War II, without achieving its original purposes, due to various political factors and institutional flaws. Contrary to this, the ILO went through political and economic crises, including the Great Depression and World War II, consistently working on its mission of protecting the rights and lives of workers. And four years from now, in 2019, it will celebrate the 100th anniversary of its foundation.

There are several factors which have sustained the ILO for nearly 100 years. Throughout its almost centenarian history, the organization has maintained and further developed its missions into the 21st century - an era of peace and development - by overcoming the upheavals and disturbances of the 20th

century.

For one thing, the ILO owes its lengthy existence to its indirect approach toward world peace. Instead of seeking, as in the case of the LN, to prevent wars and gain peace through military or political solutions of member countries, the ILO has made efforts to improve lives and guarantee rights of workers. In other words, it has sought to lower unemployment, poverty, economic disparities and conflicts between labor and management, through the improvement of labor law systems. Currently, in line with a new concept of peace-building, the importance of the "rule of law" ("legal technical assistance" falls into this category) has been highlighted under the United Nations. In this regard, it can be considered that the ILO has been engaged, since one hundred years ago, in the improvement of legal systems for world peace and development, though being limited to the area of labor legal system.

II. A SECOND REASON FOR THE LONG HISTORY OF ILO

Another reason for the ILO's longevity as an international organization with unique roles lies in its organizational and functional features.

The organizational characteristic of the ILO is its tripartite constituents. Different from other international organizations, like the UN, the ILO's General Conference and Governing Body consist of representatives from member states, who represent not only their governments but also employers and workers. In addition, each representative is granted unique voices and votes. As a result, the representatives of social stakeholders from member countries become directly involved in the deliberation process at the ILO. In this way, the actual situations of member states can be directly addressed in the decision-making process by the ILO, making the organization a uniquely flexible entity.

The ILO is also unique in its activities. When setting international labor standards, in addition to legally-binding "conventions," documents called "recommendation," which are not legally binding, are also adopted to flexibly handle labor-related issues. When examining the application status of conventions and recommendations in each state, the ILO respects constructive dialogue with member countries, by not only unilaterally criticizing violation cases but also providing detailed explanations, proposing improvements, or welcoming efforts for improvements. In cases where, as often seen in developing countries, the situation of violations cannot be improved due to a lack of human or financial resources, the ILO can extend technical cooperation by providing advice, etc. In this way, instead of unilaterally establishing strict international standards and stringently supervising the

compliance status of member states, the ILO responds to problems in a flexible manner.

The ILO can thus be considered being able to commit itself to the protection of rights and lives of workers by overcoming various hardships, owing to its constituent structure and flexibility in performing its mandate.

III. INTERNATIONAL LABOR STANDARDS SET BY ILO

As a way of improving lives and protecting rights of workers internationally, the ILO has established a procedure through which each member state improves its labor law system in line with international labor standards set by the ILO. This means that, the ILO has undertaken legal technical assistance (which has recently become a topic in global discussions) since nearly 100 years ago - though being limited to the labor law area.

In the course of legal technical assistance, standard laws are necessary for recipient countries to follow as models. In bilateral cooperation, there is often a tendency for domestic standards of donor countries (advanced countries in most cases) being adopted as models. This has caused a backlash from recipient countries or has been considered a cause for poorly functioning legal systems. The ILO has been flexible in addressing this issue, by adopting two forms of procedures as a way of establishing international labor standards: conventions (legally-binding agreements among nations) and recommendations (non-legally-binding but compliance thereto is recommended with certain authority to each member country).

In other words, legal technical assistance provided by the ILO in the field of labor law system is not based on the labor standards of specific countries (in particular, advanced countries). It is based on conventions and recommendations, which have been adopted in a venue (General Conference) attended by its tripartite constituents including employer and worker representatives.

To date, the ILO has adopted, as international labor standards, 189 conventions and 203 recommendations concerning the rights, lives, safety and health of workers, such as restrictions on working hours, minimum wages, workers' rights to organize and collective bargaining, prohibition of forced labor or child labor, prohibition of discrimination at workplaces, health and safety at workplaces, social security, etc.

IV. SUPERVISING ACTIVITIES BY ILO

The ILO urges each member country to meet the adopted international labor standards. In doing so, the organization has in place a mechanism of monitoring not only the adoption of international labor standards, but also, as a follow-up procedure, the extent of application thereof in each country. There are various methods of monitoring but the most general system is regular assessment by experts on the application status of international labor standards. The "Committee of Experts on the Application of Conventions and Recommendations" of the ILO (the author himself has served as a member of the committee) is responsible for this type of monitoring.

This committee is composed of approximately 20 experts in labor law, international law, international human rights law, etc. coming from such positions as university professors, judges, and legal practitioners. Candidates for committee members are recommended by the Director-General of the ILO, in consultation with the Director of the International Labour Standards Department, and appointed by the Governing Body. In this process, consideration is given in selecting committee members representing different regions and legal systems around the world.

ILO member states are required to report the performance status of international labor conventions which they have ratified every five years in principle, but in the case of eight fundamental conventions and four other priority conventions every three years, to the ILO Secretariat. The ILO Experts Committee is responsible for: 1) evaluating these reports from member states taking into account comments from employer groups and worker groups; 2) reporting their findings to the General Conference and publishing them. Committee members annually assemble at the ILO Headquarters in Geneva for approximately three weeks from late November to mid- December. This meeting aims to evaluate reports (from the governments of member states) and comments (submitted from worker and employer groups per state and per convention) in order to formulate observations. Though these observations are not legally binding as trial judgments, they are regarded politically and socially important to an extent, as they have been adopted as a result of deliberations by internationally prestigious experts.

With regard to recommendations, the performance status thereof is not subject to regular evaluations as in the case of conventions. However, the performance status of matters addressed in recommendations by laws or in practice are to be reported to the ILO.

V. TECHNICAL ASSISTANCE BY ILO

The mandate of the ILO is not limited to monitoring the application status of its conventions and recommendations through the Experts Committee. Its office staff provides advice on occasions to fill gaps between international labor standards and domestic laws and practice in member states. This activity is called "technical assistance." Technical assistance, one of ILO's wide-ranging activities, can be considered to be closest to legal technical assistance which has in recent years attracted special attention, among the types of assistance to developing countries.

Gaps between international labor standards and domestic situations can be observed in developed countries as well, including Japan. However, in the case of developing countries, there are quite a number of cases where domestic labor law systems are not sufficiently established or not all government officers in charge clearly understand the purposes of, and methods of, applying international labor standards to domestic labor situations. In these cases, in response to requests from the governments of developing countries concerned, the ILO office dispatches experts and specialists to initiate discussions with government officers in charge and provide advice on requested topics. Such topics include legislative measures, budgetary measures, personnel allocation, etc.

In recent years, the UN has begun to provide international standard-setting and monitoring services in the field of human rights. These monitoring activities, however, are limited to referring to serious violation cases and criticizing actions (or non-actions) by governments concerned, and have not extended to the provision of technical assistance in order to improve the situation. In this sense, legal assistance by the ILO will be useful in the future, in examining measures to improve the international mechanism to secure compliance of conventions in the field of human rights.

VI. CONCLUSION

The following is a summary comparison between the above-mentioned ILO activities and legal technical assistance.

First, the ILO adopts international labor standards in two forms. The combination of these forms is significant in securing flexibility in its activities: conventions (hard-line legal instruments) and recommendations (soft-line legal instruments).

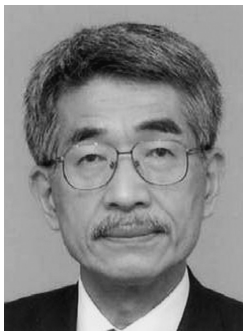
Second, the adoption of international labor standards is not based on domestic legal systems or legal concepts, such as the standards of particular developed countries or those of certain developing

countries. The adoption, and contents of standards is discussed and decided by the General Conference, which is attended by not only government representatives but also representatives of social stakeholders from many countries (developed and developing countries).

Third, although a mechanism is in place to monitor the application status of international standards in each member state, the ILO does not unilaterally admonish countries not meeting the standards. In fact, it shows flexibility in its response to such situations through the communication of the existence of specific problems, proposing improvement measures, and welcoming countries which have taken appropriate measures.

Fourth, in cases where gaps between international standards and domestic situations cannot be filled due to various reasons, the ILO has a system in place to provide necessary technical assistance or advice.

These flexible mechanisms in setting and applying international labor standards, monitoring and supporting the application thereof, highlight the importance of dialogue with related countries. This may offer potential solutions to the international community (including Japan) in promoting legal technical assistance to developing countries.



MY THOUGHTS ON THE EARTHQUAKE IN NEPAL

Kunio TAKAHASHI

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April 25, 2015 would become an unforgettable day for me for the rest of my life.

Around lunch time on that day, I was with a few peers of mine whom I had worked with in the Japanese Embassy in Nepal. We had gathered to celebrate a former colleague who had just retired from the office after returning to Japan, completing his term of office in Kathmandu in March of that year. Precisely when our group had finished lunch, the earthquake struck Nepal. As soon as I arrived home, a brother of mine called me and told to turn on the TV. I spent that day frantically switching channels on the TV in pursuit of the latest local news.

I would like to talk about the background of my involvement in Nepal, as well as my personal history. I had completed my career of over 35 years at the Ministry of Foreign Affairs, approximately two years ago in the fall of 2013. Throughout my career, most of my overseas assignments were in Asia (more specifically, in China, Vietnam, Sri Lanka and Nepal). In the last two countries I served as an ambassador extraordinary and plenipotentiary. These two countries have in common not only their geographical locations in South Asia, but also the fact of being engaged in nation-building after the recent completion of civil wars. This may be viewed with hindsight, but through my experience as a diplomat in helping with national reconstruction from civil wars in Sri Lanka and Nepal at the end of my career, I feel like I was being confronted by fundamental questions, such as: “What is a nation?” or “What is democracy?”.

As an aside, I was posted in Nepal after my assignment in Sri Lanka. As my diplomatic colleagues in Colombo kindly introduced me to their peers in Kathmandu, I was often asked for advice as a “specialist in post conflict” by ambassadors from developed countries in Nepal. This “post conflict” may refer to “post-civil war reconciliation and reconstruction.” However, this does not mean that I had any special knowledge or expertise when I was appointed to Sri Lanka. In fact, the Japanese government, as one of the “Tokyo Co-Chairs (or four co-chairs for peace and reconstruction of Sri Lanka)” (for your information, other co-chair members were the United States, Norway and the EU), had actively been contributing to the realization of peace since the middle of the civil war. As a continuation of such activities, Japan had been intimately involved in the reconciliation and

reconstruction of the country since the end of the civil war. Against this background, I was considered an "expert" in this field for being the Japanese ambassador to Sri Lanka during that period.

Though both Sri Lanka and Nepal are considered "post-conflict" countries, the situations were quite different. In the case of Sri Lanka, civil war broke out due to a conflict between the majority Sinhalese and the minority Tamil. That conflict ended with the extermination of a Tamil rebel group, by the government forces composed primarily of Sinhalese. Contrary to this, the Nepalese civil war was caused by the armed Maoist rebels under the influence of the Communist Party of India, upholding the elimination of undemocratic politics and the abolition of the caste system (Note: Though this armed group was named after the Chinese political leader Mao Zedong, it was not directly influenced by China during the civil war). The war ended upon conclusion of a comprehensive peace agreement between the Maoist group and major political parties.

Another major difference between these two countries is the political power. In Sri Lanka, as the government came off victorious in the civil war, the political regime did not thereafter change. In Nepal, in comparison, the Constituent Assembly (which was established after the civil war ended in 2006) decided to adopt the federal republic system abolishing the traditional monarchy. Thus, the country was forced to engage in nation-building from scratch. This meant Nepal faced various urgent challenges ranging from constructing infrastructure, including roads, hospitals, to the establishment of national systems and mechanisms, centered on the enactment of a new constitution. The latter challenge was equally important, or even more so than the first. The establishment of legal systems, for which Japan provides assistance to Nepal (and which is explained below), is an important issue included in the latter category of challenges.

As you may already be aware, legal technical assistance is a relatively new area of international cooperation with developing countries. Japan began legal technical assistance in the latter half of the 1990s, first to Vietnam, and then to Indochina and Central Asia. Assistance to Nepal commenced in 2009, in an effort to replace the "Mulki Ain" (the traditional General Code of Nepal which covers both civil- and criminal-related laws) with modernized laws. Japan has taken charge of drafting civil code, and the draft law (an achievement of Japanese assistance) was submitted to the Constituent Assembly in 2011 along with other bills (Note: As noted below, unfortunately neither of these bills nor a new constitution have been enacted).

In addition, the Ministry of Justice of Japan and the Japan International Cooperation Agency have extended cooperation in other legal fields or related fields, including: the creation of a commentary on the civil code following the completion of the draft code; and the training of judges on "case management" as a solution to backlogged lawsuits. Assistance has also been provided in promoting

the “community-mediation system” for dissemination of democracy, toward the election commission and media, etc.

While there are other donor countries and international organizations providing support to Nepal in the legal field, Japanese assistance is characterized by its policy of matching the actual situation of the locality. For example, in supporting the drafting of the civil code, the draft code was created as a modern law through discussions with Nepalese legal personnel, and taking the local tradition and customs into consideration. Regarding the “community-mediation system,” there may exist opinions, according to the Western-style rationalism, that official courts should be established nationwide. However, Nepal is still in development and the population in provincial areas have difficulties in accessing judicial institutions located in cities under severe natural conditions. In light of these factors, the government of Nepal took steps to introduce the community-mediation system in these areas as a conflict-resolution method. Japan agreed to the introduction of the system and is supporting it acknowledging its purposes and necessity.

As mentioned above, legal technical assistance from Japan to Nepal has seen steady, step-by-step progress. In this process, Japanese related legal professionals have visited not only Kathmandu but also the northern mountainous area through the Tarai which spreads to India in the south. Their purposes were in conducting surveys on the role of law in everyday life in the local villages and in discussing with Nepalese legal professionals in various locations throughout Nepal, a multi-ethnic country. I sincerely admire their efforts in the face of the daunting challenges they faced. Regrettably, however, the enactment process of a new constitution, the most important law, has not progressed. The Constituent Assembly, which was established in 2008 (two years after the realization of peace), initially planned to complete and promulgate a new constitution within two years. However, due to a lack of agreement being reached among major political parties over the federal system and the political regime (the presidential system or parliamentary cabinet system), the deadline was extended for another two years to allow discussions to continue. The assembly, however, failed to reach a consensus and yet declared its term “concluded” in May 2012. The meaning of the Constituent Assembly was thereafter questioned in that it was closed without any constitution being enacted. A more serious problem, however, was the re-establishment of the Constituent Assembly. This was due to the interim constitution, which declared the establishment of the Constituent Assembly, provided that the Assembly (as indicated by its name) would enact a new constitution. Consequently, a new assembly would be selected to take over the Constituent Assembly. Thus, the interim constitution did not stipulate any article on the dissolution of the original assembly, or on re-election. Due to the lack of such constitutional provisions, and through various difficulties, the major political parties finally reached an agreement on deciding the method, timing, etc. of the assembly’s re-election by consensus. Such an agreement took a surprising amount of time, causing the second election of constituent

assembly members to be conducted in November 2013, approximately one and a half years after the "completion" of the term of the previous Constituent Assembly.

Reading these words, one may reach the conclusion that politics in Nepal is underdeveloped. However, one should be reminded for the honor's sake in Nepal, that during the one-and-a-half years of political stagnation, no military movement such as a coup (which often results in developing countries under similar situations) did ever occur. What most surprised observers of Nepal (myself included) was the fall of the Maoists - the ruling party at the time of the "completion" of the Constituent Assembly - to third place in national politics. Most of the Nepalese population, as well as outside observers, had expected the Maoist party to gain victory previous to the second election. In other words, the Nepalese public handed down a severe verdict against the Maoists, which had not delivered noteworthy results, during its nearly four-year term of office.

On April 25th of this year, when another year-and-a-half had passed since the second election of the constituent assembly members without a new constitution having been enacted, the devastating earthquake struck. As mentioned at the beginning of this paper, I was initially aghast at the tragic human loss and devastating property damage caused by the earthquake. As the situation began stabilizing (and in addition to the concern about the direct damages caused by the disaster) I personally began to ponder such anxieties as to: What would happen to the process of national system-building, including the enactment of a new constitution (about which I earlier explained in detail); and whether the process would stagnate on the pretext of post-quake reconstruction. Looking back now at the results, these concerns may have proved unfounded. In fact, calls heightened for earlier enactment of a new constitution in order to accelerate national recovery. In response, early June, just two months after the disaster, saw an agreement reached among the major political parties on sixteen important items for the enactment of the new constitution, and discussions were continued toward the completion of the new constitution before the end of August.

In the meantime, smaller parties or minorities represented by them who opposed the above-mentioned agreement, have expressed objections by resorting to common protesting methods in South Asia, including "banda (roadblock)" or "chakka jam (obstructing traffic)." With these disruptions, it is unknowable whether the new constitution enactment-process will continue smoothly.

As explained to this point, it is difficult to foresee the future of politics in Nepal. However, in my experience having closely observed the democratization process in Nepal (having resided in Kathmandu for two years -- though still a limited amount of time) I am sincerely hoping for the earliest-possible enactment of the new constitution followed by the effort of improving legal systems. In addition, I look forward to the national recovery from the earthquake and further development of

Nepal*.

(Nepal later adopted the new Constitution in September 2015, taking a major step toward new nation-building.)

* Any opinions conveyed in this paper are the author's personal opinion written on August 17, 2015.

THE 16TH ANNUAL CONFERENCE ON TECHNICAL ASSISTANCE IN THE LEGAL FIELD

Hiroshi SUDA*

Professor and Government Attorney

International Cooperation Department

I. INFORMATION

Date and Time: Friday, January 23, 2015: 9:40 a.m. – 6:00 p.m.

Venue: Osaka Venue: International Conference Hall,
International Cooperation Department,
Research and Training Institute, Ministry of Justice

Tokyo Venue: Meeting Rooms 228 & 229,
HQs of the Japan International Cooperation Agency

Theme: Legal Technical Assistance in the Post-2015 Era

Program: See the attached "program."

Number of attendees: 174 in total (140 in the Osaka Venue; 34 in the Tokyo Venue)

II. OUTLINE OF THE CONFERENCE

A. Introduction

The Research and Training Institute (RTI) of the Ministry of Justice of Japan, jointly with the Japan International Cooperation Agency (JICA), has organized an annual conference on technical assistance in the legal field since 2000, as a venue for sharing information and exchanging opinions with entities and individuals concerned. The 16th conference was held under the title: "Legal Technical Assistance in the Post-2015 Era," at the International Conference Hall of the International Cooperation Department (ICD) of the RTI as the main venue, and at the meeting rooms of JICA HQs as the satellite venue. The conference was in a vibrant atmosphere with approximately 140 attendees in the Osaka venue alone.

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* The author is currently posted in Laos as a JICA long-term expert.

B. Theme of the 16th Annual Conference

The year 2015 is the final year to achieve the Millennium Development Goals (MDGs), which were set forth as the common target of the international community according to the UN Millennium Declaration. In terms of the "Post-2015 Development Agenda" (which follows the MDGs), active discussions have been developed concerning the inclusion of the "rule of law" and "good governance" – which are deeply related to legal technical assistance - as part of development goals in said agenda. These discussions are based on an increasing awareness of the importance of these two factors for sustainable and inclusive development.

In Japan as well, amidst recent changes in the circumstances surrounding development assistance, consideration has been given to the ideal form of ODA. In this course, legal technical assistance has drawn increased attention as a medium of realizing the rule of law and securing governance, which may serve as foundations for development.

Under these circumstances, it has been considered to be an opportune moment to seek an ideal form of medium- and long-term assistance for future development and evolution of Japan's legal technical assistance, in particular from the viewpoint of its relations with UN development goals. These are the reasons for which "legal technical assistance in the post-2015 era" was selected as the theme of our 16th annual conference.

C. Program Structure

In pursuit of the above theme, it was considered beneficial to understand, in addition to the movement of development assistance as the national policy of Japan, the focal points at issue during UN discussions. Moreover, information on the activity status, directions, etc. of foreign donor organizations was deemed useful. As such, it was decided to divide the conference into three sessions, as follows:

Session 1: A keynote speech was delivered by Dr. David M. Malone, Rector of the United Nations University and the UN Under-Secretary General, on the topic of "the Post-2015 Development

Agenda, and Rule of Law and Governance." A talk session was also held with Dr. Yozo Yokota, Special Adviser to the Ministry of Justice as the commentator.
Session 2: An official from the Ministry of Foreign Affairs (MOFA) spoke on the movement of the revision of Japan's ODA Charter, and invited legal/judicial experts from the UNDP, the World Bank and the EU reported on the current efforts and future activity directions of their organizations.
Session 3: A panel discussion was held among the invited experts of Session 2, with Professor Hiroshi Matsuo of Keio University Law School as the moderator, concerning the ideal legal technical assistance in the post-2015 era.

D. Contents of the Program

1. Section 1

In Session 1, which was the centerpiece of the 16th annual conference, Dr. Malone spoke in an easy-to-understand manner on the background circumstances which led to the establishment of the MDGs. In particular, he emphasized the importance of "having a great degree of humility and showing a desire of learning from others when approaching a society with a history different from ours," and "having a solid understanding of the needs in the concerned region." He also highlighted the importance of the rule of law for development, and the necessity of enlightening its importance, despite the difficulty in promoting and realizing it in developing countries, etc. Dr. Yokota commented that the importance of law, or the rule of law, could be the base for economic activities. Dr. Malone gave high marks to Japan's legal technical assistance to Southeast Asian countries, based on the high degree of trust of the local people toward Japanese assistance and its increasing implications.

Through the speech by Dr. Malone and his talk session with Dr. Yokota, we reaffirmed the stance we should take and the importance of our activities in promoting development.

2. Section 2 & 3

Session 2 was composed of presentations by experts from the UNDP, the World Bank, the EU and the MOFA, and based on which a panel discussion was held in Session 3. In Session 2, all presenting

organizations referred to the realization of the rule of law and governance as one of the important fields to be targeted. The panel discussion in Session 3 confirmed that:

- Attaining the rule of law is a huge challenge;
- In order to realize and put it in practice, it is necessary to advance substantive discussions in response to the needs of recipient countries and their people; and thus
- The more participants cooperating, the better.

3. Minutes of Session 1

For your information, please see the minutes of the keynote speech by Dr. Malone and the talk session in Section 1 on the following page and onwards. You will find it meaningful and truly interesting.

KEYNOTE SPEECH BY DR. DAVID M. MALONE, RECTOR OF THE UNITED NATIONS UNIVERSITY AND THE UN UNDER-SECRETARY GENERAL, AND A TALK WITH DR. YOZO YOKOTA, SPECIAL ADVISER TO THE MINISTRY OF JUSTICE OF JAPAN (Excerpt)*

Dr. Malone: Thank you all very much. It's a great pleasure to be in Osaka this morning. I always enjoy coming here, much as I love living in Tokyo. It's actually very nice to travel outside Tokyo within Japan and so I always welcome kind invitations like this one to get out. The first thing to be said about development is that the reality of development is a mystery. We don't understand it. We struggle with it. The measures we advocate, the programs we adopt. We can never be certain of their outcome. Sometimes it is bad rather than good but it is as if we had religion. We don't stop to question our activities, our beliefs. So we don't question our beliefs and activities particularly and that is why seminars like this one are very important for any of us working professionally in one way or the other in the field of development. We know, after the problems of Western countries, Japan also in recent years, that economists are often very affirmative in their beliefs, actually are not necessarily reliable advisors to governments and individuals, but somehow our faith in experts on development remains quite strong. One of my arguments is that when we approach societies that are not like our society, when we approach people with a very different history from our own, we need above all to be quite humble and open to learning, rather than wanting to teach people of these societies what to do. It rarely works trying to teach people what to do. At best, sharing experience, sharing what seems to work at home, when it does work at home, sometimes it doesn't even work very well at home, can be helpful. But the idea that we teach other societies what to do is profoundly delusional and unhelpful because it leads us into avenues that make the countries we are dealing with not so happy and that in turn makes us not so happy. So, a high degree of humility and also continued openness to learning ourselves is, I think, very important.

I will give you a couple of examples. A few years ago I was living in India and Canada's aid program in India which had been a mix of success -- failure, disaster, money well spent, money wasted -- ended rather well with a ten-year partnership with an Indian group in which the Indian group was dominant experimenting with alternative sources of energy. So a number of experiments were designed in different corners of India and what was interesting about them wasn't – were they

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* As the text of the speech and talk is a dictation from recordings, it may include omissions or misinterpretations due to inaudible or unclear passages.

successful, were they not successful. They were usually somewhat successful, but what were the unintended consequences of these programs? What took us by surprise was very interesting. On the high Tibetan plateau, at the Western end of India, in a district called Ladakh, many of you will have heard about, there was a very isolated village about 4500 meters up and very strong sunshine at that altitude and not many clouds in Ladakh. It seemed a very good place to try solar energy and so a very uneconomical solar energy project was mounted with costs much too high for Indian citizens but that's okay -- it was experimental. We were simply trying to see what might work, what might not work.

One decision that was made early on was to pass on quite a high proportion of the real cost to local consumers. So the electricity bills in this community were much higher than they were in the capital of Ladakh, the city 200 kilometers away or 100 kilometers away and we didn't know how the citizens would react to that. How would you know, you don't know until they react. One surprise was that in this community which wasn't a rich community at all, people paid their bills regularly. Why was that a surprise? In India, mostly poor people never pay electricity bills. They steal electricity from the grid because they can do it and because they are poor. It's perfectly natural. So, to have high electricity bills, the people were paying quite regularly, voluntarily without pressure. It was a surprise. So of course when you are surprised you mount a survey and you ask people: "So, why are you paying your bills?" And the answer, a very important one for the Indian government thinking of the country as a whole is: "We pay because the service is good. If the service was not good, we would not pay." Now, it sounds very basic but there's a great deal to be learned from that answer, from the citizens of this village, because by and large service and electricity in India is terrible. So, something to think about if you are the Indian government or the State government.

Second, rather different alternative energy project. If you go to Calcutta and then you take some ferries in the Bay of Bengal, you get to one of the most beautiful places in India, the Sundarbans Islands. They are extraordinarily beautiful manifestations of nature. And one of them is – by the way they are one of the great surviving tiger preserves and reserves in India. One of the islands is quite inhabited and at the very end of this quite inhabited island, there are two things of interest. One is a Hindu temple that is quite important for worshippers of the Hindu faith and the second thing is three rather lonely windmills generating a rather limited quantity of electricity. Now, with this rather limited quantity of electricity, local residents at that tip of the island were given a choice: "The electricity can be provided only six hours a day -- which six hours would suit you?" They chose the hours between – depending on the season, roughly five o'clock in the afternoon and 11 o'clock at night. And there were two major consequences of this community. This community was having electricity regularly in the evening and reliably in the evening. The first one will not surprise you. It is that school performance of the children in those communities appreciated radically and a number of them were able to leave the island for

secondary school to go and study in better high schools and perhaps some of them even go to university one day. So, no surprise there. The second side effect was -- at least to us quite surprising -- a radical drop in domestic violence in the communities where electricity was being provided. So, again why this radical drop in domestic violence? Inquiries were made and it rapidly turned out that what had happened in these villages where before there was only one television operating on a generator system usually in the village café and the bar was that households started buying cheap TVs and enjoying very lively Indian television at home, involving lots of sports, lots of cricket, many other things, Bollywood performances. The men in the family stayed home rather than getting drunk in the bar and that is why domestic violence trailed off so much. It was something completely unanticipated but a very good outcome. It could have been a very bad outcome. Nobody knows in these cases. But in this case, it was a very good outcome as was the outcome for the children of these villages. I only mentioned these two examples to share with you that when we start planning development in our societies for other countries, we don't know what the results will be and certainly in these countries there is no certainty of what the outcome will be either.

Very often people in developing countries are more polite than we are in Canada or Europe. It's hard to be more polite than people are in Japan. But when we arrive, we have something we want to offer them, and tell them it's very good and their response is to be very polite. Whether they think it is a good idea or not a bad idea may create some jobs that could be good. We might learn something from it, that could be good and anyway these very kind foreigners are offering us something. It would be rude to say "no, we don't really want that, we would rather have something else." And they know that we won't offer them something else than what we want to offer them. So, right from the outset of that dynamic, there's something wrong frankly and many of the unhappy experiences in development arise from that dynamic. Demand and supply don't really meet because we don't really take enough interest in what the demand might be while we know what we are prepared to supply. So, another reason perhaps why development assistance has often disappointed us. But if you think we are disappointed, imagine the disappointment of developing countries with often limited results.

I am really very pleased to be with Yozo Yokota here in the world of academic law to be active both at the Michigan Law School and the University of Tokyo Law School. That's a very high pedigree. So, I'm a bit worried about his comments. Nevertheless I will proceed. In development, the UN is a very confusing place. Why is that? Well, again, there were unintended dynamics of the UN when the UN was created. If you look at the UN Charter, there wasn't yet very much thought in 1945 about development as we know it, post-colonial development. At the time, post-World War II reconstruction was the priority and the Post-Colonial era came about much quicker than most of the delegates at San Francisco in 1945 would have expected. Indeed the existence of the UN helped hasten decolonization although the principal motor for decolonization was the insistence by the United States that it should

occur and the rest of the world was indebted to the United States after the war, so its voice was quite loud and effective.

When the UN was created, the IMF and the World Bank had already been agreed a year earlier at the Bretton Woods Conference. So there was an idea of international assistance but it's important to remember that it was the bank for reconstruction and development. Primarily efforts were focused at the very beginning at reconstruction and development came later, although not very much later. And the IMF, I think, thought it would be dealing mainly with the countries it knew in 1944 and the countries that created it rather than future countries which would turn out to be rather different. In the UN, there was very little machinery for development. The charter language is full of possibility but not full of concrete suggestions. So over the years, a number of programs, agencies, funds developed that in one way or the other addressed development. UNDP is the best known of the ones that are focused on development as such but because so many UN funds and agencies were created rather absent-mindedly by the General Assembly over the years and because donor money was always quite limited, these various institutions started being in competition with each other for donor money. Secondly being very trend driven, if the donor seems to be interested in humanitarian action which they were primarily as of about 25 years ago, then everybody would claim to be doing humanitarian action and relief.

So, a sense of competition and incoherence amongst UN agencies arose, all of them trying to do the same thing, whatever their mandate said and so the UN became a troubled actor in development, I would say. The World Bank with a much narrower mandate, with better management often did better. It also had much more money than the UN did and the possibility to raise money for loans on commercial markets which the UN did not have. And the IMF's contributions to development were largely normative and trying to instill principles of sound economic management but what we think have a sound economic management has varied quite a lot. We see the International Monetary Fund having a lot of trouble dealing with the European crisis since 2008 because many of the things that preached in the developing world, it turns out their major fund shareholders weren't very interested in hearing when it came to themselves. So the IMF comes face to face with some of its own limitations and contradictions. Why do I mention all of this? It's very important to understand the backdrop against which Millennium Development Goals came and the whole idea of goals developed because there was a strong sense by the late 1980s, early 1990s: that well-meaning general development funding was not achieving very much and so the idea of targeting money at specific goals that could be measured like the early goal of eradicating Small Pox -- which was both ambitious but measurable -- was something that became increasingly appealing, including in the developing countries. They could see the value of having something fairly targeted.

So, by – in the 1970s and 80s relations between the donor countries and the developing countries at the UN on economic issues, primarily development issues, were really quite difficult, even hostile at times, and this reached its apogee with the Cancun summit in – I forget when it was, probably something like 1980 or 81. At the Cancun summit, the politeness ceased on the donor side. There had been two important developments. Margaret Thatcher had been elected Prime Minister of Great Britain, Ronald Reagan had been elected President of the United States, and they believed in frank talk. They also believed in investing your money only where you thought there was a reasonable hope of it bearing fruit. They were quite upfront and their impact on the debates at the UN, more generally and internationally on development, was significant because they said "No, most of this is garbage and it has produced garbage results. We are not against development and we are not against funding development but we have to become more serious about both, what we are funding and what is happening on the ground." So, big confrontation and a great deal of unhappiness. But the result of that was during the 80s which was a very troubled decade for the whole continents of developing countries. Latin American countries did very poorly. Africa did very poorly. There was a sense by the 1990s because the debt issue of developing countries was being addressed at long last. Developing countries had been offered lots of credit. There was nobody actually telling them and there was nobody inside their governments telling them that if you take on debt there is a bill to be paid, perhaps not tomorrow but one day. And many of the countries were over-indebted, but in the 1990s that started to be addressed.

So by the end of the 90s it was possible to see again a more positive approach to development, in a way a more philosophical approach to development, a real conversation and that started to happen around the time, in the run up to the 2000 summit at the UN, the 2002 conference at Monterey which was the much friendlier successor to the Cancun meeting and the 2005 summit at the UN.

The 2000 summit at the UN had a number of paragraphs about development that called for some goals but the summit did not agree to any goals. It didn't provide goals and it was unspecific on how goals were to be provided. So, for the Millennium Development Goals, we tend to forget or perhaps we never knew, exactly how they emerged. They emerged from a very small group of people working around Kofi Annan -- mostly in his office, one or two were consulted outside his office -- and the result was a fairly limited number of goals that were easy to understand; targets that were ambitious but again not unrealistic for some countries at least; and indicators that were scientific and useful because they had been discussed with experts and they could actually be used to measure results. Nothing happened by the way, after Kofi Annan proposed them to the General Assembly in 2001. In 2002 without enthusiasm the General Assembly didn't really adopt them but said they were an interesting roadmap so perhaps that was okay. And then nothing happened for three more years. And then in 2005, experts woke up and realized that already five years had passed since the

summit in 2000 and that the UN and other development actors needed to get operational. And in order to provide an incentive, a number of them accelerated, a number of the donors accelerated debt-forgiveness programs in 2005 and that was the trigger for actual efforts to try to meet the goals but five years had been wasted in inaction.

Now, as you know, a number of the targets have been met, a disappointingly small number of the targets but that's okay. In a way it's a surprise that a number of the targets have been met. A number of the most popular targets have not been met. For example, the target on maternal health has not been met -- surprisingly little progress on maternal health. As the end of the Millennium Development Goal period of 15 years came up, several reactions – one reaction was to work harder at achieving the existing targets but also to start thinking about the next generation of development goals. That really started in earnest with an effort at the Rio+20 Conference on the environment on mostly climate change, effectively to hijack the development agenda and make it into an environmental agenda, with some energy and some interesting new ideas. The interesting new ideas included the idea that any new goals should apply to all countries, not just so called developing countries. The idea that we are all developing towards what we don't know exactly but the idea that some countries are developing and some countries are developed doesn't make much sense in the world today. By the way, in 2015, it makes even less sense than in 2012. Why? During the slow moving crisis since 2008, in relative terms, the developing countries have done much better than the developed countries. So who is developing today? And who is, in a sense, either flat or disintegrating? So, the idea that basically these goals needed to be valid for all countries, I think was a very helpful goal. The idea that everything should relate to the environment -- well yes, generally speaking but actually sweeping efforts like that are often the enemy of precision and result. Good intentions and broad statements generally are not that helpful in planning programming in my view.

Of course, you don't want to be unsustainable. You want your activities to be sustainable, but beyond that, repeating the word sustainability so often that you get concepts of sustainable sustainability which crops up in UN documents by the way is laughable and that's where we are today alas. Clear thinking is the victim of preaching. So, the next interesting idea came from the high level panel that the Secretary General called together after the Rio summit in 2013. It was chaired by three heads of state in government, the then President of Indonesia, the current President of Liberia, the Nobel Prize winning Ellen Sirleaf Johnson and the Prime Minister of Britain. And it had a useful distinguished but actually quite practical composition and it had an excellent secretary and the secretariat was very open to advice. The result was a report that was analytically very acute, very useful. If you can't read anything else on development, read the analytical parts of the high level panel report and like me, you will probably learn quite a bit. And basically, the most interesting thing I took away from that analysis was that development has actually been succeeding. We need to adjust our mindsets.

The idea that developing countries are a disaster and that we can teach them how to be wonderful is completely wrong. We are the disaster and developing countries have been doing much better so we need to accept that as a starting point of anything we move on with. Secondly, that precisely because development has been working in terms of growth if not in other terms, it is now issues of quality that matters rather than quantity.

If you look at the 2000 Millennium Development Goals, one of the goals was universal primary education -- getting every child into school, at least primary school. Very important goal. It's been rather successful. Now, the issue is what is the quality of what children are learning at school? And that spreads all the way up. It's not just primary school. It's now a concern with secondary school and you also see a number of developing countries, particularly in Asia and Latin America, realizing they have to invest much more in higher education. In the year 2000, higher education was a luxury. We were worried about primary education. Now many countries have moved far enough ahead that they realize they want to develop their own capacities for management, knowledge, science and so on, and so even their quality matters. And we are beginning to see African heads of state and others also reinvesting in the universities their predecessors actively destroyed. Why did their predecessors actively destroy universities? Because that's where the opposition came from -- those troublesome students; those professors who thought they knew everything. Jailed them all but now a different generation of African leaders. Yes, you know, if we are going to succeed more, we need more indigenous capacity which means better universities at home.

So, quality is a new factor in development that is going to become increasingly important. After the high level panel (which in my view, it's a personal view of course) unfortunately tabled 12 indicative goals of its own with targets and indicators to go with them. They were as good as any other set of goals but they had the unintended consequence again -- the law of unintended consequences -- of exciting the member states of the UN. "Who are these pygmies of the high level panel? We never appointed them. They know nothing. Who are they to tell us what the goal should be? We the sovereign members of the United Nations will decide what the goals will be." And so the sovereign members of the United Nations undertook a discussion amongst themselves (a lot of it ignoring good advice that had been preferred by the high level panel and others). They proceeded not so much to try to determine a good set of manageable goals that would be easy to understand with targets that were based on science and good public policy principles and so on. They came up with the package of seventeen goals and 160 targets. Many of them were actively unscientific, no indicators - and basically were pleased with themselves. They thought this was a wonderful outcome and when they started hearing from people like me that it was a terrible outcome, it could never be applied by any government including our own government, Japanese government, Canadian government. "How could any developing countries seriously tackle 160

targets and 17 overarching goals?" The answer from some of the member states was "Oh, that's a communication's problem. It's your duty to communicate our brilliant ideas." This shows you how pathetic governments can be in international forums. They just want their own national priorities reflected in whatever is going on internationally. If they are successful in getting their own national priorities reflected, they think it's a huge success because they aren't thinking about development or developing countries. They are thinking about themselves which has been the problem in the dynamic of development overall. Very self-centered.

Now, one good thing about the development goals as the member states articulated them was at the very last substantive goal before a goal on partnership, was one dealing with issues of governance, justice, rule of law. It was accompanied by targets that were a mix of the highly abstract: for example, promote the rule of law at national and international levels and ensure equal act of justice for all. It's something in my country we have comprehensively failed to do for all of our citizens, so I'm sure developing country governments will be pleased to learn of this high-minded ……., but how they will realize this when it's very difficult to realize in much richer countries, I remain to be educated on. Develop effective, accountable and transparent institutions at all levels. My country is going in the opposite direction by the way, so it would be nice to see how my country will encourage developing countries to follow this advice when they are following the reverse and then you get occasionally to an actual target that could be quantified by 2030, provide legal identity for all including birth registration. That is something you can check. It is something that's relatively easy to check and it should be the case that everywhere people have legal identity and birth registration which is vital to accessing government services later on. Identity turns out to be extremely important which is not individual identity in poor countries as in our own countries.

So, that is a good one but it was a hopeless mix and if you didn't like them it was a communications problem. So, we are in a mess currently at the UN on the development goals in general but the emergence of a goal that deals with -- from the member states -- internally peaceful societies, access to justice for all accountable institutions. This is progress. By the way what wasn't progress was that this goal was resisted by many developing countries. They felt it was shoving down their throats. They felt this was a Western agenda and I think we can include Japan in the west-sided identity of the west at the UN. So it was resisted sometimes by the usual suspects, -- Cuba, Algeria, Pakistan and so on. They are followed by many of the developing countries because it's felt that at least they stand up for us against them and for developing countries at the UN. We are them. And so this goal on justice, we need to be lucid, was resisted by many of the developing countries. It is no coincidence it comes last, in realistic and substantive goals and it's rather lonely with 15 other substantive goals and one-on-partnership. So, it's progress but rather limited progress. I wouldn't want to be triumphalist and say because there's a goal on rule of law and justice that we can look forward to our ideas about

law, justice, inclusivity, accountability being enthusiastically adopted elsewhere unless we learn to better partner with the countries we think should be adopting these values, these goals. We shouldn't forget they have values of their own already. We shouldn't neglect their values. We shouldn't simply be pressing our own. It seems to me.

So, probably these are the 17 goals that will emerge later this year at the 2000 summit because it will be too difficult now to change them, but there will before that be a conference on the financing of development in Ethiopia -- very unpromising conference. Voila there is much less government money for development than there used to be in real terms. In inflation non-adjusted terms, we can always claim that the figure is a bit higher. By the way, the OECD figure is striking, is highly suspect as you look into them in detail. You discover that the great deal that a country is described as a – can hardly be accepted by an objective analyst as a - and so we have a reality that reminds one of the old Soviet joke: You pretend to pay and we pretend to work. We pretend to be providing development assistance and you pretend to be grateful. So, with that reality, going to a conference on financing of development. I fear it may be either an occasion for a polite speech, as not much else or something worse than that.

My hope is that the member states will be sensitive to the challenge of communications rather than thinking that it is a technical challenge for pygmies. Actually, if you can't communicate what you are doing and you are an international institution, you are in deep, deep trouble. So, the Secretary General recently issued a synthesis report. The only point of that was to try to organize all this material in five or six headings, one of which importantly was on justice and related issues -- the fifth or the sixth. But it remains to be seen whether the outcome will be overall a positive one this fall. The climate change summit in December may overshadow all of the work on goals. We don't know. It's a tremendously important summit. Unfortunately there are so much activities at the UN this year. There are all these events and then in March of next year. There's a humanitarian summit that sometimes one gets the sense of systems overload, of too much activity, too much talk, too many resolutions, too many communications. Often getting divorced from reality what governments can do, what governments want to do, what citizens hope for. So, I will stop there. Yozo, a few provocations and I hope we'll have a good discussion.

Dr. Yozo Yokota: Thank you, David, for your excellent, precise and thought-provoking presentation. I found your statement especially valuable because it reflects your long-time experience as a diplomat, UN staff and scholar. I have two questions to raise.

First, you started off with an interesting phrase: "the reality of development is largely a mystery". In general terms, I agree with this proposition. However, in dealing with the real world of development,

we should not stop at the level of mystery. When we are faced with many difficult and complicated problems surrounding development, we have to understand various facts related to development, analyze them carefully, formulate adequate policies and implement projects effectively and efficiently to resolve them. In this regard, I have one question to raise with you, David. As you are well aware, in 1990, UNDP began issuing a useful annual publication called *Human Development Report*, which contains interesting data called "Human Development Index." How do you evaluate it in terms of its usefulness in understanding the problems related to development, formulating policies and planning and implementing development projects and programs?

My second question is related to the role of law in development. The UN and many donor countries, including Japan and Canada, place importance on the role of law in the process of not only economic but also political and social development. However, economists, who play a major role for development field, tend to emphasize economic aspects and ignore law in their theories and policy discourse for development. Political scientists are almost in the same track. They tend to consider political elements as a most significant aspect of development assistance. Since I have been involved in development cooperation from the angle of law, I cannot agree with this somewhat biased way of looking at the role of law in development. For example, unless law is in place to maintain order on the street or at the market place, economic activities cannot flourish. If property right is not ensured or freedom of negotiation and contact for business is not enjoyed, economic activities will not take place. I vividly remember, when I visited Myanmar in early 1990s as a UN human rights special rappoteur, I observed that publishing or journalism business was practically non-existent because there was no freedom of the press or expression in place at that time in Myanmar under the rigid military government. I would appreciate your view on the role of law in development from your broad knowledge and experience in development cooperation.

Dr. David Malone: Thank you very much, and I'm looking forward to comments from colleagues in the room. You got your own provocations and don't hesitate to announce mine. The human development report, the human development indicators, I think there was a huge step forward and probably over time it has been as both a tool for benchmarking development and as a relatively simple approach to measuring and drawing policy conclusions from data, I think tremendously useful. Again, often the analytical parts of the report which are sometimes long and boring to read are more useful than the tables of statistics. Why do I say that? We tend to think a figure, something that appears with 0s and 1s and 9s, is reliable but we know that's not the case when it comes to developing countries and our own country. We keep discovering our own figures were wrong for one reason or another and we have highly developed statistical agencies and models and in developing countries not only are the figures often wrong for innocent reasons but they are also sometimes wrong because they are engineered to be wrong. When I was living in Egypt 40 years ago, nearly all the figures we

would consider important for development had been doctored for one reason or another. Sometimes for reasons so strange that I would not have believed it unless I had come to know Egypt. So, what is interesting in the figures is not the grouped figure. Say, Egypt has a GDP per-capital purchasing power – power to, I don't know, let's say $3000 that may or may not be true. But very often the trend lines are very interesting because starting from a wrong figure, how does that figure evolve dynamically is often more accurate than the original figure was. So, you can learn quite a bit from how a country seems to be developing statistically with, or in statistics, from being interested in what happened between 1980, 1990 and 2000, assuming the statistical base was not altered. But we are going through a wave of alteration of statistical base in many developing countries. And so looking at the figures of the past may not be so useful for us when we compare them to the present if the statistical base has changed. One example, you probably read in the newspapers, recently with a lot of evidence in support. Ghana adjusted its Gross Domestic Product by 60%, six-zero not one-six. That's a big adjustment. So, I think they were very wrong before or they are very wrong now or perhaps they are quite wrong both times. So, that's why I would say figures are useful, helpful to act, and the human development report extremely useful and very much to the credit of the early UNDP administrators who resisted all the pressure. The human development report team came under to comply with the wishes of individual member states; terrific report. And there are other very useful reports that come out every year, one from the World Bank. It's tremendously interesting, like the human development report. It has a theme every year. Some are more successful than others but we really have a lot of stimulus for thinking on development from the UN, from the World Bank and from some other sources. That's as much as I can say about that.

Non-lawyers don't appreciate the law - I think that's generally true partly because lawyers love complicating the law. They rarely simplify anything because they want to be special. They are like the rest of us, so they make their own work over-wrought. And then they are annoyed that the rest of the world is very interested. So, lawyers are creatures of contradiction but lawyers are the victims of their own pathologies, I would say, if they feel unloved and ignored. But is the law important? Yes, tremendously important for the reasons you say, Yozo, exactly for the reasons you say, very difficult to develop your full potential without a minimum of predictability which the rule of law brings. The rule of law doesn't have to be perfect to provide benefits and predictability; knowing that you can go to court if you are being cheated; knowing that you can go to court if the government is behaving arbitrarily irrelative to the written law. These are things as you say, that are extremely important in business, and development ultimately has to be driven by business. It should be socially-conscious, it should be respectful of law, but the idea that international organizations create development in any developing country is deeply delusional. Development always comes from within, but the international community can share a number of instruments and the legal instruments we value in our countries which in the past have been quite successful. Of course, we want to share and we

should share and that is the great value of the program that Japan, the Justice Ministry and JICA have collaborated on and very cleverly you have applied that program in countries that particularly admire Japan -- the countries of Southeast Asia. These are countries that adopted Japan in many ways as their development model -- post-war Japan.

So they are naturally more inclined to listen to Japan than they are to Canada on any subject because they freely adopted Japan as a very good model for that and the assistance that Japan has provided to those countries has made a major significant difference, possibly unlike Canadian assistance. So, for all of those reasons, a program of assistance in the law field, be it judicial, be it other dimensions of law, I think can be much more useful in Southeast Asia when it comes from Japanese actors than, say, in Chad. First of all the climate in Chad isn't very propitious at the moment for in-depth legal reforms, legally driven reforms. Secondly, Japan is not the model for Chad to the extent there is a model. So, again it seems to me that this program has been well-targeted, has clients that will not always agree with Japanese advisors and will have their own objectives -- some of them more admirable than others -- but will welcome Japanese efforts to promote their development, including through more transparent, stronger, more reliable, more resilient legal systems. And there we are seeing hopeful results throughout Southeast Asia. The recent election in Sri Lanka was actually a real sign as the changes in Myanmar a number of years ago were. They were a reminder that even leaders who can be extremely autocratic, can also either be removed or decide that things should change after they have enriched themselves. So, these are positive developments in the wider neighborhood of Japan, in both countries, Japan, as a very common actor both in the content sense, but also in the government sense and I'm very optimistic in the medium or long term about Asia. I'm also very optimistic about Africa in a completely different way. African development in African ways, not in Asian ways. I never believed in the one-size-fits-all model and I think that was one of the mistakes of development actors starting in the 1950s was the search for a single formula that would work, either policy formula or technical approach for development that would work everywhere in the developing world. Each society has profoundly accurate, in its DNA, values and approaches which are not the same as a society 5000 miles away and thinking that they can be the same, I think it's unhelpful.

Yozo Yokota: Thank you, David, for your very useful response. Let me add a brief comment on your statement. You touched on one of the most controversial issues related to development, namely, which of the two approaches one should take when we engage in development cooperation activities: the global standard approach or the cultural diversity approach. This issue of universalism versus cultural diversity was a major challenge at the Vienna World Conference on Human Rights in 1993. After long and difficult negotiations, particularly between Western, industrial countries including Japan which supported universalism, and mostly Asian countries which took a cultural diversity position.

The result was a happy compromise that human rights standards are universal and global but their implementation should take into account regional and cultural differences and particularities. I have, in the past twelve years, served the ILO's Committee of Experts which monitors the implementation in each member State of international labor standards adopted by the International Labor Conference in the form of legally binding Conventions and non-binding Recommendations. The long-standing practice adopted by this body of experts follows in fact the same line of the compromise solution reached in Vienna. The Committee of Experts always takes a firm position that international labor standards are applicable to all member States equally but, when it deals with specific situation in a particular member State, it takes into account the local conditions and specificities in formulating comments or providing advices for improvement. This kind of soft, compromise approach seems to me to be most practical and workable not only in the area of human rights and labor standards but also in the field of economic and political development cooperation.

Dr. Malone: Can I add something to this because you make a very interesting point, Yozo. I mentioned a couple of projects in India that had unintended consequences -- good in both cases -- but unintended consequences needn't to be a complete waste. We can learn from them and that is where accountants and parliamentary committees are taking a narrow view, "was this success or was this a failure and if it's a success, we should have funded and if it's a failure, we should not have funded it," very unhelpful because often we get to where we need to go by failing first and going through that process of failure. Most children go through it, throughout most of their education, is extremely important. So, thank you so much, Yozo, for making that very, very important point.

The 16th Annual Conference on Technical Assistance in the Legal Field 2015

ORGANIZERS
RESEARCH AND TRAINING INSTITUTE(RTI)
MINISTRY OF JUSTICE OF JAPAN
JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)

PROGRAM

Time/Date: 9:40 to 18:00 on Friday, 23 January 2015
Venue: International Conference Hall, ICD, OSAKA

(To be connected with Meeting Rooms 228, 229, Japan International Cooperation Agency (JICA) HQs, TOKYO, via TV-conference system)

Theme: Legal Technical Assistance in the Post-2015 Era

Supported by

- Supreme Court of Japan
- Japan Federation of Bar Associations
- Institute of Developing Economies -Japan External Trade Organization (IDE-JETRO)
- International Civil and Commercial Law Centre Foundation (ICCLC)

TIME TABLE

Opening Addresses and Introduction 9:40-10:00

Ms. AKANE Tomoko (Director General, RTI)

Mr. UESHIMA Takumi (Director General, Industrial Development and Public Policy Department, JICA)

Session 1: Keynote Speech 10:00-11:30

Speaker: Dr. David M. Malone
Rector of the United Nations University and Under-Secretary-General of the United Nations

Commentator: Dr. YOKOTA Yozo
Special Advisor to the Ministry of Justice of Japan

Session 2: Reports by government and donor organizations 13:00-15:20

Mr. Alejandro Alvarez
Team Leader - Rule of Law, Justice and Security, Bureau for Policy and Programme Support, United Nations Development Programme

Dr. Heike Gramckow
Lead Counsel and Acting Practice Manager, Governance and Inclusive Institutions Practice, WORLD BANK

Mr. Jean-Louis Ville
Head of Unit - Governance, Democracy, Gender, Human Rights, Directorate General for International Cooperation and Development, European Commission

Ms.HAMADA Maya
Deputy Director, Aid Policy and Management Division, International Cooperation Bureau, Ministry of Foreign Affairs of Japan

Q&A

Session 3: Panel Discussion 15:40 – 17:50

Moderator: Prof. MATSUO Hiroshi (Keio University Law School)

Conclusion and Closing Address 17:50 - 18:00

Mr. HARADA Akio (President, ICCLC)

Reception 18:30 –

Note: An English/Japanese simultaneous interpretation service will be provided.

Session 1: Keynote Speech

Speaker

Dr. David M. Malone

Rector of the United Nations University
Under-Secretary-General of the United Nations

A Canadian national, Dr. David M. Malone holds a BAA from l'École des Hautes Études Commerciales (Montreal); an Arabic Language Diploma from the American University (Cairo); an MPA from the Kennedy School of Government, Harvard University; and a DPhil in International Relations from Oxford University.

Prior to joining the United Nations University Dr. Malone served (2008–2013) as President of Canada's International Development Research Centre, a funding agency that supports policy-relevant research in the developing world.

Dr. Malone previously served as Canada's Representative to the UN Economic and Social Council and as Ambassador and Deputy Permanent Representative of Canada to the United Nations (1990–1994); as Director General of the Policy, International Organizations and Global Issues Bureaus within Canada's Department of Foreign Affairs and International Trade (DFAIT, 1994–1998); as President of the International Peace Academy (now International Peace Institute), a New York-based independent research and policy development institution (1998–2004); as DFAIT Assistant Deputy Minister for Global Issues (2004–2006); and as Canada's High Commissioner to India, and non-resident Ambassador to Bhutan and Nepal (2006–2008).

Dr. Malone also has held research posts at the Economic Studies Program, Brookings Institution; Massey College, University of Toronto; and Norman Paterson School of International Affairs, Carleton University. He has been a Guest Scholar and Adjunct Professor at Columbia University, and an Adjunct Professor at the New York University School of Law.

Dr. Malone has published extensively on peace and security and international develpment issues.

Commentator

Dr. YOKOTA Yozo

Special Advisor to the Ministry of Justice of Japan

Dr. YOKOTA Yozo completed his Ph.D. at the University of Tokyo, Graduate Schools of Law and Politics.

Dr. YOKOTA has served as a legal counsel to the World Bank; professor at International Christian University; visiting professor at the University of Adelaide, University of Michigan, and Columbia University; professor at the University of Tokyo Faculty of Law and the Graduate Schools of Law and Politics; and at Chuo University Faculty of Law and Chuo Law School. He is currently a Special Advisor to the Ministry of Justice of Japan, President of Center for Human Rights Education and Training (Tokyo), and an Advisor to the Japan Committee for UNICEF.

Dr. YOKOTA has also served as a Special Advisor to the Rector of the United Nations University, visiting professor at the United Nations University Institute for the Advanced Study of Sustainability (UNU-IAS); a Member of the UN Sub-Commission on the Promotion and Protection of Human Rights; UN Special Rapporteur on Human Rights in Myanmar; Chairperson and a Member of the Committee of Experts of the International Labour Organization; and the Chairperson of the Japan Association for United Nations Studies. His specialties include international law, international organization law, international human rights law and international economic law.

Session 2: Reports by government and donor organizations
Session 3: Panel Discussion

Mr. Alejandro Alvarez
Team Leader - Rule of Law, Justice and Security, Bureau for Policy and Programme Support, United Nations Development Programme

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UNDP Support to Rule of Law, Human Rights and the Post-2015 Agenda

The 16th Annual Conference on Technical Assistance in the Legal and Judicial Sectors

January 23, 2015

Alejandro Alvarez

United Nations Development Programme

Team Leader - Rule of Law, Justice & Security

Bureau for Policy and Programme Support

UNDP Support to Rule of Law and Human Rights

Rule of law and human rights are featured prominently in the UNDP Strategic Plan (2014-2017).

UNDP-supported legal aid clinics reach out to more than 16,000 community leaders in Khyber Pakhtunkhwa province. Photo: UNDP Pakistan

UNDP Support to Rule of Law and Human Rights

Military justice hearings take place in Goma, in eastern DRC. Photo: UNDP/Benoit Almeras-Martino

Rule of Law pillars, particularly in crisis settings:

1. Dealing with the legacy of violence.
2. Increasing safety and security for all.
3. Building confidence through institution strengthening.
4. Increasing access to justice and security, especially for women.

UNDP Support to Rule of Law and Human Rights

Human rights pillars:

1. Supporting national systems to promote and protect human rights.
2. Engaging UN human rights mechanisms, such as Universal Periodic Review, Rights Up Front.
3. Supporting marginalized minorities.
4. Mainstreaming human rights and utilizing a human rights-based approach.

Afghan National Police officers study the Code of Conduct booklet. Photo: UNDP/Afghanistan

Priorities for UNDP in 2015

Empowered lives.
Resilient nations.

Substantive priorities

- Continue strengthening institutions.
- Incorporate technical and political elements of rule of law.
- Utilize rights-based, people-centered and problem-solving approaches.

A legal aid clinic in Nepal. Photo: UNDP/Nepal

Priorities for UNDP in 2015

Empowered lives.
Resilient nations.

A law school in Sierra Leone. Photo: UNDP/Alejandro Alvarez

Operational priorities

- Continuously improve the impact of rule of law and human rights programming.
- Provide support to UN system effectiveness especially in high-risk and complex settings.
- Scale up outreach to build better external partnerships and knowledge sharing on RoL issues.

The Post-2015 Development Agenda

From the beginning, UNDP has supported the inclusion of rule of law (including access to justice and violence reduction) in the post-2015 development agenda.

UNDP supported the process of the Open Working Group to develop the current proposal for the Sustainable Development Goals, including Goal 16:

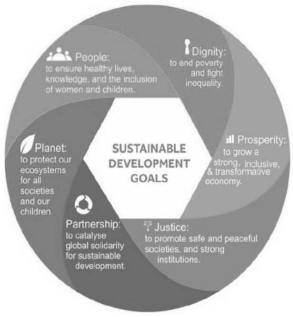
THE WORLD WE WANT

- Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Preparing for Justice Reform Assistance in the post-2015 Sustainable Development Goals (SDG) environment

PRESENTED BY DR. HEIKE GRAMCKOW
JUSTICE AND LEGAL INSTITUTIONS, GOVERNANCE GLOBAL PRACTICE
THE WORLD BANK

Post 2015-SDG Goal 16 and World Bank Work



Goal 16 : *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*

Current client (i.e. government) demand for WBG work in justice focuses on 6 key issues:

- Improving justice sector institution performance
- Advising on criminal justice reform and citizen security
- Promoting justice in development sectors (e.g. land, extractives, urban development; service delivery)
- Justice sector reforms for improved business and investment climate
- Generating learning and information for designing interventions to promote access to justice and legal empowerment
- Leading global knowledge, learning and measurement initiatives on justice, and human rights and the rule of law

Preparing for the post-2015 development environment

What is needed when the SDGs are set

- Development of meaningful indicators on SDG progress that reflect country context, inclusiveness and limit country burden
- Support for development of affordable and actionable country systems to measure progress towards the SDGs
- Collaboration with the extended development communities, relevant other partners (i.e. Trade and business organizations, diasporas, etc.), and country counterparts in defining the financing needs and requirements and funding alternatives
- Assistance for development of legal frameworks, policies, institutions and systems that reflect inclusive justice mechanisms and structures to advance all new SDG goals

Current preparatory work

- Review existing justice measurement systems to identify internationally existing data elements to measure relevant SDG justice goals, potential gaps in measurements and implementation
- Initial collaboration with other Bank colleagues who are testing country-level SDG measurement approaches to establish benchmarks, estimates of progress if no changes are made (i.e. business-as-usual estimates) by 2030, and estimates of different change investment options to achieve particular SDG goals (or parts thereof) by 2030.
- Early discussions with other development partners(UN, OECD) to collaborate on:
  - Measurement approaches
  - Data sets
  - Mapping of lessons learned, good practices
  - Benchmarking
  - Funding estimates
  - Financing options

4

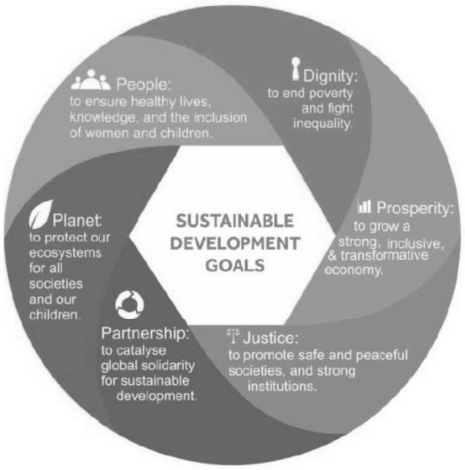
Preparing for Justice Reform Assistance in the post-2015 Sustainable Development Goals (SDG) environment [1]

With the deadline for adoption of the new post-2015 development agenda approaching quickly, the Justice and Legal Institutions Group of the World Bank's Governance Global Practice is continuing internal and external dialogues to support the development of a framework for the Bank's assistance to countries in their efforts to understanding their respective status, needs and requirements for meeting the SDGs that are related to justice and legal reforms.

While it is commonly understood that the rule of law is both an enabler and outcome of development and frequently essential and integral to achieving other development goals, like gender equality, equal access to land, health and education, to name a few, justice, the rule of law or governance have not been part of the current MDGs. This gap had been pointed out by many and linked to MDG shortfalls. As a result, among the globally consulted and currently proposed 17 SDGs[2], one specifically focuses on justice:

> Goal 16 currently reads: *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*

Furthermore, the UN Secretary-General's synthesis report of December 4, 2014, titled "The Road to Dignity by 2030"[3] presents a vision for the SDGs to consider by the UN Member States in the negotiations leading up to the United Nations Special Summit on Sustainable Development in September 2015, which will adopt the post-2015 development agenda.



This report lays out six essential elements to deliver the SDGs, namely:

- ending poverty and tackling inequalities;
- improving people's lives and wellbeing;
- ensuring inclusive economic transformation;
- *promoting just, safe and peaceful societies;*
- protecting the planet for current and future generations; and
- building bold and lasting partnerships for a sustainable future.

Reflecting earlier consultations, the report further specifies the meaning of justice in this context:

Justice: to promote safe and peaceful societies, and strong institutions

- Effective governance for sustainable development demands that public institutions in all countries and at all levels be inclusive, participatory, and accountable to the people.

[1] The author of this presentation is Dr. Heike Gramckow, Lead Counsel and Acting Practice Manager, Justice and Legal Institutions, Governance Global Practice, The World Bank. The views presented are those of the author and not official World Bank policy.

[2] For all proposed SDGs see the Annex

[3] United Nations. 2014, The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet. Synthesis Report of the Secretary General On the Post-2015 Agenda. New York.

- Laws and institutions must protect human rights and fundamental freedoms.
- All must be free from fear and violence, without discrimination.
- Recognizing that participatory democracy, free, safe, and peaceful societies are both enablers and outcomes of development.
- Access to fair justice systems, accountable institutions of democratic governance, measures to combat corruption and curb illicit financial flows, and safeguards to protect personal security are integral to sustainable development.
- An enabling environment under the rule of law must be secured for the free, active and meaningful engagement of civil society and advocates reflecting the voices of women, minorities, LGBT groups, indigenous peoples, youth, adolescents and older persons.
- Press freedom and access to information, freedom of expression, assembly and association are enablers of sustainable development.
- The need to rebuild and reintegrate societies better after crises and conflicts.
- Addressing state fragility, support internally displaced persons and contribute to resilience of people and communities.
- Reconciliation, peacebuilding and state-building are critical for countries to overcome fragility and develop cohesive societies, and strong institutions.

World Bank engagement in justice and legal reform to date and likely focus areas for post-2015 development support related to justice

To date the Justice Group, along with many others in the Governance Global Practice and other Global Practices (GP), the Cross-Cutting Solutions Areas, and the Bank's many regional and country offices have supported country efforts across the globe to address most of these key justice development issues.

Reflecting the mandate of the Bank, efforts have focused more prominently on supporting governments, less so, and more indirectly non-government actors and civil society. Our work naturally focuses more on strengthening the executive branch, on enhancing judicial branch capacities, only to a limited extent on assistance for legislative branch strengthening. It is beyond the scope of this presentation to show the breath of Bank support to countries related to justice and legal reform in all sectors, however, the specific work conducted by the Justice Group and closely related colleagues working in the regions to date can be generally captured by the following 6 core areas:

IMPROVING JUSTICE SECTOR INSTITUTION PERFORMANCE

This includes **design and implementation support** for performance and service delivery improvement of courts and other justice institutions (including the entire chain of criminal justice agencies) through the application of core public sector management expertise (e.g., human resources and budget planning and management; capital investment planning and management; performance management; IT; e-solutions; open justice institutions; service delivery, user inclusion and community outreach and web applications for increased access to justice).

This work is underpinned by support for the **formulation of evidence based policy for justice sector reform**, including assessment of user needs and demands for justice services, public

expenditure analysis, impact evaluations, and political economy, stakeholder and institutional analysis to highlight reform pathways, risks and constraints, and development of appropriate mechanisms to respond to these needs.

ADVISING ON CRIMINAL JUSTICE REFORM AND CITIZEN SECURITY

The Bank works with a wide range of institutions of the criminal justice sector (e.g., prosecutors, police, corrections, criminal courts, public defenders) providing support similar to what is listed in the prior section, i.e. support for agency specific legislative, organizational and policy reforms but also for overall sector reforms to enhance crime prevention and enforcement policies, legislation, funding, and governance across a country, region or district overall or concentrating on a particularly burning crime issues, such a drugs, gangs, youth crimes or domestic violence, as well as the often looming issue of corruption.

PROMOTING JUSTICE IN DEVELOPMENT SECTORS (E.G. LAND, EXTRACTIVES, URBAN DEVELOPMENT, PUBLIC SERVICE DELIVERY)

Just outcomes are not the sole purview of justice sector institutions. The Bank works across development sectors to support effective mechanisms for access to justice in form of mechanisms for mediating rights and entitlements, providing grievance redress, empowering users, and promoting accountability. This work is generally in collaboration with other GPs on issues such as land, extractives, public infrastructure and service delivery in other sectors, such as health.

JUSTICE SECTOR REFORMS FOR IMPROVED BUSINESS AND INVESTMENT CLIMATE

This work includes reviews of legal and regulatory frameworks and business court and court decision enforcement operations that are essential to a conducive and inclusive business climate. This work is often led by and in collaboration with the Bank's Trade and Competiveness Global Practice/IFC.

GENERATING LEARNING AND INFORMATION FOR DESIGNING INTERVENTIONS TO PROMOTE ACCESS TO JUSTICE AND LEGAL EMPOWERMENT

This includes work with legal aid providers, NGOs, and law schools, as well as community engagements and outreach, and IT-supported open governance approaches.

LEADING GLOBAL KNOWLEDGE, LEARNING AND MEASUREMENT INITIATIVES ON JUSTICE, AND HUMAN RIGHTS AND THE RULE OF LAW

The Justice Practice continues to create knowledge products and learning events to capture lessons from Bank projects and to bring expertise to Bank teams. The recent inclusion of the Nordic Trust Fund for Human Rights in our team provides new opportunities to expand justice work with a specific focus on human rights in sectors.

Preparing for the post-2015 development environment

Within the context of overall Bank's re-organization to better serve our client countries in the post-2015 environment, the Justice Group was moved from the Legal Vice Presidency to the Governance

Global Practice. This group has and continues to be part of the Bank's internal post-2015 consultations and participated in related UN group events.

Following and in cooperation with the Bank's overall focus on support for the new post 2015-agenda, our current efforts aim to address the following four areas:

- Supporting the development of meaningful indicators on SDG progress that reflect country context, inclusiveness and limit country burden by using and refining existing international indices and data collection efforts.
- Supporting the development of affordable and actionable country systems to measure progress towards the SDGs chosen by each county and assisting in focusing these efforts on justice related goals.
- Supporting countries in developing legal frameworks, policies, institutions and systems that reflect inclusive justice mechanisms and structures to advance the new SDG goals.
- Collaborating with the extended development communities, relevant other partners (i.e. Trade and business organizations, diasporas, etc.), and country counterparts in defining the financing needs and requirements and funding alternatives.

Considering that the post-2015 SDGs are still being negotiated it is difficult to finalize our responses but it is more than clear that the entire international community has to collaborate much more to not just ensure agreement on and clear understand of the post-2015 SDGs, but on how these can be reasonably measured, how we all can work together, and most importantly how each can contribute to supporting achievements of these goals in the future.

The proposed new SDGs extent positively beyond the current MDGs. The envisioned SDG agenda is much broader than the current MDGs, many of which will also not be reached in the most needing countries by the time the MDGs were envisioned to expire. This means that programming, commitment and funding has to expand. Discussions about financing the new SDGs will continue and will have to reach beyond the traditional boundaries of development financing.

At this point in time the Justice Group of the Bank is very much looking to dialogue with other development partners not just on a common understanding of justice related SDG goals and meaningful and affordable measurement systems to assist countries, but especially in developing a truly collaborative approach to financing systemic, sustainable changes in country systems that lead to greater justice across countries as expressed in SDG Goal 16.

Currently we are in the process of

- Reviewing existing justice measurement systems to identify internationally existing data elements that measure relevant SDG justice goals, potential gaps in measurements and implementation
- Initial collaboration with other Bank colleagues who are testing country-level SDG measurement approaches to establish benchmarks, estimates of progress if no changes are made (i.e. business-as-usual estimates) by 2030, and estimates of different change investment options to achieve particular SDG goals (or parts thereof) by 2030.[4]

[4] See Annex 2 for a short summary of this work currently undergoing

Both efforts would greatly benefit from collaboration with other development partners.

Equally important, in order to prepare for assisting countries in the post-2015 environment, and to inform the financing needs estimates, a mapping of good practices, lessons learned and implementation results has to occur for proper benchmarking and to inform change options. This is another area where collaboration among development partners is essential and we are looking to develop the needed connections and funding support.

5

Annex 1 – Proposed post-2015 SDGs

Following two years of inclusive and intensive consultative deliberations, the Open Working Group proposed 17 specific goals with 169 associated targets

Goal 1 End poverty in all its forms everywhere
Goal 2 End hunger, achieve food security and improved nutrition and promote sustainable agriculture
Goal 3 Ensure healthy lives and promote well-being for all at all ages
Goal 4 Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
Goal 5 Achieve gender equality and empower all women and girls
Goal 6 Ensure availability and sustainable management of water and sanitation for all
Goal 7 Ensure access to affordable, reliable, sustainable and modern energy for all
Goal 8 Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
Goal 9 Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
Goal 10 Reduce inequality within and among countries
Goal 11 Make cities and human settlements inclusive, safe, resilient and sustainable
Goal 12 Ensure sustainable consumption and production patterns
Goal 13 Take urgent action to combat climate change and its impacts
Goal 14 Conserve and sustainably use the oceans, seas and marine resources for sustainable development
Goal 15 Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
Goal 16 Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
Goal 17 Strengthen the means of implementation and revitalize the global partnership for sustainable development

Annex 2 – Testing a proposed framework for benchmarking and measuring SDGs at the country level

The World Bank Group developed and tested a framework to provide an initial understanding of the challenges policymakers will face in implementing key parts of the global SDG agenda in their countries. The framework is designed for application in countries with a wide variety of characteristics, including differences in initial conditions and access to financing, and provides a starting point for more detailed analysis. It benchmarks a country's achievements, provides projections up to 2030, and helps policy makers ask questions about SDG targets and policy options.

In order to present and test the analytical framework Uganda was chosen as a pilot with a limited focus including only the following SDG areas: (i) poverty reduction and shared prosperity, (ii) infrastructure (water, sanitation, electricity, roads, and information and communications technology, or ICT), access to (iii) education, (iv) health, and (v) climate change. Several indicators are used to measure progress of goals in each of these areas, limited by what is available in cross-country data sets.[5]

The framework benchmarks country performance in SDGs, policies, and other factors that influence the SDGs. It makes projections for SDGs to the year 2030, analyzes spending adjustments in priority areas, and discusses sources of fiscal space.

The questions that the framework helps to address include: For any country, what would be a set of feasible development targets for 2030 if the country were to continue to develop with business-as-usual (BAU) assumptions? What policy areas should the country's government consider in order to accelerate progress? How could it create the fiscal space needed to achieve more ambitious development outcomes?

Underpinning the analysis is a database that covers all low- and middle-income countries, designed to include available indicators relevant to the post-2015 agenda, including SDGs, their determinants, and indicators related to financing options.

The approach is based on the following:

- Step One benchmarks current SDG outcomes against those of other countries, given the levels of GNI per capita.
- Step Two projects BAU levels for the SDGs in year 2030, drawing on GNI per capita projections.
- Step Three tries to assess how to achieve more ambitious targets achieved in other, but similar countries in order to assess spending priorities.
- Step Four addresses challenges related to expanding fiscal space to address the broader SDHG agenda in partnership with others.

[5] The World Bank. The Post-2015 Global Agenda. A Framework for Country Diagnostics. Washington, DC (http://pubdocs.worldbank.org/pubdocs/publicdoc/2014/10/303491412887765048/ThePost2015GlobalAgendaAFrameworkForCountryDiagnostics.pdf).

EU support to Justice, including Legal and Judicial Assistance in the post-2015 era.

-

- Jean-Louis VILLE
- Head of Unit 'Governance, Democracy, Gender and Human Rights'
- European Commission, DG for International Cooperation and Development

- January 2015

EU support to Justice, including Legal and Judicial Assistance in the post-2015 era

1. Introduction;
2. 1. The EU Framework in the field of Justice and Rule of Law;
3. 2. EU Assistance in the field of Justice including tools and approaches;
4. 3. Suggested elements for an effective post-2015 Agenda

EU support to justice and the Rule of law

- **1. Legal and policy basis:**
- The Treaty on European Union:
  - Article 21: “Action...should be guided by principles which have inspired its own creation...: democracy, Rule of law ...human rights and fundamental freedoms....”
  - Article 208 on Development policy

EU support to justice and the Rule of law

- **1. Legal and policy basis:**
- The 2011 EC Communication
- ‘Increasing the impact of EU development Policy: An Agenda for Change’
- The 2011 EC Communication
- ‘The Future Approach to EU Budget Support to Third Countries’

EU support to justice and the Rule of law

- **1. Legal and policy basis:**
- The 2012 EC Communication
- 'Europe's engagement with Civil Society in external relations'
- The 2012 Strategic Framework and Action Plan on HR and Democracy.

EU support to justice and the Rule of law

- **2. The EU experience:**
  - Different tools, financial, technical, political and diplomatic ones;
  - For the period 2014-2020 nearly € 86 billion (EU budget and EDF)
  - About 1/3 was dedicated to Democratic Governance during the perido 2007-2013

EU support to justice and the Rule of law

2. The EU experience:

Modalities

Stand-alone project: when a focused intervention is pursued, or when conditions for a sector's eligibility for budget support are not fulfilled.

(Sector) Budget support: in order to address sector reforms and improve sector-wide service delivery.

Non-state actors and civil society organisations: a sustainable force for change and reform!

EU support to justice and the Rule of law

2. The EU experience:

Approaches:

Institutional support: technical solutions to justice system dysfunctions

Service delivery: support is responsive to the needs of people

EU support to justice and the Rule of law

- **2. The EU experience:**
- **Entry points**
- Formal justice: the justice chain; Court operations (automation, one stop shops, mobile Courts); standards and procedures; affordability; accessibility; trust; bias; corruption; Bar Associations; ADR; legal aid; paralegals.
- Informal justice: why; who; how. Bridging the gap.
- Needs of the people vs. needs of institutions

EU support to justice and the Rule of law

2. The EU experience:

Geographic instruments:

Supporting **institutional and legislative reforms** of the justice sector

Addressing the **demand side of justice:** strengthening rights holders'capacities to access justice

Thematic instruments:

Enabling **CSOs** to play an active role of **catalyst** in achieving justice system reforms

EU support to justice and the Rule of law

- **2. The EU experience:**
- **Lessons learnt**

- **To what extent has the Commission's support in the past 10 years contributed to the strengthening of the justice machinery, including access to justice by the population and the penal system?** JSSR evaluation (2012)

- Shifting from a HR mainstreaming towards a Human Rights Based Approach in development cooperation;
- (The individual is the subject of rights and has claims on state and its institutions).

EU support to justice and the Rule of law

- **2. The EU experience:**
- **Conclusions**
- 1. Complexity

- 2. Analysis and sources of information

- 3. Approach: Quick wins - long term solutions

- 4. Costs of sustainability

EU support to justice and the Rule of law

- **3. An Effective post-2015 Agenda?**
  - **Universality**
    - Nature of the agenda in itself;
    - Mutual accountability;
    - Shared responsability.
  - **Participation of all**
    - Engagement and implementation at all levels of government;
    - Consultation with citizens.

EU support to justice and the Rule of law

- **3. An Effective post-2015 Agenda?**
  - **Enshrined in Human Rights,, Good Governance, RoL and support for demacratic institutions;**
    - Responsive institutions at all levels;
    - Transparency of policies ;
    - Accountability mechanism to citizens.
  - **Participation of all**
    - Engagement and implementation at all levels of government;
    - Consultation with citizens.

EU support to justice and the Rule of law

- **3. An Effective post-2015 Agenda?**

  - **Civil Society and other partners**
    - Global partnership beyond traditional channels of cooperation;
    - Multi-stakeholders partnerships
    - Private sector, CSO academic, both national and international levels.

Questions and debate

- ***Thank you for your attention!***

16th Annual Conference on Technical Assistance in the Legal and Judicial Sectors
Osaka, January 23rd, 2015

"EU Support to Justice, including Legal and Judicial Assistance in the post-2015 era."

Ladies and Gentlemen,

It is a great honour and pleasure to be invited to take the floor as the EU representative in front of such a distinguished audience and to participate today to the 16th conference on Legal and Judicial Assistance as it touches upon one key area where the European Union in its development cooperation has been providing continuous support particularly over the last decades and continues to support reform also for the years to come, from 2014 to 2020.

The post-2015 framework is not completely defined. As you know, the outcome of the post-2015 Sustainable Development Goals is a very ambitious agenda that must be transformative to be effective in addressing today's world challenges:

- Eradicating poverty
- Achieving sustainable development in all its three dimensions (social, economic and environmental) and
- Ensuring the promotion and the protection of all human rights and fundamental values.

Implementing such a complex and far-reaching agenda represents an historical unique opportunity to redefine how the global community works together. From an EU perspective a new global partnership for poverty eradication and sustainable development is required and all should contribute their fair share.

Although good progress has been made and solid basis laid down, still, a lot of work has to be achieved during the final negotiations: The outcome of the Open Working Group is this set of 17 goals.[1] Obviously, Proposed Goal 16 on

[1] Open Working Group on SDGs; Beyond2015, 19 July 19 2014.

Promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, is the most relevant for the topic of our discussion today. Equally "Governance" and the principles of accountability, participation, non-discrimination and transparency could be mainstreamed into Post-2015 agenda across the goals.

In addition, on 4 December 2014, UN Secretary-General Ban Ki-moon has released an advance version of his synthesis report on the post-2015 development agenda, titled 'The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet' where justice is among the six key essential elements, along with dignity; people; prosperity; planet; and partnership.[2]

Ahead of the negotiations, the EU, as many other key players, is in the process of positioning itself in the debate and is preparing its vision for the final steps of what should become the universally recognized and approved framework for our common destiny.

Ladies and Gentlemen

Against this backdrop, let me now revert to the specific EU framework that entails our action in the field of Legal and Judicial Assistance and how the EU experience in this field, based on our thematic assistance in the field of Governance can provide some food for thought that could be useful. I will finally say a few words elaborating on what could be the main elements that should underpin an effective post-2015 agenda.

1. The EU framework in the field of Justice and the Rule of Law

Since the entry into force of the Treaty on the European Union (Lisbon Treaty), the EU's "action on the international scene shall be guided by the principles

[2] http://sd.iisd.org/news/un-secretary-generals-cs-for-post-2015-agenda/

which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law" (Article 21 of the Lisbon Treaty).

In addition the Treaty has a specific article (Article 208) on the Development Policy that reads: "The Union development policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries."

I do not intend now to start a sophisticated legal analysis of these two articles of the Treaty, but let me stress the relevance of both in the present debate on setting the future framework: we have clear mandate to eradicate poverty, while respecting the principles of democracy, the rule of law and human rights - all highly relevant to our debate in this Conference.

In addition, the Commission has adopted new policies, Communications, in order to implement these objectives in a coherent way, most important of which our debate is the one on "*Increasing the impact of EU Development Policy: an Agenda for Change"*[3], endorsed by the Council on 14 May 2012; this Communication stated that good governance, along with human rights, democracy and gender equality, is one of the two main priority areas of EU development policy. EU support for governance should henceforth figure more prominently in all our partnerships, which it in fact does when looking at the on-going programming reality of EU aid for the period of 2014-2020 where Governance support in the broad sense is among the major sectors of EU support across the regions.

Let me highlight another policy commitment which demonstrates the strategic shift of the EU as to strengthened commitment to Governance agenda, namely the Communication on *The Future Approach to EU Budget Support to Third Countries*, where the Commission underlined that it will ensure that "EU budget support is consistent with the overarching principles and objectives of EU external action (Article 21 TEU) and development policy (Article 208 TFEU)". In addition, budget support as an instrument of EU development policy is based

[3] (Editor's note: The original document contained no description in footnote 3.)

on performance assessment and mutual accountability. The EU provides budget support as a vector for change to address the development challenges and objectives, such as

• Promoting human rights and democratic values;
• Improving financial management, macroeconomic stability and the fight against corruption and fraud,
• Promoting good governance and inclusive growth for human development.

Last but not least, the Communication on *Europe's engagement with Civil Society in external relations* also seeks to revise our partnership with civil society organisations, based on the results of the worldwide *Structured Dialogue on the involvement of Civil Society Organisations (CSOs) and Local Authorities in EU development cooperation*. In essence, this Communication proposes an enhanced and more strategic approach in the EU's engagement with local CSOs world-wide, with due consideration of country-specificities. This strategic engagement with CSOs will be mainstreamed in all our instruments and programmes, with an emphasis on enhancing CSOs' role in democratic governance and accountability.

And finally, on 25 July 2012, the Strategic Framework and Action Plan on Human Rights and Democracy were adopted by the Council which concluded, among other things that: "The EU will promote human rights in all areas of its external action without exception. -- In the area of development cooperation, a human rights based approach will be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations." [4]

What should we conclude about this increasing focus and outspoken positioning of the EU on the "Governance" issues?

Well, that all EU institutions, Council, European Parliament, Commission and the European External Action Service, but also the EU Member States and Civil Society partners, are expecting the EU on the whole to be true and firm to the objectives and principles as stated in the Lisbon Treaty. We have to stick to our commitments and are watched by all members of the international Community, our public opinions, our partners be it States or non-governmental organizations to deliver on these objectives.

[4] Council Conclusions of 25 June 2012, Luxembourg, 11855/12.

This was reflected again in the last Development Council Conclusions of last December; let me quote: "... the need to prominently address peaceful and inclusive societies, democratic governance and the rule of law. Promoting these issues successfully is a key part of making the post-2015 agenda transformative. Human rights and fundamental freedoms must be respected, protected and fulfilled, (...). We need to ensure that institutions, including security and justice institutions are legitimate, accountable and efficient and act in accordance with the rule of law"[5].

I will come back on the how this agenda could be framed in the last part of my intervention, but I would like now to elaborate a few minutes on the EU experience in the field of support to Justice and the Rule of Law, which is the substance area that you are practitioners and experts in.

2. *The EU experience in the field of Justice, including Legal and Judicial Assistance; tools and approaches*

EU aid to developing countries, including in the areas of Justice and the Rule of Law, is implemented through different tools: the financial, technical, political and diplomatic ones. As for the financing, for the period of 2014-2020 EU development funding: nearly € 86 billion (€58.7 billion for external aid from the EU budget and €26.98 billion for the 11th EDF). About a third of our funding was dedicated to Democratic Governance during the last period. The EU has a variety of financing instruments at its disposal to support reform programmes in the area of justice and democratic governance in the broad sense, which we seek to use in a complementary way for instance to reconcile short term and long term reform objectives. However, our experience demonstrates that, to be successful, any funding in such areas in particular needs to be accompanied by technical assistance and coherent policy and political dialogue with the partner country concerned.
Technically, we can support justice reform on a project basis or via channelling funds by using the budget support modality, which I mentioned earlier on; we can also use both the project approach and the budget support approach in a complementary fashion. The choice of the tool is obviously linked to the

[5] Development Council Conclusions of 16 December 2014, par. 22

country situation and more specifically, when we speak about justice support, to the overall governance situation, political commitment of the partner country and the political and policy dialogue with the partner country. In addition, the non-state actors and civil society organisations are sustainable force for change and reform with whom the EU seeks to work with in a strategic way also in the area of justice support.

As to EU experience over the past decade in supporting justice and the rule of law across the globe, our support has focused in the past on building institutional capacity within state institutions, with assistance concentrating on technical solutions to justice problems, delivered through training, advice, provision of capital equipment, and infrastructure development. This kind of institutional support helps to strengthen the capacity and governance of the justice sector. Through this approach, the EU has made many positive contributions to justice sector reform, and reinforced the institutional frameworks necessary for effective justice delivery. However, such approach does not necessarily result in more access to justice for people, particularly the vulnerable groups. The service delivery approach on the other hand focuses on the ability of institutions to deliver improved services to people most in need, which in many cases will not necessarily occur without fundamental transformation of organisational culture within a sector that is long-term by nature. By improving people's legal awareness and ability to demand services, and use existing legal structures, this long-term organisational transformation is strengthened. Successful, sustainable justice reform thus seeks to strike a balance between the institutional support and need of effective justice institutions, on the one hand, and the legal empowerment of people and ability to seek justice, on the other.

What has been the EU response so far in supporting access to justice?

When engaging with a partner country in judicial reform program, we increasingly focus our efforts on access to justice, as it is one of the key drivers for tackling poverty and protecting the human rights of persons living in poverty. States have a legal obligation to ensure that all individuals are able to access competent, impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.

The reality in many parts of the world indicates that vulnerable people in particular (poor, disabled, women and children, minorities or indigenous people) continue to face many challenges and obstacles to access to justice: discrimination, insufficient legal awareness, legal disempowerment, unavailability of legal aid, un-affordability of accessing formal justice or structural deficiencies of the justice system (uneven distribution of courts; corruption; lengthy and sometimes unfair proceedings; poor enforcement of Court decisions, etc).

The reality at country level also shows that informal justice systems in legal pluralistic societies are often preferred by vulnerable people in their attempt of seeking justice, especially for people living in smaller communities, or those sharing common customs, languages, and beliefs. They provide streamlined procedures, familiarity, proximity, low cost, speed, common language, community involvement, and the likelihood that decisions are based on community values. Nevertheless, informal justice mechanisms can also act as a barrier to meaningful justice, particularly for the poorest and most disadvantaged community members, often reinforcing existing power structures and promoting elite domination and influence. In some cases, non-State justice mechanisms prioritize the interests of the community over the interests of the individual, which may have the effect of exacerbating the situation of the worst off in the community. Rarely do informal mechanisms take into account the legal rights of the individuals involved or consider international human rights standards.

Traditionally, the EU has been supporting access to justice via bilateral cooperation by providing technical and financial assistance to accompany justice reforms, mainly focusing on the formal justice system, in building its institutional capacity to provide effective services to the public. Irrespective of the chosen aid modality and scope of intervention, access of justice has received primary attention in most of EU funded justice projects, as well as in policy dialogue and consultations with civil society organisations and other donors. Complementarily, under the thematic instrument on human rights ('The European Instrument for Democracy and Human Rights'), access to justice has been addressed through engaging local civil society in advocating for the improving of the legal frameworks giving wider access to legal aid and providing paralegal assistance to the poor, in recognizing fundamental rights in law and practice for the most vulnerable groups (e.g. collective rights of

indigenous peoples; land rights and inheritance rights for women and children etc), or in providing legal assistance for people in custody.

In recent years, based on several evaluations and studies on EU support to justice sector[6], and given the policy advancement regarding the primary importance of human rights in EU external action[7], we are shifting from a human rights mainstreaming towards embracing a human rights based approach in development cooperation. This means that the individual is the subject of rights and has claims on the state and its institutions, which have duties and obligations. The human rights based approach makes the accountability clear, since it identifies the rights holders and the duty-bearers, and enables support of the capacities of duty-bearers to meet their obligations, and/or of rights-holders to claim their rights. It also emphasises the importance of the governance principles of inclusion, participation, transparency and accountability.

For the justice sector, a human rights-based approach translates in assessing the adequacy of laws, policies and strategies addressing human rights, identifying the main human rights problems in general and in the justice area, fixing specific human rights objectives, and identifying services and service providers that can promote and protect human rights. The approach then focuses on reinforcing the prime actors, so that they can engage in dialogue, meet their responsibilities, and hold justice delivery mechanisms and state institutions accountable for their shortcomings with respect to human rights. These may include legal and institutional reforms, capacity building and awareness-raising regarding human rights within legal institutions, advocacy activities, education and empowerment of vulnerable groups, and developing services and legal assistance.

As far as support to informal justice system is concerned, different options can be explored. The first is to support the reform of customary systems from the inside, with the aim of increasing procedural and substantive protections. The second option is to explore the creation of new institutions that offer

[6] Evaluation of EU support to justice and security sector reform, EuropeAid, 2012;

EuropeAid Reference document no. 9 – Support for judicial reform in ACP countries, 2010;

EuropeAid Reference document no.15: Support to justice and the rule of law: Review of past experience and guidance for future EU development cooperation programmes, 2012

[7] EU Strategic Framework and Action Plan on Human Rights and Democracy, 2012

alternative forms of dispute resolution. The third is to consider the interface between the customary and formal legal systems, and how states can modify, regulate or use this interface to influence the manner by which justice is dispensed at the customary/traditional level. A key message is that approaches need to be grounded on a broad and deep understanding of the customary system, to be adapted to the goal of improved access to justice. In recent years, the European Union has started to engage in supporting informal/traditional justice mechanisms for example in Gambia, in the Philippines, in Bangladesh or in Mauritania.

3. Suggested Elements for an effective post-2015 Agenda.

Ladies and Gentlemen,

I would like to take the last few minutes of my intervention and having in mind our experiences to look forward to the post-2015 era.
If we were, in a perfect world, to try to set what major elements or principles we would like to see in an effective post-2015 Agenda, I would, as regard Governance, Rule of Law and Human Rights, insist on having the following 5 elements in the final framework.

- ***Universality of the Agenda by nature and mutual accountability***

As the post-2015 agenda is universal by nature, the global partnership should be based on the principles of shared responsibility, mutual accountability and respective capacity. Countries at all stages of development should engage and take on responsibility for its implementation. National ownership will be at the core of implementation, supported by political commitment at highest level.

- ***Participation of all***

As a basic principle, engagement and implementation at all levels of government will be essential; to my view, this means that all government in full consultation with their citizens will need to decide how they will contribute to

the achievement of goals and targets, keeping in mind the need to reach out to all members of society including the most vulnerable ones.

- ***Enshrined in Human Rights Good Governance, Rule of Law and support for democratic institutions;***

For implementation at national and sub-national levels countries will need to promote effective and responsive institutions, transparency of policies and system of accountability to their citizens through democratic processes based on Rule of Law. This has been stated and repeated as being the cornerstone of any partnership between the EU and its partners, as I have elaborated earlier on.

- ***Role of Civil Society and others partners;***

The partnership, going beyond the traditional channels of cooperation should promote more effective and inclusive forms of multi-stakeholders partnerships, with the participation of the private sector, civil society, academic and knowledge institutions, both at national and international level.

- ***Measurability and Accountability.***

The partnership should have a clear focus on achieving measurable, concrete and sustainable results that contribute directly to agreed goals and targets. Transparency and information sharing for all stakeholders should be at the heart of that framework; it should reinforce the importance of strong monitoring, accountability and review at all levels for citizens and stakeholders and promote feedback and learning.

These elements are of course not an exhaustive list of what must be part of the future agreement; still we consider them important in the process that is now finalizing the negotiations and these are very much based on the lessons we have learned from our development cooperation experience during the last decade. Learning from these projects and programs, implemented in various part of the world has guided our thinking in the process.

Ladies and gentlemen,

As a conclusion, I believe we all share the view that cooperating in the field of justice is most effective in countries that show political will, commitment and steady engagement for reforms. I am convinced that working with and through the country's systems and under the national leadership, the protection and realization of poor people's rights is more likely to be achieved in a sustainable way. Further, a strategic engagement with CSOs is part of any reform agenda.

The EU has a clear and strong legal and political framework in place as well as a long-standing experience to share in working with partner countries in the area of justice, and democratic governance and human rights more broadly, and we remain is committed to contribute our fair share to elaborate and contribute to the final success of the outcome of a robust post-2015 agenda.

The EU has already expressed a clear committed to an ambitious, transformative and inclusive post-2015 agenda ahead of the final negotiations at the UN in view of preparing the conference on financing for development in July and the UN summit on the post-2015 development agenda in September 2015. The EU is further developing its position within its internal decision making structures, and we for our part in the Commission will continue to push in the direction which is coherent with EU political and legal engagements in order to achieve a strong Post-2015 agenda as to Governance, justice included, and to build a strong global partnership for the future.

Thank you for your attention!

The 16th Annual Conference on Technical Assistance in the Legal Field

Review of Official Development Assistance (ODA) Charter
--From ODA Charter to Development Cooperation Charter--



January 23, 2015
International Cooperation Bureau,
Ministry of Foreign Affairs

1

Chronology and background of review of the Official Development Assistance (ODA) Charter

ODA Charter Document adopted by a Cabinet meeting that clarifies the philosophy, principles, and other guidelines of official development assistance

Chronology

The ODA Charter was adopted by a Cabinet meeting in June 1992.
(To clarify the philosophy of ODA and step up efforts for policy-making)

The ODA Charter was revised in August 2003 (adopted by a Cabinet meeting)
(To enhance the strategy, flexibility, transparency, and efficiency of ODA, to promote wider participation from the citizenry, and to deepen understanding of Japan's ODA within its own country and the rest of the world)

Background

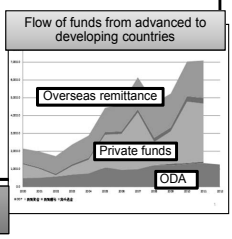
1. Diversification of the roles ODA is expected to play
From the viewpoint of contributing to the international community and serving the national interests, as it is clearly stated in the national security and Japan reconstruction strategies that Japan should make the most of its ODA proactively and strategically, ODA is expected to play more diverse and more important roles.

●National Security Strategy (NSS):
The NSS clearly states that based on the policy of "Proactive Contribution to Peace", Japan should make the most of its ODA proactively and strategically in order to achieve goals such as sharing universal values, ensuring human security, solving global and development issues, and promoting international peace and cooperation.

●Japan Revitalization Strategy:
The Japan Revitalization Strategy declares that Japan should utilize its ODA proactively and strategically to support international development in economic fields in an effort to contribute to the growth of developing countries and at the same time taking on such growth in Japan, thus revitalizing its economy (e.g. involving exporting infrastructures and small and medium enterprises, relating to securing resources)

2. Changes in discussions about development in the international community
As typified by discussions to formulate the Post-2015 Development Agenda, new perspectives and challenges are emerging in addition to the usual subject of poverty reduction as discussions about development in the international community are undergoing changes (e.g. sustainable development, growth, eliminating disparities, disaster prevention, and international health).

3. Need for establishing closer partnership with non-ODA funds
There is a growing need for establishing closer partnership between ODA and non-ODA funds as private funds and non-ODA public finance are playing more important roles in the growth of developing countries.



The government decided to revise its ODA Charter for the first time in over 11 years.

Overview of the new Development Cooperation Charter

Name **Development Cooperation Charter**
For peace, prosperity, and a better future for everyone

- **Development cooperation:** International cooperation activity that is conducted by the government and its affiliated agency with the main purpose of development in developing regions
- **Establishing closer partnerships** with other funding and activities of the Government of Japan and its affiliated agency (such as OOFs and PKO) as well as private funding and activities (by private sector, local governments, NGOs, etc.) whose objective is development or which contribute to development

Background of name change

- **Expanding the scope of** cooperation (extending cooperation to countries excluded from the DAC list)
- Playing its role as **the core and driving force of cooperation that is provided by not only the government but also all parties concerned with cooperation in Japan** (establishing closer partnership with private sector, NGOs, and other various organizers of finance and initiatives)
- Shifting from assistance to **cooperation** (cooperation through partnerships with developing countries on an equal footing)

Text

Preamble (understanding of the present state of affairs)

●**Major changes in the environment that surrounds Japan**

- **Wider international economic activities, deepening interdependency, and growing influences of non-state actors**
- **Greater economic importance of emerging economies and developing countries**
- **Economic and social circumstances in Japan**

→ **Building a peaceful, stable, and prosperous international community is inseparably linked to Japan's national interests.**

●**Development issues are becoming more diverse, complicated, and far-reaching**

- **Development issues that cannot be measured based on the progress in development and simple income levels alone**
  - ✓ **Issues facing emerging economies and developing countries that are continuing to grow** (political and economic fragilities that arise from weak governance, internal disparities, issues of sustainability issues, "middle-income trap")
  - ✓ **Special problems of vulnerability in small island countries**
- **Measures for countries that are left underdeveloped due to their fragility**
  - ✓ The challenge is how to help them **escape from fragility** (securing foundations for stable development and setting in motion the wheel of development)

3

1. Philosophy

(1) Objective of development cooperation

- Japan promotes development cooperation **to contribute more proactively to the peace, stability and prosperity of international community.**
- Such cooperation will lead to ensuring **Japan's national interests such as maintaining its peace and security, achieving further prosperity, realizing an international environment that provides stability, transparency and predictability, and maintaining and protecting an international order based on universal values**.
- ODA, as **the core of various activities** that contribute to development, will serve as a catalyst for mobilizing a wide range of resources in cooperation with various funds and actors and, by extension, as **an engine for various activities aimed at securing peace, stability and prosperity of the international.**

(2) Basic policies

(A) Contributing to peace and prosperity through non-military cooperation

- **Japan's contribution to world peace and prosperity through non-military cooperation** is highly rated as an embodiment of its philosophy as a peace-loving nation.
- Japan will comply with **the principle of avoiding any use of development cooperation for military purposes or for the aggravation of international conflicts.**

(B) Promoting human security

- Ensuring human security is **the guiding principle that lies at the foundation of Japan's development cooperation.**
- Providing development cooperation aimed at ensuring human security **by focusing on people prone to be placed in fragile situations, protecting them, and helping develop their abilities**
- Contributing proactively to **promoting basic human rights, including women's rights**

(C) Cooperation for self-reliant development through assistance for self-help efforts as well as dialogue and partnerships based on Japan's experience and expertise

- **Placing emphasis on** developing countries' own **initiatives and self-help efforts, Japan extends cooperation aimed at self-reliant development.**
- Attaching importance to laying the foundation for self-efforts and self-reliant development **such as developing human resources and socioeconomic infrastructures as well as establishing legal and other systems**
- Stressing **dialogue and partnerships with developing countries and other parties concerned**, including not only waiting for their requests but also proposing plans proactively from Japan's side

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2. Priority policies

(1) Priority issues

(A) "Quality growth" and poverty eradication through such growth

- In order to solve poverty problems, **it is essential to help achieve economic growth** through development of human resources and infrastructures and establishment of legal and other systems as well as growth of the private sector based on these efforts. Economic growth must be **"of high quality" (inclusive, sustainable, and resilient)**, and Japan supports such growth **using its experience, knowledge and technology effectively.**
- Providing fragile states with **cooperation from a humanitarian perspective and cooperation to help them to break away from fragility**
- Extending support from this perspective **to lay the foundation for economic growth and secure its driving force** and **promote human-centric development to support people's basic lives**

(B) Sharing universal values and realizing a peaceful and secure societies

- In order to achieve stable development based on "Quality Growth," it is essential that **the rights of each individual are guaranteed, that people can be engaged in economic and social activities with a sense of security, and that society is managed in a fair and stable manner.**
- From the perspective of **strengthening the foundation that provides the basis for such development, Japan extends cooperation to ensure the sharing of universal values and achieve peaceful, stable, and safe societies**
  - **Sharing universal values:** Establishing the rule of law, realizing good governance, promoting democratization and making it an integral part of society, and respecting fundamental human rights, including women's rights
  - **Peaceful, stable, and safe societies:** Establishment of peace, emergency support (such as disaster rescue), response to threats to stability and safety (coast guarding, anti-terrorism, maintenance of public order, and international public goods, etc.)


National reconciliation meeting

(C) Building a sustainable and resilient international community through efforts to address global issues

- Global issues cannot be resolved by a single country alone. Taking into consideration discussions about **the Millennium Development Goals (MDGs), Post-2015 Development Agenda, and so forth,** Japan aims to **help build a sustainable and resilient society** as a member of the international community.

(2) Priority policy issues by region

- Providing cooperation strategically, effectively, and flexibly in various parts of the world according to their characteristics and the degree to which they need cooperation
- Taking into account **regional integration, activities at regional levels, trans-border development, and enhancement of connectivity**
- **Extending necessary cooperation** to countries faced with various development issues though they are making progress in development and small island and other countries that are especially fragile though they have a certain level of per capita income **according to their development needs and their ability to repay**
- Providing the Asian region with cooperation taking into consideration **its close relationships with Japan and its importance to Japan's security and prosperity**
- Formulating priority policies for each of the regions such as ASEAN, South Asia, Central Asia and Caucasia, Africa, the Middle East, Central and Eastern Europe, Central and South America, Oceania, and the Caribbean

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3. Implementation

(1) Implementation principles

(A) Principles for effective and efficient development cooperation

(a) A more strategic approach

- Setting development cooperation policy and goals based on diplomatic policy
- Enhancing the synergies of **ODA and non-ODA funding and cooperation by establishing closer cooperation between the two**
- Evaluating development cooperation at the policy and project level, giving feedback on results, and reflecting it on the policy-making process

(b) Cooperation that takes advantage of Japan's strengths

- Proactively accepting **proposals from the private sector** and **making the most of Japan's knowledge and experience in a comprehensive and proactive manner in both tangible** (such as infrastructure development) **and intangible** (such as development of human resources and establishment of systems) **aspects**

(c) Proactive contribution to international discussions

(B) Principles for securing the appropriateness of development cooperation

(a) Situation regarding consolidation of democracy, the rule of law and the protection of human rights

(b) Avoidance of any use of development cooperation for military purposes or for the aggravation of international conflicts

- Avoiding any use of development cooperation for military purposes or for the aggravation of international conflict. **In case the armed forces or members of the armed forces in recipient countries are involved in development cooperation for non-military purposes such as civilian or disaster-relief purposes, such cases will be considered on a case-by-case basis in light of its substantive relevance.**

(c) Situation regarding military expenditures, the development and production of weapons of mass destruction and missiles, and the import and export of arms, (d) Impact of development on the environment and climate change, (e) Ensuring equity and consideration to the socially vulnerable, (f) Preventing corruption, and (g) Security of development cooperation personnel

(2) Implementation Arrangements

(A) Improvement of the implementation architecture of the government and the implementing agency

(B) Strengthening partnerships

(a) Public-private partnerships and partnerships with local governments

- Helping developing countries achieve economic development more powerfully and effectively by **utilizing the private sector's resources and facilitating growth led by the sector** and **using this to achieve solid growth in Japan**
- Development cooperation plays a role as a catalyst **to introduce the private sector's excellent technology and know-how and abundant funds to solve problems in developing countries.**
- **Establishing stronger partnerships with private businesses, including SMBs, local governments, universities and research institutes, and other organizations**

(b) Partnerships in emergency humanitarian relief and international peace cooperation

- Continuing to work with international agencies, NGOs, and other organizations for emergency humanitarian assistance and **promote partnerships with PKOs**

(c) Partnerships with international, regional and sub-regional organizations, (d) partnerships with other donor, emerging countries and other players, and (e) partnerships with civil societies

(C) Strengthening the foundation for implementation

Necessary efforts should be made to strengthen the foundation required to provide sustainable development cooperation such as financial and human resources

(a) Promoting understanding of the public and international community and (b) Developing human resources and solidifying the intellectual foundations for development cooperation

6

COMMENCEMENT OF A NEW PROJECT FOR VIETNAM -THE PROJECT FOR HARMONIZED, PRACTICAL LEGISLATION AND UNIFORM APPLICATION OF LAW - TARGETING YEAR 2020 -

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I. INTRODUCTION

Since the adoption of the Doi Moi (renovation) policy in 1986, the Socialist Republic of Viet Nam has pushed forward judicial reform to introduce and promote the principles of a market economy. The reform has included such undertakings as: the legislation of various laws, primarily in the civil and commercial law fields; and the adoption of Resolutions No.48 and No.49 of the Politburo of the Central Committee of the Communist Party issued in 2005. After the amendment to the Constitution in 2013 (which aimed to strengthen the protection of human rights, etc.), judicial reform has seen further progress through new legislation or comprehensive revisions in all legal fields (including public law field), and by reinforcing court functions.

The Research and Training Institute (RTI) of the Ministry of Justice (MOJ) of Japan began legal cooperation with Vietnam by organizing a study tour to Japan for Vietnamese MOJ officers in 1994. After the launch of the Technical Cooperation Project in the Legal and Judicial Field by the Japan International Cooperation Agency (JICA) in 1996, the RTI has continued legal technical assistance to Vietnam, primarily through the before-mentioned project and its successor projects[2]. Its assistance methods include: support in drafting basic laws, capacity-building of judicial personnel and improvement in legal practices. Its effort has led to such achievements as: the enactment of the Civil Code, Civil Procedure Code, Bankruptcy Law, Civil Judgment Execution Law, State Compensation Law, etc. (all critical laws in Vietnam); the joint-drafting of manuals for legal professionals, etc. In addition, a number of former participants in the projects have gone on to become high-ranking officials in those relevant organizations.

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[1] The author is currently posted in Vietnam as a JICA long-term expert.

[2] Former projects are: "Technical Cooperation in the Legal and Judicial Field" Phase I (1996 – 1999), Phase II (2000 – 2003) and Phase III (2003 – 2007), and "Technical Assistance for the Legal and Judicial System Reform" Phase I (2007 – 2011) and Phase II (2011-2015).

As a succeeding project to the "Technical Assistance for the Legal and Judicial System Reform Phase II" (hereinafter referred to as the "former project") implemented from April 2011 to March 2015, a new project titled "the Project for Harmonized, Practical Legislation and Uniform Application of Law Targeting Year 2020" (hereinafter referred to as "the Project") began in April 2015. The new project aims to further promote comprehensive and developmental cooperation towards 2020, the target year of the legal/judicial reform in Vietnam. At the same time, it plans to use approaches for the purpose of building a new type of partnership between Vietnam and Japan after completion of the project. Based on this purpose and plan, the project consists of two pillars: 1) assistance in legislative-drafting and improvement of legal practices, working with the conventional counterpart organizations: the Ministry of Justice (MOJ), the Supreme People's Court (SPC), the Supreme People's Procuracy (SPP) and the Vietnamese Bar Federation (VBF); and 2) assistance in capacity-building to secure legal consistency and transparency, through the Office of Government as an additional counterpart organization.

This paper will discuss the outline, outputs, challenges, etc. of the former project, and also explain the formation process of the outline (goals, outputs, etc.) of the new project.

II. OUTLINE OF THE FORMER PROJECTS[3]

The first legal cooperation project with Vietnam: "Technical Cooperation in the Legal and Judicial Field (Phase I to III) (1996 – 2007) undertook assistance in drafting basic laws, capacity-building of judicial personnel and improvement of legal practices. The outcomes of the projects included the enactment of the Civil Code and the Civil Procedure Code and the joint-drafting of legal practice manuals, etc. However, it appeared that the purposes of the enacted laws were not sufficiently understood by those engaged in law enforcement/operation. Even after the completion of the above project, it remained necessary to improve the adjudication and execution practices. Against this background, a new technical cooperation project, "Technical Assistance for the Legal and Judicial System Reform Phase I" was implemented from April 2007 to March 2011. The Phase II of this project (hereinafter "former project") was implemented from April 2011 to March 2015. These projects worked with the Ministry of Justice (MOJ), the Supreme People's Court (SPC), the Supreme People's Procuracy (SPP), and the Vietnam Bar Federation (VBF) as counterpart organizations. Its goal was to facilitate central judicial authorities to identify the legal challenges at the national level and examine solutions thereto, and thereby to promote such activities to take root in institutional

[3] Regarding the background to the commencement of the former project, please see "*Purojekuto shokai: Betonamu Ho/Shiho Seido Kaikaku Shien Purojekuto ni tsuite* (Presentation of a project: regarding the technical cooperation project for the legal and judicial system reform in Vietnam)" in ICD NEWS NO. 34 (in Japanese).

workflows.

The former project sought, as its most-noted goal, to strengthen institutional/personnel capacity-building at the above-mentioned four counterpart organizations. Such capacity-building was necessary in order to improve the contents and operation of legal normative documents. It was also necessary for adjudication and execution practices at the central judicial organizations, in response to challenges in legal practices, and needs for national development.

As a method to reach the above goal, the following approach was taken: identifying challenges in legal practices in provincial areas and accumulating such knowledge (by selecting pilot areas appropriate to conduct forward-looking activities in accordance with the nature of counterpart organizations); analyzing identified challenges by central judicial authorities; and improving guidance/supervisory methods toward local-level authorities. It was hoped that these approaches would lead to improvements in legal practices across the nation. At the same time, legislative drafting was undertaken in light of the identified challenges in practices.

III. OUTCOMES OBTAINED AND CHALLENGES REMAINING THROUGH FORMER PROJECTS

The terminal evaluation survey of the former project in July 2014 confirmed that:

- Seminars and other events were held in ways matching the actual situation of Vietnam;
- Based on the results of the above seminars, etc. reference materials and training textbooks were created (or revised) reflecting identified challenges and lessons learned;
- Recommendations were made for revising legal normative documents as necessary.

Moreover, it was recognized that each counterpart organization had made a number of achievements as follows:

(i) Ministry of Justice (MOJ)

- Working sessions, etc., invitation of JICA short-term experts, and study trips to Japan in order to draft revised Civil Code;
- Concerning the Secured Transaction Registration Law, based on the results of the workshops, etc., the formulation of Decree No.11 and a joint circular, by partially amending the Decree on Security Transactions No.163;
- Concerning the Law on Civil Judgment Execution, based on the inputs in the project, the creation of a handbook for enforcement officers, report on the review of the law, research report on judgments difficult to be enforced and reference materials for training.
- Concerning the State Compensation Law, based on the results of study trips to Japan, seminars,

etc., the formulation of a circular for effective operation of the law, setting of indicators to measure impacts of the enactment of the law, creation of procedure guidelines and a handbook for relevant officers;

- Training of registration officers;
- Revision of textbooks used at the Judicial Academy, etc.

(ii) Supreme People's Court (SPC)

- Seminars, etc. to review the Judgment Manual;
- Creation of a manual on criminal procedure and a handbook on the disposition of drug-related cases, based on the results of workshops, etc. organized by the Bac Ninh Provincial Court. Seminars for capacity-building of people's assessors and court officials;
- Seminars, invitation of JICA short-term experts, study trips to Japan, etc. for the revision of the Civil Procedure Code;
- Concerning the Law on the Organization of People's Courts, drafting of the law based on the results of workshops, invitation of JICA short-term experts, study trips to Japan, etc.;
- Concerning the amendment of the Bankruptcy Law, drafting of the amended law based on the results of seminars, invitation of JICA short-term experts, study trips to Japan, etc.

(iii) Supreme People's Procracy (SPP)

- Seminars, invitation of JICA short-term experts and study trips to Japan, for revising the Criminal Procedure Code;
- Concerning the Law on the Organization of the People's Procuracies, drafting of the law based on the results of workshops, invitation of JICA-short term experts, study trips to Japan, etc.;
- Activities for strengthening the guidance ability of the SPP, etc. through improvement of practices at the Hai Phong City People's Procuracy, local surveys and workshops for improving the criminal summary procedure;

(iv) Vietnam Bar Federation (VBF)

- Survey of the actual operation of local bar associations, study trips to Japan and seminars for strengthening the advisory and supervisory ability of the VBF on local bar associations;
- Drafting of the charter of "defense" in the Criminal Procedure Code, reflecting the inputs in the project.

Through the terminal evaluation survey, a significant improvement was observed in the practices of the counterpart organizations in drafting and revising legal normative documents, including:

- The establishment of workflows on legislative-drafting and revision based on on-site needs;
- The drafting and revision of legal normative documents based on on-site information and on the results of analyses of on-site challenges.

There still remained room for improvement in legislative-drafting and operation involving legal/judicial institutions. For instance:

- Draft laws completed in collaboration with the counterpart organizations can be subject to large-

scale modifications in the subsequent legislative process;

- At institutions other than the counterpart organizations, there still remained a lack of uniform understanding and operation of legal normative documents.

Due to the above, the successor project has been planned, on the basis of the achievements obtained through cooperation to date, in order to improve the entire process of drafting and operating legal normative documents. It has also been aimed to further support the Vietnam's legal and judicial system reform strategy, by launching a new project with new perspectives, improving legal normative documents drafted/amended by other administrative agencies as well.

IV. DEVELOPMENT PROCESS OF THE NEW PROJECT

The former project was given high marks by the Vietnamese counterparts. Thus, at an early stage of the former project, Japan received a request for a succeeding project from Vietnam. In August 2013, the government of Vietnam officially requested continuing support from the government of Japan. In response to this, the Japanese government agreed to accept the request to form a new technical cooperation project by the end of 2013.

On the occasion of the terminal evaluation survey of the former project in July 2014, de-facto research was conducted for the formation of a successor project. Subsequently, project-detailed planning surveys were conducted on four occasions in September, November and December (2014) and in January 2015.

From an early stage in the project formation process, Japan and Vietnam had agreed to include the strengthening of institutional/personnel capacity-building. The purpose of which was to improve the contents and operation of legal normative documents, and adjudication/execution practices, on the basis of challenges in legal practices and needs for national development. As the detailed project formation process advanced, various problems were found as follows:

- Draft laws completed through joint activities with counterpart organizations were largely modified in the subsequent legislative process;
- Japanese businesses confronted difficulties in the legal field in Vietnam. Specifically, inconsistency between laws, frequent legislative revisions, inconsistent legal operations, etc. caused problems.

Due to the above, Japanese individuals involved began calling for the addition of the National Assembly or the Office of Government of Vietnam (OOG) as a counterpart organization. The intent was to effectively improve the legislative process which was a cross-ministry challenge (strengthening the law-assessing capacity), by involving a superior authority in the legislative process. Here the critical question of how to incorporate these challenges in the new project arose.

In regards to these problems, Japan had little information available on the drafting-process of legal normative documents in Vietnam. Moreover, awareness on the addition of a new counterpart and new activities had not fully been shared between Japan and Vietnam. To help complete this lack of information and awareness, research was conducted on multiple occasions, as mentioned above.

As a result of the research, it was discovered that:

- During the drafting process of legal normative documents in Vietnam, the MOJ and the OOG play important roles in legal assessing;
- Despite their roles, those engaged in legislative-drafting and assessing brought along various issues, including an insufficient understanding of legal normative documents, and a lack of legislative skills, etc. causing inconsistency among, and ambiguous or unclear articles in, enacted legal normative documents, etc.
- Due to the above, in the operation and application of legal normative documents, understanding thereof was insufficient. This caused non-uniform or inappropriate operation/application.

Thus, the necessity was found to address these problems.

Since the first project detailed planning survey in September 2014, discussions had been continued enthusiastically between Japan and Vietnam on the details of the new project. In particular, focus was placed on the framework and activity contents in order to:

- correct and minimize inconsistency among, and ambiguous or unclear articles in, the legal normative documents of special interest for Japan;
- realize a uniform and appropriate operation and application of legal normative documents.

At first, as Japan and Vietnam had different opinions on the collaboration structure, goals, outputs and activities of the new project, they faced difficulties in coordinating them. However, as a result of persistent mutual efforts in reaching an agreement, (through the second research in November 2014) on the occasion of the third research in December 2014, an agreement was finally reached between the two countries concerning the framework of the project, etc.

In the face of 2020, the target year of legal and judicial reform of Vietnam, the two nations jointly confirmed the new project would be considered to be the culmination and grand sum of two-decades of bilateral cooperation. Moreover, it was recognized that the Japan-Vietnam relationship in and after 2021 should be further reinforced based on an equal footing and mutual understanding. The sharing of these recognitions meant that large-scale legal technical assistance activities for Vietnam should be finalized upon completion of the new project, marking the end of an era in 2020. In and after 2021, both countries would further seek cooperative relationships on equal grounds, different from traditional assistance activities. With regard to the new project, in order to make clear that the year 2020 would be the end of the “conventional type” of cooperation, the name of “the Project

for Harmonized, Practical Legislation and Uniform Application of Law Targeting Year 2020[4]" was chosen (as opposed to the continuing phase of the former project). Subsequently on February 3rd, 2015, the Record of Discussion (R/D) was signed between JICA and the relevant organizations in Vietnam. The R/D covered the contents of the new project, implementation structure, measures to be taken by Japan and Vietnam, etc. to officially initiate the project as of April 1st, 2015.

V. OUTLINE OF THE NEW PROJECT

As mentioned above, the new project commenced without interruption on April 1st, 2015, after the end of the former project on March 31st, 2015. The outline, goals, outputs, etc. of the new project are as follows (See PDM on pp.86 and onwards).

[Outline]
Period: April 2015 – March 2020 (five years)
Implementing organizations: Ministry of Justice (MOJ), Office of Government (OOG), Supreme People's Court (SPC), Supreme People's Procuracy (SPP) and the Vietnam Bar Federation (VBF)
Long-term experts: four experts including a prosecutor (chief advisor), a judge, an attorney-at-law and a project coordinator
Cooperating organizations in Japan: Ministry of Justice (MOJ), Japan Federation of Bar Associations (JFBA) and an advisory group

Among the four long-term experts from the former project, one expert (a judge) was replaced at the commencement of the project, while the remaining three experts (a prosecutor, an attorney-at-law and a project coordinator) continued their terms of office. In this way, the new project was undertaken within the same cooperation scheme (of four long-term experts) as before. It is anticipated that the number of long-term experts will be increased according to the workload of the new project.

[Overall goal]
The establishment of Vietnam's social foundation for growth is promoted through the development of predictable and reliable legal and judicial systems based on legal normative documents with ensured consistency.

[4] As the abbreviation of the project name, it was decided to use "PHAP LUAT 2020" which is composed of the acronym of each word, meaning "law" in Vietnamese.

[Project purpose]

Institutional-capacity for legal and judicial authorities/organization[5] is developed for minimizing and rectifying inconsistency in legal normative documents. It is also for promoting appropriate understanding and undertaking uniform implementation and application of legal normative documents with ensured consistency. This is in line with the 2013 Constitution and Resolutions No.48 and No.49[6]. Appropriate and efficient processing and application of legal normative documents are thereby realized.

As explained earlier, the former project aimed at the strengthening of institutional/personnel capacity-building for improving the contents and operation of legal normative documents. It also sought to improve adjudication and execution practices, in light of challenges in legal practices and development needs in Vietnam. By the end of the project, these goals were achieved.

Based on the results of the former project, the new project intends to further develop activities with the conventional counterpart organizations (MOJ, SPC, SPP and VBF). In addition, it aims to develop the institutional-capacity of legal and judicial organizations, in order to minimize and rectify inconsistency, and ambiguous or unclear articles in legal normative documents (as newly pointed out), and thereby realize uniform and appropriate implementation and application of such documents.

In order to attain these goals, the following outputs were proposed.

[Outputs]

1. The capacity of human resources at the MOJ and OOG would be strengthened for enhanced 1) review/verification; 2) post-checking; and 3) monitoring of the implementation of civil, economic, and other related legal normative documents so that inconsistent, ambiguous, or unclear articles, paragraphs and/or sub-paragraphs of legal normative documents are minimized and rectified. Moreover, the promotion of appropriate understanding and uniform implementation of legal normative documents is realized.
2. Based on the work plan formulated by each implementing agency for the implementation of the legal and judicial reform up to 2020 (which is in line with the 2013 Constitution and Resolution No.48-NQ/TW and No.49-NQ/TW2005 of the Politburo of the Central Committee of the Communist Party of Vietnam), substantive laws and procedural laws which contribute to settling civil cases, and the Criminal Procedure Law would be drafted. In addition, the appropriate

[5] These consist of the Ministry of Justice (MOJ), Office of Government (OOG), Supreme People's Court (SPC), Supreme People's Procuracy (SPP) and the Vietnam Bar Federation (VBF)

[6] Resolutions No.48 and No.49 refer to Resolutions No.48-NQ/TW and 49-NQ-TW of the Politburo of the Central Committee of the Communist Party of Vietnam.

understanding of legal normative documents on civil cases and criminal procedures is promoted and the capacity for giving advice and guidance on uniform implementation and conducting adjudication procedure would be enhanced.

3. Each organization analyzes and examines activities to be conducted after 2021, taking into consideration the Outputs of the Project in order to improve practices of 1) drafting, assessing, post-checking and supervising of legal normative documents; 2) giving advice and guidance on promoting appropriate understanding and uniform implementation of legal normative documents; and 3) giving advice and guidance for realizing trial and legal procedures based on the appropriate understanding of legal normative documents.

Output 1 was proposed in order to minimize and rectify inconsistency, and ambiguous or unclear articles in legal normative documents (which were raised as new problems). It was further proposed to realize uniform and appropriate implementation and application of legal normative documents. More specifically, among the counterpart organizations, the MOJ and OOG - which have authority over:1) pre-checking; 2) post-checking; and 3) monitoring of the improvement and implementation status – intend to develop the capacity of personnel engaged in 1) and/or 3).

For Output 1, target laws will be selected, with preference on those conducive to the improvement of business environment, according to the background to the formation of the project.

Output 2 is to be developed based on the achievements gained through joint-work with the counterpart organizations in the former project (MOJ, SPC, SPP and VBF). Such joint-work was conducted for institutional/personnel capacity-building, in order to improve the contents and operation of legal normative documents, as well as adjudication and execution practices. Efforts were made in line with challenges in legal practices and development needs in Vietnam. Output 2 aims at further qualitative development of these activities.

For example, activities conducted in the provincial areas in the former project were, in fact, quite effective, helping facilitate the discovery of problems actually occurring at the performance sites of judicial institutions. As a result, these activities will be continued through the new project. In doing so, it will be intended to implement qualitatively-deepened activities, by continuing and further pursuing activities in the same regions as in the former project (and not for quantitative expansion, such as spreading the target regions), and offering feedback of the obtained knowledge nationwide.

Concerning Output 3, on the premise of the end of large-scale legal technical assistance (upon the completion of the new project), consideration will be given to possible autonomous activities on the basis of Outputs 1 and 2 at each counterpart organization. Cooperative relationship in the legal field

between Japan and Vietnam will also be concurrently reviewed. In the formation process of the new project, it was decided to mark the year 2020 (the target year of the legal/judicial reform in Vietnam) as the end of an era, and to seek a new bilateral partnership in the legal field on an equal footing in and after 2021. In line with this goal, and upon completion of the project, one pillar of the new project is to examine possible activities by each counterpart organization in finding ideal bilateral cooperation in the judicial field.

[Activities]
For details of planned activities, see the PDM on pp.86 and onwards.

The focus of activities for Outputs 1and 2 is placed on the provision of inputs into Vietnam, through seminars, workshops, training courses, etc. by collecting and summarizing information in relation to target topics. The target topics can vary, ranging from those related to the legislative process for Output 1 to those concerned with legislative normative documents to be drafted for Output 2. Methods to be taken in pursuing these topics may not greatly change from those adopted in the former project: advice from long-term experts on a daily basis, seminars, workshops, study trips to Japan, etc. Differing from the former project, however, activity plans will be made at each counterpart organization annually, and their contents will be discussed and confirmed at Joint Coordination Committee (JCC)[7] meetings to monitor the implementation status of activities (See Activities 1-1-3, 1-2-3, 2-2-1, etc. in the PDM in pp.86 and onwards).

Specifically, regarding Output 1, the MOJ and the OOG will each formulate an annual activity plan to achieve the output. For Output 2, according to the purposes of the legal and judicial reform by the year 2020, each counterpart organization (except for the OOG) will produce a five-year plan of activities and an implementation schedule toward the end of the project in March 2020. An annual activity plan shall then be formulated with concrete activity contents and implementing schedules for each of the five years. This method has been incorporated in the new project as a new approach toward the realization of the legal/judicial reform in 2020. Its aim is to establish routines for goal-achievement, and to strengthen the awareness of those concerned by setting clear goals and its reform process.

As an aside, Japan and Vietnam came to an agreement on the allocation of costs. The new project is considered to be the grand sum of legal cooperation to date. Thus, in order to secure financial sustainability after the completion of the project, Vietnam shall bear a certain level of expenses from

[7] The JCC is composed of all the counterpart organizations, the project expert team and JICA. Chaired by the Director of the Department of International Cooperation of the MOJ Vietnam, who serves as the Project Director, the JCC plays an important role in deciding the directions of the project.

the beginning of the new project, and its budgetary burden will be increased annually.

VI. CONCLUSION

Eighteen years have quickly passed since the commencement of Japanese legal technical assistance to Vietnam. It may not be an exaggeration to consider that the project for Vietnam heads Japanese legal technical assistance to its other recipient countries.

The legal cooperation project with Vietnam, which has been ongoing for nearly 20 years, has contributed to the development of the legal and judicial systems of Vietnam. In light of local needs, assistance has been provided by helping legal personnel development, improving basic laws including the Civil Code, and improving legal practices where such laws are actually used. On the occasion of the terminal evaluation survey of the former project, high marks were given, not only for the achievement in legislative drafting but also for the creation of personal and organizational relationships of trust with legal professionals in Japan. Taking this appreciation into consideration, Output 2 (among the three outputs of the new project), which is an extension of conventional cooperation activities, is viewed as the grand sum of Japanese undertakings of over two decades. Thus, it will continue to be the central pillar of assistance activities.

Output 1 requires an expansion of significant achievements made in legislative drafting with consistency (through the former projects) into laws under the control of other organizations. In particular, with regards to legal normative documents conducive to the improvement of investment environment, the formation of: 1) a legislative-drafting system which guarantees legal consistency and uniform application of legal normative documents; and 2) a system which realizes ex-post facto the uniform operation and implementation of those documents, through reviews, feedbacks, etc. is required.

Output 1 involves activities with the new goal of securing legal consistency and guaranteeing uniform application of laws. In doing so, cross-ministry or cross-bureau activities should be developed, adding the Office of the Government as a new counterpart organization. From this viewpoint, it cannot be denied that Output 1 may pose new challenges, in particular on long-term experts. However, drawing out specific results in regards to Output 1 will lead not only to significant progress in improving the legal system and legal operation practices in Vietnam. Output 1 will also prove to be a decisive test to show a new possibility for Japanese legal technical assistance.

The new project regards 2020 as the goal year of the legal/judicial reform set by Vietnam in its

national strategy, marking the end of large-scale Japanese legal technical assistance. Therefore, it is expected that the project will be the culmination of Japan's 20 years of assistance to Vietnam.

Approaches, with an eye to the end of extensive assistance, have been incorporated for the first time as Output 3. In this sense as well, the new project will definitively become a leading project with a new significance attached for Japan. The RTI will continue to extend full-scale assistance for all three outputs -- not solely for Output 2 (an extension of existing cooperation activities) but also for Output 1 (which works on new challenges) and for Output 3 (seeing the new phase of Japanese assistance).

This new project, involving a number of new challenges, has just begun, and so it may go through the seemingly inevitable number of ups and downs. It is hoped that, as it enters into the full-scale process, the project will help contribute to the success of the legal and judicial reform of Vietnam, and help envisage a new form of partnership in the legal field between Japan and Vietnam. For these purposes, the cooperation of many individuals involved in the legal and judicial systems of Vietnam will be essential. Your continued support to our efforts will be highly appreciated.

Project Design Matrix (PDM) Ver1.0 (As of 24 December 2014)
Project Title: The Project for Harmonized, Practical Legislation and Uniform Application of Law Targeting Year 2020
Implementing Organization: Ministry of Justice (MOJ), Office of Government (OOG), Supreme People's Court (SPC), Supreme People's Procuracy (SPP), Vietnam Bar Federation (VBF)
Duration of the Project: Five (5) years
Target Group: Legal professionals and judicial officials of MOJ, OOG, SPC, SPP and VBF
Project Site: Hanoi

Narrative Summary	Objectively Verifiable Indicators	Means of Verification	Important Assumptions
Overall Goal			
The establishment of Vietnam's social foundation for growth is promoted through the development of predictable and reliable legal and judicial systems based on legal normative documents with ensured consistency.	1. The performance of the international comparative indicators on legal and judicial practices publicized by international organizations, etc. improves from that of the project inception. 2. The performance of the international comparative indicators on lawyers' practices publicized by international organizations, etc. improves from that of the project inception. 3. The reviews/verifications are conducted in accordance with the improved review/verification process. 4. The supervisions and post-checking are conducted in accordance with the improved supervision and post-checking process.	1. The performance of the international comparative indicators on legal and judicial practices publicized by international organizations, etc. 2. The performance of the international comparative indicators on lawyers' practices publicized by international organizations, etc. 3. The records of the reviews/verifications and interviews with relevant personnel. 4. The records of supervisions and post-checking, and interviews with relevant personnel.	
Project Purpose			-The legal and judicial authorities and organization continuously take action in line with the policy framework aiming at the legal and judicial reform.
Institutional capacity for legal and judicial authorities/organization[1] is developed for minimizing and rectifying inconsistency in legal normative documents as well as for promoting appropriate understanding and undertaking uniform implementation and application of legal normative documents in line with the 2013 Constitution and the Resolution No.48-NQ/TW	1. MOJ's review of legal normative documents is improved in the following aspects: ➢ Opinions from a wider range of stakeholders are taken into consideration. ➢ Attention is given to any possible issues which may arise during the implementation and application stage. ➢ The reviews are conducted from a view point of ensuring consistency of legal normative documents.	1. MOJ's record on its review processes and interviews with relevant personnel. 2. MOJ's record on its post-check processes and interviews with relevant personnel. 3. MOJ's record on its monitoring law implementation and	

and NO.49-NQ/TW2005 of the Politburo of the Central Committee of the Communist Party of Vietnam; thereby, appropriate and efficient process and application of legal normative documents are realized.	➢ The reviews are conducted from a view point of realizing uniform implementation and application of legal normative documents. 2. MOJ's post-checking of legal normative documents is improved in the following aspects: ➢ Opinions from a wider range of stakeholders are taken into consideration. ➢ The situations and causes of inconsistent implementation and application of legal normative documents are analyzed. ➢ Remedial measures are considered and facilitation for taking such measures is conducted based on the identified causes of inconsistent implementation and application of legal normative documents. 3. MOJ's monitoring law implementation is improved in the following aspects: ➢ Opinions from a wider range of stakeholders are taken into consideration. ➢ The situations of inconsistent implementation and application of legal normative documents and the insufficient development of legal normative documents as their causes are analyzed. ➢ Remedial measures are taken for improving the situations of insufficient development of legal normative documents, which can be a cause of inconsistent implementation and application of legal normative documents. 4. OOG's verifications of legal normative documents are improved in the following aspects. ➢ Coordination among different stakeholders is enhanced. ➢ Opinions from a wider range of stakeholders are taken into consideration. ➢ Attention is given to any possible issues which may arise during the implementation and application stage. ➢ The verifications are conducted from a view point of ensuring consistency of legal normative documents. ➢ The verifications are conducted from a view point of	interviews with relevant personnel. 4. OOG's record on its verification processes and interviews with relevant personnel. 5. OOG's record on its supervision on the development and implementation of legal normative documents and interviews with relevant personnel. 6. Performance of the work plan regarding the improvement of civil proceedings and interviews with relevant personnel. 7. Performance of the work plan regarding the improvement of administrative proceedings and interviews with relevant personnel. 8. Performance of the work plan regarding the improvement of criminal proceedings and interviews with relevant personnel. 9. Statistical information on civil adjudications and interviews with relevant personnel. 10. Statistical information on administrative litigations and interviews with relevant personnel. 11. Statistical information on criminal adjudications and interviews with relevant personnel.	-MOJ and OOG continuously take action for ensuring consistency of legal normative documents.

	realizing uniform implementation and application. 5. OOG's capacity to support to the government and Prime Minister in supervising, directing and verifying when drafting and implementing legal normative documents is enhanced. 6. Based on the work plan, civil proceedings are improved. ➢ SPC contributes to the implementation of due process with transparency and uniform application of law in adjudications. ➢ SPP contributes to ensuring that laws are strictly and uniformly observed. ➢ VBF contributes to the harmonized legislation, uniform application of law, protection of human rights, and better access to justice. 7. Based on the work plan, administrative proceedings are improved. ➢ SPC contributes to the implementation of due process with transparency and uniform application of law in adjudications. ➢ SPP contributes to ensuring that laws are strictly and uniformly observed. ➢ VBF contributes to harmonized legislation, uniform application of law, the protection of human rights, and better access to justice. 8. Based on the work plan, criminal proceedings are improved. ➢ SPC contributes to the implementation of due process with transparency and uniform application of law in adjudications. ➢ SPP contributes to ensuring that laws are strictly and uniformly observed. ➢ VBF contributes to harmonized legislation, uniform application of law, the protection of human rights, and better access to justice 9. Civil adjudications are appropriately held in accordance with the revised Civil Procedure Code. 10. Administrative adjudications are appropriately held in accordance with the revised Administrative Procedure Law.		

		11. Criminal adjudications are appropriately held in accordance with the revised Criminal Procedure Code.		
Outputs				The substantive laws, procedural laws and organization laws supported by the Project are enacted without major delay.
1	Capacity of human resources at MOJ and OOG is strengthened for better (1) review/verification, (2) post-checking, and (3) monitoring the implementation of civil, economic, and other related legal normative documents so that inconsistent, ambiguous, or unclear articles, paragraphs and/or sub-paragraphs of legal normative documents are minimized and rectified as well as promotion of appropriate understanding and uniform implementation of legal normative documents is realized.	1. MOJ plans, designs and holds seminars and other events to meet the needs of the internal human resources, taking into consideration the challenges faced by local practitioners. 2. MOJ plans, designs and holds seminars and other events to meet the needs of other ministries and legal departments of the People's Committees at the ministry level, taking into consideration the challenges faced by local practitioners. 3. MOJ's reference materials are developed taking into consideration the following points: ➢ The analysis on the situations of inconsistent implementation and application of legal normative documents. ➢ The analysis on the causes of inconsistent implementation and application of legal normative documents. ➢ Remedial measures based on the identified situations and causes of inconsistent implementation and application of legal normative documents. ➢ Necessary facilitation to take remedial measures. 4. MOJ's reference materials are used by relevant staff. 5. OOG plans, designs and holds seminars and other events to meet the needs of the participants, taking into consideration the challenges faced by local practitioners. 6. OOG's reference materials are developed taking into consideration the following points: ➢ The analysis on the situations of inconsistent implementation and application of legal normative documents. ➢ The analysis on the causes of inconsistent implementation and application of legal normative documents. ➢ Remedial measures based on the identified situations and causes of inconsistent implementation and application of legal normative documents.	1. Materials of seminars and other events organized by MOJ for internal human resources and interviews with relevant personnel. 2. Materials of seminars and other events organized by MOJ for other ministries and legal departments of the People's Committees at the ministry level and interviews with relevant personnel. 3. MOJ's reference materials and interviews with relevant personnel. 4. Interviews with relevant personnel 5. Materials of seminars and other events organized by OOG and interviews with relevant personnel. 6. OOG's reference materials and interviews with relevant personnel. 7. Interviews with relevant personnel	

		➢ Necessary facilitation to take remedial measures. 7. OOG's reference materials are used by relevant staff.	
2	Based on the work plan formulated by each implementing agency for the implementation of the legal and judicial reform up to 2020, which is in line with the 2013 Constitution and the Resolution No.48-NQ/TW and No.49-NQ/TW2005 of the Politburo of the Central Committee of the Communist Party of Vietnam, substantive laws and procedural laws which contribute to settling civil cases are drafted and the Criminal Procedure Law is drafted. In addition, appropriate understanding of legal normative documents on civil cases and criminal procedures is promoted and capacity for giving advice and guidance on uniform implementation and conducting adjudication procedure is enhanced.	1. The work plan formulated by each organization takes into consideration the following points: ➢ Each organization's review on the achievement of the legal and judicial reform up to 2020. ➢ Each organization's analysis on the activities in previous years. ➢ Each organization's process to achieve the goal of the target year. ➢ Each organization's prioritized activities for the purpose of attaining the legal and judicial reform up to 2020. 2. The drafts of the revised Civil Code, revised Law on Civil Judgment Execution, revised State Compensation Liability Law, revised Civil Procedure Code, and the revised Administrative Procedure Law are improved taking into consideration the following points: ➢ Stipulations of the 2013 Constitution and the Resolution No.48-NQ/TW and NO.49NQ/TW2005 of the Politburo of the Central Committee of the Communist Party of Vietnam. ➢ The development of Vietnam's market economy ➢ The challenges in practical implementation 3. The draft of the revised Criminal Procedure Code is improved taking into consideration the following points: ➢ Stipulations of the 2013 Constitution and the Resolution No.48-NQ/TW and NO.49NQ/TW2005 of the Politburo of the Central Committee of the Communist Party of Vietnam. ➢ The challenges in practical implementation ➢ Enhanced protection of human rights 4. Practical challenges are identified and analyzed for the development of the Law on Property Registration and Law on Private International Law. 5. Issues regarding the formation of judicial precedents are synthesized. 6. The synthesized issues regarding the formation of judicial	1. The work plans of each organization, the results of the analysis on the activities in previous years, and interviews with relevant personnel. 2. The drafts of the revised Civil Code, revised Law on Civil Judgment Execution, revised State Compensation Liability Law, revised Civil Procedure Code, and the revised Administrative Procedure Law 3. The draft of the revised Criminal Procedure Code 4. Reports on the development of the Law on Property Registration and Law on Private International Law. 5. Reports on the synthesized issues regarding the formation of judicial precedents. 6. The legal normative documents in which the synthesized issues regarding the formation of judicial precedents are reflected, and/or reference materials recording the improvement of practical implementation, and interviews with relevant personnel. 7. Reports on identified and analyzed practical challenges in the settlement of international civil cases. 8. The legal normative documents in which the identified and analyzed challenges in the settlement of	

		precedents are reflected to legal normative documents and/or improvement of practical implementation is undertaken. 7. Practical challenges in the settlement of international civil cases are identified and analyzed. 8. The identified and analyzed challenges in the settlement of international civil cases are reflected to legal normative documents and/or improvement of practical implementation is undertaken. 9. MOJ plans, designs and holds seminars and other events to meet the needs of the participants, taking into consideration the challenges faced by local practitioners. 10. Issues taken up in MOJ's seminars are reflected to legal normative documents and/or improvement of practical implementation is undertaken. 11. SPC plans, designs and holds seminars and other events to meet the needs of the participants, taking into consideration the challenges faced by local practitioners. 12. Issues taken up in SPC's seminars are reflected to legal normative documents and/or improvement of practical implementation is undertaken. 13. SPP plans, designs and holds seminars and other events to meet the needs of the participants, taking into consideration the challenges faced by local practitioners. 14. Issues taken up in SPP's seminars are reflected to legal normative documents and/or improvement of practical implementation is undertaken. 15. VBF plans, designs and holds seminars, training courses and other events to contribute to the legal policy and legislation development and to meet the needs of the participants, taking into consideration the challenges faced by local practitioners (particularly challenges regarding the protection of human rights and access to justice). 16. Issues taken up in VBF's seminars, training courses, and other events are reflected to the Lawyer's Manual and other professional and skills guidelines and/or improvement of practical implementation is undertaken.	international civil cases are reflected, and/or reference materials in which the improvement of practical implementation is recorded, and interviews with relevant personnel. 9. Materials of seminars and other events organized by MOJ and interviews with relevant personnel. 10. The legal normative documents in which the issues taken up in MOJ's seminars are reflected, and/or the reference materials in which the improvement of practical implementation is recorded, and interviews with relevant personnel. 11. Materials of seminars and other events organized by SPC and interviews with relevant personnel. 12. The reference materials in which the issues taken up in SPC's seminars are reflected, and/or the reference materials in which the improvement of practical implementation is recorded, and interviews with relevant personnel. 13. Materials of seminars and other events organized by SPP and interviews with relevant personnel. 14. The reference materials in which the issues taken up in SPP's	

		17. The Lawyer's Manual and other professional and skills guidelines are developed taking into consideration the following points: ➢ Contribution to the protection of human rights and better access to justice. ➢ Stipulations of the 2013 Constitution and the Resolution NO.48-NQ/TW and No.49-NQ/TW2005 of the Politburo of the Central Committee of the Communist Party of Vietnam. ➢ Enhanced legal services to the citizens. ➢ The challenges in practical implementation. 18. The Lawyer's Manual and other professional and skills guidelines are at the disposal of lawyers for utilization. 19. The Lawyer's Manual and other professional and skills guidelines are used by lawyers.	seminars are reflected, and/or the reference materials in which the improvement of practical implementation is recorded, and interviews with relevant personnel. 15. Materials of seminars, training courses, and other events organized by VBF and interviews with relevant personnel. 16. The Lawyer's Manual and other professional and skills guidelines in which the issues taken up in VBF's seminars, training courses, and other events are reflected, and/or the reference materials in which the improvement of practical implementation is recorded, and interviews with relevant personnel. 17. The Lawyer's Manual and other professional and skills guidelines and interviews with relevant personnel. 18. Interviews with relevant personnel. 19. Interviews with relevant personnel.	
(3)	Each organization analyzes and examines activities to be conducted after 2021 taking into consideration the Outputs of the Project in order to improve practices of (1) drafting, reviewing/verifying, post-checking and monitoring the implementation of legal normative documents, (2) giving advice and guidance on promoting appropriate	1. Each organization conducts an analysis taking into consideration the following points: ➢ Activities for uniform application and enforcement of laws and ordinances. ➢ Activities for establishing a framework which enables appropriate dispute settlements. ➢ Activities for realizing legal procedures which underscore human rights. ➢ Activities for strengthening access to justice.	1. Results of the analysis by each organization and interviews with relevant personnel	

	understanding and uniform implementation of legal normative documents, and (3) giving advice and guidance for realizing adjudication and legal procedures based on appropriate understanding of legal normative documents.			
Activities		Inputs		- Transfers or resignations of the staff of legal and judicial authorities/ organization do not happen frequently.
(1-1-1)	In cooperation with the Long-term Experts, MOJ analyzes, examines and synthesizes effective and efficient measures to achieve the minimization and correction of inconsistent, ambiguous, or unclear articles, paragraphs and/or sub-paragraphs of legal normative documents and to promote appropriate understanding and uniform implementation of legal normative documents.	<Japanese side> - Long-term Experts (a Chief Advisor (Prosecutor), a Judge, an Attorney-at-law, a Project Coordinator, etc.) - Short-term Experts - Advisory Group - Training in Japan - Conference rooms in Japan for seminars and workshops - JICANET - Part of project activity cost	<Vietnamese side> Government contribution (from MOJ, OOG, SPC and SPP): - Project Director - Project Manager - Coordinator - Working Group Members - Conference rooms for seminars and workshops to be held at the offices of the implementing partners - Office equipment for project implementation - Communication and coordination expenses From VBF: - Project Manager - Coordinator - Working Group Members - Conference rooms for seminars and workshops to be held at the offices of the implementing partners - Office equipment for project implementation - Communication and	
(1-1-2)	In consultation with the Long-term Experts, MOJ selects target legal normative documents for achieving the minimization and correction of inconsistent, ambiguous, or unclear articles, paragraphs and/or sub-paragraphs of the legal normative documents and/or promoting appropriate understanding and uniform implementation of the legal normative documents.			
(1-1-3)	MOJ formulates an annual work plan for the target legal normative documents agreed in (1-1-2) based on the measures analyzed in (1-1-1).			
(1-1-4)	Joint Coordinating Committee (JCC) formally confirms the work plans formulated in (1-1-3).			
(1-1-5)	In cooperation with the Long-term Experts, MOJ holds workshops/seminars based on the work plan formulated in (1-1-3).			
(1-1-6)	In cooperation with the Long-term Experts, MOJ holds seminars for improving the capacity of drafting, reviewing, post-checking and/or implementing legal normative documents, targeting other ministries and legal departments of the People's Committees at the ministry level, based on the results of the analysis in (1-1-1).			<Preconditions> - No major organizational reforms at the implementing organizations
(1-1-7)	In cooperation with the Long-term Experts, MOJ develops reference materials based on the contents of, and lessons learned from, the seminars and other events held in (1-1-4) and (1-1-5).			

(1-2-1)	In cooperation with the Long-term Experts, OOG analyzes, examines and synthesizes effective and efficient measures to achieve the minimization and correction of inconsistent, ambiguous, or unclear articles, paragraphs and/or sub-paragraphs of legal normative documents and to promote appropriate understanding and uniform implementation of legal normative documents.	coordination expenses	occur. - No major changes in roles and responsibilities of the implementing organizations occur.
(1-2-2)	In consultation with the Long-term Experts, OOG selects target legal normative documents for achieving the minimization and correction of inconsistent, ambiguous, or unclear articles, paragraphs and/or sub-paragraphs of the legal normative documents and for promoting appropriate understanding and uniform implementation of the legal normative documents.		
(1-2-3)	OOG and the Long-term Experts formulate an annual work plan for the target legal normative documents agreed in (1-2-2) based on the measures analyzed in (1-2-1).		
(1-2-4)	In cooperation with the Long-term Experts, OOG holds workshops/seminars based on the work plan formulated in (1-2-3).		
(1-2-5)	In cooperation with the Long-term Experts, OOG develops reference materials based on the contents of, and lessons learned from, the seminars and other events held in (1-2-4).		
(2-1-1)	In cooperation with the Long-term Experts, MOJ, SPC, SPP and VBF individually formulate (1) an overall work plan and (2) an annual work plan for Output 2 at the beginning of each year (Japanese fiscal year), based on the roadmap for the legal and judicial reform up to 2020.		
(2-1-2)	JCC formally confirms the plans formulated in (2-1-1).		
(2-1-3)	JCC confirms the progress of (1) the overall work plans (2) annual work plans formulated in (2-1-1).		
(2-2-1)	In cooperation with the Long-term Experts, MOJ holds seminars and other events for finalizing the drafts of the revised Civil Code, revised Law on Civil Judgment Execution, and revised State Compensation Liability Law (including related legal normative documents and other guiding documents), respectively, in collaboration with related organizations.		
(2-2-2)	In cooperation with the Long-term Experts, MOJ collects information on the development of the Law on Property Registration and the Law on Private International Law, analyzes the information and then synthesizes the results in collaboration with related organizations.		

(2-2-3)	In cooperation with the Long-term Experts, MOJ plans and holds seminars and other events for improving the capacity of giving advice and guidance on promoting appropriate understanding of legal normative documents in collaboration with related organizations.
(2-3-1)	In cooperation with the Long-term Experts, SPC holds seminars and other events for finalizing the drafts of the revised Civil Procedure Code and the revised Administrative Procedure Law (including related legal normative documents and other guiding documents), respectively, in collaboration with related organizations.
(2-3-2)	In cooperation with the Long-term Experts, SPC plans and holds seminars and other events for improving capacity for giving advice and guidance on realization of adjudication based on appropriate understanding of legal normative documents, in collaboration with related organizations.
(2-3-3)	In cooperation with the Long-term Experts, SPC collects information on the formation of judicial precedents which enables uniform application of laws, analyzes the information and then synthesizes the results in collaboration with related organizations.
(2-3-4)	In cooperation with the Long-term Experts, SPP holds seminars and other events for analyzing issues concerning international civil cases in collaboration with international organizations.
(2-4-1)	In cooperation with the Long-term Experts, SPP holds seminars and other events for finalizing the draft of the revised Criminal Procedure Code (including related legal normative documents and other guiding documents), in collaboration with related organizations.
(2-4-2)	In cooperation with the Long-term Experts, SPP plans and holds seminars and other events for improving capacity for giving advice and guidance on realization of prosecution and adjudications based on appropriate understanding of legal normative documents, or improvement of civil, administrative, and criminal adjudications, in collaboration with related organizations.
(2-5-1)	In order to fulfill lawyers' role to promote harmonized legislation and uniform application of law, to protect human rights, and to ensure the access to justice, in cooperation with the Long-term Experts, VBF, either on its own or with other related organizations, plans and holds seminars, training courses, and other events for improving VBF's capacity for giving advice and guidance on improvement of lawyers' practice based on

	appropriate understanding of legal normative documents.			
(2-5-2)	In order to fulfill lawyers' role to promote harmonized legislation and uniform application of law, to protect human rights, and to ensure the access to justice, in cooperation with the Long-term Experts, VBF, either on its own or with other related organizations, analyzes the target legal normative documents, synthesizes the opinions from its members, and holds seminars and other events for proposing recommendations on the improvement and uniform application of these legal normative documents.			
(2-5-3)	In cooperation with the Long-term Experts, VBF establishes a working group (WG) for developing the Lawyer's Manual and other professional and skills guidelines.			
(2-5-4)	In order to fulfill lawyers' role to promote harmonized legislation and uniform application of law, to protect human rights, and to ensure the access to justice, the WG established by VBF develops the Lawyer's Manual and other professional and skills guidelines in cooperation with the Long-term Experts.			
(2-5-5)	In cooperation with the Long-term Experts, VBF holds seminars, training courses, and other events for analyzing and addressing issues concerning the professional development of commercial lawyers in dealing with international transactions and civil cases in collaboration with international organizations.			
(3-1)	In cooperation with the Long-term Experts, MOJ, OOG, SPC, SPP and VBF individually review the results of the analysis on annual performance of the project activities at each organization.			
(3-2)	In cooperation with the Long-term Experts, MOJ, OOG, SPC, SPP and VBF individually analyze and examine measures to improve work procedures after the year 2021 at each organization.			
(3-3)	In cooperation with the Long-term Experts, MOJ, OOG, SPC, SPP and VBF individually write a report on the results of their analysis, examination and reviews at each organization.			

[1] Legal and judicial authorities/organization refers to MOJ, OOG, SPC, SPP and VBF.

OUTLINE AND CHARACTERISTICS OF THE LEGISLATIVE PROCESS IN VIETNAM

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I. INTRODUCTION

This paper attempts to provide an overview of the current legislative process in Vietnam and to identify its key features. It is intended to provide useful insights for implementing our new cooperation project with Vietnam which deals with the issues of legislative quality such as ambiguous, inconsistent and unenforceable legal provisions.

The legislative process in Vietnam is provided for in the Law on Promulgation of Legal Documents (No.17/2008/QH12; hereinafter referred to as the "Promulgation Law")[1] and the Decree Detailing and Providing Measures for the Implementation of the Law on Promulgation of Legal Documents (No.24/2009/ND-CP; hereinafter referred to as the "Implementation Decree"). This paper focuses primarily on these statutory provisions rather than the empirical findings of the legislative process in Vietnam. Thus, some explanations in this paper may not reflect the actual legislative practice in Vietnam.[2] Moreover, as this paper is based primarily on the English translation and has not referred to the original Vietnamese version of the above two statutes, linguistic differences may lead to an imperfect analysis thereof.[3] Please also note that any opinions expressed in this paper are mine and do not represent the official views of the Ministry of Justice of Japan.

II. LEGISLATIVE PROCESS

In Vietnam, multiple organizations listed in Article 84 of the Constitution have the right to submit

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[1] The current Law on Promulgation of Legal Documents, which was enacted in 1996 and revised in 2002 and 2008, will be replaced by a new law (effective from 1 July 2016). The new law will cover the legislative process at both central and local levels.

[2] For the analysis of issues of legislative process in Vietnam, see PHAN Thi Lan Huong, *The Role of Vietnamese Government in Legislation – in Comparison with Japan* (CALE Discussion Paper No.11, September, 2014).

[3] The English texts of the Promulgation Law and Implementation Decree can be found on the website of the Ministry of Justice (MOJ) of Vietnam at http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10500 and http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10662. The English translations of the Promulgation Law and the Implementation Decree may contain different translations for the same matters/items.

draft laws to the National Assembly.[4] Among them, the Government and government-related agencies are the primary bodies in charge of legislative activities.[5] Thus, in this paper I will mainly focus on cases in which the Government prepares and submits the draft law to the National Assembly.

The legislative process in Vietnam can be divided largely into three stages: 1) Formulation of the law development program; 2) Drafting of the proposed law by the Government; and 3) Adoption of the draft law by the National Assembly. Below is the outline of each stage.

A. Formulation of the Law Development Program

In order for a law to be promulgated in Vietnam, it must be included in the law development program approved by the National Assembly. The Promulgation Law requires that development programs be made on laws and ordinances of the Standing Committee of the National Assembly and decrees of the Government among all legal documents.[6] Of these, the law development program consists of the National Assembly term-based (5 years) development program and the annual development program (Art. 22, para. 2 of the Promulgation Law). For example, the term-based law development program of the current National Assembly term (the 13th) has been formulated by Resolution No.20 of the National Assembly dated November 26, 2011(20/2011/QH13), and the 2015 annual program by Resolution No.70 of the National Assembly dated May 30, 2014(70/2014/QH13).

The outline of the formulation process of the law development program is as follows:

1. Proposals by the Government

The Government shall make a proposal for the law development program on issues within its functions, tasks and authority (Art. 23, para. 2 of the Promulgation Law). The proposal for the term-based program shall be submitted to the Standing Committee of the National Assembly and the Committee for Legal Affairs of the National Assembly by August 1st in the first year of the National Assembly term. Likewise, the proposal for the annual program shall be submitted by March 1st in the previous year (Art. 24, para. 1 of the Promulgation Law).

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[4] The State President, the Standing Committee of the National Assembly, the Ethnic Council and Committees of the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, the State Audit, the Central Committee of the Vietnam Fatherland Front and the central bodies of its member organizations have the right to submit draft laws to the National Assembly.

[5] "The Government" is the highest administrative body of Vietnam and is composed of the Prime Minister, Deputy Prime Ministers, Ministers and heads of ministerial-level agencies. The Government makes its decisions by a majority vote. In this paper, "the Government" may include government-related agencies.

[6] The types of legal documents are listed in Article 2 of the Promulgation Law. Of these, decrees of the Government and circulars of Ministers are the most commonly issued. Since Doimoi was introduced in 1986 up to July 2013, 471 Laws/Ordinances (290 Legal Codes, Laws/Acts and 181 Ordinances), 2,783 Decrees and 7,080 Circulars and Joined-Circulars have been enacted in order to respond to the needs of an open market economy, see PHAN, supra note 2, at pp. 24.

The Ministry of Justice shall support the Government in making the draft of the law development program based on proposals from Ministries, Ministry-equivalent Agencies and Government-affiliated Agencies (hereinafter referred to as "Ministries") (Art. 23, para. 2 of the Promulgation Law). The procedure for making a proposal is specified in the Implementation Decree as follows. Ministries shall first send the Ministry of Justice their proposals and other necessary documents for the term-based program and the annual program within the specified period of time (Art. 4 of the Implementation Decree). The Ministry of Justice examines these proposals and posts them on its Website to collect opinions from organizations and individuals (Art. 6 of the Implementation Decree). In examining submitted proposals, the Minister of Justice may set up the Advisory Council consisting of a representative of the Ministry of Justice and specialists (Art. 7 of the Implementation Decree). On the basis of these proposals and opinions, the Minister of Justice shall finalize the draft proposal on the law development program and submit it to the government (Art. 8 of the Implementation Decree).

After the Ministry of Justice presents the draft proposal on the law development program, the Government shall deliberate and vote on its adoption (Art. 23, para. 3 of the Promulgation Law). On the basis of the result of the Government meeting, the Ministry of Justice shall finalize the government proposal on the law development program, and report it on behalf of the Government to the National Assembly Standing Committee on the government proposal on the law development program (Art. 10 of the Implementation Decree).

2. Verification, deliberation and approval by the National Assembly

In the National Assembly, the Committee for Legal Affairs plays a major role in verifying law development proposals in cooperation with other related Committees. The "verification"[7] shall focus on the need to promulgate the proposed law, its scope and object, consistency, feasibility, etc. (Art. 25, para. 1 of the Promulgation Law).

Subsequently, the Standing Committee of the National Assembly shall deliberate the proposal in consideration of the explanation by the government and the verification report from the Committee for Legal Affairs, and then submit it to the National Assembly (Art. 26 of the Promulgation Law). Following the introduction by the Standing Committee, the National Assembly deliberates on the proposed law development program at the plenary session, and votes on its adoption (Art. 27, para. 1 of the Promulgation Law).

[7] For the acting of examination/scrutiny/assessment/verification of the law development program or draft laws, different terms seem to be used intentionally depending on the entities in the English version as well as in the original Vietnamese version. It may be necessary to further examine the definition and interpretation of these terms.

There are also provisions on the adjustment of the law development program according to changes in social/economic situations after adoption. In principle, adjustment and approval of an amended program shall be done through the same procedure as the initial program formulation procedure (Art. 29 of the Promulgation Law; Art. 12 of the Implementation Decree).

B. Drafting of the Proposed Law by the Government

1. Drafting of proposed laws

a. Establishment of the Drafting Board

For the drafting of the proposed law, the government shall, according to the proposal by the Ministry of Justice, assign a ministry or a ministry-equivalent agency to be the lead drafting agency, which shall establish a Drafting Board (Art. 30, para. 2 of the Promulgation Law). In most cases, the Ministry which proposed the law will be assigned as the lead drafting agency. In cases where the proposed law covers several sectors/areas, the Standing Committee of the National Assembly shall establish a Drafting Board and appoint the lead drafting agency (Art. 30, para. 1 of the Promulgation Law).

The Drafting Board is established on an *ad hoc* basis for each proposed law to be drafted. Once the law is promulgated, it shall be dissolved (Art. 20, para. 3 of the Implementation Decree). A Drafting Board shall consist of at least nine members, including its Chairperson, who is the head of the lead drafting agency (Minister, etc.), and other members who are senior officials of the lead drafting agency and other concerned organizations, and experts in the area of the proposed law. In cases where the Government submits the proposed law, the Drafting Board shall include representatives of the Ministry of Justice and the Office of Government (Art. 31, para. 1 of the Promulgation Law).

The Drafting Board is responsible for reviewing the outline of the draft law and deliberating the basic policy and other related issues. It is also tasked with ensuring the constitutionality, legality, consistency with the legal system and feasibility of the draft law (Art. 32, para. 2 of the Promulgation Law).

b. Establishment of the Editorial Team

The chairperson of the Drafting Board shall establish the Editorial Team to support the Drafting Board in performing its duties (Art. 32, para. 3 of the Promulgation Law). The Editorial Group shall be composed of at least nine members who are specialists from the lead drafting agency and other organizations including officials serving on the Drafting Board. The Editorial Team shall perform duties assigned by the Drafting Board (Art. 25, para. 2 of the Implementation Decree).

c. Drafting procedure of laws

It is provided that the lead drafting agency shall perform various tasks in the preparation of the draft

laws, including reviewing the existing legal documents and international treaties related to the proposed laws, organizing the impact assessment, and collecting comments from concerned organizations (Art. 33 and 35 of the Promulgation Law). The draft laws and other explanatory documents shall be posted on the website of the Government and the lead drafting agency for a minimum of sixty days (Art. 35, para. 1 of the Promulgation Law). Comments may also be collected directly from concerned organizations and individuals, by organizing consultative workshops or through the mass media (para. 3 of the said Article).

2. Assessment of the draft law[8]

The Ministry of Justice is responsible for assessing the draft law prior to its submission to the Government (Art. 36, para.1 of the Promulgation Law). As mentioned above, when the government is submitting the draft law, a representative of the Ministry of Justice shall participate in the Drafting Board as a member (Art. 31, para. 1 of the Promulgation Law). The Ministry of Justice is therefore expected to play both roles: drafting and assessment.

In cases where the proposed law is related to several areas or has been drafted primarily by the Ministry of Justice, the Minister of Justice shall establish an Assessing Council consisting of representatives of concerned agencies and experts (Art. 36, para. 1 of the Promulgation Law). The Assessing Council shall consist of nine members, including representatives of the Ministry of Justice and the Office of Government (Art. 46, para. 1 and 2 of the Implementation Decree). In cases where the Assessing Council is not set up, the Ministry of Justice shall, when necessary, hold an advisory assessment meeting with the participation of representatives of concerned agencies and experts (Art. 45 of the Implementation Decree).

These assessments are carried out with a focus on the following issues: the need to promulgate; the relevance to the Party's policies; the constitutionality; legality; consistency with the legal system; feasibility; language and drafting techniques, etc. of draft legal documents (Art. 36, para. 3 of the Promulgation Law). Assessing agencies shall forward assessment reports to the lead drafting agency within 20 days at the latest from the date on which they have received a full set of documents for assessment (Art. 36, para. 4 of the Promulgation Law). The lead drafting agency shall study and incorporate assessment opinions into the draft law, and submit it to the Government together with assessment reports. (Art. 36, para. 5; Art. 37 of the Promulgation Law).

The Implementation Decree also provides for the assessment by the Office of Government (Art. 29), although the difference between the assessment by the Ministry of Justice and the Office of the

[8] See supra note 7.

Government is not necessarily clear. In addition, the Office of Government faces the same situation as the Ministry of Justice in that it is involved both in drafting and assessment.

If there exists different opinions among Ministries on the proposed law, the Minister-Chairman of the Office of Government shall convene a meeting of representatives of the lead drafting agency, the Ministry of Justice and other concerned Ministries for consideration. Based on comments collected in this meeting, the lead drafting agency shall revise the proposed law (Art. 38 of the Promulgation Law; Art. 29, para. 2 of the Implementation Decree).

3. Deliberation by the Government

After the above procedure has been completed, the Government shall deliberate and decide on the submission of the proposed law (Art. 39, para. 1 of the Promulgation Law). If the Government decides to submit it to the National Assembly, the lead drafting agency shall finalize the draft document in cooperation with the Ministry of Justice, the Office of Government and concerned agencies (Art. 30 of the Implementation Decree). In cases where the Government has not adopted the submission of the proposed law, the Prime Minister shall decide the timing for its re-consideration (Art. 39, para. 4 of the Promulgation Law).

C. Verification of the Proposed Law by the National Assembly

1. Verification by verifying agency[9]

The proposed law shall be verified by the Ethnic Council and relevant National Assembly committees (which are referred to as "verifying agency") before being submitted to the plenary session of the National Assembly. The Ethnic Council and committees of the National Assembly shall participate in the verification of proposed laws within their domains as the lead verifying agency (Art. 41, para. 1 of the Promulgation Law). The Committee for Legal Affairs has a special responsibility to participate in verification to ensure the constitutionality, legality and consistency with the legal system of the draft law (Art. 46, para. 1 of the Promulgation Law).

In carrying out the verification, the lead verifying agency shall organize a meeting for verification with the participation of other verifying agencies (Art. 44, para. 1 of the Promulgation Law). The lead verifying agency may invite concerned organizations and individuals to attend the meeting, hold workshops or conduct surveys on substantive issues of proposed laws in cooperation with the lead drafting agency (Art. 41, para. 3 and 4 of the Promulgation Law). The key issues to be verified are the scope and content of the draft law; controversial issues; the relevance of the draft law to the Party's policies, the Constitution and other existing laws; the feasibility of the draft document (Art.

[9] See supra note 7.

43 of the Promulgation Law). The results of verification shall be summarized in a verification report (Art. 45 of the Promulgation Law).

2. Deliberation by the Standing Committee of the National Assembly

The agency submitting the draft law shall forward the set of documents to the Standing Committee of the National Assembly for comments (Art. 48 of the Promulgation Law). The Standing Committee shall review the submitted documents once or multiple times in order to give comments (Art. 49 of the Promulgation Law). The agency submitting the draft law shall be responsible for amending the draft by incorporating comments from the Standing Committee (Art. 50, para. 1 of the Promulgation Law). If the agency submitting the draft law has opinions different from those of the Standing Committee, the case shall be reported to the National Assembly for deliberation and decision (para. 2 of the said Article).

3. Deliberation and adoption by the National Assembly

The National Assembly shall consider and approve the draft laws at one or two meeting sessions[10]. The procedure to deliberate and approve the draft law at two sessions is as follows:

a. First session

At the first session, after presentation of the draft law by the agency submitting it and of the assessment report by the lead verifying agency, the National Assembly shall deliberate the basic contents and major contested issues of the draft law. Subsequently, at the request of the Standing Committee, the National Assembly shall apply majority voting on such issues (Art. 53, para. 1 of the Promulgation Law).

b. Amendment of draft laws

After the first session, the lead verifying agency shall consider the improvement and amendment of the draft law in cooperation with the agency submitting the draft law, the Committee for Legal Affairs of the National Assembly, the Ministry of Justice and other relevant institutions. The amended draft shall be submitted to the Standing Committee of the National Assembly (Art. 53, para. 2 of the Promulgation Law).

c. Second session

At the second session, after the Standing Committee of the National Assembly presents the report on amendment of the draft law, the National Assembly shall deliberate the contested points of the proposed draft law. At this stage, the draft law shall be sent again to the Committee for Legal Affairs for review in terms of drafting techniques, to ensure constitutionality, legality and consistency with

[10] The National Assembly shall hold two sessions each year (Art. 83, para. 2 of the Constitution).

the legal system (Art. 53, para. 3 of the Promulgation Law). Finally, the National Assembly approves the proposed law by majority vote.

When the proposed law has been passed, the President of the State shall issue an order for the promulgation of the law within 15 days after the date on which the law was passed (Art. 57, para. 1 of the Promulgation Law). In cases where the proposed law has not been approved or has been partially approved, future deliberation of the draft shall be decided by the National Assembly at the request of the Standing Committee (Art. 53, para. 3 of the Promulgation Law).

The above is the basic legislative process when the government submits draft laws, which is summarized in the attached flow chart.

III. LEGISLATIVE PROCESS OF DECREES

In this part, I will briefly discuss the legislative process of the decree, particularly in comparison to the legislative process of the law.[11]

Concerning the formulation of the development program for decrees, the Office of Government shall take lead responsibility in cooperation with the Ministry of Justice and concerned agencies (Art. 59 of the Promulgation Law). On the basis of results of the Government meeting, the Office of Government shall finalize the decree development program and submit it to the Prime Minister for promulgation (Art. 17, para. 3 of the Implementation Decree).

For drafting the proposed decree, as in the case of drafting laws, the lead drafting agency shall establish the Drafting Board and the Editorial Team (Art. 60 of the Promulgation Law). There are also provisions on the drafting procedure of decrees in parallel with the drafting procedure of laws (such as studying related documents; conducting impact assessment; collecting comments through workshops and websites) (Art. 61 and 62 of the Promulgation Law).

In regard to the assessment of the draft decree, the Ministry of Justice shall play the primary role, as in the case of the draft law. In cases where the draft decree is related to various fields, or being drafted by the Ministry of Justice as the lead drafting agency, the Assessing Council shall be created, as in

[11] A decree is a legal document issued by the Government (Art. 2, para. 4 of the Promulgation Law). The Promulgation Law lists the four types of decrees which can be issued by the Government (Art. 14). A decree in Vietnam is equivalent to a cabinet order in Japan, but different in that it is not limited to an order to enforce laws or orders based on special delegations by laws.

the case of the draft law (Art. 63, para. 1 of the Promulgation Law; Art. 46 of the Implementation Decree). Reports on the assessment of the draft decree shall be sent to the lead drafting agency within 15 days after the date on which the assessing agency receives a complete set of documents (Art. 63, para. 5 of the Promulgation Law). Besides the assessment by the Ministry of Justice, the Office of Government shall also assess the draft document, as in the case of the draft law (Art. 29 of the Implementation Decree).

Upon receiving the draft decree, the government may consider it at one or two meetings. After presentations from the lead drafting agency and the Office of Government, the Government shall discuss the draft decree and approve it by majority vote (Art. 66 of the Promulgation Law).

IV. CHARACTERISTICS OF THE LEGISLATIVE PROCESS IN VIETNAM

In this part, I discuss two main characteristics of the legislative process in Vietnam which seems to have some influence on the legislative quality issues in Vietnam.

A. Legislation Based on the Law Development Program

As already mentioned, in order for the law to be promulgated in Vietnam, the law must be included in the law development program which must be approved by the National Assembly. Otherwise, the law may not be promulgated. This approach of preparing legislation in a planned and controlled manner clearly contributes to the enhanced predictability of future legislation. On the other hand, it may lack flexibility in responding quickly to the urgent need of laws, especially given the fact that two sessions of the National Assembly continue for approximately just one month, respectively. Furthermore, if there are legislation proposals which have not been examined sufficiently in terms of necessity, effectiveness or enforceability, this can lead to the promulgation of unnecessary or unenforceable legislation, or legislation inconsistent with the existing legal system.[12]

B. Legislative Process involving Multiple Institutions and Individuals

In Vietnam, the Drafting Broad established by the lead drafting agency is composed of multiple agencies and individuals, including not only representatives from the lead drafting agency but also those from related ministries/agencies, entities, experts, etc. Comments are widely collected online and through holding workshops, etc. Similarly, in assessing the draft law, the Ministry of Justice shall establish the Assessing Council or hold assessing meetings with the participation of related institutions

[12] PHAN points out that some proposals of law only meet requirements of procedures for submission but not yet drafted in detail, and regulatory impact assessment is not carried out properly, see PHAN, supra note 3, pp.17.

and experts. Thus, the law is drafted and assessed not exclusively by a single agency, but multiple organizations and individuals are expected to be involved in these procedures. Even after the draft law has been submitted to the National Assembly, the lead verifying agency may invite interested groups/individuals to attend the meeting or hold workshops to hear their opinions. Through these processes, the draft law is improved and corrected, and eventually completed. This method appears to have an advantage when it comes to the formation of policies, particularly given that Vietnam is a multi-ethnic country with regional disparities, and there may exist a strong necessity of forming consensus. On the other hand, legislative drafting requires technical legal skills and must be done in conformity with the strict rules of drafting. Therefore, if the draft law is re-written based on the opinions submitted intermittently, it is likely to cause a lack of coherence and consistency in the draft law or between the draft law and other existing laws.

V. FOR THE NEXT COOPERATION ACTIVITIES

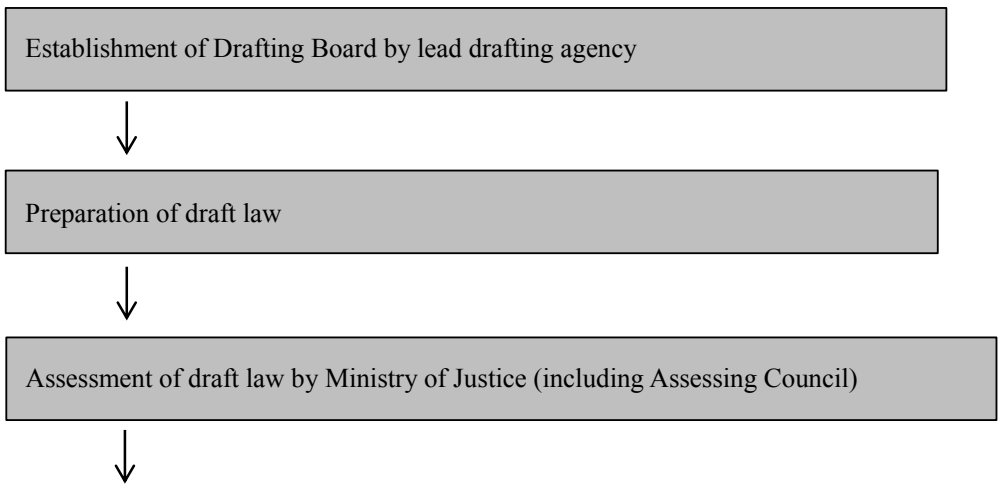
This paper has discussed the legislative process in Vietnam and its key features. In order to address legislative quality issues, comprehensive measures should be considered, such as establishing uniform drafting rules and standards, a clear separation between policy-making and legislative drafting, introducing effective examination/scrutiny system, etc. Legislative quality issues are in actuality not restricted to developing countries but can be found in developed countries as well. It should also be noted that how legislation in a country should be shaped is closely related to how a nation should be. In that sense, it will be of the utmost importance to support and enable the Vietnamese people to consider and construct by themselves the most suitable legal structure for their country.

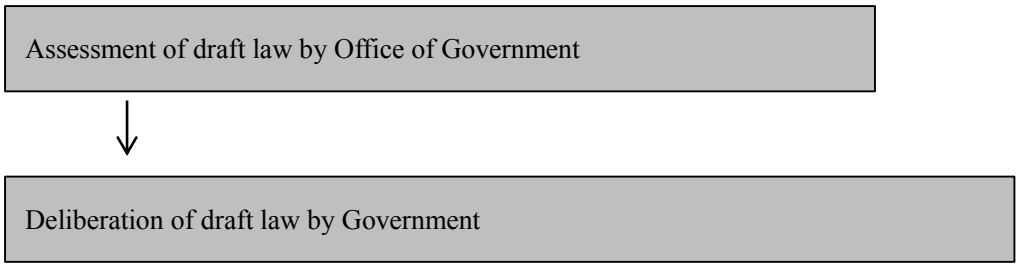
Appendix

Legislative Flow in Vietnam
(when the draft law is prepared by the Government)

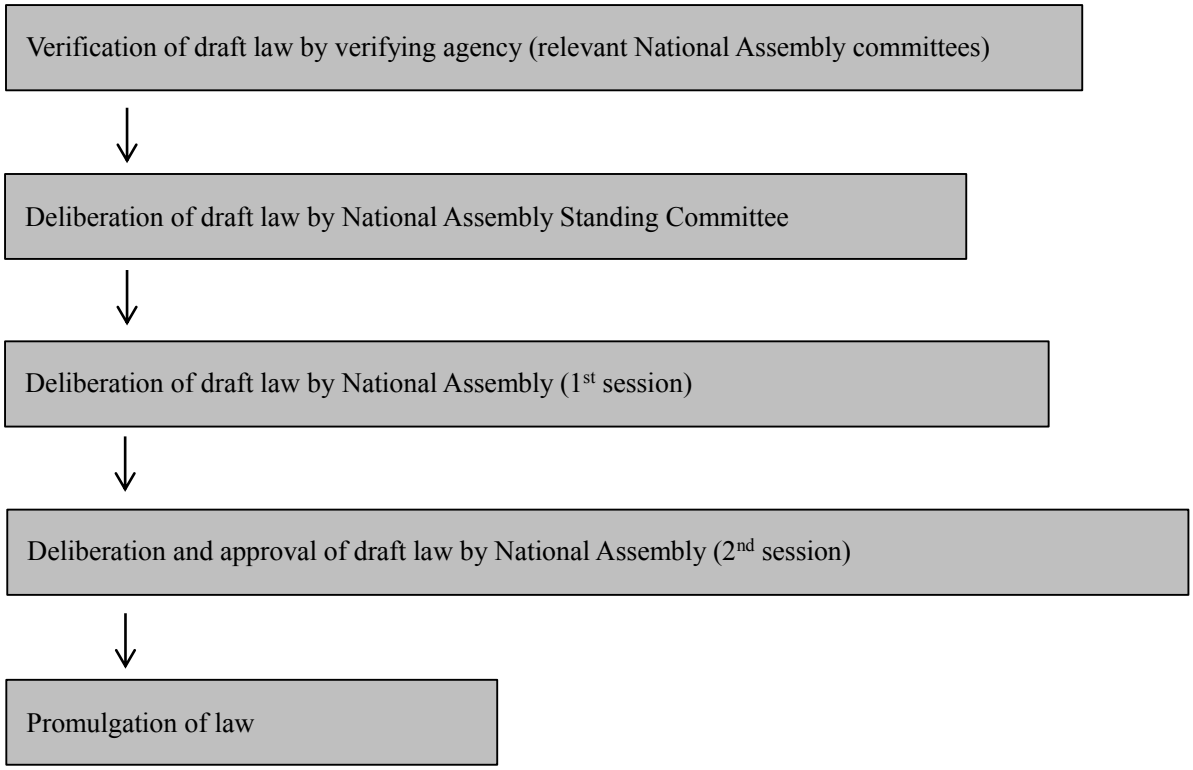
【1. Formulation of law development program】

【2. Drafting of proposed law by Government】





【3.Deliberation of draft law by National Assembly (at two consecutive sessions)】



LETTER FROM VIETNAM ON LEGAL DEVELOPMENT[1]

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The Project for Harmonized, Practical Legislation and Uniform Application of Law

Targeting Year 2020

I. INFORMATION ON THE COMMENCEMENT OF THE NEW PROJECT

Have you ever heard the term, "legal technical assistance"? Since 1996, Japan has continuously implemented technical cooperation projects with Vietnam to strengthen justice in the country. More specifically, Japan has assisted Vietnam in developing laws, in particular civil-basic laws (including civil code, civil procedure code, civil judgment execution law, etc.); and in the capacity-building of legal professionals (judges, prosecutors, lawyers, civil judgment execution officers, etc.) and judicial officers;

Japan has taken the following methods to extend its assistance:

- Dispatching a team of three types of legal professionals (a judge[2], a prosecutor and a lawyer) to Hanoi for a two- to three-year span, to support counterpart organizations: the Ministry of Justice (MOJ), the Supreme People's Court (SPC), the Supreme People's Procuracy (SPP), the Vietnam Bar Federation (VBF), etc.
- Advising on general assistance policies, and giving lectures by so-called "Advisory Group" established in Japan (composed of eminent law scholars and legal professionals).

Our cooperation projects have been involved in the enactment and revision of a wide variety of laws, and also created training materials for legal professionals. In this manner, Japanese legal technical assistance has been able to achieve tangible results in Vietnam. However, in this huge nation with a population of approximately 90 million, it is for all intents and purposes impossible to establish legal systems and cultivate human resources capable of supporting legal systems in a real sense in a short period of time. And thus, Vietnam remains in need of legal technical assistance from Japan.

In response to such needs for advanced assistance from Vietnam, JICA commenced, as of April 1,

[1] This paper is a reprint of columns serialized in the section on Vietnam of JIJINEWS Bulletin.

[2] Judges have been dispatched to Vietnam as JICA long-term experts upon changing their official positions from "judge" to "prosecutor."

2015, a new project titled, "The Project for Harmonized, Practical Legislation and Uniform Application of Law Targeting Year 2020." Its acronym, "PHAP LUAT 2020" (composed of underlined letters), means "laws and ordinances" in Vietnamese ("Pháp Luật").

The new project aims at:

- (as in the previous projects) the establishment of laws and capacity-building of legal professionals and judicial officers, in cooperation with relevant judicial institutions (MOJ, SPC, etc.);
- As a new challenge, the promotion of uniform implementation and application of laws, minimizing and correcting legal inconsistencies.

As you may be aware, according to surveys conducted among Japanese businesses in Vietnam, "under-developed legal systems and opaque operation thereof" has been listed several times at the top of possible risks in the Vietnamese investment environment. More specifically, the following are the primary problems listed:

i) There exists inconsistency and contradictions among laws, and between laws and subordinate circulars, causing confusion in the selection of laws to abide by;

ii) Insufficient preliminary examination on the substance to be prescribed in laws, coupled with the insufficient provision of information to companies subject to laws, leading to the contents of laws greatly deviated from actual legal practices;

iii) Vague wordings, leading to non-uniform legal operations by ministries/agencies, localities and officials;

iv) The contents of new laws are not commonly shared among administrative organizations, causing administrative dispositions/handling not in line with legislative provisions.

Many individuals doing businesses in Vietnam may have faced these problems more than once. Recognizing these realities and with the understanding of Vietnamese counterpart organizations, our new project will focus squarely on the challenge of minimizing and correcting legal inconsistencies, to realize the uniform operation and application of laws. This is a critical structural problem facing Vietnam, which neither the Vietnamese government nor any other donor organizations have yet succeeded to resolve. In cooperation with the Office of the Government (a new counterpart) and the MOJ of Vietnam, as well as with support from relevant institutions and individuals in Japan, we are committing ourselves to this unprecedented endeavor.

Below, I will discuss a few fundamental questions including: Why are Vietnamese laws inconsistent or contradictory with each other? Why are laws not operated and applied in a uniform manner?

II. CAUSES FOR INCONSISTENCY AND CONTRADICTIONS AMONG LAWS IN VIETNAM

Why have such challenges (inconsistency and contradictions among laws, and opaque operation of laws) emerged in Vietnam? This is a quite difficult question to answer. In my personal opinion, it is the result of multiple entangled factors as follows (Please note that any opinions expressed below are mine alone and not a reflection of my organization).

A. Different concept of laws from that in Japan

As premises of all factors, the concept or social roles expected to play of "laws and ordinances" in Vietnam differ from those in Japan. It appears that in Vietnam, not only the general public but also public officials in administrative authorities (or even those in the legislative authority) do not truly believe that laws are norms which must be obeyed verbatim. Needless to say (to avoid misunderstandings), the Vietnamese population is itself aware of the necessity of abiding by laws. The level of this awareness, however, is different from that of Japan. It appears to me that, the Vietnamese awareness includes an implication (or room) to allow laws to be broken, though they must in principle be followed.

Let me examine how this awareness affects legislation.

In Japan, in the legislative process, those involved share the general premise that "law must be followed verbatim." Therefore, there is definitely no room for infeasible legislation. In comparison, in Vietnam, even legislative draftsmen lack such awareness. As a result, there are cases where infeasible provisions are clearly included in laws or the necessary subordinate laws are not in place even upon elapse of the implementation date of laws.

Being faced with this phenomenon, you may feel that Vietnamese people have a week sense of obedience to the rule of law, or that they know little about what laws are. As a result, you may think it worthwhile to discard all Vietnamese laws. However, things are not so simple. When you talk with Vietnamese legislative draftsmen, you realize that they give a positive and important consideration to the functions and roles that laws should play in society (though in a different direction from that of Japan). They say: "In order to guide society to a situation which laws envision, it is necessary to include provisions which appear to be infeasible for the moment. It is acceptable as long as society is able to transition to the envisaged situation after a period of time."

It may sound extreme, but for Vietnamese people, a law is a tool to guide the nation and society to a desirable situation and to administer such a situation. For them, laws do not need to be rigidly obeyed

verbatim immediately upon implementation. Laws can be flexible to the extent that certain disobedience thereto can be overlooked and that deviation from actual legal practices can be tolerated if it would be solved shortly (in this sense, it can be considered that little attention is paid to differences in nature between laws and political declarations such as resolutions by the Politburo of the Communist Party). It is unclear to me whether such awareness about law has traditionally existed in Vietnamese society, or since its formation as a socialist country. However, at least it should be kept in mind that such "differences in legal concepts or legal awareness" underlies the differences in the manner of existence of laws in Japan and Vietnam.

B. Lack of Human Resources with Legal Culture

It should not be overlooked either that Vietnam lacks human resources with sufficient legal culture. The "human resources with legal culture" referred to here has the same meaning as that of Japan. It refers to human resources with proper legal thinking or logical mindsets, who are able to: 1) upon properly understanding legal requirements and effects; 2) find and evaluate specific facts to apply them to legal requirements; and thereby 3) to reach conclusions. In my candid impression, universities and higher education institutions in Vietnam have not produced sufficient numbers of human resources with such legal thinking ability.

In fact, in North Vietnam, there was a time during and after the 1960s in which no legal education was provided whatsoever due to its abolition at the undergraduate level (As a background thereto, allegedly, at that time law and lawyers were viewed negatively. Law was a tool for the bourgeois to control the people and that lawyers were their puppets). Subsequently, undergraduate-level legal education was re-started in the mid-1970s. For example, the Vietnam National University, Hanoi established the school of law in September 1976, and the Hanoi Law University was established in November 1979. Since then, Vietnam has greatly mended its hostile view on laws and legal education, as reflected in the current Constitution, which defines the nation as "a socialist state ruled by law"(Article 2, paragraph 1). However, the loss of the accumulation of legal knowledge during the lost period of the 1960s and 1970s, and the influence of the socialist legal theory from Russia and former Eastern European countries have greatly affected Vietnam. It is considered that the country has not yet been able to completely rid itself of such influences.

Probably under these influences, legal education at the undergraduate and graduate levels still centers on cramming for the wordings of statutory provisions, such as: "The law provides that ….. The definition of this term is explained in Article XXX." Little attention has been paid to legal interpretation theories, the core of legal thinking. These theories teach, for example: when certain legal provisions are applied to specific cases, these types of problems emerge in interpreting laws; and how to address such problems in order to reach a reasonable solution, etc. Moreover, in Vietnam there are no study

or research materials as those widely available in Japan, including "clause-by-clause commentaries" or "*Kommentar*" (which explains the purposes and interpretation of laws by articles). Without such materials, it is extremely difficult to learn legal interpretation theories by oneself. As a result, an unfavorable situation has existed for legal development. Even those who have obtained law decrees with excellent records, and who are in charge of drafting laws at ministries/agencies cannot give sufficient consideration to the importance of:

- making clear "what effects are produced under what legal requirements"; or
- devising appropriate wordings of legal provisions which can cope with all possible cases.

C. Thin Layer of Legal Studies and Scholars Who Support Legal Studies

The thin layer of legal studies, and that of scholars who support legal studies, are big problems as well, or may be the causes for the problem mentioned in (B) above. This problem may be attributed to the fact that the interpretation right of the Constitution, laws and ordinances of the Standing Committee of the National Assembly belongs to said Committee (Article 74, paragraph 1 of the Constitution). Even judges are not granted the right to freely interpret laws. In fact, in Vietnam there is no "academic society of specific laws" as those existing in Japan. There are venues for law scholars to publish their theses, including university bulletins or public journals, but under strict constraints of "policies" of universities they belong to. It is extremely difficult for the scholars to present their original views against their university policies. In Vietnam the so-called "free market of thoughts and speech" has not sufficiently developed, where scholars freely argue the purposes of specific legal systems and interpretations of legal provisions. Under these circumstances, the level of legal studies or legal theories will not improve nationwide. Individual-wise, there are excellent scholars who have studied and taught abroad and enjoy global respect. Nation-wise, however, no system or mechanism has been in place where law scholars compete with one another to mutually develop themselves, and train and nurture successors in order to improve their overall jurisprudence.

In order for Vietnam to be able to continuously and independently develop its legal system in a real sense, it will be necessary to address the above-mentioned situations and establish a system to independently maintain and enhance the level of legal studies and legal education, and thereby continuously produce and send out human resources with sufficient legal culture into society.

D. Lack of Procedural Mechanism to Prevent the Occurrence of Problems

Unclear and ambiguous statutory provisions inconsistent with other laws can be attributed, in addition to the lack of ability of legal draftsmen themselves as explained in (B) above, to the under-development of legislative mechanisms to prevent the occurrence of such problems.

1. In Vietnam, the policy-making process and the legislative-drafting process - as a means to carry

out policies- are not separated. Therefore, its procedural structure is prone to technical mistakes during the legislative-drafting process. In comparison to this, in Japan, when addressing new social phenomenon: 1) discussions precede to decide: what measures (administrative or legislative) should be taken in coping with the new problem; If legislative measures are chosen, specifically what systems should be put in place, etc. During this process, opinions of stakeholders are sufficiently heard to fix the contents of the legislation to be enacted (policy-making); 2) The policies fixed in this manner are reflected in legislative drafts (legislative-drafting). The process of 2) is viewed simply as a matter of legislative techniques. Coupled with the high quality of bureaucrats in charge of drafting work and the strict legislative examination by the Cabinet Legislation Bureau (the Legislative Bureau of the House of Representatives or Counsellors in case of legislation by diet-members), the possibility of technical mistakes occurring in the drafting process is kept to a bare minimum.

In Vietnam, on the other hand, the processes of 1) and 2) above are not separated in practice. When it is decided to enact or revise a specific law and the ministry/agency with jurisdiction thereof is designated, a drafting board is first formed. The board is composed of the minister and department director-level officers of the ministry in charge and other relevant organizations. Under the board, an editorial group is formed to perform the actual legislative-drafting. At this stage, in most cases, detailed policies are not decided yet on the contents of the law to be drafted. Decisions on law enactment or revisions are made rather politically, not out of the actual necessity but on the simple and abstract grounds, such as "the current law is out of date," etc. After this political decision is made, examination begins on the content of legislation (at least this is how it appears from the outside). Due to this, the editorial group is required to work on legislative-drafting hastily without clear directions on legislation. Subsequently, seminars are held to hear opinions from relevant organizations and entities. Each time opinions or instructions are provided from them or from higher levels, the draft must be modified on an ad-hoc basis. In this manner, it is extremely difficult to maintain consistency of the draft throughout the process. Minor modifications may not cause major disruptions. However, if radical changes of the draft are required (for example, when the introduction of a new system [devised by the editorial group] is rejected or on the contrary the introduction of a new system is required), the original draft needs to be altered to a much larger degree. In these cases, combined with the short period of time allowed for examination, the editorial group may unintentionally fail to change or properly alter relevant articles after partial modifications of the draft according to the opinions provided. Moreover, it is more problematic that the longer and more complicated draft laws are, and opinions are provided from higher positions (in other words, closer to the final stage of the drafting stage), there exists more possibilities of significant modifications to be done on draft laws. This phenomenon may be a structural problem, derived from the peculiar drafting process. In Vietnam, as mentioned above, the policy-making process and legislative-drafting process are not separated. Legislative drafts are modified through policy discussions and whenever opinions on policies are

divided. Though Vietnamese bureaucrats are attempting to avoid above-mentioned mistakes, finding time from their busy schedules, in any country it would be difficult to overcome structural problems only through individual efforts.

2. One of the underlying causes is that in Vietnam there is no professional institution equivalent to the Cabinet Legislation Bureau (or the Legislative Bureau of the Houses), which specializes in legislative-examination to maintain legal consistency.

In Vietnam, the Ministry of Justice (MOJ) conducts the preliminary "appraisal" of draft laws to be submitted by the government. However, there is no department exclusively engaged in this within the MOJ, and legislative appraisal is conducted by related departments as their secondary duties. For example, drafts of civil- or economic-related laws and criminal- and administrative-related laws are appraised by the Civil and Economic Law Department and the Criminal and Administrative Law Department, respectively.

Furthermore, those departments in charge of preliminary appraisal are required to prepare and send appraisal reports within 20 days upon receipt of a series of dossiers related to draft laws. Thus, the appraisal of draft laws is conducted in a less thorough and less effective manner in both formal and substantive aspects, compared with the elaborate examination work by the Cabinet Legislation Bureau in Japan.

Though the MOJ of Vietnam is making efforts, it is subject to several constraints, including the short period allowed for appraisal, and the lack of expertise required to sufficiently appraise legal documents drafted by other ministries, etc. Consequently, the MOJ is fully occupied by looking over the contents of draft laws, and can hardly appraise the consistency between draft laws and the enormous amount of existing laws.

E. Lack of Understanding of the Hierarchical Structure of Laws

The hierarchical structure of laws refers to the vertically-structured or subordinate-to-superior relationships among several types of legal forms. In Japan, for example, legal systems are composed of: the "constitution" (a basic law) at the top; and "laws" - acts of parliaments – under the constitution; "cabinet orders" and "ministerial orders" in this order of merit. The basic rules of this legal structure are that:

- Superior laws always precede subordinate laws.
- Subordinate laws against superior laws are deemed invalid:
- Subordinate laws must not provide for substantive matters (though opinions are divided concerning what a "substantive matter" refers to) without a commission by laws.

- Important matters shall be provided for by superior laws, with subordinate laws setting forth details, etc.

The hierarchical structure of laws is a common knowledge for legal practitioners. As long as this knowledge is commonly shared among them, it is unnecessary to purposely mention it.

However, in Vietnam, probably due to an excessive number of legal forms existing, it appears that those involved in legal operation do not share a deep understanding or awareness on the necessity of respecting the hierarchical structure or role-sharing of laws. Even under the current situation where legal forms have been categorized in a well-organized manner, there exist over 17 or 18 types of legal forms at the least (the number varies depending on which is considered to be a "legal form"). They include "Laws" and "Resolutions" by the National Assembly; "Ordinances" and "Resolutions" by the Standing Committee of the National Assembly; "Orders" and "Decisions" by the State President; "Decrees" by the government; "Decisions" by the Prime Minister; "Resolutions" by the Justices Council of the Supreme People's Court; "Circulars" by ministries/ministry-level agencies; "Joint Resolutions" and "Joint Circulars" issued by multiple institutions in their joint names; "Resolutions," "Decisions," "Directions," etc. by the People's Council and People's Committee in each locality, etc.

The "Law on Promulgation of Legal Documents" of Vietnam provides for procedural matters when enacting laws (legal normative documents), including the subject matter to be provided in each legal form, the subordinate-to-superior relationship among various types of legal forms, etc. In reality, however, it appears that this law is not strictly adhered to, due to the concept of law as mentioned in (A) above, the actual necessity as explained in (F) below and other reasons.

In summary, the awareness or attitude of individuals involved in legal operation concerning the hierarchical structure of laws, and role-sharing of each legal hierarchy, may be conducive to the situation in which important matters (which should be stipulated by superior laws) are provided for by subordinate laws without any commission by superior laws. This may be the grounds for inconsistency and contradictions between superior and subordinate laws as well.

F. Existence of Law and Ordinance Making Program System

The existence of the law and ordinance making program system in Vietnam may be a hidden factor causing inconsistency and contradictions between superior and subordinate laws. In Vietnam, with the beginning of a 5-year National Assembly session (following the party convention held every five years), a law and ordinance making program is decided on the laws to be enacted in the following five years. Based on this plan, an annual law and ordinance making program is made by breaking down the five-year plan. Accordingly, legislation is developed in line with these plans, though they may be changed when necessary. The National Assembly of Vietnam annually holds two sessions,

each of which continues for approximately one month. As only less than twenty laws (an extremely limited number of laws) can be enacted annually, arrangements are made in advance to select laws to be subjected to deliberations by the National Assembly (For your reference, in Japan, 112 acts and 137 acts were passed in 2013 and 2014, respectively. Compared to this, you may understand that quite a small number of laws are enacted in Vietnam).

At first glance, this may appear to be a rational system. However, ministries and ministry-level agencies in charge of legislation view it in a different way. Under this system, "laws not included in the law and ordinance making program cannot be revised, no matter how necessary it is to revise them, or how inconvenient they are at present" (Contrarily, those listed in the law and ordinance making program must be revised in any manner. (D)(1) above explains problems caused thereby.) There are cases where laws in need of revision have to wait for five years or ten years until they are included in the law and ordinance making program. It is an unbearable situation for those with a strong sense of responsibility to accept the situation in which existing laws cannot be revised even though they are unable to cope with social changes anymore. In order to address this challenge occurring in actual practice, there appears to be a number of cases where laws (superior laws) have been overwritten out of necessity through circulars (subordinate laws), knowing that it is not permitted under legal theories.

G. Simple Enactment Procedure of Subordinate Laws

Inconsistency and contradictions between superior laws and subordinate laws are institutionally made possible due to the simple enactment procedure of subordinate laws (circulars by each ministry or laws enacted by the people's council or people's committee in each locality). Subordinate laws can be issued without going through complex procedures as superior laws. For example, in the case of circulars by ministries/agencies, they can be issued only through in-house appraisal by the ministry in charge and after publishing them for public comments. They are not required to be subject to prior appraisal/verification by outside organizations, such as the Ministry of Justice. In other words, if a ministry/agency in charge decides to issue a circular due to its necessity, even if its contents are against certain laws, the circular can be issued by rewriting relevant laws or in other manners. (This is one reason for which circulars issued by different ministries and localities do not coincide with one another in their contents and in their operation manners. Moreover, different from the promulgation of laws bound by the law and ordinance making program, circulars can be enacted immediately when necessary, causing their frequent revisions.)

Against these subordinate laws established in such an "illegitimate" manner, a mechanism is in place in which the Bureau of Legal Normative Documents Post-Review of the MOJ conducts post-review for their corrections. However, there exists an enormous number of subordinate laws nationwide,

including those issued by the people's council and people's committee in each locality. As it is impossible to review all, a significant number are left off as they are without being subject to reviews. Moreover, officers at administrative organs have a tendency of referring to circulars, rather than laws, during performance of duties. As a result, legal practices are developed in line with illegitimate subordinate laws, which should be invalid. Consequently, these practices have caused confusion among those who attempt to act in conformity with superior laws (in particular those related to foreign businesses).

H. Low Level of Awareness among Public Servants as Service Providers

The issue of awareness among those involved in administrative duties should also be noted. It appears to me that officers at administrative organs in Vietnam have little awareness that they are public service providers for the people. Partly because of this, they do not consider themselves liable for causing confusion, by issuing circulars which:

- are inconsistent with other laws;
- inevitably cause changes in actual practices,

without sufficiently providing relevant information in advance.

Regarding the provision of information, if you are careful enough, you will eventually find that relevant information is posted on the website of the administrative agency in charge in many cases (circulars must be subject to public comments for at least 60 days on the website of the circular-issuing agency prior to their issuance). Therefore, their arguments that they perform what they are assigned to, and that it is up to users to find relevant information - may be reasonable in a sense (though they lack consideration to users). As this type of consciousness reform requires a very long period of time (as was in Japan), it is necessary to persistently teach them the importance of information-provision before issuing circulars. At the same time, users may also need to defend themselves by improving their information research ability, studying the information-transmission means of Vietnamese administrative agencies.

III. SIGNIFICANCE OF LEGAL TECHNICAL ASSISTANCE TO VIETNAM

I have discussed my personal opinions as to the reasons for the existence of inconsistency and contradictions among laws, and opaque legal operation in Vietnam. Some readers may question, "why does Japan provide legal technical assistance to Vietnam, which has totally different concepts about law, suffering from a lack of human resources, and an accumulation of structural problems." At the end of this article I would like to present my answer to this question.

Simply put, legal technical assistance brings us practical benefits. I find legal technical assistance creates, possibly not direct but specific and solid "utility." This exceeds the general logic of official development assistance which reads: "the prosperity and stability of recipient countries will lead to the prosperity of donor countries." In other words, legal technical assistance builds a common platform or arena where we can work on a mutually equal footing with people with different languages, customs and cultures.

As you may be experiencing on a daily basis, it is extremely difficult to properly communicate with, and transmit our thoughts to people abroad with different cultures and customs. Simply comparing and mutually adjusting our recognitions requires a great energy. Even when both parties appear to be working on an equal footing with an assumed shared recognition, it often turns out that the other party is working totally in a different arena. Even so, once the legal system (including law operation) is established and justice is strengthened in a country as a means for fair dispute resolution, an outsider may be able to work in that place with ease under clear rules.

If specified effects can be guaranteed upon fulfilling requirements provided in laws, people will need to solely concentrate on satisfying legal requirements. They will not be bothered anymore by the obscure and complicated "rule of men," such as: "if you pressure A, B will respond," "approval can be obtained soon by behind-the-scenes work through specific routes," etc. (it will not totally vanish, but will decrease to a significant degree.) The development of the "rule of law" - a rule equally acknowledged by anybody- means that everybody can work centering on the same base point – "law." In other words, a common foundation is formed around "law" for everybody. This is enormously important in the current international community where cross-border movement of people, goods and money has become so common. Moreover, needless to say, Vietnam is an extremely important country for Japan. The political and economic ties between the two countries have been strengthened year-by-year, with mutual exchanges of populations. In the midst of this movement, legal development in Vietnam, in particular with assistance from Japan, will lead to less communication gaps, bringing immeasurable benefits to both countries (As an aside, the government of Japan immediately after the Meiji Restoration was also aware of the above-mentioned benefits. At that time it was urgently necessary to revise unequal treaties with Western countries. Therefore, Japan made accelerated efforts to develop modern legal and judicial systems, in order to be able to negotiate with Western countries on an equal footing). We certainly encounter accumulated problems in providing legal technical assistance to Vietnam. However, there exists an actual necessity of overcoming a mountain, no matter how tall it is. As long as benefits from assistance are visible, we need to persistently provide support to the country.

At the same time, however, no matter how necessary it is, assistance in such a form as irrigating

deserts should definitely be avoided. Fortunately, our assistance has produced steady results in Vietnam. It is often said that Vietnam appears to lack a wide perspective on each problem on the ground, running around in panic without solid policies. However, when the country is viewed with a long span of 10 to 15 years, Vietnam has certainly seen a steady advance in its national structural reform. Let me present an example on the structural problem in the above-mentioned legislative process.

Compared to the time when the Law on Promulgation of Legal Documents was first enacted in 1996, the current system has made a quantum leap since then. As the law will be revised again within 2015, it is expected to be further improved.

Regarding the problem of under-developed legal studies centering on legal interpretation theories, the Supreme People's Court has finally decided to introduce the "precedent" system (a mechanism in which court decisions and rulings in the past are referred to in adjudications) under the 2013 Constitution and the 2014 Law on Organization of the People's Courts. Though detailed system-designing is still to be seen, this decision shows that the judicial system in Vietnam is steadily making progress in its effort to make it more transparent and predictable system. Accordingly, legal studies will certainly become active in Vietnam.

Among young generations, studying abroad has become tremendously popular and a great number of young persons have brought back international-standard legal concepts from abroad. In the legal education field as well, ambitious approaches are being taken to send excellent and internationally-minded students to society, such as "the Research and Education Center for Japanese Law in Hanoi" (an educational institution where Japanese law is taught in Japanese to Vietnamese students, established by Nagoya University). In fact, through my assignments in Vietnam, I feel that the Vietnamese population have a strong will toward reform, and the international community (including Japan) supports its efforts. With continuous endeavors, it will not be long before the Vietnamese become able to discuss the rule of law with Japanese people on an equal footing.

In the end, my personal answer to the question at the beginning of this chapter is that, "there are no reasons for which Japan should not provide legal technical assistance to Vietnam, as it brings us practical benefits and assistance effects are visible." Thus, all of us involved in the JICA project are committed to our assignments for future development of Japan and Vietnam, based on a firm belief on the bright future of this Southeast Asian country. I would like to take this opportunity to request your kind understanding and support to our project.

OUTLINE OF THE NEW LAW ON BANKRUPTCY OF VIETNAM

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I. INTRODUCTION

On June 19, 2014, the new Law on Bankruptcy of the Socialist Republic of Vietnam (hereinafter referred to as "the 2014 law[1]") was enacted, and went into force on January 1, 2015, in place of the former Bankruptcy Law (hereinafter "the 2004 law[2]"). I was engaged in the revising work of the above law on bankruptcy in the capacity of a long-term expert for the JICA Project for the Legal and Judicial System Reform, Phase 2. As part of my assignment, I made a tentative translation of this law into Japanese. In this paper I will discuss the outline of the new law as follows:

II. BACKGROUND TO THE REVISION

The 2004 law was enacted by completely revising the Company Bankruptcy Law which had been enacted in 1993 (hereinafter "the 1993 law[3]") as the 1993 law had never been commonly used[4]. However, even with the statutory revision, there had been quite a small number of bankruptcy cases filed to courts. According to the "Summary Report on the Enforcement of the 2004 Bankruptcy Law" compiled by the Supreme People's Court (SPC), etc., during eight years between October 15, 2004 (when the 2004 law was enacted) and September 30, 2012, solely 336 bankruptcy cases were filed nationwide. Approximately 60% were concentrated in six people's courts: Hanoi (56 cases), Ho Chi Minh (54), Thua Thien Hue Province (33), Binh Duong Province (32), Haiphong City (14), and Da Nang City (12). Among 63 Provincial-level People's Courts, 18 courts received solely one case while

[1] Law No. 51 of 2014. The abbreviated number of the law is 51/2014/QH13. The provisions of the 2014 law quoted herein are temporary translations of the 2014 law written originally in Vietnamese, which is posted on the website of the Ministry of Justice of Vietnam (http://vbqppl.moj.gov.vn/pages/vbpq.aspx).
[2] Law No. 21 of 2004. The abbreviated number of the law is 21/2004/QH11.
[3] No number was assigned to the 1993 law.
[4] Regarding the background to the enactment of the 2004 law, see Tsuyoshi Maruyama, *Betonamu Hasan-ho no Seiritsu* (Enactment of the Bankruptcy Law in Vietnam), ICD NEWS No. 17 (in Japanese), pp. 5.

14 courts received no cases during eight years of implementation[5]. For reference, there were 44,906 companies in 2012 which registered the suspension of business activities, with 9,355 companies registering their dissolution. Thus, in order to make the 2004 law more user-friendly, its revision was decided.

On November 26, 2011, the National Assembly resolved the 5-year law and ordinance development programme[6] including the revision of the Bankruptcy Law. This was followed by the designation of the SPC, on December 29 of the same year, as the main organization in charge of legislative drafting, by the Standing Committee of the National Assembly[7]. On June 12, 2012, the National Assembly resolved the law and ordinance development programme for 2013[8]. According to this programme, it was decided to hear opinions on the draft revised law on bankruptcy at the National Assembly to be held in October and November in 2012, and to adopt the revised law in the assembly session to be held in May and June 2014[9]. In line with this programme, the SPC advanced preparations for statutory revision by establishing the drafting board and the editorial group on August 15, 2012[10]. Along with this, the SPC requested assistance in this regard be added in the JICA project. In response to this, an agreement was officially reached on the requested assistance in April 2013[11].

As part of assistance activities, the JICA Project Team, in cooperation with the SPC, held a seminar on the Japanese Bankruptcy Act, Civil Rehabilitation Act, etc. from July 28 to August 7, 2013, inviting Professor Toshikazu Fujimoto of Osaka University Law School to Vietnam. The seminar was conducted in Ho Chi Minh in the south, in Da Nang in the central part, and in Quang Ninh Province in the north. Moreover, from October 1 to 12 of the same year, a study trip to Japan was organized inviting ten relevant officials from Vietnam, led by Hon. Dang Xuan Dao, Chief Justice of the Economic Court of the SPC. The curriculum of this trip included lectures on the bankruptcy and civil

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[5] Through the revision in 2004, not only provincial-level people's courts but also district-level people's courts (approximately there are 700 courts) were granted jurisdiction over bankruptcy cases. However, quite few cases have been filed before district-level courts.

[6] The National Assembly creates a new 5-year law and ordinance development programme at each term (Article 22, paragraphs 2 and 3 of the Law on Promulgation of Legal Documents).

[7] The SPC also has the right to submit bills (Article 87 of the Constitution 1992; Article 84, paragraph 1 of the Constitution 2013).

[8] In addition to a 5-year law and ordinance development programme, an annual law and ordinance development programme is also created for the following year (Article 22, paragraph 2 of the Law on Promulgation of Legal Documents).

[9] In general, deliberations on bills require two sessions to go through the procedure of opinion-hearing at the National Assembly, inter-sessions arrangement of bills based on the opinions heard, and the adoption of bills by the National Assembly (Article 53 of the Law on Promulgation of Legal Documents). The National Assembly holds two sessions annually, except for extraordinary sessions (Article 86 of the Constitution 1992; Article 83, paragraph 2 of the Constitution 2013).

[10] The drafting board is a guiding and supervising organization of law-drafting led by the chairperson who is the head of the lead drafting agency. The editorial group is an assisting office to the drafting board (Article 31, paragraph 1; and Article 32 of the Law on Promulgation of Legal Documents).

[11] In addition to the JICA project, to my knowledge, the International Finance Corporation also provided assistance on the law on bankruptcy.

rehabilitation procedures in Japan, etc. by the above mentioned Professor Fujimoto, Professor Shiro Kawashima of Doshisha University Law School, Attorney Miki Yamaura of Hatotani Bekki & Yamaura Law Offices, Attorney Masaki Inada of Kyoei Law Office, Attorney Akihiro Yasuo of Yasuo Law Office, and others[12]. The participants visited Yasuo Law Office and the 6th Civil Division (Bankruptcy Div.) of the Osaka District Court to discuss the draft revised law on bankruptcy.

Following the first deliberation at the National Assembly in late October, a seminar was held in Ho Chi Minh on March 3, 2014, in collaboration with the Economic Committee of the National Assembly, National Assembly members group in Ho Chi Minh and the SPC, in order to broadly collect opinions from financial institutions and companies. I was also invited to attend. In addition, on March 10 and 11 of the same year, the JICA Project Team and the SPC held a seminar in Binh Dinh Province to collect opinions from judges nationwide regarding the draft revised law on bankruptcy and the decree on asset management officer[13].

The 2014 law was enacted on June 16, 2014, as scheduled.

III. CONTENTS OF THE 2014 LAW

A. Outline of the Procedure

The bankruptcy procedure in Vietnam consists of two primary parts: the so-called DIP (debtor in possession) type reconstruction procedure and the management-by-the-third-party type liquidation procedure.

With the appointment of an asset management officer at the beginning of the bankruptcy procedure, certain limitations are imposed on debtors[14] in managing and disposing of assets, though this does not mean an immediate loss of their right to manage and dispose of assets. After the creation of a list of assets by the debtor and the registration of claims by creditors, a creditors' meeting shall be convened.

The creditors' meeting shall resolve whether to intend restoration of the company or to immediately enter into the liquidation procedure. When it is approved to go through the restoration procedure, debtors shall make detailed restoration plans to be referred to the creditors' meeting. When the restoration plan is admitted, it will be performed with an approval by a judge, and the bankruptcy

[12] Lectures were provided by these lecturers in this order. At that time Attorney Yamaura belonged to Kitahama Partners. For details of the seminar, see Tomoya Mori, *Dai Yonju Gokai Betonamu Hoseibi Shien Kenshu (Hasan-ho)* (The 45th Legal Training Seminar for Vietnam [Law on Bankruptcy]) , ICD NEWS No.58 (in Japanese), pp. 121.
[13] A decree is a legal document equivalent to a cabinet order in Japan.
[14] "Debtor" refers to insolvent enterprises or cooperatives.

procedure ends upon completion of the performance of the plan.

Contrary to the above, when the restoration procedure is not approved; the restoration plan is rejected; or the debtor does not perform the restoration plan, the court shall decide to declare bankruptcy to commence the liquidation procedure. This procedure is conducted by an asset management officer under the supervision of a civil judgment enforcement agency[15]. Upon conversion of assets into cash and the division thereof, the bankruptcy procedure shall conclude.

In addition to the above general procedure, there is a summary procedure. When there are no bankruptcy foundations which could afford to pay bankruptcy procedure expenses, at this moment the liquidation procedure begins upon decision on bankruptcy declaration.

The outline of these procedures has not changed from those in the 1993 law and the 2004 law. However, in the 2014 law, in place of an asset management/liquidation team consisting of bailiffs, court officials, representative creditors, representative debtors, etc., asset management officers (primarily attorneys-at-law, etc. are to be appointed for this position) shall bear important roles in the procedure. Moreover, while the "decision to declare bankruptcy" was equivalent to the decision to conclude the bankruptcy procedure in the 2004 law, the decision shall commence the liquidation procedure under the 2014 law[16]. The following asset-conversion-and-division procedure is considered to be the execution of the decision to declare bankruptcy, as in the 1993 law.

B. General Provisions

Entities with the capacity to go bankrupt are cooperatives[17] or unions of cooperatives, while natural persons may not go bankrupt[18] (Article 2). During the revision process, the expansion of the scope of application to natural persons, households[19], schools, etc. was examined. In the end, however, this idea was tabled.

In the 2004 law, the bankruptcy procedure was opened when the debtor "fell into the state of bankruptcy," which was defined as: "a state where the debtor is unable to pay debt when it becomes due (Article 28, paragraphs 2 and 3 of the 2004 law). In comparison to this, the 2014 law provides

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[15] The civil judgment enforcement agency belongs to the Ministry of Justice, not to courts.

[16] A decision to begin the liquidation procedure was called the decision to open property liquidation procedure in the 2004 law.

[17] A cooperative is an organization established under the Cooperative Law (Law No.23 of 2012; 23/2012/QH13), and its members cooperate with each other. It has legal personality.

[18] While natural persons may not go bankrupt, they may be considered for exemption from the obligation towards the state in the course of enforcement procedure under certain conditions (Article 61 and onward of the Law on Enforcement of Civil Judgments). Although opinions exist supporting the application of the obligation exemption procedure to debts in general, they are not prevailing.

[19] At present, households are held as the subject of rights and obligations (Article 106 and onwards of the Civil Code).

that the bankruptcy procedure opens when the debtor "falls insolvent," which is defined as: "fails to perform the obligation to pay its debts within 3 months after such debts become due" (Article 42, paragraph 2; Article 4, paragraph 1). Active discussions were held to define the cause to open the bankruptcy procedure, and the draft content went through twists and turns. In Vietnam, many accounting documents of companies, etc. are not properly made or preserved. Therefore, the majority opinion was that it would be difficult in practice to make the concept of "unable to pay debts" (adopted in Japan) as the basis for opening the procedure. In the end, it appears that a formal and clear norm has been adopted in Vietnam.

It is provided that district-level people's courts have jurisdiction over bankruptcy cases, in principle (Article 8, paragraph 2). However, when the debtor has branches or real estate in different provinces or the case is complicated, those cases shall fall under the jurisdiction of provincial-level people's courts (Article 8, paragraph 1). It thus appears that most cases shall be filed before provincial-level people's courts.

An asset management officer is defined as an individual who practices management and liquidation of debtors' assets in the bankruptcy procedure (Article 4, paragraph 7). Lawyers, accountants, or those with a bachelor degree in law, accounting, etc., with at least 5 years' experience in those fields may be granted certificates to practice as asset management officers (Article 12, paragraph 1). It has thus been classified as a type of profession. Companies represented by asset management officers, who are individuals with unlimited liability, are called asset management and liquidation firms (Article 4, paragraph 8; Article 13, paragraph 2). These companies are treated in the same manner as asset management officers (hereinafter asset management officers and asset management and liquidation firms are collectively referred to as "asset management officers, etc."). Opinions were heard during the revision process requiring only lawyers be asset management officers. However, as there is not sufficient number of lawyers in many parts of Vietnam[20], it was decided not to limit the qualification of asset management officers to strictly lawyers. Asset management officers, etc. may receive remuneration based on the time spent, efforts made and results of their performance, and must obtain the professional liability insurance[21] (Article 16, paragraph 5; Article 24).

The provision on the responsibility of related individuals and entities to submit documents and evidence (Article 7) has been newly introduced as there have been cases where it was difficult for the court, etc. to collect materials and evidence.

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[20] For example, in Lai Chau Province located in a mountainous area in the northwest of Vietnam, it had been impossible to establish a bar association as there were less than three lawyers until 2013 (See Article 60, paragraph 2 of the Law of Lawyers).

[21] Lawyers are obliged to purchase a professional liability insurance (Article 40, item 6; Article 49, paragraph 2).

C. Filing and Acceptance of Petitions for Initiating Bankruptcy Procedures

When there are causes for initiating the bankruptcy procedure, creditors (Article 5, paragraph 1; Article 26); employees and trade union representatives (Article 5, paragraph 2; Article 27); shareholders or cooperative members (Article 5, paragraphs 5 and 6; Article 29); have the right to file a petition for initiating the bankruptcy procedure; while debtors and their representatives have the obligation to file petitions for the same purpose (Article 5, paragraphs 3 and 4; Article 28). The cause for initiating the procedure is, as mentioned earlier, the non-payment of the debts for three months after the debts become due. When creditors, etc. file a petition, it is sufficient to submit documents concerning the existence of their claims and facts on the non-performance of the debt, with no need of documents on the solvency of debtors. Debtors filing petitions need to submit the financial data of the three most recent years, statement on the causes of becoming insolvent, a list of assets and debts, etc.

The judge in charge shall examine the petition and when it lacks the necessary information, shall have the petitioner to modify it (Article 34). When the petition is properly created, the court shall calculate the amount of bankruptcy expenses to be paid in advance and notify the petitioner of the payment thereof together with the bankruptcy fee (Article 38, paragraph 1). Upon receipt of payments of advanced bankruptcy expenses and bankruptcy fee by the petitioner, the court shall accept the petition (Article 39) and notify in writing the petitioner; the debtor; the court or civil judgment enforcement agency in which a case involving the debtor is pending; and the same-level people's procuracy; of the acceptance of the petition. When the petition has been filed by the debtor, the court shall also notify the creditors thereof to whom the debtor has notified of the petition (Article 40, paragraph 1). With the acceptance of the petition, cases over the property obligation in which the debtor is a party, the enforcement of a civil judgment against the debtor, and the disposition of security assets shall be suspended temporarily (Article 41). In cases where the petition has been filed by person(s) other than the debtor, the debtor shall submit relevant financial data, etc. within 15 days after being notified thereof (Article 40, paragraph 2).

When the petition has been filed by a creditor, the debtor may negotiate with the petitioner regarding the withdrawal of the petition. The court shall decide the time limit for such negotiations within 20 days after receiving the petition (Article 37, paragraph 1). When parties have reached an agreement on the withdrawal of the petition, the court shall return the petition (Article 37, paragraph 2); when no agreement has been reached, the court shall notify the petitioner of the payment of the bankruptcy fee, etc. (Article 37, paragraph 3).

In order to preserve assets of the debtor upon filing of the petition, the petitioner may request the application of provisional urgent measures (Article 70, paragraph 1), which vary from: foreclosure of debtor's assets; to freezing bank accounts of the debtor; to the seizure of accounting books; to the

prohibition of the disposition or alteration of the status quo of debtor's assets. Though the provisional disposition of prohibiting the payment of debts is not provided for, it is assumed to be included in the "disposition of prohibiting the debtor from taking certain acts." Similarly, the enforcement of civil judgments and the disposition of security assets are supposed to be included in the "measures of prohibiting other related organizations from taking certain acts." It is not scheduled to select an asset management officer or a substitute for it prior to the decision to initiate the bankruptcy procedure.

Within five working days after the court accepts a petition for initiating the bankruptcy procedure, if it is deemed that the ongoing or future performance of obligations may cause harm to the debtor, the creditor and debtor may request the court issue a decision to suspend such performance (Article 61, paragraph 1).

D. Decision to Initiate the Bankruptcy Procedure

The judge shall decide, by convening related parties if necessary, to initiate the bankruptcy procedure when the debtor falls insolvent (Article 42, paragraph 2). The decision shall include the time limit for creditors to register their claims and the legal consequences in case of failure to register (Article 42, paragraph 4, item đ). The decision shall be sent to the petitioner; debtor; creditors; the same-level people's procuracy; civil judgment enforcement agency, tax office, and the business registration office of the locality where the debtor is headquartered, and be published on the national enterprise registration portal, the website of the people's court and in a newspaper of the locality where the debtor is headquartered (Article 43). Debtors and others may request review of, and the same-level people's procuracy may protest against, such decision within 7 working days after receiving the decision. In this case, three judges of the immediate higher-level people's court shall, with the attendance of a prosecutor, consider the review request or protest (Article 44).

Within 3 working days after the issuance of the decision to initiate the bankruptcy procedure, an asset management officer, etc. shall be appointed (Article 45, paragraph 1). The petitioner may recommend an individual or firm as an asset management officer, etc. (Article 26, paragraph 3; Article 27, paragraph 3; Article 28, paragraph 4; Article 29, paragraph 2), which shall be taken into consideration when the judge makes the appointment (Article 45, paragraph 2, item b). This provision may be attributable to insecure sources of asset management officers, etc.

After the issuance of a decision to initiate the bankruptcy procedure, the debtor may continue its business operation (Article 47, paragraph 1). However, the debtor shall be prohibited from hiding, dispersing or donating their assets; waiving their rights to claim debts; paying unsecured debts arising prior to the decision except for salaries to be paid to employees; or offering assets as new securities (Article 48, paragraph 1). Moreover, the debtor shall need consent of the asset management officer,

etc. when conducting activities related to the borrowing, pledge, mortgage, guarantee, purchase, sale, transfer or lease of assets; paying salaries or debts arising after the decision (Article 49). No system has been established to convert debts (arising during the period between the filing of the petition and the decision to initiate the bankruptcy procedure) into common benefit claims, or no system equivalent to the permission by the court for the payment of small claims. When a decision is issued to initiate the bankruptcy procedure, the debtor's employees have the obligation to protect assets of the debtor (Article 74).

Litigations or the enforcement of civil judgments suspended upon acceptance of a petition to initiate the bankruptcy procedure shall be terminated with the issuance of a decision to initiate the bankruptcy procedure and relevant cases shall be forwarded to the court in charge of the bankruptcy procedure (Article 71, paragraph 2). Such forwarded cases shall be heard and decided by the court in charge of the bankruptcy procedure, and civil judgments to be enforced shall be handled as they would deal with secured or non-secured debts according to the enforcement stage in the course of the bankruptcy procedure (Article 72). The suspended disposition of security assets shall be handled in the course of business resumption procedure. If such procedure is not carried out, or security assets are unnecessary for carrying out such a procedure, the disposition thereof shall be conducted as necessary (Article 53).

In cases where the performance of a contract is suspended, the court shall examine the suspended contract and decide to terminate or continue the performance of the contract (Article 61, paragraph 4). When the court decides to terminate the performance of the contract, if assets received by the debtor from the contract still exist, such assets shall be returned to the other party of the contract. If such assets no longer exist, the other party may have the right as an unsecured creditor to claim back the unpaid assets and damages (Article 62).

E. Disposition of Assets of Debtor, Creation of an Inventory of Assets

Assets of a debtor include those held at the time of, and acquired or recovered after the issuance of a decision to initiate the bankruptcy procedure. In cases where the debtor has employees with unlimited liability, their assets which are not used directly for business operation shall be handled as the debtor's assets (Article 64).

Within 30 days after receiving the decision to initiate the bankruptcy procedure, the debtor shall evaluate its assets, create and submit a table of inventory of assets to the court. When the court finds the inventory inaccurate, it shall request an asset management officer, etc. to organize the re-inventory and re-evaluate the assets of the debtor. The value of assets may be determined based on market prices at the time of inventory (Article 65).

With regard to the claims held by the debtor toward third-party debtors, the asset management officer, etc. shall make, in addition to an inventory of assets, a list of debtors of the debtor and have it posted publicly. The debtor or third-party debtors may file an objection against the list (Article 68). If no objection has been filed, the list of third-party debtors is deemed final.

It is not obligatory under the bankruptcy law to make a report concerning the background to the initiation of the bankruptcy procedure, the history, status quo, etc. of business operation.

The donation of assets and transfer of assets not at market prices, an offer of new securities, unreasonable payment or any other transactions for the purpose of hiding or dispersing assets, etc. within 6 months before the issuance of a decision to initiate the bankruptcy procedure are deemed invalid. In cases where these transactions have been conducted between the debtor and affiliated persons[22] within 18 months before the issuance of the decision, they are also deemed invalid (Article 59). Upon request by an asset management officer, etc., the court shall declare the above transactions invalid, which will be enforced by a civil judgment enforcement agency, leading to the recovery of the debtor's assets (Article 60).

In cases where a seller who has sent goods to the debtor has not yet been paid, and where the debtor has not yet received the goods, the seller may retrieve such goods (Article 58).

F. Disposition of Claims, Making a List of Creditors

While the Bankruptcy Law of Vietnam does not include terms equivalent to bankruptcy claims or rehabilitation claims in Japan, the payment of debts which arose[23] prior to the issuance of a decision to initiate the bankruptcy procedure is prohibited in principle, as mentioned above. As a result, there remains no other option but payment of debts within the bankruptcy procedure. Debts are valued at the time of issuance of the decision (Article 51, paragraph 1), and interests on debts arising between the issuance of the decision on the initiation of the bankruptcy procedure and the issuance of the decision on the declaration of bankruptcy shall also be charged (Article 52, paragraphs 1 and 3).

Though there are no detailed provisions on the prohibition of set-off of debts, the consent of asset management officers, etc. is required for set-off (Article 63). It is thus deemed difficult to collect claims through set-off, in practice.

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[22] Affiliated persons shall include parent companies, subsidiary companies, managers, persons or shareholders holding controlling contributed capital or shares and family members thereof (Article 59, paragraph 3).

[23] Article 51 uses the term "established" before the issuance of a decision to initiate the bankruptcy procedure. However, the difference between "established" and "arose" is not made clear.

Creditors shall send debt claims to the asset management officer, etc. within 30 days from the issuance of a decision to initiate the bankruptcy procedure (Article 66). At the elapse of said period, the asset management officer, etc. shall make and publicly post a list of creditors. Upon this, creditors and debtors may request the judge to review the list of creditors (Article 67). If no such request has been filed, the list of creditors may become final. It appears that taxes and public dues are not required to be claimed (See Article 54, paragraph 4, item d).

G. Creditors' Meetings

Within 20 days after completing both an asset inventory and a list of creditors, the judge shall convene a creditors' meeting (Article 75). Those with the right to attend creditors' meetings are creditors on the list of creditors, employees and representatives of labor unions (Article 77). The petitioner and representatives of debtors have the obligation to attend creditors' meetings (Article 78). A creditors' meeting must be attended by creditors representing not less than 51% of unsecured debts, in principle. However, those who have sent their written opinions to the judge in advance shall be deemed to have attended the meeting (Article 79). While in the 2004 law, the attendance of the majority of creditors representing two thirds of total debt amount was required, in the 2014 law this requirement is relaxed. In addition, participation by submitting written opinions is also accepted. In cases where there are not sufficient creditors participating in the first meeting, the judge shall postpone the meeting once (Article 80).

In the creditors' meeting, the asset management officer shall report the status of the business situation, financial status and asset inventory results of the lists of creditors and debtors, etc. Following this, the representative of the debtor, etc. shall present his/her opinion about the contents reported by the asset management officer, etc. and proposes a plan to reorganize its business operation. In response to this, creditors exchange opinions and discuss (Article 81). The creditors' meeting may issue a resolution concerning the application of measures for restoring business operation, or proposing the declaration of bankruptcy of the debtor (Article 83). The resolution shall be adopted with votes by more than half of the attending unsecured creditors representing not less than 65% of the total amount of unsecured debts. These requirements are almost the same as those in the 2004 law.

Within 5 business days after receiving the resolution of the creditor's meeting, creditors, employees or debtors may request, or the procuracy may make a recommendation, for review of the resolution, and these requests shall be disposed of by the chief justice of the court settling the bankruptcy case (Article 85).

H. Procedure for Business Operation Restoration

When the creditors' meeting has approved the resolution on the application of the procedure for

business operation restoration, within 30 days after the resolution, the debtor shall make a business operation restoration plan and send it to the judge, creditors, asset management officers, etc. Creditors or asset management officers, etc. may send their opinions to the debtor, other creditors, asset management officers, etc. The judge shall consider the plan and decide whether or not to submit the plan to the creditors' meeting for consideration (Article 87).

Regarding the content of a business operation restoration plan, while the 2004 law did not clearly set forth whether or not to approve the reduction of debts, the 2014 law provides for the reduction or writing off of debts, or postponement of the payment of debts (Article 88). Moreover, the time limit for implementing the plan has been extended from three years to an indefinite term, in principle (Article 89). The plan shall include, in addition to clauses on the alteration of rights, changeover in capital-raising, products and management, renovation of manufacturing techniques, reorganization, business plan, capital plan, etc. including the sale of stocks, etc. The handling of the security assets necessary for restoration shall also be included (Article 53, paragraph 1, item (a); Article 91, paragraph 5). The consent of security right holders is necessary on this clause.

The creditors' meeting needs to be attended by creditors representing not less than 51% of the total amount of unsecured debts, as in the first creditors' meeting, and participation in writing is also possible (Article 90). The business operation restoration plan shall also need to be approved by more than half of the attending unsecured creditors representing not less than 65% of the total amount of unsecured debts (Article 91). Once the plan is approved, it shall be implemented with an approval by a judge (Article 92). Asset management officers, etc. shall continue to supervise the business operation of the debtor until the plan is completed (Article 93). Upon fulfillment of the plan, the procedure for business operation restoration shall end (Article 95, paragraph 1, item (a)).

Ⅰ. Decision to Declare Bankruptcy

In cases where the creditors' meeting for deciding whether or not to apply the business operation restoration procedure or for approving the business operation restoration plan fails to do so (Article 106); where the application of the procedure or the plan has not been approved at such meetings; or where the debtor fails to fulfill the plan (Article 107), the court shall decide to declare the debtor bankrupt.

In addition, when the debtor has filed a petition for initiation of the bankruptcy procedure, if the debtor has no assets to pay the bankruptcy fee or advanced bankruptcy expenses, or no assets remain to pay bankruptcy expenses after the petition for initiation of the bankruptcy procedure has been accepted, a decision to declare the debtor bankruptcy shall be made immediately without holding a creditors' meeting, etc. (Article 105).

Upon the decision of declaring the debtor bankrupt, the debtor shall terminate its business operation and the debtor's representative shall lose its power. The decision shall include matters concerning the liquidation and division of assets as well[24] (Article 108). The decision shall be sent, in the same manner as the decision to initiate the bankruptcy procedure, to stakeholders and be made public (Article 109). The debtor, etc. may file a request for review of, and the procuracy may make a protest against the decision within 15 days after being notified of the decision (Article 111). In this case, three judges of the immediate higher-level court shall hold a session with the attendance of a prosecutor to decide on the request or protest (Article 112). A request for review of this decision may be filed to the Chief Justice of the Supreme People's Court (Article 113).

With the issuance of a decision to declare the debtor bankrupt, the bank where the debtor has its account shall be prohibited from settling debts of the debtor, except when it obtains written consent of the court or civil judgment enforcement agency (Article 73). Moreover, in issuing a decision to declare the debtor bankrupt, if necessary, it is possible to apply several provisional urgent measures to preserve assets of the debtor (Article 70, paragraph 1).

From the date of issuance of a decision on declaration of bankruptcy of the debtor, interests on debtors shall not be charged (Article 52, paragraph 3). A property obligation of the debtor which has arisen from the date of inssuance of the decision to initiate the bankruptcy procedure shall be valued at the time of issuance of the decision on bankruptcy declaration (Article 51, paragraph 2). As the settlement of security assets should be done before the decision to declare bankruptcy (Article 53, paragraph 1, item (b)), the debt amount including secured debts shall be fixed at this stage, in principle. Security assets shall be divided in the following order: 1) bankruptcy expenses; 2) salaries, etc.; 3) debts arisen with the aim of restoring business operation after the initiation of the bankruptcy procedure; 4) debts toward the State, debts payable to creditors on the list of creditors; and unpaid secured debts after the settlement of secured assets. Compared to the 2004 law, priorities are granted to finance debtors in possession, etc.

Management personnel of state companies shall be prohibited from holding such posts in any state companies (Article 130).

J. Conversion of Assets into Cash, Division of Assets

Upon decision on bankruptcy declaration, those who have rented assets, etc. to debtors may receive the assets back by producing documents providing their ownership to the civil judgment enforcement

[24] As the conversion of assets into cash has not been done yet at this stage, attention should be paid to the contents of the decision.

agency. In cases of having received rent fees in advance, the owner of rented assets shall refund the rent fee for the remaining lease term (Article 56).

The debtor's assets shall be liquidated in enforcing the decision of bankruptcy declaration. The judgment enforcer shall open a bank account, supervise asset liquidation by the asset management officer, etc. and divide the debtor's assets (Article 120). Asset management officers, etc. shall value assets (Article 122). Immovable assets and movable assets valued VND10 million or more shall be subject to auction by entrusting it to an auction organization under the law on asset auction. Movable assets valued VND 2 million or more but less than VND 10 million shall be auctioned by asset management officers, etc. Other types of assets shall be converted into cash through any other appropriate manner (Article 124) with collected money being deposited to the above bank account (Article 16, paragraph 1, item (i)). In cases where asset management officers, etc. fail to liquidate debtor's assets within 2 years, the judgment enforcer himself shall conduct liquidation (Article 121). In cases where invalid transactions or assets have been detected after the decision on bankruptcy declaration, additional division, etc. of debtor's assets shall be conducted upon decision by the court (Article 127). When assets division has been completed or there is no asset to divide, the bankruptcy procedure shall conclude (Article 126).

IV. CONCLUSION

Being based on the 2004 law, the 2014 law has amended and supplemented flaws found in the 2004 law. It includes a large-scale revision through introduction of the asset management officer system, etc., with trial and error ahead in the operation of the new system for the moment. The trial and error process will not always be successful. However, relevant experiences will be accumulated through settlement of many cases, improving the quality of case settlements with inventions of various measures in practice. As a result, the public trust toward the bankruptcy procedure will improve, encouraging dispositions of further bankruptcy cases in line with the established legal procedure. For this purpose, the roles of lawyers, accountants, etc. will become more important, increasing the necessity for courts and civil judgment enforcement organizations to regularly exchange opinions with them. It is hoped that the practice in settlement of bankruptcy cases will be improved and properly performed according to the procedure under the new law.

OUTLINE OF THE AMENDED LAW ON CRIMINAL PROCEDURE OF LAOS

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I. INTRODUCTION

I was dispatched to Laos as a JICA long-term expert for the Project for Human Resource Development in the Legal Sector (Phase 1) from July 2011 to July 2014. With the aim of strengthening the capacity of human resources in the legal sector, a sub-working group (SWG) was formed on each basic law area of civil law, civil procedure law and criminal procedure law. To this end, we conducted several activities including the study of Laotian law, the development of model teaching materials, law dissemination, etc[1].

With regard to the Law on Criminal Procedure, at the beginning of the project, assistance was provided based on the 2004 revised law. However, the law was amended in 2012 in the middle of the project implementation period[2].

This paper summarizes (concluding my activities as a long-term expert), the valuable experience I gained in studying the Law on Criminal Procedure in Laos, together with SWG members, through the project. I would like to take this opportunity to thank Professor Katsuyoshi Kato of the Faculty of Law and Graduate School of Law, Meijo University; Professor Mitsuo Shumi of the Law School, Doshisya University; and Attorney-at-law Shunji Miyake, for their participation and their many suggestions as members of the advisory group for the SWG for the Law on Criminal Procedure.

The law provisions quoted herein are of the Law on Criminal Procedure revised in 2012 (hereinafter referred to as "the 2012 law") unless otherwise provided for.

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[1] We worked with four counterpart organizations: People's Supreme Court; Office of the Supreme People's Public Prosecutor; Ministry of Justice; and the National University of Laos. In August 2012, assistance in the drafting of the Civil Code was added as another component of the project. Regarding the details of the project, see ICD NEWS No. 44, 47, 49-51, 53, 55-58, etc. (in Japanese).

[2] The law was approved by the National Assembly in July 2012. Though it was promulgated by an order of the President and went into effect on August 1, 2012, it was not published until November of the same year.

II. DEVELOPMENT OF THE LAW ON CRIMINAL PROCEDURE AND THE OUTLINE OF THE CRIMINAL PROCEDURE IN LAOS

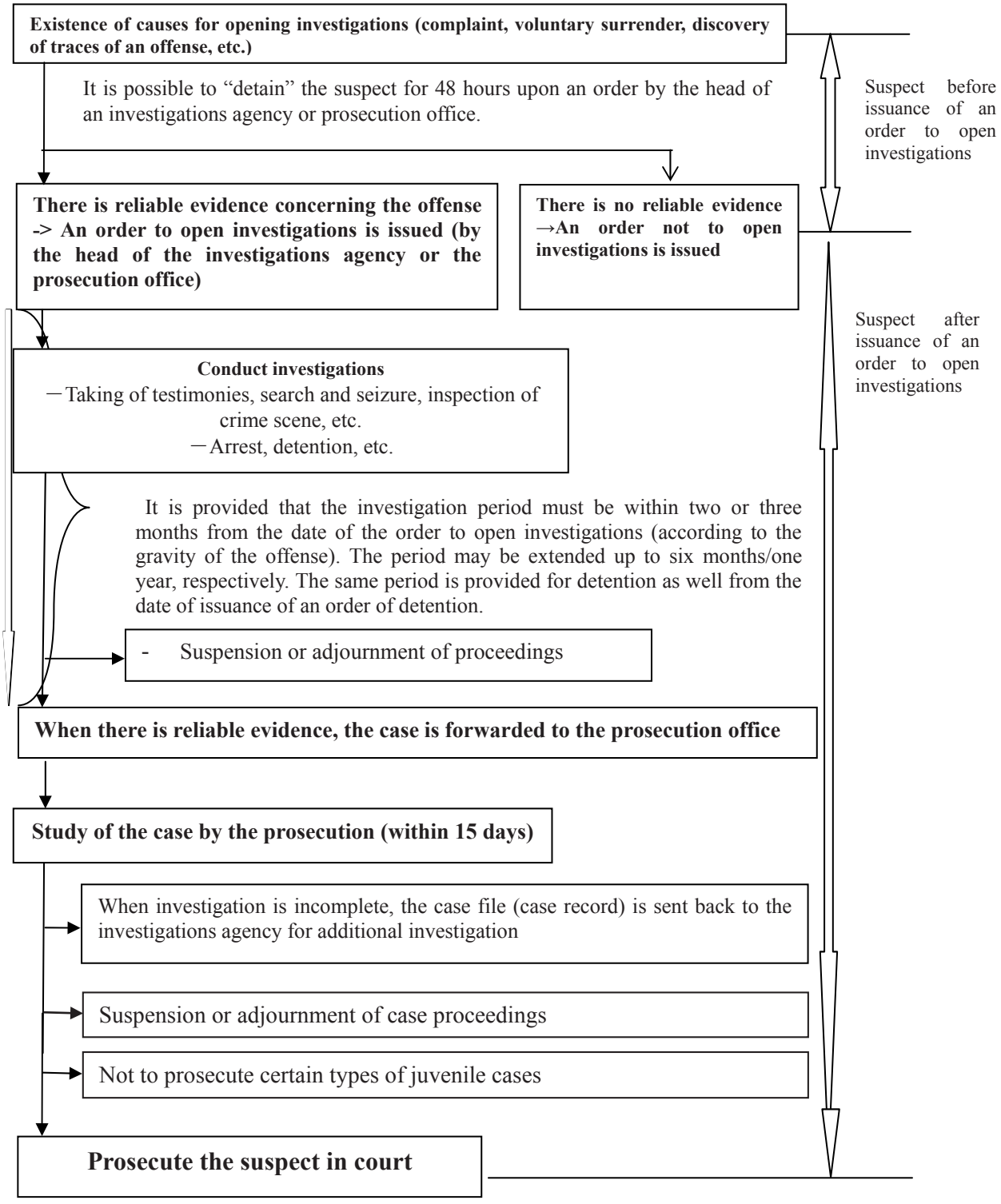
Regarding the Law on Criminal Procedure in Laos, after the establishment of the regime by the Lao People's Revolutionary Party in 1975, an order was issued in 1976 by the then Prime Minister. Later in 1989, the Law on Criminal Procedure was approved by the National Assembly and was promulgated in 1990 through an order by the President.

In 2004, the law went through its first amendment. The former law (hereinafter referred to as "the 2004 law") consisted of 12 chapters limited to 122 articles, including provisions on appeal instance, enforcement of verdicts, reopening of cases, etc. It was a simple procedural law with many general provisions.

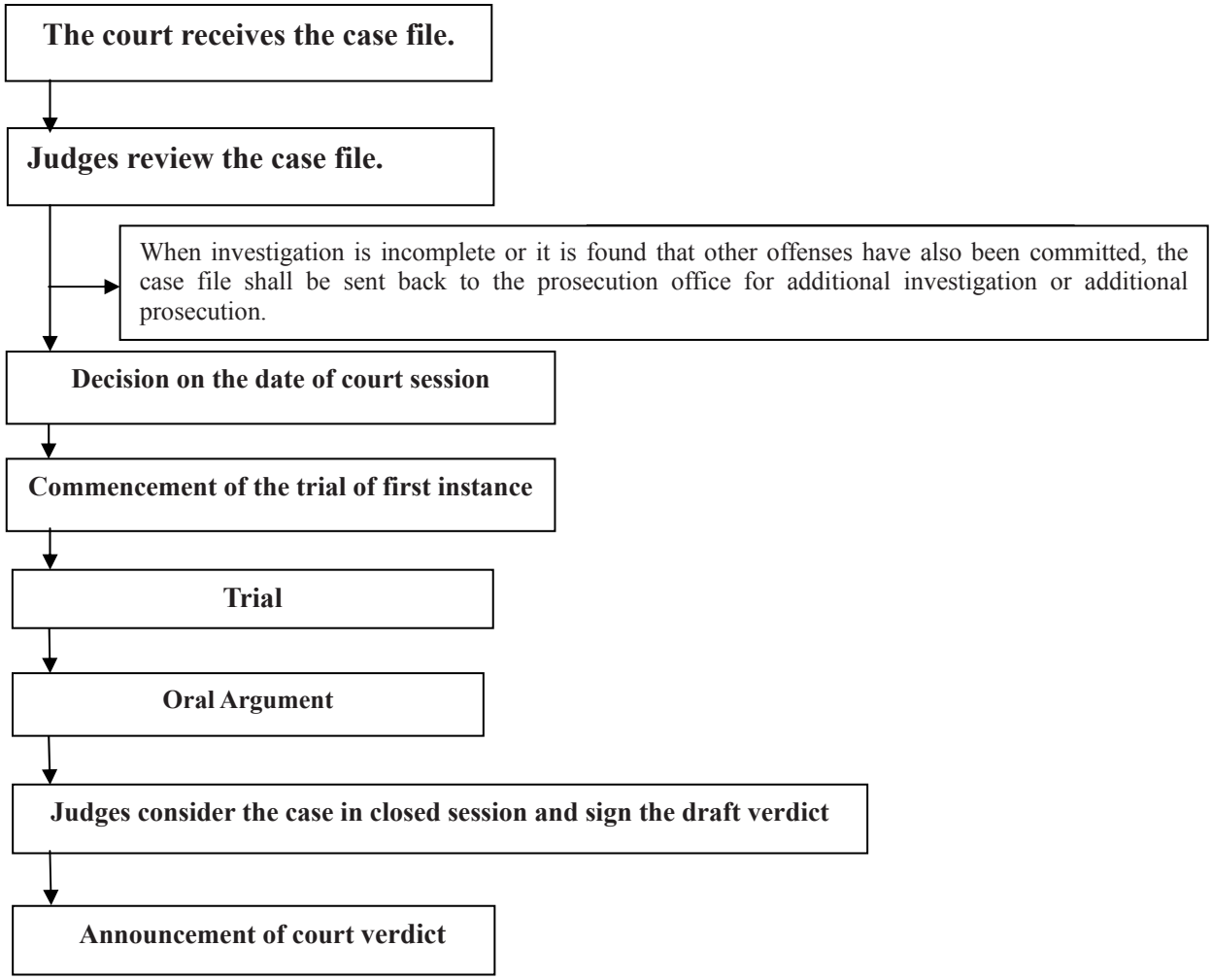
In order to make the procedure clearer and consistent with the structure and names of the prosecution offices and courts, which were changed according to the revision of the Law on People's Prosecution Offices and the Law on People's Courts in 2009, the Law on Criminal Procedure was revised again in 2012. The 2012 law consists of 15 chapters with 275 articles. As the number of articles has doubled, the law provides for the criminal procedure in greater detail, while maintaining the basic structure and principles.

The following flow chart outlines the criminal procedure in Laos.

Chart of Criminal Procedure in Laos



The prosecutor shall serve the charging sheet on the suspect or his defense counsel and obtain their signature within three business days before sending the suspect to the court. In cases where they have not signed, a statement thereof shall be recorded.


The court receives the case file.
Judges review the case file.
When investigation is incomplete or it is found that other offenses have also been committed, the case file shall be sent back to the prosecution office for additional investigation or additional prosecution.
Decision on the date of court session
Commencement of the trial of first instance
Trial
Oral Argument
Judges consider the case in closed session and sign the draft verdict
Announcement of court verdict

III. CHARACTERISTICS OF THE LAW ON CRIMINAL PROCEDURE OF LAOS

A. Basic Structure

The criminal procedure in Laos is based on the so-called "inquisitorial system." The results of investigations conducted by an investigations agency are compiled into a case file (case record) to be forwarded to the prosecution office. When the case is prosecuted, the case file or case record shall be forwarded to the court together with evidence. Therefore, the prosecution procedure is not based on the principle of charging-sheet-based prosecution as in Japan. Furthermore, when the court finds, after reviewing the case file, a lack of important evidence or the existence of other offences committed by the defendant or any co-defendant, etc. the court may return the case to the prosecution office. Only when there are no such circumstances, shall a court session be held[3].

All court sessions in Laos are conducted by a judicial council of three judges (Article 18). Court sessions begin with the questioning of the defendant by the presiding judge according to the statutory provisions and also in practice. Questions by the prosecutor, defense counsel, etc. are supplementary. Under the Criminal Procedure Law, while investigations agencies, prosecution offices and courts are listed as the responsible organizations for criminal proceedings (Article 45), suspects, defendants and defense counsel are considered participants in criminal proceedings - the same as victims, witnesses, etc. (Article 63). These provisions indicate the structure of criminal procedure between the procedure-conducting party (subject) and the procedure-receiving party (object).

As another characteristic of the system, the law provides that the proceedings shall continue even should the defendant pass away during case proceedings in court (Article 6, paragraph 1, item 8). Although these provisions are not necessarily based on the inquisitorial system, it is provided that even when the defendant (one of the parties) passes, the court shall continue the proceedings for the purpose of searching the truth. In this sense, these provisions can be considered to have an affinity for the inquisitorial system. In reality, however, these provisions aim at, rather than being based on such principles, examining the amount of damages – the substance of civil procedure[4]. This is also represented by the provisions of Article 16, paragraph 3 on the "examination of damage amount in criminal cases" to the same effect as Article 6, paragraph 1, item 8.

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[3] According to the 2012 law, it is provided that even when a case has been returned from the court to the prosecution office, if the prosecution office is unable to collect the additional evidence proposed by the court and yet upholds the prosecution of the case, the court must accept the case (Article 168, paragraph 4). Though this provision can be deemed as being based on the adversarial system, it does not mean that theoretical reviews were conducted as to the adoption of the adversarial system in the revision process.

[4] In Laos, compensation for damage is examined during criminal proceedings, in principle. Regarding the legal structure of liability for damages when the defendant has passed away, it is not clearly provided. It has also been explained that if the defendant has an asset, compensation will be paid from his/her asset. In this case, however, relevant legal theory structures (including relations with inheritance, etc.) have not been made clear.

B. Basic Principles

The Law on Criminal Procedure Law of Laos provides for sixteen basic principles, including: the prohibition of breaching citizens' rights and freedom (to the effect that it is prohibited to arrest, detain or search premises, etc. without an warrant, Article 12), equality of citizens before the law and the courts (Article 13), guarantee of the right to defense (Article 14), presumption of innocence (Article 15), independence of judges (Article 19), trial in open court (Article 21), as well as case consideration by a judicial chamber (Article 18), language used in case proceedings (Article 20), etc. (Articles 11 through 26).

I would like to give some consideration to the principle of presumption of innocence as follows:

The Law on Criminal Procedure of Laos provides, as the principle of presumption of innocence, that during criminal proceedings, suspects and defendants for whom a final court verdict has yet to be reached shall be considered innocent. Although its meaning is not made clear, it appears that many understand it as meaning the defendant should not be treated as an offender or prisoner until conviction against him/her becomes final[5].

The provisions of Article 142, paragraph 3: "Persons held on remand must be held separately from prisoners and in suitable conditions as they are still presumed innocent" may also represent the above understanding. In general, the understanding of "presumption of innocence" in Laos does not include the meaning of "*in dubio pro reo* (when in doubt, for the accused)" nor such profound discussions may have been held (SWG members were aware of this point in drafting the model textbook).

As Laos has adopted the inquisitorial system, public prosecutors are not assumed to bear the burden of proof as one of the parties. In this respect, as Article 14, paragraph 3 provides: "Suspects and defendants (omitted) shall not be forced into finding evidence to verify their innocence," the procedure-conducting party (courts, prosecutors, etc.) bears the burden of proof. According to these provisions, it may be possible to consider that the criminal procedure law of Laos also adopts the principle of "*in dubio pro reo*." However, the meaning of the principle of presumption of innocence provided in Article 15 appears to be limited as no discussions on this matter have been held to date. In practice, there exist concerns about cases in which the defense is forced to bear the burden of proof (for example, there appears to be a tendency that, even should the defense challenge the voluntariness of its confessions, its statements may be considered simply evasive and false).

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[5] This may be attributable to the provisions of Article 8 of the 2004 Law on Criminal Procedure regarding the principle of presumption of innocence which states: "….. he shall be regarded as innocent and shall be treated properly." As the phrase "shall be treated properly" has been deleted in the 2012 law, it may be possible to find a new implication in the provisions on this principle. The reasons for the deletion have not been made clear.

C. Order to Open an Investigation

The investigation procedure in Laos differs from the procedure in Japan in various aspects. One of the differences is the "order to open an investigation" system, as provided for in Article 84, paragraph 1: "In the event that there is concrete evidence which proves that an individual has committed a criminal offence, the head of the investigations agency or the head of the prosecution office[6] must issue an order for the opening of investigations into that individual" (Article 84, paragraph 1). The purposes of these provisions are not made clear.

In Laos, in addition to the period of detention, the period of investigations is also provided (which commences at the issuance of an order to open investigations). The investigation period is for two months (or three months in cases of more serious crimes. The period varies according to the types of offenses. The investigation period can be extended to six months/one year, respectively.)

Another point to note is that the term of suspect changes before and after the issuance of an order to open investigations, as well as their rights and obligations (Articles 64 and 65). The order to open investigations by the head of an investigations agency shall be sent to the head of the prosecution office to obtain his/her approval or non-approval.

D. Institutions Authorized to Issue an Order to Use Coercive Measures

Coercive measures include (temporary) "detention,[7]" arrest, incarceration, etc. While the "(temporary) detention" can be conducted by the investigations agency, arrest or incarceration requires an order by the head of the prosecution office or by the court (the extension of the period of incarceration needs to be authorized by the head of the prosecution office, and an order by the head of the prosecution office or the court is necessary for search.)

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[6] "The head of the investigations agency" and "the head of the prosecution office" refer to the head in each jurisdictional area: heads of investigations agencies and prosecution offices in each province and district.

[7] This is a 48-hour detention under the order by the head of an investigations agency or the head of the prosecution office. After the detention, it shall be decided whether an order to open investigations is issued or the suspect should be released without issuing the order.

List of rights to issue an order concerning investigations

	Investigations agency	Prosecution office	Court
Warrant to bring in	✓	✓	✓
Temporary "detention"	✓	✓	
Arrest		✓	✓
Incarceration		✓	✓
Pre-sentencing release		✓	✓
Pre-sentencing house arrest	✓	✓	✓
Suspension of positions or duties		✓	

As indicated in the above table, the rights which belong solely to courts in Japan are shared by the prosecution offices and courts in Laos. This may prove the common roles shared by the prosecution office and courts. In other words, it appears that in Laos the role of prosecution offices as a supervisory authority (rather than as an investigations agency) is emphasized[8] (although there are no statistics comparing the number of orders of arrest or orders of incarceration issued by the prosecution offices and courts, it appears that in practice those orders are issued mostly by the prosecution offices, not by courts).

E. Institution of Prosecution

The institution of prosecution is the right of the head of a prosecution office. Laos adopts the principle of compulsory prosecution, different from the principle of discretionary prosecution in Japan. However, in cases where a mediation agreement has been reached between the victim and the suspect, or property damages are less than the specified value, the criminal proceedings shall be discontinued with no prosecution of the case (Article 6).

F. Defense Counsel

In Laos, in addition to lawyers, parents, spouses, children, etc. (who do not need to be appointed as representatives) of defendants or any other "protectors" (or guardians) who have been granted the right to represent defendants are allowed to become the defendant's defense counsel (Article 71 of the 2012 law; Article 3, item 7 of the Law on People's Court[9]). The existence of protectors is attributed to the fact that no defense counsel is appointed in many criminal cases with there being solely 200 lawyers registered in the country. However, there is a concern that those protectors cannot stand in

[8] Although the prosecution office also has the right to investigate, in general, the Laotian term "investigations agency" does not include prosecution offices (Article 46).

[9] Article 3, item 7 of the Law on People's Court lists, in addition to lawyers, organization representatives, spouses, parents, guardians or close relatives.

for defense counsel.

Protectors and lawyers have the same rights, in principle. However, in cases of crimes punishable by the death penalty, only lawyers may be appointed as defense counsel (Article 71, paragraphs 3 and 4). Moreover, in cases where the suspect or the defendant is a child under 18 years of age, has disabilities or does not know the Lao language, the accused or the defendant must have a lawyer or protector. The selection procedure thereof is provided in Article 71, paragraph 8.

IV. PRIMARY POINTS OF REVISION IN THE 2012 REVISED LAW ON CRIMINAL PROCEDURE

A. Increased Number of Provisions on Evidence

While the 2004 law had only three articles on evidence in the chapter on evidence, the number of articles has increased to eighteen in the 2012 law. Some new articles include provisions similar to those in the Rules on Evidence-Related Affairs (an official directive of the Minister) in Japan, while others newly provide for important matters on rules on confession (Article 36, paragraph 3), rules on the exclusion of evidence illegally collected (Article 42), etc.[10] However, in Laos where the admissibility and probative value of evidence are not necessarily distinguished, the application and implementation of these important provisions will be a challenge to overcome.

B. Rights of Suspect/Defendant

The provisions on the rights of suspects and defendants have also been subject to revision. As I mentioned earlier, in Laos suspects before and after the issuance of an order to open investigations are distinguished. The 2004 law provided for the rights and obligations of suspects and defendants only after the issuance of an order to open investigations, but no provisions on the rights or obligations of suspects before the issuance of the order. Contrary to this, the 2012 law provides for the rights and obligations of suspects before the issuance of an order to open investigations as well. In addition, while the 2004 law provided for the rights and obligations of suspects and defendants after the issuance of the order jointly in one article, the 2012 law provides for the rights and obligations of suspects and defendants separately in different articles to make each article clearer. The 2012 law also clearly states that "being informed of one's rights and obligations" is a right of suspects and

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[10] Article 36, paragraph 3: A confession of a suspect or defendant obtained through trickery, coercion, threats, bodily harm, torture, or any other illegal actions may not be used as case evidence.
Article 42, paragraph 1: The information obtained by means in violation of this law shall not be considered evidence in a criminal case.
paragraph 2: The information not considered to be evidence in a criminal case shall have no legal effects and may not be used as a basis during criminal proceedings.

defendants.

Furthermore, while the 2004 law provided for the obligation of suspects and defendants of making testimonies after the issuance of an order to open investigations, the provision on this obligation has been deleted in the 2012 law. However, there are no provisions on the right to remain silent either[11]. In this regard, I heard that the drafting committee of the revised criminal procedure law proposed provisions on the right to remain silent. No provisions were ultimately added however on grounds that under the present conditions in Laos, where investigations agencies lack sufficient ability to investigate and collect evidence, granting the right to remain silent would make collection of evidence extremely difficult.

C. Detailed Provisions on Investigation

The revised law has more detailed provisions on investigation in general, including many new provisions on the commencement of investigations. In particular, there are many provisions on time limits, such as the time limit for an investigations agency to report a case to a prosecution office or the time limit for the prosecution office to make decisions. However, these detailed provisions have made the law more complicated, leaving the relevance of each provision quite ambiguous. Despite these provisions, Laos still faces difficulties in meeting time limits.

D. Provisions on Court Session

As well as the provisions on investigations, the number of provisions on court session has also increased in the revised law. In the 2004 law, there were only ten articles on trial in Part IV "Proceedings in the Court of First Instance," providing for the acceptance of a case for consideration by the court to the pronouncement of a verdict. The 2012 law includes 50 articles in total on this topic (from Articles 160 to 210), separated into seven chapters on the acceptance of cases, commencement of court sessions, trial, oral argument, etc., in the part on case proceedings at the court of first instance. In particular, while the 2004 law had only one article on trial at an open court, covering from the principle of direct, verbal, and open trial to trial proceedings and final statements, these are provided separately in different articles in the 2012 law.

These are the principal points of revision. For reference, the 2012 law is composed of the following parts.

[11] Laos ratified the International Covenant on Civil and Political Rights in 2009.

Part I	General Provisions
Part II	Fundamental Principles for Criminal Procedure
Part III	Evidence in Criminal Cases
Part IV	Organizations and Participants in Criminal Case Proceedings
Part V	Investigations
Part VI	Methods for Investigations and Coercive Measures
Part VII	Rights and Duties of the Office of the Public Prosecutor in the Monitoring and Inspecting of the Application of the Law by Investigations Agencies and the Complaint of the Injured Party Raised in Court
Part VIII	Case Proceedings at the Court of First Instance
Part IX	Case Proceedings at the Appellate Court
Part X	Case Proceedings at the Court of Cassation
Part XI	Enforcement of Court Agreements
Part XII	Reopening Cases
Part XIII	Medical Treatment Measures
Part XIV	International Cooperation over Criminal Procedure
Part XV	Final Provisions

V. CONCLUSION

It can be considered that, compared to the 2004 law, to some extent the 2012 law provides for the criminal procedure in detail. However, it cannot be denied that there are still ambiguous or unclear parts with conflicts or inconsistencies in-between articles. Moreover, it is not made clear on how, or whether it is actually possible to apply and implement idealistic provisions in consideration of the reality in Laos. It appears that there was a lack of such concrete and practical images in the course of legislation. In this sense, the gap between the law and practice may have grown in certain aspects.

On the other hand, SWG members who rarely had questions on statutory articles in the beginning of the project have now become aware of the meaning of articles and problems including unclear points or relevance among articles, etc. It is often said that the law can never be perfect and importance is placed on those who use it. It is my sincere hope that SWG members will become models to follow in developing human resources in the future. At the same time, being involved in such cornerstone activities for the legal development of Laos has provided me with a great joy. I would like to take this opportunity to express my sincere gratitude to those who have supported our activities. Thank you very much.

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