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～Features～

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Please note that the articles contained in this book were originally written for ICD NEWS NO. 71 through No. 73 (Japanese version) published in June, September and December 2017. 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 -

COOPERATION FOR THE RULE OF LAW PROMOTION IN WEST AFRICA AND ACTIVITIES OF THE LEGAL ADVISOR IN REPUBLIC OF CÔTE D'IVOIRE

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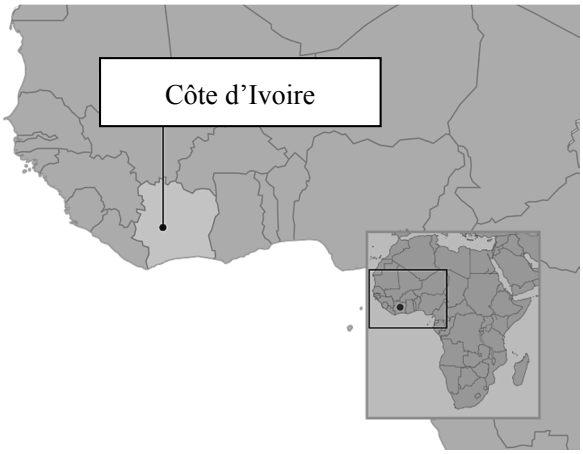
I. Introduction

I was dispatched to Ministry of Justice of Republic of Côte d'Ivoire in December 2014 as an Expert of JICA, in the status of "the Advisor in the field of Law and Justice" (the "Legal Advisor"), and returned to Japan in April 2017 after working there for two years and four months. Following is a summary of my activities and what was achieved during this period:



II. Cooperation for the Rule of Law Promotion towards Africa - Background of Dispatch of Legal Advisor

Japan has carried out cooperation for the Rule of Law promotion mostly in Asian countries.[1] At the occasion of the fifth Tokyo International Conference on African Development (TICAD

[1] Support for the field of justice in Africa has actually been provided to a certain extent in the past. In addition to the acceptance of trainees from African countries for JICA training by subject in Japan with themes of the field of justice, firstly in Kenya, in cooperation with United Nations Asia and Far East Institute (UNAFEI), training for the system to deal with juvenile delinquents was provided and the project for improvement of skills of staff relating to juvenile protection

V) held in 2013, "peace and stability" was newly introduced as one of main policies for cooperation to be carried out by Japan towards Africa, and in this context, it became possible to start some concrete assistance to the field of justice in Africa. At this time, five countries and regions were selected to be the key regions for cooperation, including Republic of Côte d'Ivoire where civil wars and other crises had taken place for approximately ten years until around the end of 2011, while the country experienced economic growth called as the "Ivorian miracle" in the past. For this country, several experts called as "Advisors" had already begun to be dispatched in major fields of cooperation such as agriculture, fishery and private sector development to resume support activities that had been interrupted. In the governance field, needs for the development of personnel in the field of criminal justice and the improvement of access to justice, as well as capacity-building of security-related matters such as the police, were found. Accordingly, the dispatch of a legal "Advisor" locally engaged in support activities for the field of law and justice was decided. According to the preliminary survey in August 2013, in relation to the improvement of access to justice, the Côte d'Ivoire authorities requested that a call center be installed.

Although I have been involved in international matters throughout my carrier, in the year of 2013, I served as General Manager, First Business Department of the Japan Legal Support Center (JLSC), while concurrently being a part-time visiting Senior Advisor of Japan International Cooperation Agency (JICA). In JLSC, among measures for the improvement of access to justice in Japan, I was responsible for provision of civil legal aid, support for victims of the Great East Japan Earthquake, and information services which include operation of a call center. In the context of these situations, I was given a position in Côte d'Ivoire as the legal advisor for duration of two years to carry out activities for cooperation. No Japanese expert in the field of law and justice had been dispatched for a long term to any region other than Asia in the past, and it was surely the first example in Africa.

III. Mission of Legal Advisor and Scheme of Activities

The legal advisor is not an expert dispatched to perform certain concrete technical cooperation project, but an individual expert. When I was dispatched, in terms of the purpose of support and local needs as stated above, the two tasks (as mission of the legal advisor): (1)

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had been implemented from October 2009 to October 2013. In the Democratic Republic of Congo around 2010, a project in the field of justice was implemented through Belgian NGO. Then, from FY2013 to FY2014 in Japan and from FY2015 to FY2017 in Cote d'Ivoire, the training on criminal justice in French speaking African countries has been provided for five-year cooperation (for more details, please refer to IV. Activities for Development of Personnel in Field of Criminal Justice).

development of personnel in the field of criminal justice; and (2) improvement of access to justice, and interim activity items were designated. In order to promote the activities, upon confirmation of local situations, service plans were expected to be formulated by the Advisor and then concretely carried out within a given budget so as to contribute to realization of these two tasks.

Ministry of Justice of Côte d'Ivoire gave me as a JICA Expert the status of Technical Advisor (Conseiller Technique) to Minister's Secretariat, Ministry of Justice[2]. My office was in a space reserved at a corner of the building of Minister's Secretariat. As services of Ministry of Justice were performed in French, I employed an English-speaking local female assistant who was the sole collaborator in the office.

IV Activities for Development of Personnel in Field of Criminal Justice

(1) Training on Criminal Justice in French Speaking African Countries

According to the declaration at TICAD V as stated above, the training on criminal justice in French speaking African countries had already begun since FY2013 by United Nations Asia and Far East Institute (UNAFEI) as an implementing organization. Eight countries in total, Burkina Faso, Republic of Chad, Republic of Mali, Islamic Republic of Mauritania, Republic of Niger, Republic of Senegal, Democratic Republic of the Congo and Republic of Côte d'Ivoire, had participated in the training. These countries are either Sahel countries where countermeasures against terrorism and organized crime has been the urgent matter or neighboring or surrounding countries that have experienced crisis, which can be called as one of the world's key regions in the field of criminal justice. In this circumstance, activities in the field of criminal justice for the legal advisor consisted of (a) dissemination of the results of the training on criminal justice in French speaking African countries, (b) building of a network of the participants, and (c) support for localization of the training session.

(2) Localization of Training Session and its Reception in Côte d'Ivoire

Two training sessions were held in FY2013 and FY2014 in Japan, and then it was planned that the sessions were held in and after FY2015 in Africa where Côte d'Ivoire was the

[2] I was the only foreign expert stationed in the Minister's Secretariat. As a foreign advisor, my position was slightly different from other technical advisors. (For example, I was not a member of the executive committee of the Minister's Secretariat.) There were two other foreign experts in justice domain: EU had dispatched an experienced French judge from 2011 to September 2015 as the expert of the support program of Minister of Justice (PARMSJP); and France has dispatched an expert to the national judicial training institute (INFJ) since April 2016. Major donors in the period while I was in office were: France, US, EU, ONUCI, World Bank, UNICEF, Red Cross, UNDP, UNHCR and UNODC.

leading candidate country. First of all, in order to make successful the session to be held in and after FY2015 in Côte d'Ivoire, I was involved in the selection of participants in the second training session, and planned a reporting session after their return from Japan even before they had come to Japan. This reporting session was held in May 2015 at a hotel in Abidjan, and became an opportunity for a rehearsal of the training session to be held locally in the following year, as well as a demonstration to the local society of legal profession and donors. The model of the executive committee established at a later day was also formed at this occasion. At the third training session held in February 2016 in Abidjan, a special session for Ivorian professionals was held for three days after the two-week training session, gathering judicial officials (*magistrats*) and judicial police officers from all over the country.

Members of the executive committee of the third training session

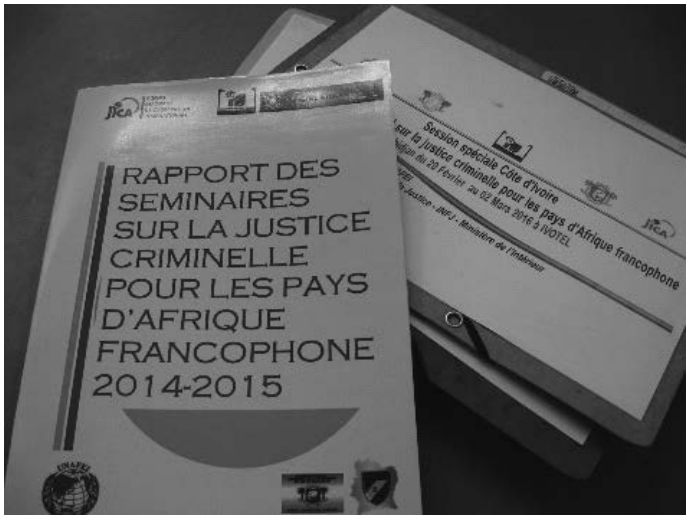
(3) Support for Dissemination of Results of Training

In regard with the participants in the reporting session and the special session stated above, judicial officials (*magistrats*) in charge of criminal justice procedures in three occupational categories, judges, preliminary judges and prosecutors were thoroughly called from all nine jurisdictions in the country, with the cooperation and direction of the director-general of the civil and criminal affairs bureau of the Ministry of Justice. These sessions had rather good reputations, and being inspired by the participation, some officials applied for and actually attended the training session by subject held in the following year in Japan.

However, actual participants were only part of those officials (*magistrats*) and information that could be shared between the participants and their colleagues would be limited. Therefore, adopting an idea of a member of the executive committee, deliverables of the reporting session and documentary materials for the training session were summarized in a booklet of about 200 pages in reference to "Resource Material Series" (the reporting material of the training session issued by UNAFEI), and the booklet was issued in the

number of copies that could be distributed for all judicial officials (*magistrats*) and judicial police officers in the country. Once it was published, the booklet was highly well-received, and was placed on display at a side event of the sixth Tokyo International Conference on African Development (TICAD VI) held in August 2016 in Kenya, in addition to provision to participants in the training session from other countries as an illustrative example of dissemination of results.

In addition to the hard copies, the digital version of the booklet was later published and downloadable on the website of the Côte d'Ivoire National Judicial Library (Centre National de Documentation Juridique (CNDJ))[3]. It is because the digitalization of materials related to the training on criminal justice in French speaking African countries had been designated to be the first pilot case of the digital archives building project for CNDJ carried out by the United Nations Development Programme (UNDP) in 2015[4]. For the fourth training session, arrangements of intellectual property rights in and to all materials used in the training session have already made so that such materials may be accessible via web services of CNDJ.



Reporting material of the first and second training sessions (on the left side)

(4) Possibility to Build Information Archives and Network

The training sessions have been held four times, and information worthwhile as reference material in the region has been accumulated. In order to make such information accessible,

[3] http://www.cndj.ci/cndj/

[4] It was the project between UNDP and the Ministry of Justice, but due to efforts made by Japanese international staff members of UNDP, it was realized with JICA and UNAFEI as intermediaries. Namely, by designating the training implemented by UNAFEI as the pilot case, financial support could be obtained from the UNDP headquarters. There was also a background support due to the cooperative relationship in the field of justice since 2014 between Japanese authorities and the UNDP headquarters.

it is expected that French contents on criminal justice are to be enriched by using means such as CNDJ's digital archives. While relationships among participants in the training have been deepened as years passed, former trainees in Côte d'Ivoire form an excellent team of mid-career judicial officials in the country. It would be possible to develop a regional network centered on them, and through the network, it would also be possible for Côte d'Ivoire to be the center of the development of judicial personnel and related information in the region.

V. Activities for Improvement of Access to Justice

(1) Plan to Establish Call Center in Ministry of Justice

As stated above, for cooperation for the improvement of access to justice, a request for establishment of a call center has been notified from the beginning. However, there was no word of "call center" in the list of tasks and activities, and accordingly, I started my services with the verification of necessity and usability of the call center. As a result of extensive interviews with persons concerned over a few months from early 2015, there was no dissident voice on support for the establishment of the call center by the legal advisor and there were rather a lot of favorable opinions stating that the call center would be extremely useful. Recently in Africa, due to the rapid spread of mobile phones, every individual even in the rural community can use a phone and the telephone has become a highly effective communication tool. It could also be deemed that the telephone would mitigate three major obstacles making people away from access to justice, that is, geographical or physical distance, economical burdens and psychological barriers. In any case, it must be worthwhile to have a call center, which can directly provide information almost in person to someone living far away from local judicial authorities or being physically handicapped, only by paying flat-rated call charges.

After confirming a consensus in the Ministry as to the points stated above, the plan of the call center[5] providing people with legal information for the purpose of the improvement of access to justice was formulated from scratch. For the start-up of such call center, it is necessary to prepare (i) legal information to be provided; (ii) a team providing such information (including operators and supervisors) and an operation flow; and (iii) equipment and the information processing infrastructure. All these preparations could be

[5] In the course of the collection of information, it was found that in the Ministry of Justice, a request for establishment of the call center also meant that of the human rights protection by the Human Rights Bureau. Until the reorganization of the Cabinet and segregation of the Human Rights Bureau in January 2016, coordination in this regard was one of the issues of priority.

somehow completed and the call center was opened on December 5, 2016, and since then, it has been providing legal information responding to inquiries from citizens.

(2) Then-Current State of Access to Justice in Côte d'Ivoire

In the opinions of persons interviewed about the call center, a few recommended to limit the scope of its services, referring to insufficient legal resources to provide full scale access to justice to all people in the country. The infrastructure of access to justice is significantly insufficient in fact. First of all, there is only a small number of attorneys (less than 1,000 while the population of the country is approximately one-fifth that of Japan (around 24 millions)) and they are extremely unevenly distributed (almost all are concentrated in Abidjan, the center of economy and politics of the country). One of the reasons for the latter is that most of legal personnel have been evacuated during a national crisis, but in any way, it is often said that attorneys are relatively unconcerned about pro bono, and jurists and legal professionals belonging to NGOs often engaged in activities for the protection of rights of the weak.

While a legal aid (Assistance judiciaire) has been provided for in the Code of Civil Procedure[6] for support of people with financial needs, it was not sufficiently used until several years ago with no secured budget. As a result of activities such as public awareness campaigns supported by US, this system has become operational even though it is applied to only approximately one hundred cases per year, according to the promulgation of a decree in 2016[7], it has become possible to grant approval for aid in five jurisdictions in the country and a budget has been added. However, for actual improvement, it is necessary to wait for the access to justice act bill[8] to be passed and a national budget in a considerable amount to be secured, and there are many points required to be improved such as non-payment of travel expenses. Thus, the development of a practical system would not be easy.

Another issue is PALAJ.[9] This is a project to improve access to justice started at six bases with a high need for consultation services mainly in the western part of the country just after the national crisis, on the initiative of UN organizations such as UNDP, ONUCI (Opération des Nations Uniesen Côte d'Ivoire (United Nations Operation in Côte d'Ivoire)) and UNICEF and by support of EU. It is a comprehensive project to provide various

6 Article 27 et seq. of the Code of Civil Procedure (Code de Procédure Civile) of the Republic of Côte d'Ivoire
7 Decree No. 781 of October 12, 2016 (Décret N° 2016-781 du 12 Octobre 2016)
8 Please refer to the footnote 10.
9 The official title is the support project for the improvement of access to the laws and justice in Côte d'Ivoire (Le Projet d'Appui à l'Amélioration de l'Accès aux Droits et à la Justice en Côte d'Ivoire), but it is known as the common name, PALAJ.

services including free legal consultation, information services, awareness activities of rule of laws and legal aid in certain cases, which have been successfully operated by domestic NGOs such as Women's Bar Association (AFJCI), and since FY2015, provided in nine places in the country supported by France and UNICEF (for two years). Everyone wishes the bases of free legal consultation services would continue to exist, and the donor side expects that the Ministry of Justice will succeed to the services. However, for realization, in addition to securing of a budget, it is necessary to resolve the issue whether its substantial operation developed solely by the domestic NGOs can be transferred to those affiliated with the Ministry of Justice, which seems to be rather challenging.

Currently, the Ministry of Justice of Côte d'Ivoire has submitted the bill of the act concerning access to justice[10] before a Cabinet meeting. The draft was prepared by the EU expert and had been revised in the Ministry, which provides decentralization of operation of legal aid for promoting efficiency. In regard with information service, it provides that the headquarters of the organization providing support for access to justice (Bureau National d'Assistance juridique et judiciaire) and its local bases should provide legal information and carry out orientation activities. Under new legislation, the call center would be incorporated into the headquarters of the organization (Bureau National d'Assistance juridique et judiciaire) as one of its functions.

(3) Outline of Information Provision Service by Call Center of Ministry of Justice

The call center in the Ministry of Justice is an information desk to receive questions about any problem of people related to laws and procedural matters, and is designed to provide the legal information service, i.e., it is not a provider of legal advice of legal professional by phone. Operators are selected from among those who do not have significant legal background, but as stated below, a set of legal information in the form of Q&A is prepared to answer the calls. In addition, to ensure the adequate provision of information, officials who have advanced degree of law and experience as court clerks provide them with support as supervisors.

Information provided by the call center for inquiries is firstly a plain explanation on legal issues or proceedings, and secondly the contact point the inquirer should visit next. For the former, the legal information Q&A has been prepared in advance assuming the areas of frequent questions, and answers are given accordingly. For the latter, the related organization list has been prepared, and for example, the telephone number of the court

[10] The official title is the act on judicial support and legal aid (Loi relatif à l'assistance juridique et judiciaire).

clerk office of the competent court in the first instance is provided. A manual has been prepared to instruct how to answer the phone, and training has been provided to operators, supervisors and responsible personnel prior to the opening of the call center.

Taking into account the proverb "have a small baby and raise him to grow big," the number of operators was the minimum, i.e., two with two substitutes, four in total, and the open hours were from 8 a.m. to 4 p.m. in line with those of contacts of government offices. Since it is expected to be expanded in the near future, the equipment prepared has a capacity to have four operators receiving calls simultaneously.

In the preparation of the legal information Q&A, the first draft was made by NGOs including Women's Bar Association that were well experienced in consultation with people so as to ensure that the areas of frequent questions in Côte d'Ivoire were reflected in Q&A, and the draft was reviewed and supplemented by the Q&A preparation committee in the Ministry of Justice for completion. At meetings of the Q&A preparation committee, prospective operators also attended to confirm that it is written in a plain language which they could understand and explain the details on the phone. (Furthermore, in the advance training session, intensive courses by a team of experienced practitioners of the NGOs and practical lessons through role-playing were provided.) The committee continued to review the draft Q&A until immediately prior to the opening, and finally, it is composed of about 700 questions as follows:

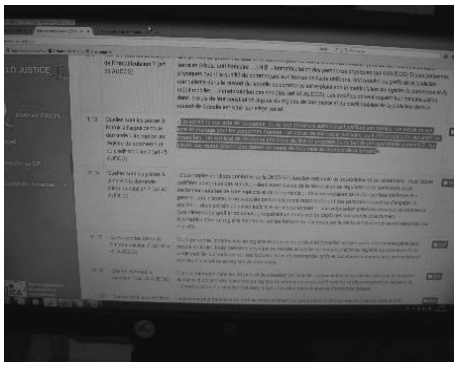
- Procedural matters such as court decision proceedings:134 questions
  (29 civil affairs, 12 commercial affairs, 19 administrative affairs, 16 labor affairs, 18 arbitration, 40 criminal affairs)
- Judicial organizations and their functions (roles of courts, court clerks, attorneys at law, etc.): 79 questions
- Legal aid: 21 questions
- Substantive law in the major area of law: 423 questions
  (180 family law, 23 civil law (in general), 49 commercial law, 41 labor law, 69 land law, 61 criminal law)
- Others: 42 questions

These sets of Q&As are contained in the system of the call center, and searchable with keywords on a computer screen. It can be bounded in one file in paper, and covers most of the legal systems and frequent legal questions in Côte d'Ivoire. Each operator will, after he/she has finished answering a call, record the details of the inquiry and the summary of information provided in a registration form on the computer screen. Each of Q&A and

related organizations is numbered, and it is possible to make analysis by area of law and extract data according to an attribute of inquirer such as place of residence or gender. According to statistics by March 2017, areas that contain the most frequent inquiry are family and personal status law (including civil rights) (48 cases). In civil affairs, law related to rights and obligations follows (24 cases), and labor law (16 cases) then land law (9 cases). Inquiries about criminal law and criminal proceedings are also frequently made (24 cases), which could suggest that the society is still in a step to completely retrieve its stability.

With respect to the use of the call center, although 25 calls were received immediately after opening, as of March 2017, promotion of use was the most important task. While the number of phones received in the period from the opening in December 2016 to middle of March 2017 was less than 200 in total, according to the Ministry of Justice, it was 182 for five days in the week following the week in late April 2017 in which the call center was publicized in a television program, and furthermore, information was provided in 378 cases in a month thereafter. We expect further increase of calls in the future.

In the call center of the Ministry of Justice
(During the visit by persons concerned with the fourth session of training on criminal justice)



Keyword search on Q&A

The way of operation

(4) Sharing of Experience of Japan in Improvement of Access to Justice

The structure of information provision service and method of operation of the call center is modeled on the services provided by JLSC in Japan. It is the same as JLSC that Q&A of frequent questions is prepared for operators to answer questions while searching the Q&A with PC, and then record details of inquiries on PC for analysis. As stated below, development of legal information provision service (where information was provided by various means not only by phone) is also modeled on the practice of JLSC. On the other hand, it must be ensured to adopt the model to the call center in the Ministry of Justice of Côte d'Ivoire to provide information on Ivorian legal systems responding adequately to locally frequent questions. In this regard, for example, at the planning stage, we had asked an experienced local jurist to review a list of the items of frequent questions in Japan and clarify the frequent fields in Côte d'Ivoire. Then, it was found that there were high needs for family law and labor law like Japan while there was almost no question about paying off of debt (major issue in Japan). It was also found that issues regarding land law were serious social problems particularly in the western part of the country, and basic questions related to commercial affairs were also frequent as there were many people carrying on small-sized business. The first draft of Q&A was prepared based on major fields so extracted. All Q&A themselves were newly drafted by local professionals for the call center, but at the planning stage, for reference, French translation of a few typical questions (extramarital affairs and dismissal) among JLSC's Q&A were provided to the Ministry of Justice.

Through the preparation of the call center, I found that the Comprehensive Legal Support Plan formulated under the Justice System Reform in 2000s in Japan was a well-formed model. Services performed by JLSC cover almost all necessary items for the improvement of access to justice and the Comprehensive Legal Support Act[11] clearly provides that such services are to be performed by JLSC and the state is to be responsible therefor. Most of concrete measures were carefully planned while referring to precedents in the developed Western countries. I would like to add a remark that if we share the history and background of JLSC and its challenges in the actual operation of services, it often becomes easier to get understanding of the counterparts, not only the authorities of recipient country but also Western donors, and helpful in most of cases.

[11] Act No. 74 of June 2, 2004

(5) Development of Legal Information Provision Service

As stated above, while details of legal information to be provided by the call center were prepared in the forms of Q&A and the related organization list, these were expected to be distributed by various means including, but not limited to by phone, on websites and in print. There are both advantages and disadvantages in information channels, and the call center is also not an exception. I myself have experienced in JLSC how it is complicated to maintain all the three elements of the call center, i.e., update of legal information, sustainable labor management and securing IT infrastructure, at the same time and it is desired to reduce the risk of inability to provide legal information to people in any channel.

Then, firstly, these Q&As were decided to be available to the general public on the website. There is no objection from any person concerned with the Ministry of Justice, and on the premise of that, the website of the Ministry of Justice has been referred to in promotional materials and the standby message of the call center as from opening.

Secondly, using JLSC's leaflet for information provision as a model, trifold brochures based on Q&A were prepared with eight themes, concretely, 4 themes for matters of substantive law: (i) family law, (ii) land law, (iii) labor law, and (iv) commercial law; 3 themes for matters of procedures: (v) court proceedings, (vi) legal aid, and (vii) procedures for crime victims; and (viii) use of the call center and access to justice. Brochures contains not only questions but various ideas to make it more understandable and useful. For example, in the brochure of (vi) legal aid, the text refers to the episode at a meeting with Yopougon inhabitants as stated below (no one has known the system of legal aid), and it contains the format of application for legal aid. Legal information included was reviewed again by the civil and criminal affairs bureau of Ministry of Justice, and the director-general himself revised even a speech bubble of a cartoon. In appearance, they were designed and illustrations were drawn on them by a local creator so that they visually suited the Ivorian's taste. Taking into account sustainable use by the Ministry of Justice in the future, no logo of JICA was put on the cover intentionally, although a catch phrase in line with the phrase "ensure equal access to justice for all" of Goal 16.3 of Sustainable Development Goals (SDGs) was included in all brochures.

Brochures for the provision of legal information

As from my understanding, the most meaningful point of this project is that not the equipment or infrastructure of the call center is established, but a set of the content of legal information for citizens is prepared on the side of the so-called public sector, Ministry of Justice. All data has been delivered to the Ministry of Justice so that they can revise Q&A as well as brochures and make use of it in the future. As a possibility of further development, it is expected that support activities for the improvement of access to justice will be carried out in third countries using these contents, and at that time, Côte d'Ivoire will be able to become a supporter based on its experience of the call center.

(6) People's Reactions to Call Center

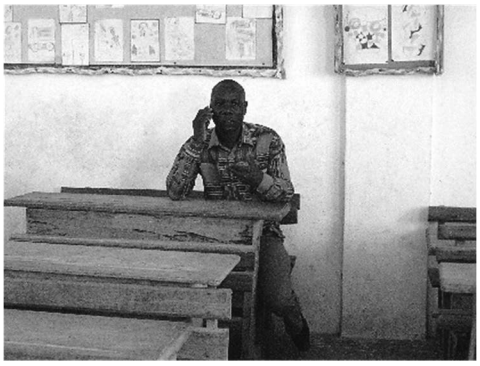
Lastly, I would like to introduce some of the people's reactions to the call center. In late October 2015 as at the planning stage of the call center, with the cooperation of JICA Côte d'Ivoire, we had a question-and-answer session for a needs survey with members of the inhabitants committee for the ongoing project in the field of peacebuilding[12] at the Yopougon district in the suburbs of Abidjan. As a result, it was found that almost all of about ten people participating in the meeting had any daily legal issue such as that related to their family, labor relation, lease or land, but no one had any means to consult with a legal professional on the issue. At the later part of the Q&A survey, when it was informed that the Ministry of Justice was planning the establishment of a call center to deal with such situation, all people agreed with the idea of the call center, and answered that they would definitely use the call center once it was established.

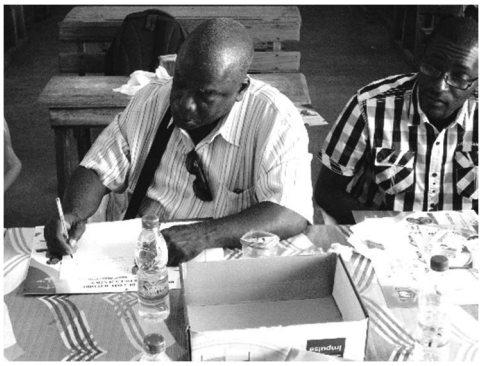
Then, in the middle of March 2017 (after the operation of the call center had begun), I and my assistant visited Yopougon again and informed the establishment of the call center to

[12] The community emergency support project for promotion of integration of societies in the large Abidjan area (commonly known as COSAY). Abobo and Yopougon districts, as the target area, suffered significant damage during the civil war.

the same members of the committee. It seemed that they also had the almost same problems, and three out of them said that they would like to call immediately. Thus, they made a call to the call center and provided us with their comments. It seemed that they could obtain any concrete information to take a step forward for the resolution of their problems and their satisfaction was higher than our expectation. They praised the call center, and on that day, all of them promised to tell their families and friends details about the call center, and brought with them a bundle of cards indicating its telephone number.

The above is only a single example, which indicates that the information provided by the call center would be the first step towards the improvement of access to justice for ordinary people; thereby a problem would be resolved through certain procedures, which might contribute to the rebuilding of peaceful society (one of people who made a call in Yopougon had a problem related to an incident that had occurred during the crisis).





Follow-up meeting with Yopougon inhabitants

VI. Conclusion

Based on what I have experienced in the operation of activities for two years and four months, my conclusion is that the Japanese method of cooperation for promoting the Rule of Law,

which places emphasis on sharing of experience of Japan, would be well accepted in Africa, and there would be an area where our expertise shows significant effects. With respect to cooperation for the improvement of access to justice, it should be noted that the ongoing activities were straight in a line with the phrase "ensure equal access to justice for all" of Goal 16.3 of Sustainable Development Goals (SDGs), adopted in the United Nations in September 2015. I look forward to seeing how this Goal 16.3 will be realized in Côte d'Ivoire about ten years later.

Finally, I would like to thank all persons concerned for their support during my term of office. The above would provide you with just an outline of the project, however, I wish it could be any reference for any project or activities in the future. I would also add that comments or expressions on substantive issues herein are my personal views and not that of any institutions concerned.

REFORM OF DECISION-MAKING MECHANISM THROUGH THE INTRODUCTION OF POLICY PAPER DRAFTING

Kenta Komatsu

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Former JICA Long-Term Expert in Myanmar

I. Introduction

I stayed in Naypyidaw, the capital of Myanmar, for approximately three and a half years from January 2014 to May 2017 as the first Advisor for the JICA Judicial and Legal Project in Myanmar. This project aims to strengthen the legislative drafting and scrutinizing[1] capacities as well as to improve the training system for judicial officers of the Supreme Court of the Union (hereinafter referred to as "SCU") and the law officers of the Union Attorney General's Office (hereinafter referred to as "UAGO") of Myanmar. Our project activities for the reform of the legislative process made us realize that the decision-making process which precedes the legislative drafting plays a vital role. This article deals with our activities to introduce the creation of policy papers as part of the decision-making process, obstacles we faced upon carrying out the activities, and challenges[2] still left.

Firstly, I would like to clarify the meaning of the policy paper referred to in this article. When new legislation or regulation is introduced, a document, which includes background on social and economic factors, necessity of the new legislation or regulation, and a brief summary of such legislation or regulation, is often created. Such document is referred to as the policy paper in this article. Creation of such policy papers is one of the conditions to ensure an efficient, transparent and accountable decision-making mechanism, which is in line with Target 16.6 of the Sustainable Development Goals adopted at the United Nations summit in September 2015.

II. Introduction of Policy Paper as a Tool in Project Activities

(1) Background

I would like to explain why the introduction of policy paper writing is necessary through looking

[1] Please refer to my article, “The Legislative Process in Myanmar”, ICD News February (http://www.moj.go.jp/content/001220017.pdf).

[2] Opinions in this article are the author’s opinions, not those of the organization he belongs to.

back on our initial activities. When a relevant ministry sends a bill they drafted to the UAGO for review, they send the bill itself without any other documents that contain background information, necessity, explanation, and other matters which should be set out in a policy paper. Therefore, UAGO's officials have no choice but to examine the bill without any knowledge of such information, which is indeed necessary for effective examination. In addition, the drafting ministries do not even create such documents in the first place.

Should there be such policy paper, it will also serve as an explanatory material for superiors and colleagues who belong to the same drafting ministry, which will facilitate the decision-making within this ministry. Once the decision is made based on the policy paper, it is expected that such decision cannot be arbitrarily amended. It will also be used as an explanatory material for other ministries and is expected to promote coordination among ministries as well as to shorten the examination period in the UAGO. As a result, the introduction of new legislation or system can be carried out in an efficient manner.

Furthermore, a policy paper can be one of the tools to ensure the accountability of drafting ministries since such document serves as a record of how the ministry develops a policy. The ministries can evaluate the process based on the policy paper afterward. And when the policy paper is available to the public, the decision-making will become more transparent[3]. In a country like Myanmar where there are few textbooks or explanatory notes, it is expected that such policy paper will serve as a practical guideline for practitioners.

(2) Commencement of Policy Paper Drafting Activities in the Project

While the project has informed the counterparts of the importance of policy papers, we needed to wait for the counterpart to select a topic suitable for creating a policy paper and request JICA to support such activity. Around September 2015, SCU requested JICA's cooperation in developing efficient court proceedings for intellectual property (hereinafter referred to as "IP") disputes. At that time, Myanmar had just started to introduce a modern IP system and the four laws regarding IP were being drafted. IP rights are not sufficiently protected in Myanmar courts, and only a limited number of IP disputes have been brought before courts. Therefore, the courts also did not have sufficient IP knowledge or experience in handling IP disputes.

After the project had started IP activities, the project provided knowledge and information on various issues, including but not limited to basic knowledge of IP and IP dispute resolution systems in various countries, through seminars in Myanmar and training sessions in Japan. Discussions were

[3] If a system to allow a wide range of citizens to submit comments on the policy paper is established (so-called public comments), it would give democratic legitimacy to the decision-making process in Myanmar.

held between Japanese IP professionals and the counterpart on how to solve IP disputes efficiently and properly in Myanmar courts based on the country's current legal system and IP bills. However, it seemed that the officials from the Myanmar side did not have a clear idea on how to use such information and discussions, and they were worried that our activities would result in mere provisions of knowledge without any practical application. Therefore, we decided to create a policy paper, which summarized IP knowledge and issues facing the development of efficient court proceedings. Needless to say, this decision is also aimed at achieving the effects of a policy paper as stated in section (1) above.

However, it was difficult for all SCU's officials, who are engaged in these activities, to understand the usefulness of policy papers at the beginning. As stated above, there was no practice of preparing such documents in Myanmar, and the SCU had never done so. In Myanmar, the belief that policies are decided by the higher-ups and subordinates should do as they are told by them has taken root. In this sense, subordinates are prohibited from explaining current problems and proposing any policy to the higher-ups. Therefore, documents prepared by SCU's officials at the beginning were mere copies of a certain law, summaries of knowledge or experiences obtained at training sessions in Japan or seminars, or included obvious proofreading errors from the text of that law. They did not contain any legal analysis, pay attention to the purpose of a provision of a certain law or consider possible policy measures to solve legal issues. As an example, Japanese advisors prepared the draft of the policy paper[4]. In addition to the background information, e.g. the current IP system in Myanmar and progress of introduction of new IP laws, advisors included information on various issues in civil, criminal and administrative actions in IP cases, which are expected after the new IP laws are introduced, and solutions to such issues. Advisors of the project explained this draft thoroughly to SCU's officials. They gradually understood the usefulness and importance of the policy paper and they started to create their own version. The Japanese advisors made comments on the English translation of the SCU's policy paper.

(3) Challenges in the Course of Creating the Policy Paper

While the project prepared the policy paper in this manner, we faced many challenges. Firstly, it was difficult to make SCU's officials realize that there were problems in the long-held practices of Myanmar. For example, in Myanmar, documentary evidence is generally not admissible in both civil and criminal cases, even with the consent of both parties to the action, unless an author of the documentary evidence and a witness testify in court that it is authentic. When the new IP laws become effective, based on this rule, it is difficult to submit written opinion prepared by a foreign

[4] In creating the first draft of the policy paper, the project owes a lot to Mr. Kenichi Kumagai (Professor, Meiji University Law School), Mr. Ryoichi Mimura (attorney-at-law and former judge of the Intellectual Property High Court), and Mr. Yoshifumi Onodera (attorney-at-law), who are members of the advisory group for the development of the IP trial system.

manufacturer, which produces well-known brands[5], to court as evidence, because the manufacturer will have to bear excessive costs to call those who produced the written opinion to the court. In order for IP cases to be efficiently managed, it is necessary that such written opinion be admissible at least in the cases where the parties to the action gave consent. However, since the practice that the author and the witness must testify in court that a document is authentic had taken root in Myanmar, the project faced difficulties in persuading SCU's officials to regard this issue as a problem. Lengthy court proceedings is not sufficient to convince the officials that the existing practice was inefficient since they recognize that any action takes time to realize in the first place, and they do not find it necessary to change such practice. On the other hand, as Myanmar used to be a part of British India, which meant that it adopted the common law tradition, I thought that introducing practices in common law countries would be effective. The adversary system is adopted in common law countries, and any evidence is admissible by agreement between the parties to an action. By introducing such examples, SCU's officials slowly became aware that the inadmissibility of documentary evidence would be a problem at least in cases where there was agreement by the parties to an action.

Secondly, the officials were often resistant to documenting appropriate solutions to a problem they had been aware of. In the example above, the SCU can modify current practice by issuing a notification or revising evidence law or IP law. If such solutions are stated in writing, SCU's officials will have to explain the necessity of these solutions to their higher-ups and then implement the solution approved by them, which is burdensome to the officials. The officials tried to reduce their burden by avoiding this type of situation. For the example above, SCU's officials made a proposal, based on the provisions of the Code of Criminal Procedure, that the officials of the IP Office, which is expected to be established after the new IP laws become effective, should prepare a written opinion and such written opinion will be admissible. However, the officials of the IP Office do not always possess sufficient information to distinguish genuine goods from counterfeit goods, and, in the first place, it is not clear whether the IP Office will cooperate with SCU. As a result, it is hard to believe that the option proposed by the SCU could be an effective solution. SCU's officials obviously regard the problem at hand as not part of the SCU's responsibility. There was no way but to continue to persistently explain the disadvantages when no effective solution is adopted. In doing so, advice from professionals who possess knowledge and experience in IP dispute litigations was extremely effective in persuading the SCU to understand the disadvantages. The team of Japanese professionals, composed of Mr. Kenichi Kumagai (Professor, Meiji University Law School), Mr. Ryoichi Mimura (attorney-at-law and former judge of the Intellectual Property High Court in Japan), and Mr. Yoshifumi Onodera (attorney-at-law), not only introduced the Japanese legal system and

[5] Written opinion here refers a written private opinion prepared by the manufacturer to prove that the alleged infringing goods are counterfeit.

practices but also provided advice tailored to Myanmar's current situation after learning about the country's legal system and practice. The Myanmar side also sincerely accepted such advice, and, as a result, the SCU became aware that certain measures, such as the revision of evidence law or IP laws, were required to solve the issues of admissibility of documentary evidence, and such proposal was added to the policy paper.

Thirdly, a certain proposal in policy paper often went beyond the SCU's authority and required coordination with other ministries since such proposal required amendments to current statutes or the reform of fundamental court proceedings. If new court proceedings allow the admission of documentary evidence when the parties give consent, it will be necessary to consider applying this rule not only to IP cases but also to lawsuits in general. If this rule applies to lawsuits in general, the impact of the reform will significantly contribute to efficient court proceedings. However, the revision of evidence law is required, and it will take a considerable amount of effort. On the other hand, if this rule applies only to IP cases, revision of only IP laws will be required[6]. Nonetheless, it will also be necessary to consider the balance between IP cases and any other lawsuits in general. A significant amount of time was invested in making these analyses, confirming interest from the top levels of the Supreme Court as well as stakeholders, such as the Ministry of Education.

(4) Evaluation of Policy Paper Drafting Activities and Remaining Challenges

Since the project had overcome the various issues stated above, SCU's officials took the time to draft the policy paper. The policy paper in Burmese was approved at the Supreme Court in early summer of 2017. However, the document consists of only 10 A4 pages when translated into English. In addition, some of the issues should have been more carefully analyzed. Although, the document was not perfect, the SCU seemed to be aware of the effectiveness of creating policy papers. The project heard from SCU's officials that the preparation of the paper promoted understanding towards the IP system as well as IP trial proceedings, and knowledge transfer to other officials. It is especially useful when any official is transferred to another position or when the SCU's officials have to provide explanations to their higher-ups and officials of other ministries. As a result, the SCU planned to create such policy paper in other fields that it is engaged in. SCU has been considering the introduction of court-led mediation to tackle the pile of backlogged cases, and the JICA Project has started cooperating with the SCU to prepare a policy paper on this matter, which is conducive to efficient decision- making within the SCU.

Furthermore, the creation of the policy paper may lead to the clarification of the meaning of the laws and unclear legal practices. I would like to explain this by using torts as an example. While a

[6] Since the Supreme Court does not have authority over IP laws, the revision of the laws is not necessarily easier than the revision of evidence law.

right holder will be allowed to make a claim for damages against an infringer under the new IP bills, it is not clear whether proof of intention or negligence is required. The policy paper sets out that (i) intention or negligence, (ii) an infringing act, (iii) occurrence of any damage, and (iv) a causal relationship between the infringing act and the damage are required in the IP torts cases. As the tradition of case law, the source of law of torts, has faded way under the socialist and the military regimes in Myanmar, judges do not possess a uniform understanding of the elements of torts[7]. Therefore, the indication of requirements in the policy paper as stated above could be a set of guidelines for judges to follow. Utilizing such guidelines will prevent individual judges from making arbitrary decisions, increasing the trustworthiness of the judiciary.

On another note, the policy paper is not disclosed to the general public, which detracts from the advantages of creating a policy paper. At the beginning, the policy paper was intended to be made publicly available, seeking opinions from citizens. Such wording was included in the first draft prepared by JICA advisors, but the part concerning public disclosure of the document was deleted when SCU's officials prepared the document in Burmese. Although the draft of the policy paper was planned to be disclosed to judges in lower courts in Myanmar, such disclosure has never been made. The SCU's reaction may be due to dislike of external involvement, fear of changing the top-down decision making mechanism, or lack of know-how and experience in dealing with various types of public opinion.

If the policy paper is made available to the public, it will promote the practice of clarifying laws. For example, the four requirements for torts as explained above are common requirements for torts cases, according to SCU's officials. Therefore, if these requirements are disclosed, it will make the remedy-seeking process clear for victims of general torts, who have not been able to receive any redress so far.

Furthermore, since SCU's officials are not accustomed to making legal interpretations based on the purpose or intention of a legal provision, conclusions reached through legal analysis are often unclear. For instance, under the Code of Civil Procedure of Myanmar, prior notice must be given to the government if he or she intends to bring an action against the government[8]. One issue is whether this rule applies when an applicant for trademark registration makes an appeal to the court to review the IP Office's decision to refuse his or her application. Since the purpose of this provision is to give the government an opportunity to reconsider its action and to rectify such action, and the IP Office should have enough opportunity to review their action before refusing the application (i.e. review

[7] I heard from a judge that tort cases, such as traffic accidents, are matter of criminal proceedings and that compensation of damages under civil proceedings is not permitted.

[8] Refer to Article 80 of the Code of Civil Procedure (India Act No. 5/1908) included in Book 12 of the Codes of Burma.

by a registrar and the Director General of the IP Office), it is reasonable to assume that this rule will not apply to the appeal case mentioned above. Although the Myanmar officials reached the same conclusion, their justification is that this rule should apply only to cases where a claim for damages has been made against the government. Such limitation of application is not clearly indicated in any law, thus the grounds are not clear. This custom might date back to the socialist regime when courts were not authorized to make any interpretations of the law and officials were afraid to propose their ideas[9].

III. Conclusion

As stated above, the policy paper on developing efficient IP court proceedings was approved by the Supreme Court. However, this policy paper was prepared based on the previous drafts of IP bills but not the latest versions that were recently submitted to the Myanmar Union Parliament. Therefore, further consideration is required.

Preparation of policy papers is necessary to promote a more efficient and transparent decision-making process. However, the process of decision-making varies by country and is affected by the long-standing practice in each country. Under the social and the military regimes of Myanmar, government officials were discouraged from proposing new ideas and simply to follow instructions. Even under the new government led by the National League for Democracy (NLD), the civil servants system has not changed. Under such circumstances, it is only natural that introducing new ideas, such as the creation of policy papers, will be difficult. One of the reasons why SCU accepted the idea of policy papers is that the SCU official who is in charge of IP matters has studied at a Japanese university and is more open to new and reasonable ways of thinking. It is the result of Japan's advantage gained from continuing to accept students from the Myanmar government when Western countries isolated Myanmar by imposing sanctions.

As this article shows, reform of decision-making in one country requires the change in long-held practices. In other words, it requires changing the culture of a country. In these fields, providing technical advice is not enough to promote such reform. Involvement in the decision-making process is needed. As an advisor in a counterpart country, it is necessary to always consider when, who, to whom, how, and what we should do in order to assist the counterpart country in developing efficient decision-making processes. In order to do so, I strongly believe that advisors should understand practices in the decision-making process and to think what is the best for the people in Myanmar.

[9] This custom is often observed in other authoritarian countries, such as Vietnam.

Once again, the creation of policy papers is the prerequisite to promoting an efficient and transparent decision-making process. I truly hope that such approach extends not only to then SCU but also to other ministries and that the decision-making process will be improved, for example, by the disclosure of the policy papers.

LEGAL ISSUES PERTAINING TO OVERSEAS BUSINESS EXPANSION FROM THE VIEWPOINT OF CORPORATE LEGAL DEPARTMENT

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I. Preface

We are grateful for the opportunity to contribute an article to ICD NEWS.

Our company's overseas business originates from hotel construction works as World War II reparations to Indonesia in the early 1960s. Thereafter, in regions including Southeast Asia, South Asia, the Middle East, and East Africa, we have engaged in the construction of various critical infrastructures such as dams, bridges, undersea tunnels, airports, expressways, subways, railways, power plants, and process plants. Accompanied by overseas expansion of Japanese-affiliated firms, we have also engaged in the construction of factories, apartment buildings, office buildings, hotels, condominiums, shopping malls and the like.

We have learned lessons from our failures in dealing with such projects, thereby paying a large sum of "lesson fees." Even though we repeatedly made similar mistakes in the past, we came to change our basic stance for handling projects by reinforcing internal screening procedures as follows: We do not aimlessly prioritize volume; we make sure that a project scale falls within the controllable extent and select a project carefully. Thus, when undertaking a project in a country or region where we have no experience rather than a country where we have experience, we make sure to adhere to the following policy: We examine risks in detail and do not receive construction orders if risks cannot be managed. As far as communication language is concerned, we expand our business overseas in countries where English is commonly spoken or where English-speaking staff can be employed.

Based on experience obtained through our company's overseas business expansion, we would like to discuss the legal issues and matters to be encountered when expanding business overseas

focusing on construction projects from the viewpoint of a corporate legal department.

Please note that any section or part comprised of opinions in this article reflects the authors' personal views, and not the views of the organization to which the authors belong.

II. Characteristics of Overseas Business Expansion of Construction Companies

(1) In principle, a construction company expands its business overseas by targeting a specific country and aiming at receiving orders for the execution of construction work therein.

One of the characteristics of such overseas expansion is that, compared to manufacturers whose overseas business expansion takes in a form to establish a factory in selected country and takes root in the country, a construction company engages in so-called "make-to-order production" on a project basis. Construction business is a project-oriented business where production commences upon accepting an order for a project[1].

Therefore, it is difficult for a construction company, whose task is to receive an order to produce a single unique item each time, to forecast when and where individual and specific project will be proposed even if the overseas market trend, etc. is closely observed. Thus, such business does not always take root in a specific country.

Some of our predecessors in the industry, who excel at making things, mentioned, "There is no difference in Japan or overseas when carrying out construction work." However, in reality, a construction project traditionally has a production structure comprised of labor-intensive and multi-layered subcontracting features, which values daily communications among engineers and parties concerned, and brings a good deal of impact on residents in the neighboring community. Thus, due consideration needs to be paid to the environment and conditions that significantly vary depending on the country where construction work is to be implemented, such as language, religious beliefs, culture, laws, and business practices.

Accordingly, a construction company ends up taking a risk unique to each project. Considering the nature of the construction of infrastructure, etc., the scale of each project happens to be the contract amount of several tens of billions of yen or several hundreds of billions of yen in some cases. A construction company sometimes ends up taking a risk which is too large for a single firm to bear.

[1] Indeed, the increasing number of construction companies has established a local subsidiary in each country so as to carry out construction projects on a continuous basis just like manufacturers, particularly in the case of building works.

Almost all construction companies have encountered a common challenge, “how to control such large risks” even though the types of risks vary from company to company depending on, such as the time of the expansion of overseas business, the field of expansion including civil engineering and building construction specialization, and a difference in terms of countries and regions. The companies have experienced difficulty managing risks in overseas construction work, and continue to suffer at present[2].

(2) It is said that Japan’s mission in terms of international cooperation is to engage in infrastructure improvement work in the relevant countries, albeit facing such challenges. Such tasks could not be avoided in the past or cannot be avoided now or in the future. As a member of Japanese construction industry, we are proud to participate in such a national mission, thereby contributing to the advancement of other counties.

However, in the case of overseas expansion of a construction project, despite facing such a large sum of risks, in reality, there is little time allowed to conduct basic preparation work such as reviewing the legal system of a country and region into which we advance for the first time regarding a proposed project due to schedule restrictions, etc. for bidding procedures. On the other hand, in the case of a proposed project in a country and region where we have experience engaging in projects in the past, we can handle such preparation within such limited time-frame.

For example, in the case of a project in a Southeast Asian country where we have engaged in various projects so far, we could rely on the wisdom, capability and alliance of Japanese-affiliated law firms whose advancement is remarkable nowadays, or could foresee a country risk to some extent based on our experience. However, for example, in the case of an infrastructure project in a small country in the African continent, which belongs to the French-speaking countries or the Spanish-speaking counties rather than the English-speaking countries, we must start from scratch since there is no Japanese-affiliated law firm thereat: We must review basic data including the government, history, political trend and geopolitical positioning of the said country, and the current legal system, etc. of the said country. In such a case, it is extremely difficult for us to be confident of handling and hedging the country risk in a short period of time before bidding.

Furthermore, we must consider risks unique to such projects including the owner and supply chain.

(3) Under such harsh conditions, a corporate legal department has extreme difficulty obtaining

[2] The Overseas Construction Association of Japan, Inc.; “Risk Management in Overseas Construction Projects” (April, 2015)

basic legal data including the legal system of the relevant country and region, and the quality of legal professionals.

In this regard, even in the case of entering a new market, as long as it happens to be a country or region where Japan has provided support for improving legal systems, we can easily and promptly gather data concerning the legal system and the quality of legal professionals. Moreover, based on a legal-based relationship established between Japan and the said country or region, we will feel at ease dealing with a project at first glance.

We would like to clearly state with a sense of gratitude that Japan's Legal Technical Assistance is a highly significant activity of international cooperation which also greatly contributes to risk analysis by the relevant operating company when expanding its business overseas.

We would like to discuss in detail the types of legal challenges a Japanese construction company actually encounters when expanding its construction projects overseas from the following two perspectives; legal infrastructure and legal issues.

III. From the Perspective of Legal Infrastructure

(1) General Remarks

Our company is somewhat familiar with the fundamental law (civil code, etc.) of countries where we have accumulated experience in expanding business such as Indonesia. We also have a network and know-how for studying and examining other laws and regulations and legal systems of the said countries within a relatively short period of time. However, in the case of advancing into a country where we have no experience expanding business, we need to start from scratch in terms of studying the laws of the said country including the fundamental law.

In the case of a country where we have experience in expanding business and engaging in the execution of construction work, we may have previous chances to employ local lawyers for some purpose.

However, in the case of advancing into a country where we have no such experience, considering that we have never employed a local lawyer in the said country, it could be our primary task to find a local lawyer who has suitable capabilities.

(2) Judges and Courts

Just like a judicial system varies depending on the country, the quality of judges varies depending on the country. In some countries, some lower court judges do not fully understand law, or do not have sufficient knowledge of law.

Regrettably, there is a rumor that many judges nonchalantly receive money from litigants in some countries.

If we are concerned about the credibility of courts or judges of the relevant country, when expanding our business therein, we focus on establishing the provision which stipulates that disputes are to be settled finally through international arbitration, which is the standard procedure for international transactions, at the time of contract negotiation with an owner and a local contractor with respect to a construction contract, thereby making efforts to avoid a situation where we get involved with a lawsuit in the relevant country.

However, as stated above, in general, construction work is a project which inevitably brings a good deal of impact on residents in the neighboring community of the construction site. Thus, in some cases, a third party, which is not a party to the construction contract, files a suit against us with the court of the relevant country on the grounds of suffering losses arising from the execution of the construction work.

Therefore, it is crucial to conduct thorough research on the judicial system, or credibility, qualifications and capabilities of judges and courts of the relevant country in advance. Especially, it is essential to investigate the degree of corruption of judges of the relevant country.

(3) Lawyers

Not only judges, but also the quality of lawyers varies depending on the country.

In Europe and the US, Australia, Singapore, and Hong Kong, the profession of lawyers with abundant experience in construction related disputes (so-called “construction lawyers”) has been established. In the event of getting involved with a construction related dispute in a country with a credible bar society, it is possible for us to come up with lawyer-related strategies smoothly.

However, in some countries, a lawyer’s license itself seems ambiguous or obscure if such would be compared to what is expected of Japanese lawyers and based upon our common sense.

Even though the lawyer’s license system has been somewhat established, in reality, there aren’t many lawyers who are trained and specialized in handling construction related disputes such as

construction lawyers.

In the case of aiming to receive an order for a newly proposed project, we make efforts to study the lawyer system itself of the relevant country first, determine the quality of lawyers, and obtain information on a highly reputable law firm in the said country.

When conducting such research, it is very rare to conduct research all by ourselves. In many cases, we rely on a Japanese-affiliated law firm which has advanced into a local region or a major US or British-affiliated international law firm holding an office in Tokyo. They often have various connections with leading law firms in the relevant country.

In the event of actually facing a construction related dispute, in some cases, we simultaneously use the service of such a Japanese or US-/British-affiliated law firm and a local law firm in the relevant country. Such a decision is made due to the following reasons: The credit of a local firm in the relevant country would be insufficient; we have a hard time directly communicating with the said local law firm due to the judicial system and language of the relevant country.

In reality, we do not always have the luxury of conducting such research in advance and organizing a legal expert team. In some cases, we start searching for lawyers in a hurry after the occurrence of a construction related dispute.

IV. From the Perspective of Legal Issues

(1) General Remarks

As you know, there are various legal issues that an enterprise faces when expanding business overseas. Construction business is not an exception. On the front area where overseas business expansion takes place, it is necessary to overcome a variety of legal issues due to the characteristics of such projects.

Thus, we would like to present some of the main legal issues that construction business faces when expanding overseas, albeit applying to one field of overseas business expansion, and review problem areas thereof to provide as a reference.

(2) Civil and Commercial Laws

The fundamental laws that applicable to the performance of construction business are the laws which govern civil and commercial matters just like other business transactions.

However, in some common law countries such basic law is not codified, i.e. there is no “Civil Code” or “Commercial code”. As you know, the fundamental theory of laws is typically developed and improved through an accumulation of so-called judicial precedents in such common law countries. However, in reality, some of such countries have little accumulation of judicial precedents or have insufficient accumulation or disclosure of judicial precedents. Thus, in some cases, we cannot easily identify a fundamental theory of law such as contract law.

As a result, we have a hard time grasping and understanding the complete picture of the law which governs civil and commercial matters and the details of individual provisions.

Going into details, in the case of construction projects, assuring the quality of the construction work is an important element of contract. With regard to the quality assurance of the construction work, in addition to the provision on warranty against defects agreed under the construction contract, in some cases, the provision on warranty against defects is stipulated by the laws and regulations of the relevant country. Thus, it is necessary to conduct thorough research on the respective laws and regulations.

In particular, warranty against defects is stipulated as a compulsory provision under laws and regulations in the Middle Eastern countries due to the influence of the French law. For example, in the UAE, contractors are required to assume the liability for quality assurance concerning the frame of structures and buildings for a period of ten years.

To give an example from the perspective other than the influence of the French law, contractors are required by law to assume the liability for quality assurance concerning the frame of a dwelling for a period of 15 years in Taiwan.

Thus, special consideration needs to be paid for reviewing the legal system for warranty against defects and laws and regulations concerning quality assurance.

(3) Administrative Law (Permission, etc.)

In some cases, it may also be questioned, first of all, whether Japanese construction companies can enter the market of the relevant country or not.

In the past, Japanese construction companies were fully prohibited from entering into the South Korean market. Such a restriction has been already lifted. However, in some countries, a Japanese construction company cannot enter into the industry unless it establishes a local subsidiary. Other

countries have a legal system under which a Japanese-affiliated firm is not permitted to hold a majority stake in the local subsidiary, thereby stipulating that local individuals or corporations must hold a majority of the shares of the said local subsidiary. Other countries make it a condition that a Japanese construction company forms a joint venture with a local contractor in order to enter into their market.

In order to appropriately correspond to such restrictions on market entrants, it is inevitable to seek assistance from competent local lawyers and consultants.

In the case of carrying out a construction project in Japan, it is required to obtain a business license from the Minister of Land, Infrastructure, Transport and Tourism or the Prefectural Governor under the Construction Business Act. Some countries do not require the acquisition of such a permission, while other countries only require the registration of a business office.

Furthermore, depending on projects, a construction company receives an order for design service and execution work in an integrated manner. In such a case, the scope of service of the design work includes the acquisition of a permit for commencing the construction from the competent authority of the relevant country, so a construction company is required to obtain a design license from the relevant country. Laws and regulations stipulating technical levels and quality standards of the design work and construction work as well as the details of facility, such as the Building Standards Act in Japan, vary depending on the country.

As seen above, in the case of carrying out a construction project in the relevant country, a construction company is expected to be equipped with many licenses and permissions as well as standards in advance. In order to fully satisfy such laws and regulations without any issue, it is essential to obtain cooperation and advice from a credible local consultant, while requiring a tremendous amount of research and preparation work.

(4) Labor Law and Industrial Safety and Health Law

Albeit the advancement of mechanization and automation, a construction business activity is still operated under the production structure comprised of labor-intensive and multi-layered subcontracting features, thereby making it important to secure many skilled laborers.

However, as soon as a construction company attempts to secure many skilled laborers in the relevant country, it encounters various laws and regulations.

First of all, the handling of laborers itself is largely affected by the fundamental policy of the

relevant country. For example, a socialist state highly prioritizes the policy for protecting local laborers, thereby making it difficult to manage skilled laborers in a Japanese management style.

In some cases, a socialist state has established a permit system, restricting the adoption of foreign laborers under the policy for protecting domestic laborers. This means that, when a construction company is unable to secure the number of skilled laborers necessary for the project concerned within the relevant country alone, and when they try to employ many skilled laborers in Japan or the neighboring countries and have them enter the relevant country, they may not be able to do so in a timely manner as planned.

An insufficient preliminary survey will result in the inability to secure skilled laborers expected at the time of receiving an order in a timely manner; thereby making it impossible to proceed with the construction work according to schedule; resulting in a delay in the completion of the construction; thereby materializing a risk of being imposed with a large amount of penalty under the contract.

So as not to fall into such a situation, a construction company needs to fully understand the labor laws and regulations of the relevant country and appropriately respond to competent authorities including negotiations. Thus, it is vital for a construction company to secure a credible local lawyers and consultants, and build a relationship with them where their advice and cooperation can be obtained in a timely manner.

(5) Currency Law and Foreign Exchange Control Law

In case of carrying out a construction project overseas, a construction company undertaking such construction project often receives the contract fee in local currency from the project owner at the relevant country, while paying the compensation in local currency to subcontractors and material vendors. Hence, a risk of fluctuations in local currency value (foreign exchange risk) is significantly large.

Such a foreign exchange risk is a fundamental country risk beyond the legal issues.

In order to avoid such a foreign exchange risk when expanding business overseas, in principle, the currency of receipt should be the same as the currency of payment when possible.

For example, in the case of procuring materials by importing them to the relevant country from any country other than the relevant country, US dollar, which is an international currency, is often used. Considering the payment of the contract fee under a construction contract with the owner at the relevant country, if the portion equivalent to the procurement cost of such imported materials can be

settled in US dollar rather than the local currency, a foreign exchange risk can be avoided with respect to such portion.

However, there is a country which recently amended the regulations under the policy, "A currency of contract will be limited to the home currency." If we are unable to execute a contract to be settled in an international currency, we will not be able to hedge a foreign exchange risk by balancing currencies.

In some countries, a business operator, which makes profits in local currency, is required by law to obtain a permission for remitting the amount equivalent to such profits overseas.

As seen above, currency laws and foreign exchange control laws vary depending on the country. A construction company may unexpectedly suffer a large amount of foreign exchange loss if it fails to conduct thorough research and take measures while obtaining advice of a credible local consultant, etc. of the relevant country.

(6) Laws concerning Visas, Import and Export, and Customs Clearance

In relation to the above (4), many countries require a visa for foreigners to enter their countries. In the case of carrying out a construction project which requires the securing of skilled laborers surely and in a timely manner, and when taking a measure for employing many skilled laborers from the neighboring countries and Japan, it is important to secure visas surely and in a timely manner.

In the case of having difficulty securing not only skilled laborers, but also materials and equipment of a certain quality and quantity by locally procuring in the relevant country, a construction company sometimes makes a plan for securing materials and equipment necessary for the relevant project by importing them from the neighboring countries or Japan.

In principle, such imported materials and equipment will be subject to import duties. However, in the case of the provision of financial assistance between governments, such as the ODA (Official Development Assistance), materials and equipment that form a structure itself to be constructed may be exempted from import duties. In order to acquire such a tax exemption measure, some countries require the filing of a document called "Master List" which states the applicable materials and equipment.

In some counties, temporary materials and equipment used for the construction, which would not form a structure itself to be constructed, may also be exempted from import duties, or the import duties paid will be refunded for such temporary materials and equipment, on condition of re-export.

Such tax exemption and refund procedures are largely affected by an actual practice of customs authorities. Thus, it is vital to seek advice from local consultants at the time of estimating the construction cost.

In any event, such costs are directly linked to procurement costs, so it is important to properly file the procedures pertaining to tax exemption and refund and not to overlook such measures from the viewpoint of business practice.

(7) Tax Law

In addition to the above (4), (5), and (6), it is important to understand tax laws concerning corporate tax, VAT (value added tax), sales tax, and regional tax.

However, tax laws and taxation systems significantly vary depending on the country. Thus, it is vital to carefully conduct research on tax laws and taxation systems while obtaining assistance of local taxation experts.

In a similar manner to import duties in the above (6), an Official Development Assistance construction project may be "exempted" from VAT under the Exchange of Notes between Japan and the recipient country.

However, in some cases, tax authorities of the relevant country ignore the Exchange of Notes due to procedural reasons, such as nonexistence of laws and regulations concerning the tax exemption procedures of the relevant country, thereby enforcing the taxation of such projects.

And in another country, upon receiving an explanation from the tax authority that the laws and regulations concerning the VAT refund procedures do exist though there are no laws and regulations concerning the VAT exemption, we continued to temporarily pay VAT expecting the refund thereof. However, the tax authorities of the said country would authorize the setoff of the VATs to be imposed on another construction project in the future with the already paid VATs but would not authorize a refund alone. As it turns out, under the said system, a construction company cannot collect already paid VATs unless it continues to carry out the project by continuously receiving orders in the relevant country.

Generally speaking, tax authorities in most countries take a tough stance on the treatment of a Japanese construction company which carries out a large-scale construction project in the relevant country. Also, tax authorities of the relevant country act at their discretion, or the treatment of such

Japanese construction companies varies depending on the person in charge of taxation affairs of the local office. Thus, in many cases, Japanese construction companies have difficulty not only understanding the tax laws and the legal system concerning taxation affairs of the relevant country, but also dealing with tax authorities and tax agency of the relevant country.

(8) Arbitration Law

(i) As you know, it is a standard practice to finally settle disputes in international transactions by arbitration instead of filing a lawsuit with the court of the relevant country.

In the case of overseas business expansion pertaining to construction business, many construction contracts stipulate in the clause that disputes are to be finally settled by international arbitration.

In the case of settling disputes by arbitration instead of filing a lawsuit with a court, it is possible to secure a mechanism for enforcing an arbitration award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Therefore, if the country in which the owner is located (same as the country in which the construction work is executed in many cases) is a member country of the said Convention, and the arbitration clause is included in the contract as the means of settling disputes, it gives a sense of relief to the parties concerned to some extent.

(ii) In the case of finally settling disputes by international arbitration as seen above, the following matter needs to be noted first; how to stipulate the “seat of arbitration.”

If a contract stipulates that the place of arbitration is to be a third country other than the relevant countries (for example, Singapore), the said contract is considered fair. However, in some cases, the instructions to bidders provide the bidding condition that the country in which the owner is located is to be the seat of arbitration.

In such a case, even if a Japanese construction company secures a favorable arbitration award in an arbitration in the relevant country, the owner will be able to file an “action for setting aside arbitration award” with the court of the relevant country to continue to dispute over the award.

With regard to such an action for setting aside an arbitration award, setting aside is only approved on the extremely limited grounds under the New York Convention. Thus, whether or not the relevant country is a member country of the New York Convention

becomes a huge factor in selecting the seat of arbitration.

According to common knowledge among the developed countries which respect the international arbitration system, setting aside of an award is approved only in the extremely exceptional cases (invalidation of arbitration agreement, unfair arbitration procedures, and arbitration award contrary to the public policy, etc.) as stipulated under the New York Convention.

However, even if the seat of arbitration happens to be a member country of the New York Convention, some countries excessively extend their interpretation of the provision of the New York Convention, thereby practicing the arbitration law completely different from a common understanding formed based on the confidence in the international arbitration system.

For example, in the case of a certain country, the court permitted an action for setting aside arbitration award on the following grounds: "An arbitration award goes against the public policy." However, the court practically permitted the said action on the grounds that the arbitration award is "in violation of the state policy."

(iii) Even if a Japanese construction company secures a favorable arbitration award as a result of an arbitration in a third country such as Singapore, etc. instead of the relevant country, the owner of the relevant country sometimes files an "action for setting aside arbitration award" with the court of the relevant country.

According to a common understanding formed under common knowledge on international arbitration, "Only the court of the seat of arbitration has jurisdiction over an action for setting aside arbitration award." However, in some cases, the court of the relevant country accepts an action for setting aside arbitration award, ignoring such common knowledge and understanding, thereby compelling a Japanese construction company to continue to dispute over the award in the court of the relevant country, completely away from home.

(iv) Enforcement of an arbitration award poses a more serious issue.

Even if an action for setting aside arbitration award is not filed against a Japanese construction company, which has secured a favorable arbitration award, thereby affirming the said arbitration award, if the owner fails to fulfil the obligation under the said arbitration award (payment of a fixed amount of contract fees, for example), a Japanese

construction company will be compelled to file a lawsuit for the enforcement of the arbitration award to the court of the relevant country in which the owner is located, unless the party holds a reasonable amount of assets in a third country.

In the end, such a dispute will endlessly continue in the relevant country away from home, thereby resulting in a situation where a Japanese construction company cannot collect accounts due.

The New York Convention stipulates that a foreign arbitration award is to be enforced pursuant to the execution proceedings rules of the relevant country; and that conditions, etc. stricter than a domestic arbitration award should not be imposed on such enforcement. However, an issue on the validity and effectiveness of the specific execution proceedings of the respective country goes beyond the framework under the New York Convention, posing an issue on the improvement of domestic laws of the respective country and the effectiveness of the execution proceedings.

Although it is desirable to finally settle disputes by international arbitration instead of filing a lawsuit with the court of the relevant country as stipulated in contracts according to the standard practice in international transactions, in many cases, such disputes cannot be truly and finally settled, thereby compelling a Japanese construction company to be drawn into a lengthy suit in the relevant country.

(v) Such issues are not limited to the issue on the judicial system and courts of the relevant country. In some countries, the administration does not approve of an arbitration award, thereby intervening in the affairs.

Let me provide a specific example: After a dispute over a demand for additional costs was settled between a Japanese construction company and the owner, which is a government agency of the relevant country, in accordance with the arbitration clause stipulated in the construction contract, an organization equivalent to the Board of Audit, which is another government agency of the relevant country, raised an objection to the content of the said settlement of dispute and the validity of the result thereof as if bringing the matter up again.

(vi) Therefore, when expanding business overseas, a Japanese construction company should not be relieved to learn that disputes will be finally settled by international arbitration in a third country, and must appropriately obtain the following information to decide whether

or not to engage in the proposed project; the arbitration law of the relevant country where the project was submitted; a decision to be given by the court of the relevant country in the case of filling of an action for setting aside arbitration award; handling of a lawsuit for the enforcement of the arbitration award; the possibility of government intervention in the affairs.

(vii) In addition to the commercial arbitration mentioned above, there is a category called investment arbitration in international arbitration.

Investment arbitration takes place as follows: When a firm makes an investment in a foreign country under the investment agreement or the economic partnership agreement between the country in which the said firm is located and the country receiving investment, and if the said firm suffers losses such as loss of invested funds as a result of a violation of the said agreement by the said country receiving investment, the said firm will file a request for arbitration against the said country receiving investment, seeking damages under the investment agreement, etc.

In the past, several firms that advanced into South American or Central Asian countries filed a request for arbitration against the country receiving investment. Recently, a Japanese engineering firm has filed an investment arbitration against the government of Spain on the grounds of lost investment funds.

In many cases, “implementation of a construction project” falls under “investment” under the investment agreement or the economic partnership agreement. In theory, it applies to construction companies as well.

However, the settlement of disputes by arbitration is not stipulated in all investment agreements or economic partnership agreements. Moreover, such filing of a request for arbitration against the relevant country where a construction project is carried out is considered a last resort, which is to say, an act of suing the “State.” Thus, it is necessary to make a careful judgment after gathering sufficient information.

V. Recent Trend

In recent years, Japanese-affiliated law firms have expanded the scope of their operations through mergers, established an overseas office, and formed alliances with local law firms centering on Asia,

thereby expanding overseas. Japanese-affiliated law firms seem to compete with each other in stationing Japanese lawyers in the offices located in Southeast Asian cities including Singapore.

However, as mentioned in the section 2 above, a Japanese construction company whose mission is to construct and improve the fundamental social infrastructure when expanding business overseas must sometimes carry out a project in a country into which such Japanese-affiliated law firms have not yet advanced.

For example, the current Japanese government focuses on Africa as part of its growth strategies and has developed measures to encourage Japanese-affiliated firms to engage in the construction and improvement work of undeveloped social infrastructure in Africa. However, Japanese-affiliated law firms have not built the network in Africa yet, and almost no Japanese lawyer has been stationed in African countries yet.

Before discussing the "legal issues," it is important to consider the language barrier. It is not unique to the African region but it is difficult for the existing legal staff of a Japanese construction company to handle legal matters in the French-speaking counties while cases in English-speaking countries can be manageable. It is even harder for them to handle such matters in the Spanish-speaking countries and the Portuguese-speaking countries.

Central Asian countries to which Mongolia and the former Soviet republics belong have a high potential in terms of international cooperation pertaining to social infrastructure in the future. Considering that such countries belong to the Russian-speaking countries, it will be difficult for a Japanese construction company to obtain an opportunity to gather information on legal matters there.

From the perspectives of the legal systems and solutions to the legal issues, a Japanese construction company, which has to engage in the development and construction of social infrastructure in a country or region reasonably considered as "undeveloped region," needs to be prepared to take considerable risks. However, a corporate legal department of a construction company, which is burdened with such hardships, assumes a role in handling imminent legal challenges somehow, thereby feeling concerned about the handling of such issues on a daily basis for the purpose of performing duties as a corporate legal department.

VI. Conclusion

It is ideal for an enterprise to expand business overseas smoothly. Needless to say, it is desirable to avoid legal disputes to the extent possible at the time of such overseas business expansion.

However, in the case of intending to carry out a construction business overseas in an environment completely different from home in terms of language, religious beliefs, culture, laws, and business practices, a construction company will come into contact with an extremely wide range of and large number of organizations and people including the owner, local suppliers, and third parties such as residents in the neighboring community, and passersby when carrying out the project. It is no exaggeration to say that such environment involves a wide range of conflicts on a daily basis which might develop to disputes.

In the event of a legal dispute, it is desirable to end such dispute as early as possible without spending much cost. However, it is not easy to do so.

It is possible to hold a hearing on information exchanges between two Japanese firms having a longtime business relationship. However, if such information exchange is held between two companies in the same trade, due consideration needs to be paid to compliance matters so as not to raise suspicion of bid rigging and price fixing by cartels.

In this regard, consulting with the Japanese government agencies and JICA gives a sense of relief to Japanese construction companies.

To conclude, please allow us to mention what is expected of Japan's Legal Technical Assistance from the viewpoint of concerned members of a corporate legal department of a Japanese construction company:

(i) Provide not only support for improving legal systems, but also continued support for promoting the quality improvement of judges and administrative officers who actually operate such systems;

(ii) With regard to laws and regulations in particular, support is needed for improving the structure of rules pertaining to law enforcement due to the following reasons; conflicts between a law and the rules of enforcement thereof, and conflicts between/among the rules. In some cases, the existing law is not being actually applied or implemented due to the absence of the rules of enforcement thereof;

(iii) Implement support measures such as providing local legal professionals and students

aiming to become legal professionals with education on the laws of Japan so as to spread the legal interpretations and views based on the laws of Japan when implementing the fundamental law, etc. enacted as a result of providing Legal Technical Assistance, thereby leading to the positioning of the laws of Japan, which is similar to the positioning of the English law among the common law countries;

(iv) Build a public database pertaining to basic legal data on the legal systems and legal professionals of each country, which is difficult for a private company to obtain:

(Examples)

- Information concerning arbitration awards and legal actions setting aside arbitration awards;
- Information on the names and backgrounds, etc. of international arbitrators;
- Judicial systems, judges, and the number of lawyers;
- Information on the leading law firms which can provide consultations in English; and
- Information concerning incorporation, branch registration, and tax payment (corporate tax and individual income tax, etc.).

We think that Japan has engaged in significant international contribution projects for many years in terms of improvement of the fundamental social infrastructure as a result of having taken various measures for Legal Technical Assistance in the countries including Southeast Asian countries.

On the other hand, we, Japanese construction companies, are on a mission to take part in international contributions by engaging in the improvement and construction of various infrastructure facilities and buildings pertaining to transportations, sanitation and resources that form the social infrastructure of the relevant country.

Even though there is a difference between the abstract aspect as in legal systems and the tangible aspect as in infrastructure facilities and buildings, there is a common ground between the State and a construction company in terms of the significance of international contributions through the improvement of social infrastructure.

We are privileged to present in this article various legal issues that we, a corporate legal department of a Japanese construction company, have encountered when carrying out a project supporting the improvement of social infrastructure from the tangible aspect in which a Japanese construction company takes part.

Although this article may stay in some low level due to insufficient writing skills of the authors, we

hope that you find this article somewhat informative when carrying out Legal Technical Assistance, which is an infrastructure improvement activity from the abstract aspect.

Thank you for your continuous support in the years to come.

TAX LITIGATIONS IN VIETNAM - BASED ON CASE ANALYSIS-

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I. Introduction

Last year, I was requested by the JICA Project on Tax Administration Reform in Vietnam[1] to give a lecture on the litigation system in Japan. Vietnam currently faces a problem in which many of the tax litigations over disputes concerning the applicability of the taxation result in the loss on the tax authority's side. I was asked to introduce the manners in which litigation is handled by tax authorities in Japan, so that they can be referred to for solving similar problems in Vietnam. When I inquired the Vietnamese tax authorities to provide me with court decisions for cases in which the tax authority's side lost and received them for first and appellate instances, I found them to be very interesting. I would therefore like to introduce one of them and attempt to offer my analysis on the case. While I have not yet heard of any case in which a Japanese national/corporation becoming party to tax litigation in Vietnam, it is possible that such circumstance will arise in the future with its remarkable economic growth and the expansion of operations by Japanese corporations in Vietnam. I hope this paper will help you perceive some of the aspects of tax litigations in Vietnam.

II. Tax Litigations in Vietnam

First, before the analysis, I would like to offer an overview of the tax litigation system in Vietnam.

1. Types of Tax Litigations

In Vietnam, there are three types of tax litigations: tax administrative litigation, tax criminal litigation and tax civil litigation. Each of these can be likened to administrative, criminal and civil cases in Japan. A distinctive feature is that a criminal case e.g. tax evasion is also classified as a type of tax litigation in Vietnam.

[1] Project on Tax Administration Reform Phase 4 (http://gwweb.jica.go.jp/km/ProjectView.nsf/SearchResultView/83D339C5E689E82149257DCC0079C7A8?OpenDocument)

2. Overview of Tax Institutions

The central organization is the General Department of Taxation, Ministry of Finance (equivalent to the National Tax Agency in Japan). Under the Ministry's control, there are provincial departments of taxation, which control district departments of taxation. Each division and organization within the General Department of Taxation has a Legal Section, which is in charge of such matters e.g. submission of opinions for legislative proposal on tax affairs, handling of cases of tax litigations which are under the jurisdiction of the General Department of Taxation and assistance and guidance on tax litigations which are under the jurisdiction of lower tax institutions. In provincial departments of taxation, the Legislation Section (only in Hanoi and Ho Chi Minh Cities) or the General Budget Section handles cases of tax litigations. If the tax authority is a Defendant in the tax litigation, the tax institution itself must respond to the action as Defendant, and there is no litigation system, such as the one found in Japan, where litigation is uniformly handled by the government attorney.

3. Flow of Tax Litigation Process

In this paragraph, I would like to introduce a case of tax administration litigation. The Plaintiff can be a taxpayer in this case. When the taxpayer files a complaint against the decision, disposition and/or action made by the tax authority and/or tax officials in advance, and when the taxpayer is not subject to any judgement on the relevant complaint during the prescribed period, or when the taxpayer is dissatisfied with the judgement, the taxpayer may be able to file a lawsuit for the said decision, disposition and/or action.[2] The said decision, disposition and action for which may be filed include taxation, a notice of tax payment, a decision of tax exemption or reduction, a decision of tax refund or of no tax collection, a decision of tax collection, an administrative punishment for violation of tax laws, and a decision of compulsory execution for an administrative disposition, etc. Among the foregoing, it is said that the decision of tax collection, which is made as an administrative disposition in accordance with an act of violation of tax laws having been discovered by investigations are the most common. The taxpayer, who is Plaintiff, must file a lawsuit against the said decision, disposition and/or action within one year from the date of receipt or of being notified of the said decision, disposition and/or action. The procedures to follow are the same as those for an ordinary administrative case, and I will not go into details, but to summarize the procedures, once the court receives the case and after the period of trial preparations elapses, the decision to put the case on trial will be made, and the trial will take place.

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[2] Although it is my understanding that the Law on Administrative Procedures does not adopt the principle of pre-entering of appeal, the explanations provided here shall be based on the documents prepared by the tax authority. [3] According to experts on the Project, the tax authority loses over 50% of such court cases.

4. Status of Tax Cases

According to the statistics, the number of reports submitted to the General Department of Taxation regarding the cases of violation by the tax authority that were discovered by provincial departments of taxation in 2014, was 12 for administrative disposition, 1 for criminal disposition, and 17 for civil disposition. In the first half of 2015, there were 46 cases for administrative disposition, 18 for criminal disposition, and none for civil disposition. The data is unknown for the previous and succeeding periods. However, as far as the above data shows, the number of cases for administrative disposition seems to be increasing sharply, although the numbers of cases is not so large at this stage. In fact, according to the General Department of Taxation, the number of cases for administrative dispositions are on the increase, and the fact that, in many of these cases, the Court accepted the claims made by the taxpayer, who is the Plaintiff, and made the decision to cancel the disposition in part or in all by the tax authority, has become an issue.[3]

III. Introduction of Court Decisions

As I introduce the content of court decisions in the first and appellate instances, I would like to present my analysis on these decisions.

1. Overview of the Case

In the present case, Plaintiff X was subject to a taxation by Defendant Y, who is the tax department branch, for the profits from the sale of the use right of the land and the ownership of the house owned by Plaintiff X (hereinafter referred to collectively as "the Land and House" or individually as "the Land" and "the House") in a city located in the south of Vietnam. Plaintiff X was dissatisfied with the disposition and filed an administrative action for cancellation and the like of the taxation.

Facts involved in general in thus situation are as follows:

1991	Ex-owners B and C, who owned the Land and House before the previous owner of Plaintiff X, acquire the use right of part (hereinafter referred to "X-part) of the Land and the ownership of a house on X-part of the Land.
1997	Ex-owners B and C acquire the use right of different part (hereinafter referred to "Y-part ") of the Land, which is adjacent to X-part of the Land, as well as the ownership of a house on the Y-part of the Land (X-part and Y-part of the Land, and above-described two houses are indicated as "residential land and housing" on the Certificate for Rights to Use Residential Land, Residential

[3] According to experts on the Project, the tax authority loses over 50% of such court cases.

	Houses, and Assets Attached to Residential Land (hereinafter referred to as "Land Use Right Certificate").
1998	Ex-owners B and C tear down the above-described two houses and build the House (a 6-story building) on the Land.
March 2003	Ex-owners B and C apply for a construction permit for extension of the House to a 10-story building.
December 2003	Ex-owners B and C transfer the use right of the Land and the ownership of the House under a purchase and sale contract to Company A, which is a limited liability company for housing management. Company A continues with the extension work. Later on, Company A takes procedure for making X-part of the Land and Y-part of the Land into a single lot. In doing so, the purpose of use according to the Land Use Right Certificate is changed to "production and management."
June 2004	Company A agrees to sell the use right of the Land and the ownership of the House for 4,000 taels[4] of gold (equivalent to 22 billion Vietnamese dong) to Plaintiff X. Plaintiff X pays 2,000 taels of gold to Company A. However, since the purchase and sale contract cannot be notarized due to the failure to finish the procedure for completion of the extension of the House, the procedure for transfer of ownership cannot be carried out.
January 2005	Company A, without finishing the notarization procedure, hands over the Land and House to Plaintiff X. Company A and Plaintiff agree to take the procedure for transfer later. Plaintiff X borrows 50 billion Vietnamese dong from Person E to carry out repair work of the Land and House.
May 2011	Company A receives the Land Use Right Certificate for the Land and House (the purpose of use is indicated as "production and management").
October 11, 2011	Company A officially executes the purchase and sale contract for the Land and House with Plaintiff X, and thus the procedure for transfer of ownership is completed.
October 14, 2011	Plaintiff X executes the contract for sale of the Land and House with Bank F for 289 billion Vietnamese dong, and the contract is notarized.
October 15, 2011	Plaintiff X and Bank F declare to Defendant Y of the registration fee for housing sale as well as the personal income tax under the self-assessment and payment system. Plaintiff X submits the declaration for the House as Plaintiff

[4] One tael is almost equivalent to 37.8 g.

X's only one residential house.

October 28, 2011 Defendant Y issues a notice requesting payment of 5.78 billion Vietnamese dong in tax by applying a 2% tax rate. Plaintiff X pays the tax of 5.78 billion Vietnamese dong in order to complete the transfer procedure to Bank F, but later files an appeal to the General Department of Taxation and requests for refund of the said amount.

December 12, 2012 Plaintiff X receives from Defendant Y a notice requesting additional payment of 60,844,199,000 Vietnamese dong for the personal income tax. That is because Defendant Y has been pointed out by the State Audit Office of Vietnam that Defendant Y has to recalculate and apply a 25% tax rate, therefore Defendant Y of the need for recalculation, and thus requests Plaintiff X for payment of the difference between the amount of the tax already paid and the amount of additional payment required.

December 27, 2012 Plaintiff X files an administrative action against Defendant Y for refund of the amount of tax already paid and for cancellation of the decision requesting for additional payment of tax.

As described above, this case is what would be called in Japan an action for cancellation of payment by mistake and for revocation of the taxation. As far as the court decisions for the first and appellate instances are concerned, neither Plaintiff X nor Defendant Y seems to be arguing over the facts involved in the case.

2. Issues of Contention

The major issue of contention is whether or not the profits which Plaintiff X gained from the sale of the use right of the Land and the ownership of the House fall under the requirement for tax exemption as stipulated in the law. In this respect, Plaintiff X claims that they fall under the requirement for tax exemption, and thus payment of tax is not required, so that the payment already made should be refunded and that the taxation should be revoked. On the other hand, Defendant Y claims that the said profits do not fall under the requirement for tax exemption, and thus Plaintiff X should pay 25% of the said profits pursuant to the law. To clarify the issues of contention, first and foremost, whether or not the said profits fall under the requirement for tax exemption is a primary issue of contention. Next, in the case where the said profits do not fall under the requirement for tax exemption, the secondary issue of contention is the percentage of the tax rate. In the present case, the decisions over the primary issue of contention differed greatly in the first and appellate instances. I would like to further review this issue in details (the applicable tax rate, which is the secondary issue, will be omitted here).

The primary issue of contention whether or not the said profits falls under the requirement for tax exemption is, specifically speaking, whether or not the said profits falls under the requirement for tax exemption as stipulated in Article 4, Clause 2 of Decree No. 100 (100/2008/ND-CP). Article 4, Clause 2 of the same Decree provides for tax-exempted incomes as follows: "Incomes from transfer of residential houses, rights to use residential land and assets attached to residential land received by individuals who have only one residential house and rights to use residential land in Vietnam." In the present case, the point at issue is, after all, whether or not the Land and House falls under "residential land and a residential house."

3. Claims by the Parties

Plaintiff X claims since the Land and House fall under "residential land and a residential house" as stipulated in the said Decree, the income is subject to tax exemption. The reason for this, Plaintiff X claims, is that the Land and House originated[5] (nguồn gốc) as residential land and a residential house, and that the column for the purpose of use on the Land Use Right Certificate was changed to "production and management" only to indicate the purpose of use as of the time of issue of the certificate to Company A (2003), and thus the change resulting from such description should not affect as far as the type and financial obligations[6] of the Land (as a rationale for this claim, the Plaintiff X points out that the Land Use Right Certificate in the present case indicates the period of use as unlimited and the right as being conditional on payment of rents for the allotment[7]).

To the contrary, Defendant Y claims since the Land and House do not fall under "residential land and a residential house" as stipulated in the said Decree, they do not fall under the tax-exempted income. The reason for this, Defendant Y claims, is that the purpose of use under the Land Use Right Certificate at the time of payment of tax for the Land and House is indicated as "production and management," and that it can be acknowledged that Plaintiff X is actually not using the Land and House as a residential house but instead, purchased the Land and House for some other purpose than as a residential house.

4. Court Decision in the First Instance

In the first instance, the Court made the decision that the Land and House do not fall under "residential land and a residential house" as stipulated in the said Decree and that tax exemption is

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5 The original language is "nguồn gốc," which means "origin" or "root," but the meaning of the word in a legal context is unclear. Here, the word is interpreted as referring to the purpose of use as of the timing at which the Land and House are first distributed from a person to another.

6 While the meaning of financial obligations is unclear, they are interpreted as pertaining to the tax payment obligation.

7 The land use right can be largely divided into the land use right based on allotment from the government and the land lease from the government, and the former can furthermore be divided into one that requires rents and one that does not require rents. Upon grant of the land use right for allotment or for lease, the purpose of use is specified, and the period of duration is decided according to the purpose of use.

not applicable. In this respect, the relevant document suggests that the Court gave the following reasons: (i) Company A obtained the Land Use Right Certificate for the purpose of "production and management"; (ii) the contract for transfer of the Land and House from Company A to Plaintiff X indicates the same purpose; and (iii) in either of the instances of (i) and (ii), neither Company A nor Plaintiff X raised any objection at the time. This decision does not indicate any norms for determining the cases in which "residential land and a residential house," as stipulated in the said Decree are applicable. However, I believe that the Court reached this conclusion because the decision for such case should be made substantially based on the description on the column for the purpose of use on the Land Use Right Certificate.

5. Court Decision in the Appellate Instance

In the appellate instance, the court decision over the applicability of a requirement for tax exemption was different from the decision in the first instance. The Court stated that the Land and House fall under "residential land and a residential house" as stipulated in the said Decree and that the said profits are subject to tax exemption. In this respect, the Court stated the following main reasons: (i) At the time of ownership by ex-owners B and C, the purpose of use was residential, and thus the origin of the Land and House is residential; and (ii) when the Court made reference to the Department of Natural Resources and Environment (DONRE), the Department responded that the Land and House "originated as a residential house … when the owner relocates or changes the land category to production and management., financial obligations may be considered in accordance with the origin as a residential house." The Court also listed other reasons which do not seem reasonable at all, such as that there is no evidence to support the inaccuracy of the declaration which states that the House is Plaintiff X's only one residential house, that there is no provision stipulating that the owner should reside in the house, and that the document which the government issued to Company A and Plaintiff X is titled, "Certificate for Residential House Ownership." In any case, the court decision in the appellate instance, as in the first instance, does not indicate the norms for determining which cases fall under "residential land and a residential house". However, the court decision seems to suggest that the Court reached such a conclusion because the decision for such case should be made substantially based on the "origin" of the Land and House.

IV. Review of Court Decisions

As you can see, the major issue of contention in the present case concerns whether or not the Land and House fall under "residential land and a residential house" as stipulated in the said Decree. It seems that both decisions in the first and appellate instances failed to indicate norms based on the intent or purpose or the like of the relevant provisions and instead, applied facts to the language of

the provisions. As a result, the Court reached greatly different conclusions in the first and appellate instances.

In this respect, the 1992 Constitution stipulates that interpretation of the law is within the duties and powers of the Standing Committee of the National Assembly (Article 91, Clause 3). As such, if the court squarely indicates norms for interpretation or application of the law, it would be considered as infringement of the power of legal interpretation by the Standing Committee of the National Assembly, therefore the Court may likely be generally reluctant to indicate norms for application of the said provisions. Nevertheless, it seems that in the first instance, the Court indicated, as norms for application of the said provisions, that the decision be made based on the description of the Land Use Right Certificate, and furthermore in the appellate instance, the court indicated, as norms, that the decision be made based on the origin of the land concerned, when arriving at its decision.

As described above, judges should be naturally allowed to offer their interpretation of law at the field level as a matter of practice[8], and it is certain that such capacity will be important as the court precedent system is established in future. With this in mind, upon legal interpretation as a matter of practice, if it is also possible to draft applicable norms according to the legislative intent or purpose of the provisions at issue, I believe that the direction of decision-making would be consolidated into some certain course. While it can be said that both the description on the Land Use Right Certificate as used in the first instance and the "origin" of the relevant land as used in the appellate instance should be given credit for the fact that they elicited norms from the language of the provisions concerned and went a step further in terms of interpretation, it seems that they were still unable to give explanation as to the reason for using the said norms.

While it is not clear with what intent the said provisions designated the "use right of the only residential land and the only residential house in Vietnam" as being subject to tax exemption, I believe that, as a policy measure, residential properties should be treated differently from other investment properties by being given some tax incentive. In this connection, the claim made by Defendant Y that the applicability of the said provisions should be decided from the actual conditions of use of the Land and House, seems convincing as an argument made with a legislative intent, but in the court decision in the appellate instance, this point was not taken into consideration at all. On the contrary, it was decided that there is no need to take this point into consideration because there is no provision stipulating that the person concerned should reside in the property.

Furthermore, the court decision in the appellate instance seems to give the impression of

[8] Even in seminars and other events that are held locally and are targeted to local judges, some judges have voiced the opinion that legal interpretation is in the hands of judges as a matter of practice.

substantially relying heavily on the response to the reference made to the DONRE. If this response did in fact have significant influence, the appropriateness as to the DONRE making a response on the applicability of the provisions concerning taxation may be in question, and the significance of the Court itself may also be in question if the court had in fact relied on the said response upon decision-making.

There may be various causes concerning the above matter. One major cause seems to be the problem concerning judges' capacities. Especially in the court decision in the appellate instance, the Court decided that, in response to the claim that the actual conditions of use of the Land and House should be taken into consideration, there is no need to do so, and the Court did not state any reason to support the decision. As for the said declaration which the Plaintiff submitted as evidence of the Plaintiff's only house, the Court provided the reason that there is no evidence to support the inaccuracy of the document. The Court also points out as another reason that the Land Use Right Certificate, which is titled "Certificate for Rights to Use Residential Land, Residential Houses, and Assets Attached to Residential Land," includes the word, "residential house," but this title is a fixed phrase that is given as a pattern, and thus it is highly inappropriate to be used as a reason. I believe that the fact that this reason is indicated as one of the reasons for which the court made a decision in the appellate instance shows the differences in the capacities of individual judges.

Next, I also had an impression that the issues of contention and the claims are insufficiently organized. As described above, the applicability of tax exemption is decided first in the present case. Later, only in the case where tax exemption is not applicable, the issue of the applicable tax rate should be considered. However, as far as the Court decisions are concerned, I had an impression that the matters were not clearly organized. On the other hand, as for the Defendant Y who should claim the primary tax rate of 25% in the case where tax exemption is not applicable, followed by the secondary tax rate of 2%, I received the impression that these points were not organized in the claim of Defendant Y. Concerning the claim, the Court stated that the claim of Defendant Y for a 25% tax rate and a 2% tax rate at the same time is contradictory. As such, I believe that the Court, too, failed to organize the claims made by both parties by taking into account the logical relationship of these claims.

V. Conclusion

In this paper, I have merely presented a review of a case by looking into the court decisions in the first and appellate instances. This paper is not intended as the general review on tax litigations in Vietnam. However, by comparing the different decisions by the court in the first and appellate

instances, I hope this paper could introduce some of the aspects of tax litigations in Vietnam.

As described above, due to the fact that judges are not granted the power of legal interpretation in Vietnam, the court is much more reluctant to indicate norms for interpretation or application of the law. For this reason, decisions for the same case may greatly differ as a result, which seems to be one of the causes for the low predictability rate of trials in Vietnam. In this respect, I believe there is much room for improvement if the establishment of the court precedent system, which is currently underway at the Supreme People's Court of Vietnam, is developed. The establishment of the court precedent system will also continue to be the subject of assistance in the present Project. Furthermore, in order to make trials more predictable and eventually to increase the trust towards the judicial system, it is indispensable to improve the manners in which individual judges preside over the court, including the organization of the issues of contention and claims, as well as the capacity-development of judges. Once the issues of contention are properly organized, I believe it will enable the parties to make well-focused claims, and the Court will be able to make an appropriate decision, and the facts to be verified in support of respective claims will be clearly recognized. The present Project will continue to provide the necessary assistance, as it has done in the past, for improvement of judicial activities in Vietnam.

REFORM OF
THE LEGAL PROFESSION CAPACITY-BUILDING SYSTEM OF LAOS

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I. Introduction

In Laos, a study of the reform of the system to nurture the legal profession (e.g. professions of judge, public prosecutor, and attorney) was started around December 2012, and in January 2015, a legal profession development system was started to provide education for individuals wishing to engage in the three legal professions in an integrated manner. Considering this movement toward the reform of the legal profession capacity-building system, a working group consisting of members affiliated with the Ministry of Justice, the People's Supreme Court, the Office of the Supreme People's Prosecutor, and the National University of Laos is carrying out several activities—improving curricula, developing teaching materials, and conducting research into teaching techniques—in the ongoing JICA Project of Human Resource Development in the Legal Sector (Phase 2) in order to organically coordinate legal education at colleges, training at the National Institute of Justice, and training at the respective training institutes of the People's Supreme Court and of the Office of the Supreme People's Prosecutor with each other and establish the legal profession capacity-building system as step-by-step processes. This paper reports the situations of the reform of the legal profession capacity-building system of Laos—for example, the initial situations of the reform (including the foundation of the National Institute of Justice), the legal profession capacity-building processes that have been in operation since January 2015, and the contents of the training at the National Institute of Justice—based on the information the author obtained through the activities under the aforementioned project.

II. Initial situations of the reform of the legal profession capacity-building system (including the foundation of the National Institute of Justice)

(1) Legal profession capacity-building processes before January 2015

Under the legal profession capacity-building system of Laos before January 2015 (hereinafter referred to as the "former system"), training programs for building capacity of the three respective professions (judges, public prosecutors, and attorneys) were provided by the People's Supreme Court, the Office of the Supreme People's Prosecutor, and the Lao Bar Association respectively, and

individuals wishing to engage in those respective professions participated in the applicable training program, out of those mentioned above, depending on the desired profession while being subject to the statutory qualification requirements relevant to the desired profession (statutory qualification requirements were established by profession), and then qualified as a judge, public prosecutor, or attorney, as desired. In other words, individuals wishing to become a judge, to become a public prosecutor, and to become an attorney went through different processes as detailed below. First, for individuals wishing to be appointed as a judge, they had to (i) graduate from a higher professional school or a higher-level educational institution in the field of law, (ii) be employed by a people's court as a technical staff, (iii) complete the specified training program, and (iv) be promoted to the position of "assistant judge" and then to that of "judge." Second, for individuals wishing to be appointed as a public prosecutor, they had to (i) graduate from a professional school or a higher-level educational institution in the field of law, (ii) be employed by the Office of the People's Public Prosecutor as a prospective technical staff, (iii) complete the specified training program, and (iv) be promoted to the position of "regular employee," then to that of "technical staff," then to that of "assistant public prosecutor," and finally to that of "public prosecutor." Third, for individuals wishing to become an attorney, who were required to hold a Bachelor's or higher degree of Laws, to qualify as an attorney, they had to (i) complete the specified training program provided by the Lao Bar Association and acquire the status of apprentice attorney, (ii) complete attorney's professional hands-on training, (iii) pass the bar examination, and (iv) obtain a license of the Minister of Justice. Thus, under the former system of Laos, the three legal professions were developed through different processes[1] (see Figure 1).

[1] Laos was not the only country where a system to develop the legal profession in an integrated manner was not adopted. For example, the system was not adopted in France (that is, Laos' former colonial power), either; in France, a system to nurture judicial officers (judges and public prosecutors) and attorneys separately from each other has been adopted. On the other hand, in Japan, a system called the National Bar Examination system was introduced in 1947 (after the Second World War), and this system led to the establishment of the current full-fledged framework to nurture the three legal professions in an integrated manner. After the introduction of the law school system in 2006, individuals who have gone through the following processes qualify as a legal professional, in principle: (i) graduate from a law school; (ii) take and pass the National Bar Examination; (iii) enter the Legal Research and Training Institute, which is under the control of the Supreme Court, and receive judicial training as a legal apprentice for about one year; and (iv) pass the final examination of the Institute.

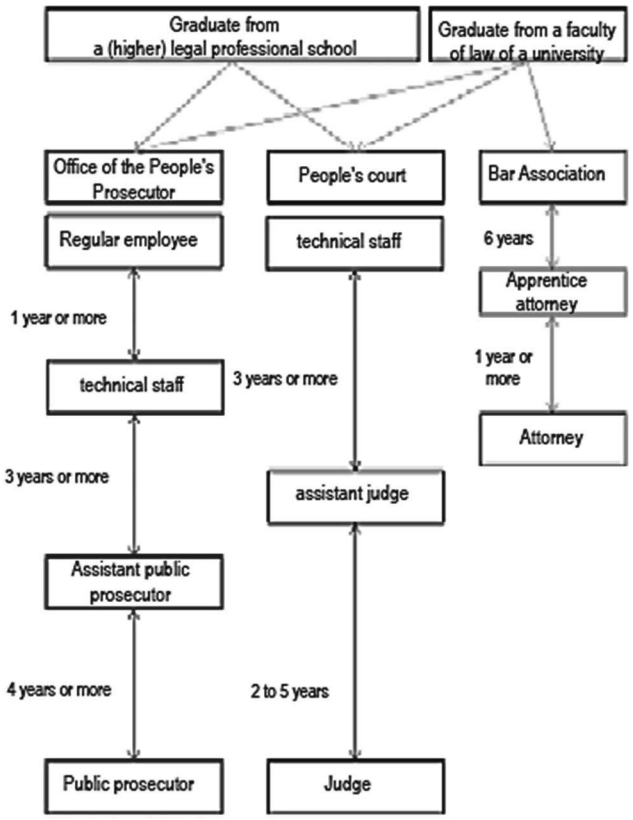

Figure 1: Legal Professional Capacity-Building Processes before the Establishment of the National Institute of Justice (prepared by the author)

(2) Lao government's awareness of the issue of the former system

The legal and judicial stakeholders from the Lao government were aware of the issue of the former system, which functioned to develop the respective legal professions separately. The following remark indicates such awareness. "In Laos, the three legal professions, that is, judges, public prosecutors, and attorneys, are currently developed separately from each other. In other words, judges are fostered by the People's Supreme Court, public prosecutors by the Office of the Supreme People's Prosecutor and attorneys by the Lao Bar Association. Since the capacity of each profession is built separately, variations in knowledge and understanding of laws, expertise, and the like occur among the three professions, and the application of obtained knowledge, in other words, the application of governmental policies, laws, and governmental ordinances in practice, particularly in litigation, is not done in a standardized manner. Therefore, discrepancies occur in the interpretation of offenses or that of provisions of law, leading to an inappropriate decision on the responsibility or liability of offenders. Consequently, depending on the case, people’s confidence in the judiciary cannot be secured. For this reason, the legal profession is drawing criticism from the society. Among various contributors to these situations, the main contributor is the fact that the three legal

professions are separately trained."[2]

(3) Details of the provision of expertise from Japan and of the foundation of the National Institute of Justice

With the aforementioned issue awareness shared among the Lao legal and judicial stakeholders, the Lao government requested us to provide our expertise in the legal profession capacity-building system of Japan. In response to this request, JICA implemented an invitation project in February 2012. In this invitation project, JICA invited to Japan executives of the Ministry of Justice, the People's Supreme Court, the Office of the Supreme People's Prosecutor, and the National University of Laos with the primary objective of providing them with information on the legal profession development system being in operation in Japan. As part of the project, the following programs were conducted: lecture and opinion exchange focusing on comparison between the judicial and legal systems of Japan and those of Laos; visit to the Legal Training and Research Institute of Japan (affiliated to the Supreme Court of Japan); visit to the Supreme Court of Japan; visit to the Research and Training Institute of the Ministry of Justice of Japan; visit to the Japan Federation of Bar Associations; and visit to the Graduate School of Law and Politics, Rikkyo University.[3]

The executives of judiciary-related agencies who participated in the invitation project, including the Lao Vice Minister of Justice, became more interested in a legal profession development system functioning to provide education for individuals wishing to engage in the three legal professions in an integrated manner through the visit to and tour of the Legal Training and Research Institute of Japan, opinion exchange with Japanese legal experts, and the like. This fact triggered a dramatic increase in the momentum for establishing a Japanese-style legal profession development system in Laos, resulting in the integrated capacity-building of the three legal professions (hereinafter referred to as the "integrated capacity-building of the legal profession") being promoted.

In December 2012, the Ministry of Justice, the People's Supreme Court, and the Office of the Supreme People's Prosecutor entered into a written agreement with each other and decided to

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[2] This remark was made by Dr. Chomkham Bouphalivanh, the (then-current) Director of Judicial and Legal Training Center Institute, the Ministry of Justice, as a part of his explanation of the actual situation of Laos to the Japanese stakeholders in the “Japan-Laos Joint Research on Human Resources Development and Strengthening in the Legal Sector,” which was conducted in August 2014 under the joint auspices of JICA and the Ministry of Justice of Japan. It clearly shows the Lao government’s issue awareness and is therefore cited herein.

[3] The following eight Lao stakeholders participated in the invitation project: H.E. Prof. Ket Kietisack, (then-current) Vice Minister of Justice; Dr. Chomkham Bouphalivanh, (then-current) Director of Judicial and Legal Training Center Institute of the Ministry of Justice; H.E. Khampha Sengdara, Vice President of the People's Supreme Court; Mr. Bounkhouang Thavisack, (then-current) Director of Judicial Training Institute of the People's Supreme Court; H.E. Lansy Sibounheahg, (then-current) Deputy Supreme People’s Prosecutor; Mr. Souphasith Lovanxay, (then-current) Deputy Director General of the Institute for Research and Training of People’s Prosecutor; H.E. Dr. Saykhong Saynasine, (then-current) Vice President of the National University of Laos; and Mr. Viengvilay Theiengchanhxay, Dean, Faculty of Law and Political Science. National University of Laos.

promote a project for the integrated capacity-building of the legal profession under the initiative of the Ministry of Justice. Subsequently, the Board of Executives having a mission to provide guidance on the establishment of a training institute for the integrated capacity-building of the legal profession and a technical committee having a mission to conduct a study of the establishment of such training institute were established in March 2013 pursuant to the ordinance of the Ministry of Justice. In March 2014, a National Conference on Administration and Legal Affairs was held, which was presided over by the Vice Prime Minister, and an order was issued to promptly establish a training institute intended to implement the integrated capacity-building of the legal profession in a manner suitable for the actual situation of Laos.

With the movement toward the establishment of a training institute for the integrated capacity-building of the legal profession becoming more active in Laos, as mentioned above, the Lao legal and judicial stakeholders requested us to provide more specific information on the Japanese-style legal profession capacity-building processes. In order to respond to this request, the "Japan-Laos Joint Research on Human Resources Development and Strengthening in the Legal Sector" was conducted in August 2014 under the joint auspices of JICA and the Ministry of Justice of Japan (part of the programs of this research was shared with the invitation project sponsored by the Japan Federation of Bar Associations and conducted jointly by the sponsors of this research and that of the invitation project). The participants in the aforementioned joint research, consisting of prospective executives and instructors of the training institute for the integrated capacity-building of the legal profession, were provided with detailed information on the legal profession capacity-building system of Japan through a number of programs, including the following: visit to the Legal Training and Research Institute of Japan; visit to the Tokyo District Court (opinion exchange with judges engaging in the judicial training of legal apprentices); attendance at a lecture of and opinion exchange with a visiting professor at a law school (public prosecutor affiliated with the Supreme Public Prosecutors Office); attendance at lectures of and opinion exchange with attorneys serving as instructors of defense at the Legal Training and Research Institute of Japan; opinion exchange with the Deputy Manager of the General Affairs Dept. at Tokyo District Public Prosecutors Office in charge of guidance on the judicial training of legal apprentices and the Vice Chairperson of the Committee for Judicial Training of Legal Apprentices, the Japan Federation of Bar Associations.[4]

[4] The following persons participated in the Japan-visit programs of this project: Dr. Chomkham Bouphalivanh, (then-current) Director of Judicial and Legal Training Center Institute of the Ministry of Justice; Mr. Bounkhouang Thavisack, (then-current) Director of Judicial Training Institute of the People's Supreme Court; Ms. Phonephet Ounkeo, (then-current) Director General of the Institute for Research and Training of People's Prosecutor; Mr. Sommay Syoudomphanm, (then-current) President of the Ministry of Justice Law College; Mr. Sengphachanh Vongphothong, Ministry of Justice; Mr. Mixay Thepmany, (then-current) President of the Lao Bar Association; Mr. Viengsavanh Phanthaly, (then-current) Vice President of the Lao Bar Association; Mr. Lasonexay Chanthavong, attorney; and Ms. Manichanh Philaphanh, attorney. Of the aforementioned persons, the four attorneys visited Japan as participants in the invitation project sponsored by the Japan Federation of Bar Associations.

The Lao stakeholders made further arrangements based on information from the aforementioned sequential information provision from Japan while conducting studies of the legal profession capacity-building systems of neighboring countries (Thailand and Vietnam) and France, and then decided to adopt a system for the integrated capacity-building of the legal profession similar to the Japanese-style legal profession capacity-building system, rather than such a system to nurture judicial offers and attorneys separately from each other as employed in France. On January 5, 2015, the Judicial Institute, an organization into which the former Law College[5] and the former Legal and Judicial Training Center Institute were integrated, was established and started the enrollment of trainees of the inaugural class. Then, the integrated capacity-building of the legal profession started in the Judicial Institute. Subsequently, the Judicial Institute was renamed the National Institute of Justice (commonly called "NIJ") pursuant to the Prime Minister's Order No. 101 dated April 21, 2015.

III. Legal profession capacity-building processes that have been in operation since January 2015

(1) Change in legal profession capacity-building processes

Upon the introduction of the system for the integrated capacity-building of the legal profession in January 2015, legal profession capacity-building processes were changed. Under the new system, law college graduates and graduates with a degree in law wishing to engage in the legal profession (professions of judge, public prosecutor, and attorney) must go through the following processes as the first step: (i) pass an entrance examination of and enter the National Institute of Justice; (ii) receive training and education for about one year at the Institute; and (iii) pass a graduation examination of the Institute. After they have graduated from the National Institute of Justice, they follow one of the courses described below, depending on the desired profession. Those wishing to become a judge are employed by a people's court, where they gain professional experience and receive training for the predetermined period, and then become a judge. Those wishing to become a public prosecutor are employed by the Office of the People's Public Prosecutor, where they gain professional experience and receive training for the predetermined period, and then become a public prosecutor. Those wishing to become an attorney receive training from the Lao Bar Association and then qualify as an attorney. The following sections describe the aforementioned processes in more detail by profession (see Figure 2 and "References: Relevant Laws").

[5] The term "Law College" refers to the higher legal professional school affiliated to the Ministry of Justice. Since it is commonly called the Law College, this paper uses this name.

(2) Profession of Judge

An individual wishing to become a judge (i) obtains a High Diploma[6] or a higher qualification in Laws, (ii) passes an entrance examination of and enters the National Institute of Justice, (iii) receives about one year's training (hereinafter referred to as "judicial training"), (iv) passes a graduation examination, and (v) is employed by a people's court as a technical staff. After at least three years of service as a technical staff, the individual becomes eligible to receive training for prospective assistant judge (hereinafter referred to as "prospective assistant judge's training"). Upon completing prospective assistant judge's training, the individual is promoted to the position of assistant judge. After two to five years of service as an assistant judge, depending on the work performance the individual achieves as an assistant judge, the individual becomes eligible to receive training for prospective judges (hereinafter referred to as "prospective judge's training"). Upon completing prospective judge's training, the individual is appointed as a judge by the National Assembly Standing Committee. A series of training following the employment by the people's court is provided at the Judicial Training Institute of the People's Supreme Court.

(3) Profession of Public Prosecutor

An individual wishing to become a public prosecutor (i) obtains a High Diploma or a higher qualification in Laws, (ii) passes an entrance examination of and enters the National Institute of Justice, (iii) receives about one year's judicial training, (iv) passes a graduation examination, and (v) is employed by the Office of the People's Public Prosecutor as a prospective technical staff. Then, the individual (vi) receives training for newly hired employees together with ordinary employees, (vii) becomes a regular employee and serves as a regular employee for at least one year, and then (viii) becomes eligible to receive training for prospective technical staff. Upon completing this training, the individual is promoted to the position of technical staff. After at least three years of service as a technical staff, the individual becomes eligible to receive training for prospective assistant public prosecutors (hereinafter referred to as "prospective assistant public prosecutor's training"). Upon completing prospective assistant public prosecutor's training, the individual is promoted to the position of assistant public prosecutor. After at least four years of service as an assistant public prosecutor, the individual becomes eligible to receive training for prospective public prosecutors (hereinafter referred to as "prospective public prosecutor's training"). Upon completing prospective public prosecutor's training, the individual is appointed as a public prosecutor by the President of the Office of the Supreme People's Prosecutor. A series of training following the employment by the Office of the People's Public Prosecutor is provided at the Institute for Research

[6] Currently, the Law College affiliated to the Ministry of Justice is Laos' only educational institution that provides higher professional school level legal education. The Law College was merged into the Judicial Institute (renamed the National Institute of Justice later) upon the establishment of the Institute (in January 2015) and since then, it has been run as one division of the Institute. The degree conferred by the Law College upon completion of higher professional school level education is a High Diploma, which is lower than a Bachelor.

and Training of People's Prosecutor.

(4) Profession of Attorney

An individual wishing to become an attorney (i) obtains a Bachelor or a higher degree of Laws, (ii) passes an entrance examination of and enters the National Institute of Justice, (iii) receives about one year's judicial training, (iv) passes a graduation examination, (v) obtains the status of apprentice attorney, and (vi) becomes eligible to receive attorney's professional hands-on training. After completion of attorney's professional hands-on training, the individual takes a bar examination conducted by the Lao Bar Association. If passing the bar examination, the individual qualifies as an attorney pursuant to appointment by the Minister of Justice. The former system required individuals wishing to become an attorney to receive training conducted by the Lao Bar Association (as a prerequisite for obtaining the status of apprentice attorney) and receive attorney's professional hands-on training after they have obtained the aforementioned status. According to the information obtained from an interview with a member of the Lao Bar Association[7], however, after the introduction of the system for the integrated capacity-building of the legal profession in January 2015, individuals wishing to become an attorney who have completed practical training conducted at a law firm as part of judicial training are deemed to have completed training for obtaining the status of apprentice attorney.

[7] On July 1, 2016, the author conducted an interview with Mr. Nivanh Somsengdy, a member of the Executive Committee of the Lao Bar Association, and obtained information on the handling of training for obtaining the status of apprentice attorney after the establishment of the National Institute of Justice.

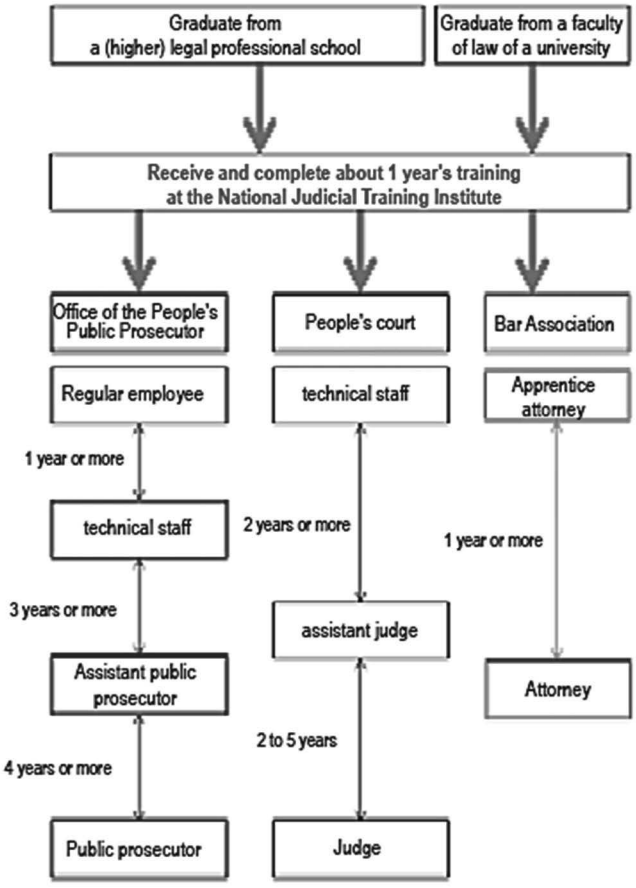

Figure 2: Legal Professional Capacity-Building Processes after the Establishment of the National Institute of Justice (prepared by the author)

IV. Details of the training, etc. at the National Institute of Justice

(1) Enrollment Requirements

The National Institute of Justice is currently providing judicial training to the third batch of trainees. The enrollment requirements met by this generation were slightly different from those met by the first and second batches of trainees.

A. Enrollment requirements for the first and second batches

- Person with steadfast spirit of revolutionary justice
- Person with a High Diploma or a higher qualification in Laws
- Person with good health
- Person not being a government employee
- Person aged 33 or younger (not applicable to one wishing to become an attorney)
- Person who has never been found guilty of any intentional offense heretofore
- Person with Lao nationality (not applicable to one wishing to become an attorney)
- Person who has paid specified fees

B. Enrollment requirements for the third batch

- Person with steadfast and revolutionary spirit
- Person with a High Diploma or a higher qualification in Laws
- Person with good health not being affected by a highly infectious disease
- Person who has never been found guilty of any intentional offense heretofore
- Person with a strong will to become an attorney who is well-versed in Laotian (applicable only to a foreign individual)
- Person not being a government employee

(2) Details of the Entrance Examination

Persons eligible to be enrolled into the National Institute of Justice are selected by an examination. The examination consists of written tests and an interview and covers five subjects, i.e., constitution, civil code, penal code, civil procedure law, and criminal procedure law.

Application and enrollment results are as follows:

First generation:	No. of applicants. 192: No. of applicants admitted, 150 (quota, 150): No. of enrollees, 146
Second generation:	No. of applicants. 299: No. of applicants admitted, 200 (quota, 200): No. of enrollees, 186
Third generation:	No. of applicants. 500: No. of applicants admitted, 200 (quota, 150): No. of enrollees, 175.

Fees required for enrollment are as follows:

Entrance examination application fee (fee for purchasing an application form): 35,000 Kips

Annual tuition fee: Varied from generation to generation.

First generation: Not collected.

Second generation: 500,000 Kips

Third generation: 1.89 million Kips[8].

To each trainee of the first and second batches, 90,000 Kips was paid on a monthly basis as compensation for meal expenses with the aid of France. However, the third and subsequent generations of trainees are no longer entitled to receive compensation for meal expenses because of the abolition of the system to compensate trainees for meal expenses[9].

(3) Instructors

At the Legal Training and Research Institute of Japan, the full-time training staff, consisting of judges, public prosecutors, and attorneys affiliated exclusively with the Institute, provides guidance to legal apprentices. On the other hand, at the National Institute of Justice, executives of the Institute provide training on a very few liberal arts subjects, and practitioners, i.e., judges, public prosecutors, and attorneys, serve as instructors of legal subjects on a part-time basis.

(4) Training Curriculum

A. Curriculum Change

The National Institute of Justice formulates a curriculum assuming that judicial training is a full-time course with a duration of about one year. In this respect, there is no difference among the curricula for the first to third batches of trainees. In terms of curriculum contents, however, it is found that the curriculum for the third batch of trainees differs from those for the first and second batches of trainees, as detailed below. First, the composition of the judicial training (with a duration of about one year) for the first and second batches of trainees was as follows:

Session I (approx. six months): Classroom training and other types of training on basic theory subjects (288 hours) and on expertise subjects (720 hours) conducted at the National Institute of Justice (1,008 hours in total);

Session II (approx. four months): Practical training[10] (672 hours); and

[8] Pursuant to the direction of the Ministry of Education and Sports, it was decided to calculate the annual amount of tuition fee by multiplying the base amount (30,000 Kips) by the number of units. Thus, the annual (total) tuition fee is 1.89 million Kips.

[9] This information is based on the results of the interviews the author had with two executives and one staff member of the National Institute of Justice— Mr. Sivixay Pasanphone, Deputy Director; Ms. Phetsamay Xaymoungkhoune, Deputy Director; and Ms. Pattner Bornpen, staff member—in June and July 2016 and in May and July 2017.

[10] During the period of practical training, each trainee is assigned to a people's court, the Office of the People's Public

Session III (two months): Examinations, paper writing, review, vacation, study tours, etc. (336 hours).

On the other hand, the composition of the judicial training for the third batch of trainees is as follows:

Session I (approx. five months): Classroom training and other types of raining on basic subjects (64 hours) and on expertise subjects (840 hours) (904 hours in total);
Session II (approx. six months): Practical training; and
Session III (one month): Review, paper writing, and other activities. In addition, differences are found in subjects covered by the classroom training and other types of training conducted at the National Institute of Justice.

It could be said that three drastic changes have occurred in the curriculum of judicial training. First, time allocation for the entire judicial training has been changed. More specifically, time for classroom training at the National Institute of Justice has been reduced and the period of practical training has been extended. Second, time allocation for the classroom training at the National Institute of Justice has also been changed. In other words, more time has been allocated to expertise subjects rather than basic subjects. Third, expertise subjects have been reorganized and systematized by profession (see Figure 3).

B. Contribution of JICA project activities to the training curriculum changes

In the JICA Project of Human Resource Development in the Legal Sector (Phase 2), the working group (commonly called the "Education and Training Improvement Sub Working Group"), consisting mainly of members affiliated with the National Institute of Justice, the Judicial Training Institute of the People's Supreme Court, the Institute for Research and Training of People's Prosecutor, and the Faculty of Law and Political Science, the National University of Laos, is carrying out several activities—improving curricula, developing teaching materials, and conducting research into teaching techniques—in order to organically coordinate legal education at colleges, training at the National Institute of Justice, and training at the respective training institutes of the People's Supreme Court and of the Office of the Supreme People's Prosecutor with each other and establish the legal profession capacity-building system as step-by-step processes, and the activities of the Education and Training Improvement Sub Working Group contributed to the aforementioned curriculum changes[11].

Prosecutor, and the Lao Bar Association by rotation so that every trainee receives practical training at all the three organizations.

[11] The Education and Training Improvement Sub Working Group consists of members who are top executives of organizations engaging in legal education and capacity-building of the legal profession, etc.—the Director and Deputy Director of the National Institute of Justice, the Director and Deputy Director of Judicial Training Institute of the People's

In those days the National Institute of Justice was established, educational goals of legal education at colleges, judicial training and education centered on the National Institute of Justice, and training conducted by the People's Supreme Court, the Office of the Supreme People's Prosecutor, and the Lao Bar Association after the completion of judicial training were not well-organized. Therefore, the division of roles was unclear, and hence, there were many unwanted overlaps among the curricula implemented in the respective educational and training phases. For instance, with courses on civil procedure law and on criminal procedure law established in multiple phases, i.e., college legal education, judicial training and education, and training provided by practical organizations, classroom lectures that were closely similar to each other in contents took place in each phase. Another fact contributes to these overlaps. In other words, since Laos is facing a significant lack of legal and judicial human resources, those available as instructors are limited. This lack of human resources often force a single instructor to provide training in multiple phases. With these circumstances as a backdrop, lectures of similar contents with similar handouts were given in different educational phases. Around July 2015, the Education and Training Improvement Sub Working Group started several activities, including a review of the curricula for the respective education and training phases and a study of the contents of education, and then clarified that many useless curriculum overlaps, as mentioned above, were attributable to the fact that no educational goals of the respective education and training phases were well-defined and that the division of roles was ambiguous. As a result, the Sub Working Group organized roles as detailed below with reference to the philosophy of the Japan's legal profession development system, the implementation situation of the system, and so forth. Division of roles:

① College education should focus mainly on "ensuring the students' understanding of the gist, interpretation, and intention of fundamental provisions of (major) laws."

② Judicial training and education should focus mainly on ensuring that trainees acquire "the ability to apply laws appropriately to established facts and derive a conclusion" and "the ability to identify necessary facts based on established evidence, apply laws, and derive a conclusion."

③ Training conducted by practical organizations should focus mainly on ensuring that trainees brush up the abilities mentioned in ② and acquire practical abilities necessary for them to act as legal practitioners.

The Sub Working Group reached a conclusion that the contents of education in the respective education and training phases should be established based on the aforementioned division of roles.

Supreme Court, the Director General of the Institute for Research and Training of People's Prosecutor, and the Dean of the Faculty of Law and Political Science. Thus, results of studies conducted by the Sub Working Group can be implemented by each organization with relative ease.

It could be said that curriculum changes as mentioned in (1) above are one outcome of the curriculum improvements the National Institute of Justice implemented with the intention of rendering the contents of the education conducted by the Institute more suitable for the development of practitioners in accordance with the aforementioned well-organized division of roles.[12]

[12] Dr. Chomkham Bouphalivanh, (then-current) Director of the National Institute of Justice, said that the new curriculum for the third and subsequent generations of trainees of the National Institute of Justice was an outcome of the reflection of results of studies conducted by the Education and Training Improvement Sub Working Group in the JICA project (based on a remark he made during the interview with the author on July 27, 2017).

First and second years (32 subjects in total)

Basic theories (9 subjects, 288 hours)
Understanding of political systems and the morality of judicial officials
Public prosecutor's duties
Judge's duties
Attorney's duties
Mechanism of coordination among public prosecutor's activities, judge's activities, and attorney's activities
International cooperation in judicial fields
Free-of-charge legal aid
Legal business

Specialized subjects (23 subjects, 720 hours)
Civil procedure law*
Attorney's skills for preparing civil affair-related documents
Arbitration skills
Skills for preparing statements of opinions and warrants in civil cases (judge, public prosecutor, attorney)
Interviews in civil cases
Skills for defense in civil cases
Examination of civil case filing
Skills for civil case trials
Skills for preparing judgment documents in civil cases
Attorney's legal consultation concerning civil cases
Audit and oversight of law application by the prosecution and the execution of civil case decisions
Criminal procedure law*
Juvenile case proceedings
Examination of criminal case filing (judge, public prosecutor)
Skills for investigation and interrogation in criminal cases
Classification of crime-constituting conditions and punishments
Skills for defense in criminal cases
Skills for preparing statements of opinions and other warrants in criminal cases (public prosecutor, attorney)
Prosecution
Skills for criminal case trials
Legal consultation concerning criminal cases
Skills for preparing judgment documents in criminal cases
Audit and oversight of law application by the prosecution in criminal cases and the execution of criminal case decisions

Third year (27 subjects in total)

Basic subjects (4 subjects, 64 hours)
Understanding of politics and revolutionary spirit
Legal profession ethics
Coordination and cooperation among judges, public prosecutors, and attorneys
International cooperation in judicial fields

Judge-related subjects '(7 subjects, 280 hours)
Judge's duties
Case proceedings by judges
Judge's case filing skills
Skills for collecting evidence, skills for evaluating evidence
Judge's arbitration skills
Judge's trial skills
Skills for preparing court documents, skills for preparing court decision documents

Public prosecutor-related subjects (8 subjects, 280 hours)
Public prosecutor's duties and general audit
Juvenile case proceedings
Public prosecutor's skills for criminal case proceedings
Public prosecutor's investigation and interrogation skills
Analysis of crime-constituting conditions, crime identification, prosecution
Public prosecutor's criminal case examination skills
Skills for drafting warrants and statements of opinions concerning criminal cases
Skills for examining civil case-related records and skills for drafting statements of opinions

Attorney-related subjects (8 subjects, 280 hours)
Attorney's duties
Attorney's defense skills
Attorney's skills for examining case filing
Attorney's consultation skills
Attorney's documentation skills
Attorney's skills for participating in case proceedings
Legal business
Free-of-charge legal aid

Figure 3. Changes in Curriculum of the National Institute of Justice (prepared by the author)

V. Conclusion

If a step-by-step education system allowing for the capacity-building of high-quality legal professionals is developed and if effective education is implemented to ensure the acquisition of necessary abilities in the respective phases, the system is able to reproduce legal professionals on a progressive scale. Unless it is supported by high-quality legal professions, judicial system cannot gain confidence from the society or serve as the basis for citizens' smooth economic activities. It could therefore be said that a successful reform of the legal profession capacity-building system leading to the stable expansive reproduction of high-quality legal professionals is an essential factor for sustainable economic development. Currently, the legal profession capacity-building system of Laos remains to be improved in many aspects—in particular, these improvements are required: (i) review of the policy for increase the number of (prospective) legal professionals; (ii) ensuring the division of roles among the respective educational phases; and (iii) improvements of the contents and techniques of education. The author hopes that all stakeholders will unite and cooperate for continued promotion of this legal profession capacity-building system reform.

IMMOVABLE REGISTRATION SYSTEM OF THE KINGDOM OF CAMBODIA AND ACTUAL SITUATION THEREOF

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I. Introduction

With respect to the immovable registration system of the Kingdom of Cambodia, particularly the system for the registration of rights, Japan supported the preparation of a draft of relevant laws providing the legal basis for the system (the Inter-Ministerial Prakas concerning to real rights registration procedure pertaining to the Civil Code and the Inter-Ministerial Prakas on immovable registration pertaining to the Code of Civil Procedure) as in the case of the Civil Code, the Code of Civil Procedure and other related laws. I was engaged in the provision of support for a draft of these two immovable registration laws for three years during my tenure as JICA expert (from April 2010 to April 2013). Based on this connection, the Ministry of Land Management, Urban Planning and Construction (hereinafter "MLMUPC") and the Japan Federation of Shiho-Shoshi Lawyer's Associations executed a memorandum for cooperation, and I was appointed as a legal advisor of MLMUPC under the memorandum and am still working for MLMUPC.

In this article, I will introduce the immovable registration system of the Kingdom of Cambodia and the actual status of implementation thereof.

II. Immovable Registration System of the Kingdom of Cambodia

I suppose that several other persons have already written about the system; therefore I will just briefly explain the system, and then introduce the process of drafting the provisions. Hereinafter the Inter-Ministerial Prakas concerning to real rights registration procedure pertaining to the Civil Code is abbreviated as the "Inter-Ministerial Prakas No.30" and the Inter-Ministerial Prakas on immovable registration pertaining to the Code of Civil Procedure is abbreviated as the "Inter-Ministerial Prakas No.59."

(1) Properties and real rights, etc. to be registered

A "property" to be registered in Cambodia is land, condominium unit or building.[1] The real rights to be registered are ownership, special right of possession,[2] perpetual lease, usufruct, easement, statutory lien, pledge of real property, hypothec and revolving hypothec. As in the case of Japan, any establishment, transfer or amendment of these real rights, except for the transfer of ownership and special right of possession based on an agreement, cannot be asserted against a third party unless it is registered (Article 134, paragraph 1 of the Civil Code). The transfer of ownership and special right of possession based on an agreement is not effective unless the agreement is prepared with a notarized document[3] and such transfer is registered (Article 336, paragraph 2 and Article 135 of the Civil Code).

(2) Jurisdiction of Registration

In Cambodia, the land registration office that has jurisdiction over immovable registration is divided into three levels, which are central (MLMUPC), capital/provincial, municipal/district/khan (ward). The central land registration office has jurisdiction over immovable registration in the entire country and the other two have jurisdiction over immovable registration in each administrative region. The registry retained by each of the three levels basically records the same information.[4] As of October 2017, the capital/provincial land registration office has 25 branches and the municipal/district/khan land registration office has 194 branches.

In Japan, the same district legal affairs bureau receives a registration application and performs the relevant registration. In Cambodia, an application for the registration of rights can be made to the municipal/district/khan land registration office or the capital/provincial land registration office that has jurisdiction over the real property to be registered. The municipal/district/khan land registration office is required to send the received registration application form and attached documents to the capital/provincial land registration office without delay (Article 5, paragraph 1 of the Inter-Ministerial Prakas No.30).

On the other hand, the capital/provincial land registration office has jurisdiction over the

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1 During a certain period, only buildings in Phnom Penh were registered.

2 The special right of possession is a right granted to the land registered by any means other than systematic registration. Article 14, paragraph 1 of the Law on Application of the Civil Code provides that such right shall be deemed to be ownership as long as it is not contrary to the nature of such right and the provisions of the Civil Code shall apply to such right.

3 In Cambodia, an agreement for sales or gift, etc. to be used for registration application under Article 65 of the Land Law and the Joint Ministerial Order of the Ministry of Interior and MLMUPC (issued in September 2005) was required to obtain certification of the head of commune, etc.

4 After completion of registration at the capital/provincial level, the registered information is sent to the other two levels. However, the registry of the three levels does not always record the same information because the sending of information may be delayed or particularly the central level collects information from all over Cambodia and cannot promptly record it in the registry.

registration of real rights to a real property (Article 5, paragraph 2 of said Joint Ordinance). In short, the registry retained at the capital/provincial land registration office having jurisdiction over the relevant real property is treated as the original copy.[5] Registration application forms are received by these two levels of land registration office and therefore the capital/provincial land registration office must assign the receipt number to the registration application forms and entrustment letter for registration that have been directly received by such office as well as the registration application forms sent by the municipal/district/khan land registration office according to the order of receipt thereof (Article 7 of said Joint Ministerial Order).

When drafting the provisions related to the organizations receiving the registration application forms, jurisdiction of registration and the order of registration, considerable discussions were made between MLMUPC and the side of experts (I and Lawyer Masayoshi Harada) and the Ministry of Justice. The original draft made by the experts and the Ministry of Justice determined that the capital/provincial level should have jurisdiction over registration and receipt of application forms. This was because the existence of more than one organization for the receipt of registration application forms would make the order of receipt unclear. We selected the capital/provincial level as the organization receiving the registration application forms because the courts sent the entrustment letter for registration to the capital/provincial level. In response to it, MLMUPC argued that the registration application forms should definitely be received by the two levels on the grounds that (i) in local provinces, many citizens lived too far from the provincial-level land registration office, (ii) the municipal/district/khan land registration office had jurisdiction over the receipt of registration application forms and could not deprive it from the existing authority, (iii) many citizens were entrusting the preparation of registration application forms and sales agreements to the registrars of the municipal/district/khan land registration office and therefore the absence of jurisdiction of such level over the receipt of registration application forms would damage the dignity of registrars and lower their motivation and (iv) it would be inconsistent with Article 4 of the Inter-Ministerial Prakas No.59.[6] MLMUPC also argued that no priority could be given according to the order of receipt by the two levels, because all relevant registration application forms were received by the land registration office and the citizens think that their rights would be preserved at the time of receipt of application forms, and that the municipal/district/khan land registration office has jurisdiction over investigation for subdividing a parcel of land, showing

[5] Registration is deemed to have been completed at the time the information is recorded in the registry that is retained by the capital/provincial land registration office, satisfying the requirements for perfection and effectuation.

[6] Article 4 of the Inter-Ministerial Prakas No.59 provides that an application for registration based on a judgment, etc. shall be made to the central, capital/provincial land registration office and the municipal/district/khan land registration office. I wanted to amend this Article, too. However, at the time of my appointment, the Ministry of Justice had almost completed the preparation of a draft of said Inter-Ministerial Prakas.I had not yet established a trust relationship with the members of the drafting group at that time, and the members were extremely unwilling to amend the Article. For these reasons, I left unharmful provisions as they were and tried to make necessary amendment in the Inter-Ministerial Prakas No.30.

disapproval for determining that the capital/provincial level should have jurisdiction over registration.

However, if no priority can be given according to the order of receipt by the two levels, an issue of priority will arise in cases where different registration application forms are received by each level at the same time with regard to the same immovable. We persuaded MUMUPC that it was absolutely necessary to clarify this point.[7] As a result, the provisions state that registration application forms are received by the two levels in consideration of the citizens living far from the capital/provincial land registration office and the current registration practice, but the capital/provincial level shall have jurisdiction over the registration of "real rights to a real property" (this term is added to indicate that subdivision or consolidation of a parcel of land is excluded and the provisions do not deprive the municipal/district/khan level of the existing authority), and the capital/provincial land registration office is required to assign the receipt number to the registration application forms and entrustment letter for registration that have been directly received by such office as well as the registration application forms sent by the municipal/district/khan land registration office according to the order of receipt thereof.[8]

With respect to the receipt record, the practice at that time prepared a separate receipt record only for the documents issued by the courts (entrustment letter for registration) and entered all other applications made to the land registration office (application for construction permit or registration, etc.) in the same receipt record. We established the provisions on the preparation of a separate receipt record for applications for the registration of real rights to a real property.[9] For reference, the relevant provisions are described below:

Article 5: Competent Institution
1. Competent institution receiving the application for registration of real rights over immovable, in the sense of this Prakas, is Capital/Provincial Cadastral Administration or Municipal/District/Khan Cadastral Administration where the immovable is located in.

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[7] At the beginning, the members of the drafting group said, "if the entrustment letter for registration by the courts competes with the general registration application made at the same time with regard to the same real property, the entrustment letter for registration by the courts will prevail." I explained relevant matters to change this idea and the provisions of the second sentence of Article 7 were established with the approval of the members.

[8] Considering these circumstances, at the time of preparation of the registration application sample for the Inter-Ministerial Prakas No.30, we added remarks that recommended making a registration application to the capital/provincial land registration office because a registration application to the municipal/district/khan land registration office would be received later than the application made to the capital/provincial land registration office at the same time.

[9] For more accurate provisions on the receipt record, it would have been better to state, “a separate receipt record shall be prepared for the applications for registration of real rights to a real property and the entrustment letter for registration.” Fortunately, the current practice enters the registration applications and the entrustment letter for registration in the same receipt record. This is because the MLMUPC members of the drafting group understood the purpose of the Article and gave instructions accordingly to the land registration office.

Capital/Provincial Cadastral Administration and Municipal/District/Khan Cadastral Administration shall create reception books for application for registration of real rights over immovable separately from other reception books.

Municipal/District/Khan Cadastral Administration receiving the application for registration of real rights over immovable shall send that application and other relevant documents to Capital/Provincial Cadastral Administration where the immovable is located in without delay.

2. Competent institution registering the real rights over immovable, in the sense of this Prakas, is Capital/Provincial Cadastral Administration where the immovable is located in.

Article 7: Order of Registration

Capital/Provincial Cadastral Administration, which is competent institution registering the real rights over immovable, shall write order number in the order of reception of the application on the application for registration which was directly received or received from Municipal/District/Khan Cadastral Administration, or on entrustment letter received from the court or from other competent institutions.

In the case where more applications for registration of the same immovable are filed, Capital/Provincial Cadastral Administration which is a competent institution registering the real rights over immovable shall register in the continuous order of the reception number and date of reception of registration application or entrustment letter which was received from the court or other competent institutions.

(3) Types of Registry, etc.

The land registries include the ownership registry, the special right of possession registry and the perpetual lease registry (long-term leasehold registry).[10] The usufruct registry is also required to be prepared (Article 89 of the Inter-Ministerial Prakas No.30), but no registration application has been made so far with regard to this right and therefore the registry has not been prepared yet.

Easement is entered in the land registry of the dominant land and the servient land and therefore no independent register is prepared (Article 86 and 89 of the Inter-Ministerial Prakas No.30).

For hypothecs and other real rights granted by way of security, MUMUPC proposed preparing an independent registry during the drafting of provisions, but such proposal was not adopted because the Inter-Ministerial Prakas No.59 was almost completed at the time of such proposal and needed to be entered into force early and also due to a lack of perspicuity.

[10] The long-term leasehold stipulated in the Land Law was deemed to be perpetual lease under Article 38 of the Law on Application of the Civil Code. However, the registry is still titled as long-term leasehold registry. (Because it still has blank pages.)

In addition to the above, the building registry,[11] the condominium unit registry, the indigenous people-related registry stipulated in Article 23 or 28 of the Land Law and the economic concession registry stipulated in Article 49 of the Land Law exist.

All the registries adopt the book style and all registered matters, except for some items, are entered in handwriting.

For all the types of registries, corresponding certificates of rights are issued.

III. Actual Situations under Current Registration Practice

I usually visit the Phnom Penh land registration office. In the subsequent registration division of the Phnom Penh land registration office, about 50 registrars perform their operations and registered approximately 25,000 cases in 2016. The registrars are in charge of each khan[12] and must check each registration application form, confirm the attached documents and conduct on-site inspection in some cases, and thereafter enter the registered matters in the registry and also enter the same information in the certificate of rights and prepare the documents to be sent to the central land registration office and the municipal/district/khan land registration office. All the documents are hand-written. The subsequent registration of the land registered under systematic registration also requires data entry and it takes an enormous amount of time. The registrars are always working hard, but it is difficult to complete registration within the period specified in laws[13] due to the complicated procedures explained above. During the drafting of the Inter-Ministerial Prakas No.30 and No. 59, I repeatedly advised that it would be more efficient to enter only the registered matters without writing sentences for the execution of registration, but I followed the opinion of the members who strongly wanted to continue the traditional method. Later I was transferred to MUMUPC and advised there that it would be reasonable to use a stamp for the fixed part. About two years later the Phnom Penh land registration office created and started to use a stamp for the fixed part of registered matters for the purpose of simplifying the operations and preventing errors. This considerably improved the efficiency of operations, but there are still many operations procedures to be taken and currently there are discussions on reviewing such procedures. The stamp method adopted by the Phnom Penh land registration office is also being adopted by other branches

[11] The Inter-Ministerial Prakas No.30 is a joint ministerial order related to the Civil Code and does not clearly include buildings, which are not independently subject to rights, in the scope of application thereof. However, the actual practice applies the Civil Code to building transactions as well as land transactions and also applies the Joint Ministerial Order to the method of entry in the building registry.

[12] In Phnom Penh, 12 khan land registration offices exist.

[13] Laws provide that the period required for the transfer of ownership is from 15 to 20 days and the period required for establishing security interest is 3 to 5 days.

of the land registration office.

In Cambodia, many parcels of land are still not registered and therefore initial registration and subsequent registration after creating the registry are implemented in parallel.

(1) Initial registration

Initial registration is called the registration of preservation of ownership in Japan. The registry is created based on the systematic registration procedures and the sporadic registration procedures. In Cambodia, the registry was lost due to the Pol Pot Administration and the civil war following it and therefore Article 1 of the 1992 Land Law and Article 7 of the 2001 Land Law determined that no ownership of real properties before 1979 shall be recognized and started to create a new registry by conducting land survey.

In systematic registration, the Governor of Province or the Mayor determines the region subject to registration, and the configuration of the subject land is incorporated into a map using an aerial photograph (a map similar to a cadastral map of Japan is created). Thereafter the results of land survey and investigation conducted by the staff of the land registration office as well as the cadastral map are publicly announced for 15 days and the certificates of ownership is issued. In sporadic registration, a person who wants to register his/her own land individually makes an application. After the receipt of the application form, the staff of the land registration office conducts land survey and investigation at the site and mainly a certificate of special right of possession is issued after public announcement for 15 days and following the same procedures as systematic registration procedures. (In some cases, a certificate of ownership may be issued.)

According to MUMUPC, approximately 65% of the territory have been registered[14] and a total of approximately 4,600,000 certificates of rights have been issued as of the end of September 2017. MUMUPC aims to register 100% of the territory by 2023.

(2) Subsequent registration (Registration related to the Civil Code)

With respect to the registration applications handled by the Phnom Penh land registration office in 2016, approximately 13,500 applications were related to the transfer of ownership, and approximately 11,500[15] applications were for the establishment of security interest, and approximately 20 applications were for the establishment of perpetual lease.

[14] The figure is calculated based on the estimation that seven million parcels of land exist in Cambodia.

[15] In addition, approximately 70 registration applications were made for a revolving hypothec, which required time for the members to understand during the drafting of provisions.

With respect to the registration application form, many applicants use the sample application form prepared by the drafting group's meeting, but they do not always prepare it correctly. For example, an applicant may use the same form as the sample and enter the name, etc. of the registered right holder and the obligor but fail to enter the purpose and ground for registration. An application form may be titled as the application form for the registration of establishment of hypothec but the purpose of registration may be to establish the right of pledge. An application form for the registration of establishment of revolving hypothec may not specify on which right such revolving hypothec is established (in Cambodia, a hypothec can be established on perpetual lease or usufruct). If there is any discrepancy between the registration form and the attached documents, the registrars are primarily required to order the applicant to correct it (Article 9, paragraph 1 of the Inter-Ministerial Prakas No.30), but they judge the purpose of registration based on the attached documents without ordering the applicant to correct the discrepancy. The reasons thereof seem to be because most registration application forms have a discrepancy and it is time-consuming to order the applicants to make correction and because the registrars have not understood the purpose of the Inter-Ministerial Prakas No.30.

There are many problems about the content of contract, etc. submitted as attached documents, and it indicates that banks, microfinance, lawyers and companies, etc. do not fully understand the Civil Code. The registrars who examine such documents also do not fully understand the Civil Code, and we are discussing about the means of improving their understanding.

(3) Subsequent registration (Registration related to the Code of Civil Procedure)

The Phnom Penh land registration office handled approximately 100 cases of registration related to the Code of Civil Procedure in 2016. It is regrettable that most registration application forms and entrustment letter for registration do not comply with the Inter-Ministerial Prakas No.59. It is still unclear whether a temporary restraining order is provisional attachment or prohibition of disposition and therefore the registrars enter "temporary restraining order" in the registry. In addition, a registration application based on a judgment must be made independently by the winning party, but in some cases the court sends the entrustment letter for registration with the judgment attached thereto.

All judgments related to a real property are declaratory judgments (with a certificate of execution) and I have never seen any judgment ordering performance. In short, judges seem to not distinguish a declaratory judgment from a judgment ordering performance. I teach them that a judgment to be attached to registration application based on a judgment must be a judgment ordering the performance of registration procedures. For this reason, MUMUPC has notified the courts and applicants that relevant rights cannot be registered with a declaratory judgment. However, such

rights are finally registered in many cases.[16]

There are many problems about the Code of Civil Procedure such as the handling of entrustment letter for registration based on an erroneous temporary restraining order or a registration application form with a declaratory judgment attached thereto.[17] I expect that entrustment letter for registration issued in future will comply with the Inter-Ministerial Prakas No.59 and a judgment ordering performance will be attached to registration applications. With respect to the registration applications that have already been made based on a declaratory judgment and have not been registered yet, it is necessary to discuss what the handling of such applications should be.

(4) Overview of registration application procedures at the Phnom Penh land registration office (example for sales)[18]

As a precondition for registration application, a sales contract is prepared and certified by a notary, a person handling the operations of notary or the head of commune.

1. An applicant submits to the land registration office (i) registration application form (2 copies), (ii) sales contract that has been certified (4 copies), (iii) four copies of identification of the right holder and the obligor (with a fingerprint and certification by the head of commune) and (iv) original copy of the certificate of rights and other necessary documents.
2. After the receipt of the application form by the land registration office, the registration fee is paid.
3. After temporary check by the land registration office, a set of registration application documents is sent to the General Department of Taxation to calculate the transfer tax.
4. Upon notice on the transfer tax from the tax office, the applicant pays such amount.
5. The tax office sends to the land registration office a set of registration application documents with the receipt of transfer tax, etc. attached thereto.
6. The registrar in charge, etc. confirms the documents and execute the registration procedures.
7. Upon notice on the completion of registration from the land registration office, the applicant visits the office to receive the certificate of rights.

In addition to the above, if land survey, etc. is required, on-site survey is conducted. If it is

[16] Article 520 of the Penal Code of Cambodia imposes a fine on a public official who fails to execute a decision or judgment, etc. of the judiciary in the course of performance of his/her duties. Most judges apply this Article to the dispositions (correction and refusal) made by the registrars pursuant to the Inter-Ministerial Prakas No.30. For this reason, the courts summon the head of a land registration office to appear in court for criminal proceedings and treat them inappropriately. Particularly local land registration offices are afraid of such treatment and often execute registration even if the entrustment letter for registration issued by the courts has an error.

[17] Some judgments or decisions even do not specify the real property.

[18] Handing procedures as of October 2017. The procedures have been frequently amended so far.

necessary to issue a new certificate of rights, the documents are sent to Phnom Penh.

- III. Interview –

MR. TAING SUNLAY, DIRECTOR OF PHNOM PENH FIRST INSTANCE COURT "I WOULD LIKE TO UTILIZE MY KNOWLEDGE ACQUIRED THROUGH JAPAN'S SUPPORT AS MUCH AS POSSIBLE."

Fumie FUKUOKA

Professor and Government Attorney, International Cooperation Department

–Profile–

Mr. Taing Sunlay graduated from Royal University of Law and Economics (RULE) in 1999. RULE was founded as an institution for training new judges and prosecutors and providing continuous education for present judges and prosecutors. He is one of the first fifty-five graduates from Royal School of Judges and Prosecutors (RSJP), which opened in November 2003. After graduating RSJP in 2005, he served as the deputy director of Phnom Penh First Instance Court for 10 years and has been engaged in all kinds of reform as the director of the same court since 2015 to improve the judicial system in Cambodia.

Mr. Taing Sunlay

Director of Phnom Penh First Instance Court

Cambodia went through the horrors of genocide and other atrocities by the Pol Pot's regime between 1975 and 1979; it is said that only a handful of legal professionals survived after the end of the Pol Pot's regime. Following the Cambodian government's request to the Japanese government for legal technical assistance, JICA's project for supporting development of the legal system in Cambodia started in 1999. JICA has provided support for Cambodia in drafting the Civil Code and Code of Civil Procedure, etc. which were lost as a result of disorder and civil war, support for training legal professionals that barely existed, support for the dissemination of the Civil Code and Code of Civil Procedure, etc. and other support. This is an interview with Mr. Sunlay, who leads the training of legal professionals in Cambodia about the project including progress of training.

■ Reasons for deciding to become a judge

—What made you decide to become a judge?

"Before I became a judge, I was working as a doctor. The most important thing for doctors is to help people, and the same applies to judges. All kinds of social activities I participated made me think that I would like to resolve disputes and help socially vulnerable persons as a judge. I wanted to resolve disputes and make the society where all the Cambodian people including socially vulnerable persons can live happily. This is why I became a judge."

■ Involvement in Japan's support for development of legal system

—How have you been involved with Japan's support for the development of legal system? What's your impression on receiving the support of Japan?

"After I graduated from RSJP in 2005 as one of the first graduates, I participated in the training project provided for RSJP[1] as a prospective instructor. Although I was involved with the training of the second graduates only in moot court, I was an instructor for the third to sixth graduates and taught about 160 students in total (55 students each year). I went to Japan to participate in training[2]. The knowledge I acquired through the training in Japan has helped me at work.

I feel that Japan's support for the development of legal system is very important for Cambodia. The Civil Code and Code of Civil Procedure of Cambodia were enacted[3] with the support of Japan, and activities to disseminate the two codes have improved the legal system of Cambodia. In addition, Japan has dispatched experts to Cambodia to train lots of legal professionals in Cambodia."

■ Outcome of support for development of legal system

—What are the effects of Japan's support for the development of legal system you have been involved in so far?

"Japan's support has helped Cambodia in many aspects. First of all, thanks to the support of Japan for the training of legal professionals provided for RSJP, instructors of RSJP are able to teach basic matters including the object of the Civil Code and Code of Civil Procedure to their students. Japanese experts have always provided support considering that the Cambodians need to take initiatives to train people. This year, we were able to conduct moot court for the second-year students without advice from Japan, which was not possible last year.

Secondly, I think the number of Japanese investors has increased. This is probably because the Civil Code, Code of Civil Procedure and other relevant laws were enacted with Japan's support; the laws of Cambodia became trustful. I felt that the number of investors increased around the time when

[1] The support for training provided for RSJP was implemented from November 2005 to March 2008 (phase 1) and from April 2008 to March 2012 (phase 2).

[2] Mr. Sunlay participated in the training for legal professionals in February 2007, July 2007 and March 2009. He also participated in the training in Japan for dissemination of the Civil Code and Code of Civil Procedure in October 2014.

[3] The Code of Civil Procedure was enacted in 2006, and the Civil Code was enacted in 2007 with the support of Japan.

Maruhan bank[4] opened its branch office in Cambodia. The other day, Prime Minister Fun Sen visited Japan for the summit meeting with Prime Minister Abe. I think that the Japanese government supports a large-scale development plan in Cambodia to improve investment environment in Cambodia because they consider that the laws of Cambodia are trustful."

■ Future Prospects

—Is there anything you expect from Japan's support for the development of legal system?

"There are some issues in the courts of Cambodia. First of all, not all the judges understand the object of the Civil Code and Code of Civil Procedure. The judges interpret the laws differently.

Secondly, since the citizens and lawyers of Cambodia do not fully understand what needs to be described in a complaint or how a lawsuit should be filed, it is necessary to establish forms and procedures which are easy to understand. Phnom Penh First Instance Court has sent a letter to the Ministry of Justice requesting the approval for the use of sample forms describing the matters necessary for a complaint and legal costs in the courts all over Cambodia, however, we have not received a reply yet.

Another issue is the insufficient cooperation among companies, the Ministry of Land Management, Urban Planning and Construction and other organizations related to the Civil Code and Code of Civil Procedure.

We still need Japan's support to solve these problems. The skills of judges in Cambodia are not sufficient, so I feel that Cambodia still needs Japan's support. I hope Japan will continue to support Cambodia by providing classes and trainings for judges providing advice to solve these issues."

■ Other Comments

—Is there anything you would like to say about Japan's support?

"Thank you for allocating a substantial amount of budget to support Cambodia. I intend to use my knowledge that I acquired with the support of Japan for my work as much as possible. I will also share my knowledge with other judges and clerks. I teach at a private university, but unfortunately, I

[4] Maruhan opened Maruhan Japan Bank (MJB) in Cambodia on May 26, 2008 as the first Japanese bank that has a branch office in Cambodia.

cannot spend a lot of time on teaching because I'm very busy at work. Nonetheless, I would like to continue to teach students. I understand that Cambodians have to take initiatives to train professionals in the future, however, I hope Japan will have a long-term perspective to provide support for Cambodia.

Phnom Penh First Instance Court has been making efforts to solve many issues, e.g. improvement of public service related to trials, facilitation of registration of cases and appropriate evaluation of judges. If our court becomes able to apply the Civil Code and Code of Civil Procedure properly, other courts in Cambodia will also follow. I will certainly continue to make efforts to improve our legal system in Cambodia."

[Mr. Sunlay and Author]

MR. BOUNKHOUANG THAVISACK, DIRECTOR OF CABINET, PEOPLE'S SUPREME COURT OFFICE OF LAOS "I WOULD LIKE JAPAN TO PROVIDE SUPPORT WHILE RESPECTING AUTONOMY AND COOPERATING WITH LAOS"

Yumi UMEMOTO

Professor and Government Attorney, International Cooperation Department

I. Background

Mr. Bounkhouang Thavisack graduated from the faculty of law and was employed as a technical staff of the People's Supreme Court of Laos in 1998 and became a judge in 2002.

He studied at the graduate school of Nagoya University through JICA's project for human resource development scholarship (JDS) and earned the Master of Law in 2009. The theme of research for his master's degree was the procedure for domestic disputes. In Laos, there is no specific law or regulation setting forth the procedure for domestic disputes. Mr. Thavisack wanted to acquire knowledge about the procedure for domestic disputes in Japan and improve the procedure in Laos because he thought domestic issues are delicate and they should not be processed in the same manner as general civil cases. He has stayed in many foreign countries, and during his stay in Japan as a student he felt safe and secure. His family who accompanied him also lived comfortably in Japan. Mr. Thavisack said, "There was nothing to worry about." in Japanese and smiled.

After going back to Laos, Mr. Thavisack was appointed as a judge of the civil chamber of the People's Supreme Court and also selected as a member of the judicial system reform council. He told us that what he had learned in Japan was helpful for the judicial reform in Laos. For example, the summary court system of Japan was used as a model for the district-level courts, and the laws of Japan was referred to during the revision of the Code of Civil Procedure of Laos.

He assumed the position of the director of the Judicial Research and Training Institute of the People's Supreme Court in 2010, and currently, he is the director of cabinet, People's Supreme Court. It is said that he is likely to become the next vice president of the People's Supreme Court.

[at Mr. Thavisack's Office]

II. Involvement with Japan's Legal Technical Assistance

Japan's Ministry of Justice and JICA started their assistance toward Laos in 1998. After the Legal and Judicial Development Project between 2003 and 2008, phase 1 of the Project for Human Resource Development in the Legal Sector was implemented from 2010 to 2014; phase 2 of the same project is currently under progress. The project has been implemented by the working group (WG) composed of Ministry of Justice, People's Supreme Court, Supreme People's Prosecutor Office and National University of Laos with the support of the advisory group (AG) consisting of Japanese researchers and the legal experts of JICA.

Mr. Thavisack was involved in all of the above-mentioned projects as a member of WG. At first, he was a little skeptical about the legal technical assistance to be provided by Japan. He said, "At first, I was not sure if Laotians can adapt to the systematic Japanese way of work, however, the JICA experts did not force us to follow the Japanese way. They shared understanding with us, then proceeded with the projects in a step-by-step manner, which was very helpful for us. The JICA experts created a system in which Laotians can basically lead a WG and receive advice from AG and the JICA experts whenever necessary."

The manual for drafting judgements, one of the outcomes of the projects, is used as a basic text in practice. Mr. Thavisack said, "Since the manual is used as an educational material at the training centers of courts, all the judges have studied this book. In addition, judge instructors teach the basic part of this book at the National Institute of Justice according to the level of students."

He pulled out the manual for drafting judgements from his bookshelf, which was revised by the People's Supreme Court. "Since the laws of Laos were revised after the end of the project, we revised the manual by ourselves. Its contents are in accordance with the laws in effect." he said.

[Mr. Thavisack showing the manual for drafting judgements]

III. Outcome of Japan's Legal Technical Assistance

Mr. Thavisack emphasized that the legal technical assistance helped building the capacity of legal professionals in Laos. He said, "Participating in WG has enabled other members and I to understand the laws of Japan and standards in the world in addition to the laws of Laos. We could also learn the knowhow and ways of expression of research of laws from AG members and JICA experts. When the project started, the members of WG including myself were not able to explain our opinions very well, so, discussions tended to wander from the point. As the project progressed, we gradually became able to express our opinions concisely and theoretically. We also learned how to write legal documents e.g. handbooks, commentaries and research papers corresponding to an application or a purpose."

According to Mr. Thavisack, other officials in the judicial department also understand these knowledges and the knowhow because each member of WG has shared the knowledge and the knowhow with other officials in their organization.

Mr. Thavisack also mentioned about the deliverables of the project. The draft for the Civil Code of Laos created as part of the project is under deliberation in the National Assembly, and is expected to take effect in the near future. In addition, the educational materials created under the project are utilized at work and for education.

Furthermore, Japan's assistance affected the whole Laotian society. Mr. Thavisack said, "For example, the flow chart explaining the procedures, laws and regulations created under phase 1 was distributed to and retained at the courts all over the country. Anyone can go to a court and see or photocopy the chart. The citizens of Laos became able to verify if the judicial procedure followed in their presence complies with the laws by looking at the flow chart explaining the procedures, laws and regulations."

IV. Future Outlook

Mr. Thavisack said that Laos still needs Japan's support create educational materials and a commentary on the Civil Code and establish a coherent system for training legal professionals. He hopes Japan will keep using the current manner of technical assistance. He said, "I think the best way is for WG of Laos to lead projects with the advice of AG and JICA experts of Japan. If the people in Laos lead the projects, they can make educational materials suitable for the Laotian society. In addition, such materials will be used more if the Laotians are proud of the ideas of Laotians included in the materials. If we are to use textbooks of France or America, it will be difficult for us to accept such textbooks."

Mr. Thavisack pointed out the efforts Laos and Japan should make in the future assistance for Laos. He thinks that people in the organizations for which WG is implemented need to understand the meaning of the project and continue to use their best efforts. He said, "Different people think differently. We can't say that everyone in the court is favorable of the project. For better understanding in the court, when an educational material is created, we actively announce in a meeting held at the court that our co-workers participated in WG and made such achievement that can be beneficial to everyone in the court. In addition, to encourage participation in WG, we divide WG into small groups, allocate duties and roles to each member and ask the senior members to refrain from expressing their opinions to create an environment in which young members feel conformable about expressing their opinions. What I want to say to those who participate in WG is to understand the meaning of work they are involved with. If they understand that what they do now is helping the future of the country, they will become more willing to do any work. I hope people understand that the activities of WG will contribute to the society just as the work of a judge will."

On the other hand, he thinks that Japan should have Laos get more involved in the project starting from the planning phase. He said, "So far, we relied on Japan when implementing the projects, however, I think it is necessary to have Laos come up with ideas little by little. In this way, Laos will be able to make plans and proposals and operate a project in the future. In addition to continue the assistance for Laos through phase 3 and phase 4 of the project, I hope Japan will support the independence of Laos. When we raise children, at first parents carry them. When children start walking, parents watch them from a short distance from them, and finally children will run on their own. Japan's assistance will come to an end one day. It will be ideal if Laos can work independently by that day."

[Mr. Thavisack and Author]

RELOCATION OF THE INTERNATIONAL COOPERATION DEPARTMENT TO THE INTERNATIONAL JUSTICE CENTER

Hiroyuki ITO

Deputy Director, International Cooperation Department

I. INTRODUCTION

The International Cooperation Department (ICD) of the Research and Training Institute (RTI) of the Ministry of Justice (MOJ) made a new start on October 2, 2017, through its relocation to the "International Justice Center (IJC)," a new establishment of the MOJ in Akishima City, Tokyo. Prior to this, the ICD had been based in Osaka Nakanoshima National Government Building for nearly 16 years, organizing a number of symposiums and training seminars with legal and judicial officers invited from abroad. With this move, the ICD will further advance and promote assistance activities, organizing various events at the IJC. As such, this paper will introduce the MOJ's new facility, as well as the Opening Ceremony of the IJC held in November 2017, and current and future activities of the ICD after its relocation.

II. RELOCATION TO AKISHIMA CITY

The ICD was originally established within the RTI as a department specializing in legal technical assistance, in response to an increasing number of requests for legal cooperation from developing countries in Asia. It was first accommodated in the MOJ's Red-Brick Building where the RTI is located, in the Kasumigaseki district of Tokyo. The ICD then moved to the newly constructed Osaka Nakanoshima National Government Building in November 2001. Since then, the ICD, based in Osaka, developed legal technical assistance activities in cooperation with relevant parties inside/outside Japan. In the course of such development, the ICD has gained trust and received hopeful expectations from partner countries.

In this manner, during the one and half-decade of activities, the ICD received critically important support from relevant parties (scholars, legal practitioners, private firms) in the Kansai area

including Osaka.

The MOJ adopted a policy of promoting and strengthening international cooperation initiatives in a more effective manner, by consolidating international cooperation facilities in both criminal, civil and commercial law fields in Akishima City. In accordance with this policy, the ICD was relocated, together with UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders) to the IJC.

Furthermore, MOJ's over-crowded correctional facilities with dilapidated buildings, dispersedly located in Tokyo and the surrounding areas, were also re-established within the IJC, for improving the ministry's medical correctional functions and efficient training of correctional personnel.

Let me briefly introduce UNAFEI, which co-habits with the ICD, in the IJC's International Building.

UNAFEI is one of the UN Programme Network of Institutes (PNI), established based on an agreement between the United Nations and the government of Japan. It is administered by the United Nations International Training Department of the RTI. UNAFEI's activities consist of the organization of international training courses and seminars targeting criminal justice practitioners from both inside/outside Japan, and research and studies on the prevention of crime and the treatment of offenders. It has a longer history than the ICD, and has organized training seminars, etc. at a training facility in Fuchu City, Tokyo, since 1962.

UNAFEI differs from the ICD in that it is a UN institution. Other differences lie in that:

- UNAFEI organizes multi-national training courses for not only Asian countries but also Latin American and African countries, with focus on criminal justice.
- Contrarily, the ICD provides bilateral assistance in the civil and commercial law fields, to Asian countries, and dispatches long-term legal experts to recipient countries.

Having said that, the ICD's assistance may cover the criminal justice field.

The MOJ's international cooperation institutions in criminal, civil and commercial law fields were located separately in Fuchu City, Tokyo, and Osaka City. By consolidating them in the IJC, though they will continue to be separate departments, the MOJ has established a foundation to implement international cooperation more effectively.

III. OUTLINE OF THE IJC

A. Akishima City

Akishima City, where the IJC is located, is geographically located in Tokyo, while it is approximately 35 km to the west of the central business district, with a population of approximately 110,000.

There is a sprawling state-owned park called "Showa Kinen Park" to the east of the IJC, which offers picturesque scenes of flowers and plants for all four seasons, including autumn foliage. In Tachikawa City to the east of Akishima City are the Tachikawa branch offices of the Tokyo District Court and Tokyo District Public Prosecutors Office.

B. International Justice Center (IJC)

As mentioned in II above, the IJC was established with two purposes in mind: promoting and strengthening international cooperation activities of the MOJ; and improving medical correctional functions and the training of correctional personnel. To this end, the IJC accommodates the following institutions:

- ICD
- UNAFEI

(The building accommodating both is called the "International Building."

- Training Institute for Correctional Personnel
- Medical Center of Correctional Institution in East Japan.
- Training Institute of the Public Security Intelligence Agency

*In addition to the above, new juvenile correctional facilities are under construction.
These facilities are located in different areas within the premises of the IJC.

C. International Building

The International Building in which the ICD and UNAFEI are located, is composed of three parts: the Main Block, Conference Block and the Dormitory Block.

[External appearance of the IJC (ICD and UNAFEI)]

1. Main Block

The Main Block is of five floors for several functions as follows:

5th floor: Meeting rooms, offices for visiting experts and a waiting room for lecturers:

4th floor: Offices for UNAFEI Director, UNAFEI Deputy Director, ICD Director, ICD Deputy Director, and an office for administrative officers:

3rd floor: Offices for professors;

2nd floor: Seminar rooms;

1st floor: Dining hall, lounge, and a Japanese-style room.

The former facility of UNAFEI also had a lounge and a Japanese-style room, to be used by training participants and other purposes. On the 2nd floor, there are six seminar rooms, some of which can be partitioned. The 3rd floor is shared by professors for both UNAFEI and the ICD. Different from individual offices the ICD had at the former location, the entire floor is simply partitioned, allowing professors to enjoy an open office area. Likewise, on the 4th floor, officers of UNAFEI and the ICD are working together in the same large office. There may be some inconveniences in communications between professors and administrative officers, as they work on separate floors, different from the layout of the former ICD office. However, sharing the same office between UNAFEI and the ICD can create a synergy between the two departments.

2. Conference Block

The Conference Block of two floors has a library, a multi-purpose hall, a gym, etc. on the first floor, and two international conference halls, A and B, on the second floor.

Hall A is the larger with approximately 110 seats, being equivalent to the International Conference Hall in the Osaka Nakanoshima National Government Building. While the hall in Osaka is a rectangle-shaped, hall A is of almost a square shape.

Hall B has approximately 60 seats, and is used mainly for training seminars organized by UNAFEI and the ICD. There is a screen in front with an image of a shoji or Japanese sliding paper door.

Both halls have booths for simultaneous interpretation: four booths in hall A and three booths in hall B.

[International Conference Hall A]

[International Conference Hall B]

3. Dormitory Block

The Dormitory Block has nine floors, mostly for participants of training courses, except for some rooms for visiting experts (55 rooms in total). There are also barrier-free rooms designed for disabled people. There is also a praying room for Muslims participants.

As the buildings and facilities are quite new, seminar participants may feel comfortable in their rooms (though the space of individual rooms is not overly large). On sunny days, the upper floors often allow delightful views of Mt. Fuji.

The facilities UNAFEI used to have at the former location are in place in the IJC. The biggest change for the ICD may be the existence of the Dormitory Block.

When the ICD was located at Osaka Nakanoshima National Government Building, seminar participants had to stay at hotels nearby. At the IJC, they stay in the dormitory, together with participants from other countries or those of UNAFEI training seminars. It is anticipated that the dormitory will provide participants with opportunities to cultivate personal exchanges with other training participants.

[Seminar room]

[Dormitory room]

D. Inauguration Ceremony and Commemorative Speeches

Upon commencement of duties by all the institutions relocated to the IJC, on November 27, 2017, an inauguration ceremony for the entirety of the IJC was held, followed by an event of commemorative speeches organized by UNAFEI and the ICD.

The ceremony was organized in the Training Institute for Correctional Personnel, with the attendance of not only MOJ officers but also from local municipalities and construction companies.

Following the ceremony, commemorative speeches were delivered in International Conference Hall A of the International Building. Many guests, including those involved in legal technical assistance, as well as officers from the Embassies of the ICD's partner countries, attended. On this occasion, after opening addresses by Mr. Tatsuya Sakuma, President of the RTI; and Mr. Yasuhiro Hanashi, State Minister of Justice, Mr. Shigeru Maeda, a Senior Vice President of JICA provided a congratulatory speech.

The ICD and UNAFEI received congratulatory video-messages from relevant parties overseas, including those of Mr. Ha Hung Cuong, a former Minister of Justice of Vietnam; and Dr. Kittipong Kittayarak, Executive Director of the Thailand Institute of Justice, being screened at the venue. In particular, Mr. Cuong, who attended as a guest speaker, the ICD's 18th Annual Conference on Technical Assistance in the Legal Field held in January 2017, had been deeply involved in legal technical cooperation between Vietnam and Japan.

At the inauguration of the IJC, Mr. Cuong, not only congratulated the establishment of a new facility of the MOJ but also expressed expectations towards the ICD, with a belief that the ICD would further proactively carry out its missions, thereby contributing to the peace and prosperity in Asia.

Subsequently, two guests, namely: Mr. Kenji Miyahara, Chairman of the International Civil and Commercial Law Centre Foundation (ICCLC); and Dr. Eduardo Vetere, Former Director of the Treaty Division of the United Nations Office on Drugs and Crime, provided commemorative speeches.

The ICCLC has assisted the MOJ in its legal technical assistance endeavors in various forms since their commencement. In 2016 and 2017, the ICCLC received a JICA Appreciation Award and was also awarded by the Minister for Foreign Affairs, respectively, for its contributions to international cooperation in the legal field. President Miyahara of the ICCLC has extended great cooperation and contribution to legal technical assistance activities by the MOJ. On the occasion of the IJC inauguration, he provided a speech under the title, "Twenty-year history of the ICCLC and legal technical assistance from now."

Dr. Vetere spoke on the topic, "Challenges for the United Nations in the field of criminal justice for the prevention of crime: Roles of UNAFEI – Present and Future."

As such, the event of commemorative speeches at the inauguration of the IJC ended successfully, followed by a reception for personal exchanges of attendants.

[Opening ceremony for UNAFEI and the ICD]

E. Activities after relocation

After the relocation to the IJC, the ICD has already organized several training courses with full use of the new facilities, overcoming newly-arising problems. As the same facilities are shared with UNAFEI, modeling after its traditional practice, the ICD began receiving and sending off training participants at their arrival and departure by all staff members.

Personally, I believe the necessity of further improving the contents of assistance, by efficient management of duties and maximizing assistance effects, through collaboration with UNAFEI.

Regarding training courses, the ICD has consistently strived to offer meaningful programs which match the needs of partner countries, in cooperation with various resource persons. The ICD aims to achieve steady progress through appropriate preparations and post-assistance follow-ups, with full understanding of the culture, legal system, status quo, challenges, etc. of the partner country.

To this end, close cooperation with UNAFEI, through information-sharing and exchanges, as well as sharing of knowledge and experiences, will be necessary for further improved legal technical assistance.

Previously, due to geographic distance, communications between the ICD and UNAFEI were possible mainly through phone calls and texting. Since the inauguration of the IJC, we have been reaping the benefit of working in the same facility (in my case, such as being able to easily consult with Ms. Kayo Ishihara, Deputy Director of UNAFEI, whose office is located next to mine).

In addition to the above, further cooperation between the ICD and UNAFEI is underway in various forms and on various occasions, such as:

- Professors of the ICD and UNAFEI mutually observe their lectures during training courses;
- UNAFEI has introduced its resource persons to the ICD to support training courses held by the latter;
- In the ICD's next annual conference, which has traditionally been organized jointly by the RTI and JICA and has been planned and administered by the ICD, professors from UNAFEI will serve as moderators for panel discussions.

As above, regardless of differences in specialties, the ICD and UNAFEI share some partner countries and address ASEAN member countries, thus there is still room for further strengthened cooperation.

We sincerely hope for your continued understanding of and cooperation with ICD activities.

Video message
By Professor Dr. Kittipong Kittayarak
Executive Director of the Thailand Institute of Justice
On the occasion of the Opening Ceremony of the UNAFEI's New Building
27 November 2017

Excellencies,
Director Senta,
Distinguished participants,
Friends,
Ladies and gentlemen,

It is a great honour for me to be part of the opening ceremony of UNAFEI's new home.
Please allow me first to offer my heartfelt congratulations to the Ministry of Justice of Japan and to my esteemed colleagues at UNAFEI for the inauguration of UNAFEI's new headquarters in the new location. This is indeed a joyful moment. It also marks a new and exciting chapter in the long and illustrious history of the Institute.

The writing of my own chapter with UNAFEI began a few decades ago when I first came to know the Institute. I was a junior public prosecutor who, at the time, was working on the preparation of the first joint seminar between UNAFEI and Thailand. It didn't take me long to become deeply impressed by the important roles played by the Institute in promoting international cooperation in crime prevention and treatment of offenders.

Over the years, I have been blessed with the opportunity to cultivate my relationship with UNAFEI, which soon became an essential part of my life and my career. I had the good fortune, for example, to attend several of the famous UNAFEI training courses, as a participant and also as a visiting expert. Over the years, my appreciation grew for the work and contribution of the Institute, which have spanned a long period of time, cover a rich subject matters with clear focus, and benefit numerous countries and regions of the world, including Thailand and Southeast Asia.

UNAFEI is the first institute in what is now known as the United Nations Crime Prevention and Criminal Justice Programme Network. Being the first in becoming something is of course impressive, but in my humble opinion it is the firm and steady commitment over 55 years that makes UNAFEI truly unique and truly visionary.

My story began as a public prosecutor. Now, several decades later, I am tasked with overseeing the

operation of the youngest member of the PNI family, the Thailand Institute of Justice. With the world becoming ever more inter-connected, and with the world united again within the framework of the United Nations' 2030 Agenda for Sustainable Development, we are faced with tremendous opportunity as well as challenges.
I believe the new chapter in UNAFEI's work will continue to inspire us, and I look forward to the opportunity to visit the new facility, the new 'Lounge B', and more importantly, the new and exciting period in our partnership with UNAFEI.

Let us work together for a brighter future for our society, a future that is firmly rooted in the rule of law and in respect for the culture of lawfulness.
Thank you very much.

Congratulation Messages
By Mr. Ha Hung CUONG
Former Minister of Justice, Socialist Republic of Viet Nam
The Opening Ceremony of the International Justice Center

I am happy to be aware of that Ministry of Justice (MOJ) just completed the new office building for the International Justice Center (IJC), where the International Cooperation Department (ICD) under Research and Training Institute (RTI) would be located, after 16 years of having its head office located in Osaka and put it into operation. I think that this shows the deep care and attention of the Government, MOJ to the legal and judicial international cooperation with other countries in the world and in the region, including Vietnam.

Taking this important event, I warmly congratulate MOJ, RTI of MOJ, and especially ICD. I also congratulate all people including Vietnamese officers, Vietnamese researchers, Vietnamese internship who would obtain the opportunity to visit this important facility of ICD of MOJ in Tokyo.

For more than 20 passing years, ICD together with JICA, Supreme Court, Supreme Public Prosecutors Office, Japan Federation of Bar Associations and other law colleges have been providing their active support to develop our legal system train legal resource with high quality and to complete judicial reform to be suitable with the innovative and integrative policy of Vietnam. This gives a significant contribution to strengthen the cooperation and friendship between Vietnam and Japan, to facilitate Japanese enterprises to invest, and do business in Vietnam and with Vietnam.

With a new spacious office in Tokyo, I strongly believe that MOJ, RTI and especially ICD would play more active role and gain more successful achievements in this important duty to improve legal systems of the countries in the region and in the world including Vietnam.

I believe that with a new office, ICD of MOJ would give more contribution to the legal system of Vietnam, actively contributing to the development of the widely and deeply strategic partnership for the peace, prosperity in Asia and between our 2 countries.
Thank you for your attention.

INTERNATIONAL COOPERATION DEPARTMENT
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