

Part II Current Condition and Prospects

Chapter 2 Sector- and Issue-wise Analyses and Trends in Assistance to Cambodia

Section 1. Good Governance

1. Introduction

Yasunobu SATO

1-1 Importance of governance

1-1-1 Concept of “good governance”¹

“Good governance” in the context of development assistance came to attract attention amid the prevalent recognition that recipient nations should have an adequate capacity to carry out policy planning and implementation so that the structural adjustment programs proposed by international financial institutions could achieve practical results.² The World Bank then extended the idea of “governance” in view of its relevance to the issues of development and focused on the process of running and managing the economic and social resources of a nation for development purposes as well as on the government’s capability for policy planning, determination and implementation. As specific future challenges, the World Bank cited i) operation and management of the public sector, ii) clarification of government responsibilities, iii) laws and systems, and iv) informa-

tion and transparency³, as well as v) the participatory approach, vi) control of military spending and vii) protection of human rights.^{4,5} The global shift to a market economy and democracy was accelerated by the collapse of communism in the Soviet Union and East European nations, leading to greater recognition of the need for donor nations and aid agencies to support the shift to a market economy⁶ and democratization. Under those circumstances, donor nations and aid agencies all came to emphasize the concept of “good governance” as a goal of assistance, and they have been making efforts to engage in assistance for good governance, from different stances.⁷

In line with this global trend, Japan also studied the concept of “good governance” in a report entitled “Participation-based Development and Good Governance”⁸ prepared by the Japan International Cooperation Agency (JICA) in March 1995. The report pointed out that the concept of “good governance” has two aspects, with one being the goal of the national pursuit of democracy, and the other being the goal of establishing government functions that constitute the basis of and contribute to participatory development. In the former meaning, a

¹ The definition and Japanese translation of good governance as used in this report is in line with the JICA report (1995) entitled “Participation-based Development and Good Governance: Study Report on Each Assistance Area.”

² In other words, it was recognized anew that the implementation of economic reforms was urged upon countries in exchange for structural adjustment loans, including market liberalization and monetary tightening, which required the active involvement of the government, with the conventional concept against government interference seen as no longer applicable.

³ World Bank (1992)

⁴ For example, World Bank (1994)

⁵ JICA (1995), p30

⁶ Protection of human rights is also essential as the basis for the establishment and development of a market economy. The most important prerequisite of a market economy is that free and self-reliant individuals can manage their rights of their own free will, and human rights, as represented by civil and political rights, are the very basis of this prerequisite. Dispute settlement through the courts is indispensable for the smooth management of the market, and active rights such as the right to a trial and the right to vote are also important for ensuring fair market rules. Also necessary are the economic, social and cultural rights that provide the safety net of a market economy.

⁷ As another example, the Development Assistance Committee (DAC) of the OECD stated in its “Policy Statement on Development Cooperation in the 1990s” (December 1989) that the issues of sustainable development, environmental protection, and participatory development are the most important challenges for development assistance during the 1990s. Emphasizing the significance of participatory development, the statement said that the stimulation of people’s productive energy to encourage everyone to actively take part in production and to ensure a fair distribution of profits should constitute the core of development strategies and development assistance. As preconditions for achieving this goal, the statement listed (i) implementation of education and training, provision of food and healthcare, investment in human resources in a broad sense including that for promoting the fight against drugs and AIDS, (ii) strengthening of the political system, governmental organizations and the legal system for guaranteeing democracy and the protection of human rights, (iii) utilization of the resources not only of the central government but also of local governments, NGOs and private companies, and (iv) establishment of an open and competitive market economy that allows for the harnessing of individual initiatives and private-sector vitality. JICA (1995), p.i.

⁸ JICA (1995)

nation is expected to pursue “self-reliant and sustainable development as well as the realization of social justice.” The specific components of good governance in this meaning of the term include “legitimacy and accountability of the state system, protection of human rights, local autonomy and decentralization, and civilian control of the military.” In the latter meaning, good governance represents “effective and efficient governmental functions” to realize self-reliant and sustainable development and social justice. Its components are “basic laws and systems that support the people’s participation in political, economic and social activities, as well as the transparency of administrative authority, decentralization, and building market environments.”⁹

1-1-2 Significance and importance of “good governance” in Cambodia

Cambodia experienced armed conflicts, both external and internal, over a period of more than 20 years. Human resources as well as social and state structures were damaged to such extent that the existence of Cambodia itself as a nation was challenged, with four warring factions repeatedly involved in armed conflicts, each claiming legitimacy as the ruling force. Under these circumstances, the peacekeeping operations of the United Nations Transitional Authority in Cambodia (UNTAC) under the Paris Peace Agreements of 1991 aimed, among other goals, to establish an internationally recognized legitimate government through free and fair national elections. At the same time, UNTAC-led assistance began with the aim of establishing a legal system for the protection of human rights and maintenance of public security, and the realization of administrative and judicial reform, as well as the repatriation of refugees and their reintegration into society. This comprehensive assistance was intended to achieve good governance, in the former meaning related to the “way of being a state” as discussed in 1-1-1. After UNTAC’s withdrawal, the government that was established through the national elections received assistance from the international society, including Japan, for reconstruction and development under democracy. Cambodia also began efforts to achieve goals related to good governance in respect of “government functions” mentioned in 1-1-1. The most

important goal for Cambodia has been to establish a system of good governance as the key factor in post-conflict reconstruction (and the prevention of a recurrence of conflicts.) It has also been important to establish a government framework and a legal system that supports it, as well as to ensure an efficient government and capable human resources to manage assistance for democratic development. Efforts to this end are required to allow Cambodia to shift smoothly from the stage of emergency assistance for recovery to the stage of assistance for autonomous and sustained development. In other words, good governance in Cambodia meant “governance for peace building,” and “development of the foundations of the nation” was necessary for this purpose. As a result, the emphasis should be placed on strengthening democracy, guaranteeing and further promoting human rights. These are essential for the maintenance and expansion of a genuine peace. Equally indispensable is establishing a legal system and an independent and fair judiciary that can peacefully settle conflicts of interest and other disputes, and the setting up of a neutral and efficient administration that is independent of any political group and bound only by the law (the rule of law).¹⁰ As peace is a paramount prerequisite for sustainable development, it would not be sufficient to regard good governance as just one of the sectors for development assistance. Good governance is the overriding goal that should be achieved in all assistance sectors, and it is also a key condition for the success of this assistance. Development is not possible without peace, and real peace cannot be achieved without development.

1-1-3 Fields covered in this section

Based on the understanding of good governance in Cambodia as discussed above, this section analyzes good governance from the four aspects of i) democratization, ii) human rights, iii) the legal system, and iv) administrative functions. First of all, some historical facts and the present situation, as common background information, will be discussed from the viewpoint of peace-building. Important issues related to each of the four aspects will be summarized for a general discussion of the appropriate form of assistance to foster good governance.

⁹ Ibid. Refer to p. iii and p. viii for a summary.

¹⁰ Refer to the JICA (1996), pp. 10-13.

1-2 Governance in Cambodia

1-2-1 Peace building in Cambodia – past and present

The debate on “good governance” came to the fore due to the global spread of the market economy and democracy after the end of Cold War in the late 1980s and the recognition that people’s contributions and active participation in domestic politics, policymaking and policy implementation in nations receiving development assistance are necessary for implementation of effective and efficient development assistance. It has been necessary to clarify the ideal form of a democratic nation that should be aimed at through assistance as well as the process of participatory policymaking and implementation of development policies. In Cambodia, for the sake of post-conflict state-building, general elections were held under UN supervision as the first step to establish a legitimate state and since then much effort has been expended. Then came the efforts towards strengthening of democratization and the rule of law with assistance from the international society.

The government that was established after the general elections was only a compromise coalition between the Funcinpec Party, who gained the majority of the seats in the legislature, and the Cambodian People’s Party, which was the second largest party, but already had overwhelming power in Cambodia. As a result, the establishment of a democratic political process was sluggish, as in the case of the disarmament of Khmer Rouge soldiers. The organization of the government was so extraordinary that Prince Norodom Ranariddh, the President of the Funcinpec Party, became the First Prime Minister, and Hun Sen of the Cambodian People’s Party, the Second Prime Minister, with other cabinet posts each having two ministers from the two parties. This coalition government was unable to solve key political issues and the systemic difficulties that arose in the transition to democracy. The social and state institutions also failed to work. While competition became severer between the parties ahead of the 1998 elections, peaceful methods for solving conflicts were set aside. In particular, the ruling parties - Funcinpec and the Cambodian People’s Party - resorted to violence, threats and intimidation to strengthen their power and influence. Domestic order was thus disturbed, and political stability shaken. The coalition regime began to

collapse, and the consequent social unrest reached its peak in July 1997 with an outbreak of armed conflict.

After various diplomatic efforts and political compromises were pursued to restore law and democracy, a proposal presented by the Japanese government was eventually accepted by the parties in Cambodia. The parties thus resumed their political activities in the run-up to the second national elections in 1998. For the poll, a considerable amount of material and technical assistance was provided from abroad, and an international election-monitoring mission was dispatched. Although the election process aroused some controversy, the monitoring mission issued a statement that the poll had been held in a fair manner. After post-election twists and turns, a coalition government led by Hun Sen as the sole prime minister was established between the Cambodian People’s Party and the Funcinpec on November 30, 1998. The Khmer Rouge faction continued to pose a threat to the nation’s reform and development as it aggravated concern for domestic order and disarmament. However, the Khmer Rouge soldiers who had become guerillas were gradually integrated into the army under the government due to intra-factional conflicts. The death of Pol Pot in April 1998 virtually put an end to their activity.

1-2-2 Major pending issues and directions for improvement

Major pending issues for good governance and directions for improvement are summarized and discussed in terms of the following separate aspects (1) democratization, (2) human rights, (3) legal system and (4) administrative functions.

(1) Democratization

Major issues on democracy include i) local elections, ii) access to information and freedom of speech, iii) grassroots activities by NGOs and other groups and iv) the rule of law. Elections for communes, the smallest unit of local administration, are scheduled for 2001, with the necessary preparations now under way. Cambodia still has problems with regard to freedom of speech, with the media including newspapers as well as radio and television stations sometimes subject to government interference. NGOs, whose activities are important for the establishment of a civil society, are now dependent

on financial assistance from other countries, and independent fund-raising is a future agenda for them. The rule of law is a major pillar for democracy since the enactment of laws by a democratic legislature would become meaningless if the laws are then ignored by the executive or judiciary. Regaining people's confidence in the law and the judiciary is an urgent task.

(2) Human rights

Major issues of human rights protection include i) a legal system that works as an institutional guarantee of human rights, especially the establishment of an independent and fair judiciary that ensures their protection, ii) strengthening of government policy-making and policy implementation for the observance of human rights, and iii) strengthening of related NGO activities. Political persecution and violations of personal freedoms are still rampant, with the minorities, the poor, women and other socially vulnerable groups left without guarantee of substantial consideration or protection of their rights concerning labor, education and healthcare. In the first place it is indispensable to establish an independent and fair judiciary capable of providing remedies to violations of human rights. This requires support through assistance not only to the government but also to NGOs and other related organizations.

(3) Legal system

Major issues related to legal system include i) a lack of an adequate legal framework, ii) a shortage of human resources in the legislative, executive and judicial branches, iii) factional conflicts and a lack of strong political will, iv) coordination of assistance, and v) the need to promote legal education and legal aid. Even the most basic laws have yet to be established due, among other factors, to a lack of human resources in the legislature. It is indeed a major challenge for Cambodia to secure capable human resources not only in the legislature but also in the executive and the judiciary, including judges, prosecutors, lawyers and judicial police officers. A major impediment to reforms is a lack of strong political will amid factional conflicts to gain new privileges and protect vested interests. Furthermore, ineffective coordination among aid agencies related to le-

gal system reform makes it difficult to enact systematic and integrated laws. Among other challenges are enhancement of the awareness of the legal system, including awareness of the importance of legal compliance, through the provision of the relevant education to students and ordinary people, as well as empowerment of people through the provision of legal aid to defend themselves against social injustice.

(4) Administrative functions

Major issues related to administrative functions include i) the spread of corruption, ii) insufficient remuneration for public officials, iii) insufficient facilities and systems (fair personnel evaluation systems and tax systems), iv) lack of adequate human resources, and v) problems of local autonomy. Behind the widespread corruption is the extremely low level of pay for public officials. An urgent task, therefore, is to establish appropriate systems for taxation and personnel evaluation. It is also necessary to train administrative officials in order to cope with a shortage of capable officials and to improve local autonomy after the commune elections.

1-2-3 Assistance for good governance by Japan and other donors

The major forms of donor assistance for better governance are summarized in the following.

(1) Bilateral donors

1) JICA¹¹

Priority areas: administrative, fiscal and judicial reform, improvements in public security, gender issues

Activities: assistance for fiscal reform (revenue increase and improvements in budget management), promotion of the social reintegration of demobilized soldiers, assistance towards the public investment management system (for the establishment and management of a mechanism for effective and efficient management of public investment including aid), assistance for administrative reform (elimination of corruption among public officials, personnel training, establishment of local governments that reflect people's will, decentralization of administrative functions), as-

¹¹ JICA Project Country Report (June 2000), pp. 22-23.

sistance for judicial reform (introduction and appropriate enforcement of a civil code, civil procedural law and other basic laws, an increase in the number of judges, prosecutors and lawyers, as well as improvement of their capabilities), assistance for improved public security (police reform, strengthening of investigative capabilities), “women in development” program (education in relation to gender equality, assistance to female entrepreneurs, and information dissemination on maternal and child healthcare and reproductive health).

2) France

Priority: Strengthening of administrative organization and democracy

Activities: assistance in drafting criminal law and criminal procedural law, assistance to the Law Department of the Faculty of Law and Economic Science of Phnom Penh University and the Royal Administration School, training of legal professionals based on technical cooperation with the Cambodia Bar Association.

3) Australia (AusAID)

Priorities: Criminal justice, human rights

Activities: assistance in criminal justice (clarification of existing criminal law procedures, training, equipment provision, improvement of prisons, police offices and courts), human rights education programs (democratization, financial assistance for local NGOs engaged in human rights activities, human rights education, assistance in the preparation of educational materials).

4) United States (USAID)

Priority: democratization

Priorities in assistance: strengthening of democratic processes, respect for human rights

Activities: financial assistance for human rights organizations, assistance to the courts regarding legal technicalities, assistance in holding the national elections in 1998, voter education via the media and NGOs.

5) Canada (CIDA)

Priorities: human rights, democracy

Activities: establishment of funds for assistance in human rights protection, democratization and governance programs in Cambodia (peace and amicable settlement initiatives, human rights education, improved access to the judiciary, improvements in the

legal system); Cambodia-Canada legal assistance project (improvement of research, information management and administrative capacity of the National Assembly and Senate secretariats, updating the legal knowledge and capacity for analysis of the National Assembly and Senate members, improved public understanding of these members’ roles and responsibilities); establishment of funds for assistance to improve legal systems in Southeast Asia (assistance for the establishment and enforcement of a legal framework to prevent the illegal traffic in women and children in the Mekong Basin, human rights education for government officials and NGO members, regional workshops on legal protection for foreign workers, training programs for journalists to enhance the media’s expertise and independence, assistance for strengthening the functions of the National Assemblies of Thailand and Cambodia, assistance for setting up regional organizations for conflict resolution in Cambodia); planning of a Canada-ASEAN governance innovation network (implementation of pilot projects in each ASEAN nation, relevant research and political dialogue, assistance for consolidating and integrating peace and democracy organizations, such as human rights ombudsman panels, as part of the National Assembly, assistance in holding the national elections in 1998); implementation of Phase II of the Cambodia-Canada development program (promotion of community development through assistance for improved administration by the central and local governments in Cambodia); establishment of a Canadian fund for encouraging local initiatives (assistance for small-scale projects by local governments, promotion of women’s participation in development, assistance for the creation of a civil society and for environmental protection).

6) Sweden (Sida)

Priorities: human rights, democratization

Priorities in assistance: promotion of human rights protection and democratic government, human rights and gender equality, democratization, administrative assistance, assistance for peace building.

Activities: technical and financial assistance through Swedish NGOs to the Cambodian government and NGOs.

(2) Multilateral donors

1) UNDP

Priorities: regional socioeconomic development, development management and administrative reform, maintenance, expansion and utilization of potential human resources.

Activities: Cambodia Regional Reconstruction Development Program (income generation, improvement of small-scale rural infrastructure, provision of basic social services, local governance system, capacity building for regional administration, SEILA program), assistance to strengthen the National Assembly functions, assistance to strengthen and improve the judicial system, technical assistance for the next local elections, reform of health organizations (improvement of public health service delivery).

2) Asian Development Bank (ADB)

Priorities: administration, transition to a market economy

Activities: improvement of auditing capability, assistance for the judicial system, provincial level administrative reform, assistance for land reform under an appropriate land law, improvement of financial and banking laws under a financial sector program.

3) World Bank (WB)

Priorities: macroeconomic policy, improvement of the legal system for the transition to a market economy, administrative reform, demobilization.

Activities: macroeconomic management and administrative reform (review of administrative organization, financing for administrative reform, participatory poverty surveys), measures against corruption, assistance for devising a Governance Action Plan, assistance for improving legal systems (sector-approach assistance, assistance for research by the jurists council attached to the Council of Ministers, assistance for the publication of laws, assistance for the Commerce Ministry in devising Commercial Law, assessment of legal needs, review of investment law, assistance for legislation related to financial and commercial laws, information dissemination through assistance for the implementation of legal reform), assistance for establishing an effective and transparent framework for land management and land administration, assistance for surveys on land problems, land policy and land

utilization, coordination of land-related programs.

4) UNICEF

Priority: children's rights

Activities: assistance to the Cambodian Bar Association through UNICEF funds, human rights education, enforcement of laws against the sexual abuse of children (improvement of police procedures and their practical application, seminars for policemen and judges).

5) UN High Commissioner for Human Rights (UNHCHR)

Priority: respect for and promotion of human rights

Activities: technical advice to the legislature and the executive on drafting laws, dispatch of consultants to the courts, human rights education programs for the police and military officers, preparation and publication of human rights materials, financial assistance to human rights NGOs, assistance for capability improvement of the media, assistance to the Cambodian government in preparing human rights reports for submission to the United Nations.

6) FAO

Priority: forest management (joint project with the World Bank)

Activities: establishment of a system for investigating and reporting on forest-related illegal activities, assistance for improving central and local government administrative capability to combat forest-related crimes, drafting and revising laws and ordinances against forest-related crimes.

1-3 Direction of Japan's assistance

1-3-1 Scope and content of the aid

As discussed above, many of the major donors regard governance as the central component of aid, and extend various forms of assistance in this field. For Japan, good governance is also undoubtedly a central focus of aid as well. Japan, as the top donor for Cambodia, should consider its governance aid to play a coordinating role through effective cooperation with other donors and the government of Cambodia in order to ensure that various forms of aid by different donors contribute to improved governance as a whole. In fields where Japan is capable of extending effective assistance, it must also consider

the means of setting and achieving the goals of aid within the framework of its overall aid policy. It is advisable for Japan to consider how it can complement the existing aid activities undertaken by Japan and other donors, rather than extending into new fields of aid, with the top priority given to ensuring the effective utilization of aid by the recipient. It is thus important, among other agendas, to set the goals of aid in achieving good governance, determine the scope of assistance, and to choose priorities from among possible cooperation programs.

Table 1-1 summarizes the targets of Japan's aid to Cambodia, the scope of assistance and the content of the specific projects proposed for implementation of the cooperation programs. Aid for good governance can be divided into two categories, with the first related to "the way of being a state" and the other to "the functions of the government". The first category was further divided under the two major targets of "assistance for democratization" and "establishment of the rule of law." The target of the other category was "improvement of government functions for effective and efficient administration." Japan's aid in the past has mainly been aimed at improving government functions to avoid interference with the recipient's internal affairs, with less accumulated experience in assistance for democracy. Future aid, however, should have its targets directed more to assistance for democratization and the rule of law. This assistance is related to the very basis of a nation in shaping the legitimacy of the government, constituting the core of the issue of governance.

The scope of aid is then determined for each target on the following bases: 1) the aid addresses core issues of legal, political administrative and social reforms in present-day Cambodia, 2) the scope of the aid is within the primary fields of assistance covered by major donors including Japan, and 3) it is feasible for Japan to provide the aid. Based on these three considerations, the table shows the order of priority in the scope of aid for each target. For the scope of aid determined for each target, the required cooperation programs, including ongoing ones, are enumerated in order of priority. The order of priority was roughly determined using the following criteria. Finally, applying the same logic of these considerations, specific projects under each program area are also listed in order of priority.

The priority order was determined taking account of the following factors. As for the order of priority for aid

programs besides the conditions listed below, consideration of the short-term, medium-term and long-term prospects is necessary, as is discussed in detail in the relevant sections of this report, whereas the priority order for projects should be determined in consideration of the need for coordination in order to reduce the possibility of overlapping with the work of other aid agencies. Therefore, the priority order for the projects should be studied more carefully in later planning stages.

Factors for determining the priority order:

- (i) Issues of utmost importance among various challenges for present-day Cambodia;
- (ii) Priority programs sought by the Cambodian side;
- (iii) Programs that can contribute most to motivating counterparts;
- (iv) Programs that can promote the effective development and utilization of resources in Cambodia;
- (v) Programs that are feasible for Japan to undertake within its resources and capability;
- (vi) Specialty areas for Japan;
- (vii) Programs not overlapping with other aid agencies and those that can be adjusted with other organizations;
- (viii) Programs that can promote multi-phase, comprehensive aid (as described later).

1-3-2 Points to be considered in the course of planning and implementation

Issues to be taken into consideration in planning and implementing the above-mentioned cooperation programs and projects are discussed in the following.

(1) Multi-phase, comprehensive aid

In planning and implementing cooperation programs for good governance, attention should be paid to assistance for democratization, the protection and promotion of human rights, legal reform, and strengthening of administrative and fiscal mechanisms as discussed in the respective sections of this report. Aid for good governance should focus on the improvement of national, political, economic and social systems as these four areas constitute the basis of good governance and they complement each other. Aid in any one of the four areas should be coordinated with that in the other areas, and it

Table 1-1 Japan's Assistance for Good Governance (scope and content)**A. Aspects of the way of being a state**

Goal of the aid: "Assistance for democratization"		
Scope of the aid	Cooperation program	Content of the program/project
1. Assistance for the political system	(1) Assistance for elections, etc. (2) Improvement of legislative functions (3) (Activities under cooperation programs for the socially vulnerable and for rural area development)	1) Improvement of the legal framework for elections including local polls 2) Physical and financial assistance in (local) elections 3) Dispatch of observers for (local) elections 1) Seminars for the staff of the legislative branch 2) Promotion of international exchanges of members of the legislative 1) Establishment of a social safety net and provision of job opportunities for veterans through rural development
2. Establishment and strengthening of freedom of speech	(1) Assistance for the promotion of journalism	1) Transfer of the experience of Japanese journalists 2) Provision of the necessary equipment 3) Promotion of joint training for the staff of the Ministry of Information and journalists
3. Strengthening the activities of the civil society	(1) Strengthening education on democratization (through assistance to NGO activities) (from cross-sectoral viewpoints)	1) Assistance for education on democratization by NGOs through assistance for the production of educational programs, etc., for media broadcast (This applies not only to governance-related projects, but also other cooperation projects, to promote citizen participation from the planning to the project evaluation stages, with the help of local NGOs).
Goal of the aid: "Establishment of the rule of law"		
Scope of the aid	Cooperation program	Content of the program/project
1. Strengthening of the legislature and the judiciary	(1) Legal assistance	1) Strengthened assistance for establishing basic laws including a civil code and civil procedural law 2) Training of judges, prosecutors and lawyers 3) Promotion of exchanges with Japanese universities and the Japan Federation of Bar Associations 4) Assistance for legal aid 5) Improvement of the courts and other related facilities 6) Thorough study on the practices of the Supreme Council of the Magistracy and the Constitutional Council, preparation of concrete assistance projects 7) Strengthening of the functions of the police and other relevant organs, assistance for performance of their duties
2. Protection and promotion of human rights	(1) Improvement of public security (2) Assistance for the socially vulnerable (3) Strengthening of human rights education (through assistance for NGO activities)	1) Removal of land-mines, control and confiscation of small arms 2) Reform of police system 1) Assistance for WID programs and efforts to prevent the abuse of women and children 1) Assistance to human rights organizations and NGOs in human rights education 2) Assistance to the National Assembly's human rights commission and domestic human rights organizations through technical cooperation with NGOs; assistance for the improvement of related activities; monitoring for human rights violations, assistance to efforts to prevent violations

Table 1-1 Japan's Assistance for Good Governance (scope and content) (continued)**B. Aspects of the function of the government**

Goal of the aid: "Improvement of government functions for effective, efficient administration"		
Scope of the aid	Cooperation program	Content of the program/project
1. Administration according to the law	(1) Enhancement of legal awareness among public employees (2) Promotion of administrative procedures according to the law	1) Offer of advice and training by legal consultants at each ministry 2) Improvement of administrative law classes at the Royal School of Administration and the Law Faculty 1) Assistance for improving legal and regulatory systems related to administrative procedures 2) Advice on administrative procedures at the main ministries
2. Strengthening of administrative capability and the improvement of transparency of administrative responsibility	(1) Assistance for fiscal and administrative reforms	1) Assistance for tax and personnel system reforms 2) Training of experts and core officials 3) Strengthening of mechanisms to disseminate laws and ordinances through information disclosure and improvement of IT and other communications systems
3. Decentralization	(1) Improvement of local administrative capability	1) Promotion of cooperation between commune representatives and NGOs 2) Advice to help strengthen local autonomy through surveys on Cambodia's local autonomy system and dispatch of experts; provision of advice to bolster the central government's role in the adjustment of local autonomy

Source: Prepared by the author

should be ensured that aid in one area will lead to improvement in the others to maximize the overall effectiveness of the aid. Each one of the four areas of democracy assistance, protection of human rights, reform of legal systems and strengthening of administrative and fiscal mechanisms is just a segment of the whole governance issue. There must be a good balance among them; otherwise, it will hardly be possible for them to lead to good governance. What is desirable, therefore, is a multi-phase, comprehensive aid program that not only comprises specific projects in the four areas, but also helps improve governance in its entirety.

For instance, the ongoing assistance for judicial reform is indispensable for the promotion of democratization and protection of human rights. The assistance, however, would fail to achieve the goals of independence of the judiciary and establishment of the rule of law if it were not accompanied by improvement of the capabilities of individual judges and other core staff of the judicial system as well as a rise in their levels of remuneration and the improvement of related facilities including the justice information system. Such assistance would not be effective without the establishment of an appropriate taxation system, which is indispensable for preventing corruption, and of a system for re-

cruiting fair, capable public officials. Those various assistance projects must be coordinated with each other, and relevant policy advice is essential. Japan can adopt two approaches to promoting such multi-phase, comprehensive aid. One is to identify the multi-phase aspects of the various fields of assistance, confirm the ongoing programs and plans of other aid agencies, and determine Japan's aid within its resources and capabilities. The other approach is to make an active contribution and participate, depending on Japan's resources and capabilities, in fields where NGOs or aid agencies are unable to extend comprehensive assistance due to financial or technical limitations.

(2) Approach based on trial-and-error in the field

Aid must take forms that meet local conditions, changing circumstances and needs. For assistance in governance improvement that is closely related to local organizations, systems and human resources, it is especially important to understand the tasks can be carried out by local counterparts. In all stages from the planning, implementation to evaluation of cooperation programs, the opinions and initiatives of local experts must

be encouraged and reflected in the programs. In Cambodia, which has yet to establish a strong force of local counterparts, opinions based on local fieldwork should be frequently fed back so that assistance programs could be implemented more effectively on a trial-and-error basis and modified flexibly if necessary according to local conditions. This kind of approach based on experience in the field will allow the appropriate transfer of techniques that are best suited to local conditions.

(3) Respect for ownership and partnership

1) Aid through the development of appropriate technology

To realize sustainable good governance, specific goals must be set for the policy making and development of the capacity to manage, apply and implement separate aspects of a field as well as the integrated whole of the relevant field on the part of Cambodia. The transfer of political, economic and social know-how necessary for good governance, including the legal framework, obviously differs from the transfer of scientific technologies, as the former requires extensive adaptation by the recipient society in the context of its history, tradition and culture. It is thus advisable to seek to “create” a new technology for good governance, rather than trying to transfer an already established one, in order to ensure that the new technology is one that is appropriate for the recipient in the social context.

To achieve this requires a sense of ownership on the part of Cambodia and equal partnership between Japanese experts and Cambodian counterparts based on joint efforts to make the best use of local knowledge. For instance, in extending judicial assistance an effective approach is to establish a joint task force, comprising Japanese and local experts. It might be better in some cases to introduce the legal model of a neighboring country, rather than Japan, by teaming up with experts of the relevant country.

A sense of ownership and partnership cannot be achieved without long-term confidence-building efforts between Japanese experts and local counterparts based on patient dialogue and advice. Shortsighted pursuit of results with insufficient efforts to develop the capacity of Cambodian counterparts will end up in increasing local dependence on aid and discouraging autonomous efforts on the Cambodian side. Among desirable examples in this respect is a successful mentoring program

being carried out by the UN Center for Human Rights participated in by legal practitioners like judges and lawyers, mainly from Asia. The program, financed by a UN trust fund set up by Japan and other countries, allows these Asian experts to work together with Cambodian counterparts in Cambodian courts and to give practical training such as through exchange of opinions and expert advice.

2) Introduction of a bottom-up approach to participatory development

The ultimate beneficiaries of good governance are the people living in Cambodia, not the government or public officials. As national development policies and the establishment of the legal system are carried out at the initiative of the government, relevant assistance is extended through officials of the competent government agencies. In Cambodia, however, governance is still in a very fragile state, and it must be kept in mind that aid tends to instigate profiteering and factional conflicts. It is necessary, therefore, to prevent aid from being concentrated at the central government level, by such efforts as direct assistance to the people and rank-and-file public officials, as in the case of the provision of legal aid and democratization and human rights education, and the adoption of the so-called “bottom-up” assistance via NGOs, local communities and municipalities. Such participatory development requires long-term efforts to raise awareness and the organization of participants as well as development of their management capabilities. Assistance for democratization, for instance, would only exacerbate factional conflicts if it were not accompanied by the enhancement of political awareness among the public and public awareness of the significance of their contribution to the public interest.

3) Utilization of local knowledge

In the above-mentioned participation process, it is important, as discussed, to respect local knowledge such as by reference to the existing norms of Buddhism and practices at temples in Cambodia, so as to ensure harmonization with traditional institutions there. Donors, while paying heed to traditional methods as a basis for assistance, should also stand ready to point out problems with these traditions, if any, and encourage their correction, not always accepting them as they are. In assistance to the justice system, for instance, it is necessary in out-of-court dispute settlement to respect tradi-

tional methods of mediation in villages, yet at the same time to ensure that a settlement is not forced on people by a local strongman. The highest priority in such cases should be the establishment of a modern judicial system that ensures effective, fair and predictable dispute settlement, without which any efforts to achieve out-of-court settlements would fail to complement the whole system.

(4) Cooperation based on ties between private-sector professionals

Counterparts, as pointed out, are not always governments or administrative organs, making it essential for donors to cooperate with private companies, NGOs and other organizations that play an important role in the society. Good governance concerns not only government organizations, but also the challenge of creating a self-disciplined civil society. Therefore, aid must go beyond the government-to-government framework to reflect viewpoints based on partnership, including private-sector cooperation, between professionals from Japan and Cambodia. Noteworthy in this respect is a recent case of cooperation between the Japan Federation of Bar Associations and the Cambodian Bar Association under a JICA project.

(5) Coordination and unity among relevant organizations in Cambodia

It is also advantageous to assist cooperation between the organizations mentioned above and NGOs. Such cooperation may sometimes be difficult due to the difference in the interests of the organizations involved, but JICA, as a neutral organ for technical cooperation and assistance, is undoubtedly qualified to act as a coordinator and adviser through the Council for the Development of Cambodia (CDC) to break any impasse. It can be expected that aid agencies, through their roles as catalysts and coordinators, can contribute to strengthening donor-recipient unity towards the goal of good governance.

(6) Coordination with other aid agencies and donors

It is obvious that aid for good governance needs coordination with other aid agencies and donors to prevent duplication and conflict in the provision of such aid. This coordination is required both at the local level and at the policymaking level. Information exchange with local aid-implementation organizations and experts will allow a comprehensive and objective understanding of various impacts and problems arising from the provision of aid for good governance. Coordination and cooperation with other aid agencies at the implementation level will facilitate the progress of each project involved and maximize its effects. Aid for good governance, which in large part has political implications, must be devised in the light of political developments concerning the subject area, including changes in relevant government policy and a shift in the political regime.

Japan should continue to contribute to promoting policy-level coordination among donors through such opportunities as CG meetings. In January 2001, the Cambodian government announced a Governance Action Plan that enumerates the short- to medium-term goals of judicial reform, administrative and fiscal reforms, corruption prevention and other issues. Japan, as the top donor for Cambodia, should continue its efforts to secure support and cooperation from other donors by clarifying its aid policy for good governance, based on the latest action plan. Such efforts are also required to gain understanding and cooperation from the Cambodian side.

Furthermore, Japan should actively take part in the discussions on a sectoral approach to judicial reform¹², as proposed by the World Bank. It is advisable for Japan to make the best use of its experience in legal assistance, for the purpose of facilitating coordination and cooperation among donors. Coordination of aid policies among the various aid agencies will make it easier not only to avoid duplication and conflict but also to establish a more integrated, comprehensive framework for aid by utilizing Japan's own experience and working with other aid agencies to complement each other.

¹² The World Bank proposes a "Master Action Plan" for judicial reform, as in other fields such as healthcare, under a sectoral approach based on information exchange between the Cambodian government and each aid agency and other interested groups.

2. Democratization

Yasunobu SATO
Kuong TEILEE

2-1 Post-UNTAC developments related to democratization

2-1-1 Democratization under UNTAC and its post-UNTAC developments

The Paris Peace Agreements signed on October 23, 1991, provided for not only an end to military action and the establishment of a legitimate government through national elections, but also social reconstruction, economic development and other goals for postwar nation-building. The national elections in 1993 led to the launch of a new coalition government and the adoption of a new constitution in the same year. The constitution established a democracy by guaranteeing the free operation of political parties, observation of human rights norms as stipulated in various international treaties, and introduction of a market economy. It also provided that the state should promote the development of agriculture, industry and other sectors based on the principle of private ownership. In addition, it set up an annual national congress in which all citizens may participate and through which they are entitled to present political issues and make requests to the government.

After the period of UNTAC, Cambodia regained sovereignty and is now entering a new stage of democracy, peace, development and stability. The most remarkable features of the new democracy were, among others, that i) the freest and fairest elections in Cambodia's history were held successfully to elect members of the National Assembly, with 90% of voters actively taking part under UN supervision, ii) young Cambodians, both at home and abroad, as well as former politicians and former soldiers of guerrilla groups, together participated in political activities by creating their own parties or running in the elections on their own, iii) many newspapers and broadcasting stations were launched at home, and it was highly noteworthy that they enjoyed freedom of speech irrespective of their editing policy or quality of the reports, iv) Cambodia's market economy, which

had long been closed and moribund, resumed active acceptance of investment from abroad, allowing Cambodian people to feel the influence of the outside world after more than a decade of isolation, and v) citizens' groups and non-profit organizations were set up in various fields, and the civil society was strengthened.

2-1-2 Latest developments

After the national elections of 1998, Cambodian Government attempted to introduce elections to elect local councils to the smallest administrative unit of the commune. The move was designed to promote decentralization and deconcentration of administrative services as a means of promoting democratization and improve administrative efficiency, with the aim of devising and implementing democratic development policies in line with the goals of participatory development and administrative reform, as later discussed. For the purpose of establishing the commune-level election system, one law has already been enacted, with drafts for two others having been submitted for consideration. Already in force is the law on the fiscal system and properties belonging to provinces and municipalities, which was adopted in 1998. The two drafts now before the National Assembly are the law on communes and municipal administration management and the law on communes and municipal elections.

The issue of demilitarization and disarmament, which had been shelved during the peace process in the past, finally came to the fore after the end of the Khmer Rouge. As a result of agreements at the Consultative Group meeting in May 2000, a long-term project was carried out to reduce the number of soldiers by more than 30,000 over three years and assist their social integration.¹³ The pilot project stage was completed by July 2000, with some 1,500 soldiers demobilized.¹⁴ The demobilization of the remaining 30,000 soldiers is scheduled to finish by 2002.¹⁵ If the project proceeds smoothly, it will make a major contribution to democracy in present-day Cambodia, as the shift from the previous society controlled by a military clique to a peacetime civil society represents the first step for Cambodia to depart from the post-conflict stage to be born anew

¹³ Cambodia Consultative Group Meeting (2000), p. i.

¹⁴ It was reported by Mockenhaupt and Samnang (2000/p. 6) that the final group of soldiers (about 420) being demobilized under the pilot project will be disbanded with a ceremony on July 15 (Saturday).

¹⁵ World Bank report mentioned in footnote 3.

as a democratic, peace-loving nation. Cambodia, however, still faces many important challenges, as discussed in the following section.

2-2 Challenges for democracy

Cambodia now faces the following challenges for the realization of democracy.

2-2-1 Preparations for local elections

Local administrative authorities in Cambodia are divided into 23 provinces (Khaet) and municipalities (Krong), with the latter including the capital of Phnom Penh. Each province consists of several districts (Srok) and smaller administrative units of communes (Khum).¹⁶ Similarly, each city consists of districts (Khan), and quarters (Sangkat) that are smaller administrative units than districts.¹⁷ Police offices, prisons and other public security facilities are partly under the jurisdiction of provincial and municipal authorities, but the administrative system as a whole is of the centralized type. A law on the fiscal system and properties belonging to the provinces and municipalities was recently adopted, empowering provinces and municipalities to decide on budgets and spending to some extent according to local demand. The Cambodian government recognizes the importance of local initiatives in realizing participatory development, and is making efforts to introduce a local Council election system (first for communes and quarters¹⁸). The government plans to hold commune elections in the latter half of 2001, but has yet to enact a law for that purpose. Even if such a law is adopted, the government will still have to overcome many hurdles including preparations for these elections, ensuring security in local areas, management and authority of the new councils, and their relationship with the provincial and municipal authorities. Issues that are

frequently under consideration from among these challenges are summarized in the following.

There are about 1,600 communes at present around Cambodia. The largest of them has a population of some 40,000, while the smallest has only 209 residents. The cost of holding commune elections is estimated at over 30 million US dollars.¹⁹ From the fiscal viewpoint, it has been pointed out that rapid decentralization could have the negative effect of the government losing fiscal control at the local level.²⁰ It is also necessary to coordinate decentralization-related policies for the communes subject to the planned elections with those policies for provincial and municipal authorities that are not yet ready to be subjected to similar elections.²¹ Another problem is whether the elected commune council members will be capable of proposing feasible policy measures. The election system itself is also an issue, with debate under way as to whether candidates for commune councils should run under political parties or with an independent status. Among other issues is whether the participation of women in local elections should be promoted further or not. On top of those issues, there is a growing concern about an apparent spread of political threats and killings involving candidates in the commune elections, with many of the victims being members of the opposition Sam Rainsy party and Funcinpec party.²²

2-2-2 Current state of access to information and freedom of speech

Under the UNTAC media guideline of 1992, forums for debate offered by the media (newspapers, radio and television) as well as by citizens' groups and political parties proliferated, which has continued up to present after going through some confusion amid political disturbance at home. Those forums were the only opportunity for people to lodge complaints against various reform measures that fell short of their earlier expecta-

¹⁶ Constitution of the Kingdom of Cambodia (including 1999 revisions) Article 145.

¹⁷ Ibid. Villages (Phum) are smaller units than communes, but they were not provided for in the constitution.

¹⁸ For simplicity, communes include, unless otherwise specified, quarters (Sangkat) as local administrative units.

¹⁹ Royal Government of Cambodia (2000.4), p. 46.

²⁰ Royal Government of Cambodia (2000.5), p. 9.

²¹ Roome (1998), pp. 57-59.

²² According to recent newspaper reports, Prak Chhien, a popular candidate of the Funcinpec party in the commune election in Kampot, was killed on June 3, 2001. On the night of August 22, Yi Mui, a candidate for the Sam Rainsy party in Prey Veng, was killed four days after Huh Chim, another candidate of the party in the same province, was wounded in a gun assault by several armed men. Two days before the assault, a member of the Sam Rainsy party was killed in Kompong Cham. For details, refer to McEvers and Ana (2000), p. 6 and Chandara and Unmacht (2000.8) p.10.

tions of the new Cambodian government. The spread of these forums was partly related to a distrust of the judicial system as mentioned before. Many people seem to use the forums, instead of going to court, to ventilate their complaints by insulting their opponents.²³ Many of these people contributed to antigovernment newspapers, which thus tend to be filled with unconstructive criticism and insults against the government. These newspapers did not adhere to neutrality in journalism, but provided opportunities for political agitation. Unable to make in-depth investigations, they often focus on defamatory articles against individuals, rather than reporting facts. The politicians and senior government officials who were criticized, meanwhile, sometimes threatened the newspapers and their reporters, reportedly ordering assaults on them.²⁴ The government also banned these newspapers temporarily under the press law of 1994, prosecuting their executives. Always at issue concerning such a situation was the precedence between the freedom of speech and the government's right to fight back against defamation. Another problem is the lack of transparency and predictability of the press law, which has yet to be accompanied by related regulations and ordinances that clarify the concept of the law and its definitions.

In Cambodia, the literacy rate for reading and writing without difficulty is fairly low at about 37%.²⁵ Only a limited number of people can read and understand newspapers. In particular, people living in rural areas, who account for 80% of the total population, are believed to be almost entirely dependent on the radio for information, except for communication among local people. Television sets are also used, but are not as prevalent as the radio. The radio thus has great significance as an information media, but few radio stations in Cambodia are sufficiently politically neutral to report various political views in a fair manner. It seems extremely difficult to obtain government approval to set up an independent radio station.²⁶ Under these circumstances, it is not appropriate to think of access to infor-

mation and freedom of speech only in terms of newspapers and reading materials. To ensure rural people's access to information, in particular, efforts should be made to include protection of the right of access to the wireless media.

2-2-3 Current state of NGOs and other grassroots activities

Activities covered here are mainly those of the so-called third-sector and private-sector nonprofit organizations, including local NGOs in Cambodia, to extend services to specific groups of the society or to the general public. These organizations, whose activities are guaranteed under Article 42 of the existing Constitution, were set up one after another during the 1990s. The number of NGOs officially registered in Cambodia totaled some 600 in the 2000 statistics²⁷, while there are numerous unregistered ones. While local administrative organs are often said to be corrupt, politicized and lacking the necessary equipment, the grassroots activities of NGOs are proceeding in a relatively smooth manner.

Almost all NGOs, however, are not yet financially independent, financing their activities with assistance mainly from UN organs, foreign governments and international NGOs. As a condition for extending services to the society, NGOs sometimes need to provide assistance to local administrative organs. For instance, in order to help improve the human rights situation in the society human rights NGOs undertake to train police officers and government officials and provide them with the necessary equipment. In such a way, NGOs often choose to cooperate with the government to promote human rights, democracy and social development, rather than just pointing out the government's mistakes and criticizing it. In such cases, NGOs need to cover not only their own operating expenses but also the relevant costs of local administrative units and other organizations that they assist. Under such circumstances, it is almost impossible for these NGOs to gain financial in-

²³ For specific examples, refer to UN materials "Situation of Human Rights in Cambodia: Report of the Secretary-General" (A/49/635, 3 Nov. 1994, paras. 93-96; E/CN.4/1996/93, 26 Feb. 1995, para. 44; E/CN.4/1997/85, 31 Jan. 1997, para. 126; E/CN.4/1998/95, 20 Feb. 1998, para. 55).

²⁴ Ibid.

²⁵ Recent joint research by UNESCO and the Education Ministry. Gravois (2000.7).

²⁶ The opposition Sam Rainsy party had to wait for a long time before gaining government approval to set up a radio station. It was not by chance that Funcinpec-affiliated television and radio stations were first attacked in the July 1997 unrest. It was thought that the ruling People's Party selected such media stations as the first target of attack to block opposition broadcasting.

²⁷ NGO Forum on Cambodia (2000.5), p. 56

dependence in the near future. They are in severe competition with each other to secure funding from foreign organizations and governments, and their relations sometimes become strained due to the competition. NGOs engaged in the promotion of democracy, human rights and other causes that involve a high level of political interest are said to tend to be on bad terms with each other, with their activities likely to be politicized.

2-2-4 Current state of the rule of law

The situation in this respect is discussed later in 4-1-2 of “4. Legal system”.

2-3 Government efforts related to good governance and relevant assistance

2-3-1 Election system

Observation of developments in Cambodia up to the elections in 1998 shows that the most important roles were played through mediation and cooperation by the United Nations and other international organizations as well as donor countries. Such mediation and cooperation helped contain tensions between political parties in Cambodia and settle conflicts through free and fair elections. The outside assistance also helped in drafting an election law, solve various problems during the election campaign and implement the elections including the monitoring of vote counting. The international society also offered active cooperation and support to help settle post-election conflicts by making diplomatic efforts and relying on locally dispatched staff and by means of monitoring.

2-3-2 The rule of law

To build on their assistance in establishing a legal framework as part of peacekeeping efforts of UNTAC, UN specialized organizations and bilateral assistance organizations continued various forms of assistance in and after 1993 to help Cambodia in drafting and implementing laws. With such assistance, the Cambodian government has made its own plan for judicial reform. For further details, refer to 4-2-2 in “4. Legal system”.

2-3-3 Strengthening of the legislature

Soon after the 1993 elections, aid agencies such as UNDP, UNHCHR and USAID offered material and technical assistance to the then National Assembly, with the aim of improving the capabilities of the parliamentary secretariat and legislative techniques. Assistance was also given to train staff of the parliamentary Commission on Human Rights and Reception of Complaints. Legal experts were dispatched to parliamentary expert commissions to provide the National Assembly with technical advice, assistance and comments on draft laws submitted by the government. These assistance projects, however, were suspended due to the political crisis in 1997.

NGOs and other organizations also offered extensive assistance. For instance, the director of the Khmer Democracy Institute, a Cambodian NGO, said the institute often organized joint meetings for parliamentarians of Cambodia and other countries in cooperation with the parliaments of foreign countries, to promote exchanges of opinions, experience and knowledge among parliamentarians to improve the capacity of Cambodia’s National Assembly as a whole.

2-4 Assistance by major donor countries

2-4-1 Japan

Activities: Japan dispatched observers to observe national elections in 1993 and 1998. Under its ODA, Japan also extended assistance for the social reintegration of demobilized soldiers, removing land-mines and supporting mine victims. As for legal assistance, Japan started in 1996 to invite law practitioners from Cambodia to attend training in Japan on the Japanese legal and judicial systems. In 1999, assistance began on drafting a civil code and a civil procedural law.

NGO-based assistance includes promotion of the civil society, both directly and indirectly, through aid for improving living standards, developing human resources, providing printing equipment for community use, etc. Japan is also helping with demining. Among activities in the field of legal assistance are the compilation of law textbooks, promotion of law education, and cooperation extended by the Japan Federation of Bar Associations to the Cambodian Bar Association.

2-4-2 Australia (AusAID)

Activities: Financial assistance is extended to local NGOs on democratization and human rights, under human rights and education programs.

2-4-3 United States (USAID)

Activities: The United States provided support for the national elections in 1998, helping to set up local NGOs and supporting their activities in monitoring the polls. Assistance was also provided in relation to voter education through the media and NGOs. NGO assistance included support for producing television and radio programs to enhance public awareness of women's rights, labor rights and the role of women, elections, politics and poverty eradication.

2-4-4 Canada (CIDA)

Activities: Under the Cambodia-Canada legal system assistance project, assistance was made to improve the research, information management and administrative capacity of the National Assembly and Senate secretariats, enhance the legal knowledge and legal analysis capacity of the National Assembly and Senate members, and promote understanding of parliamentarians' roles and responsibilities. Under Phase II of the Cambodia-Canada development program, community development was supported by helping improve the capabilities of the central and local governments. A Canadian fund for local initiatives was set up to assist small-scale projects by local governments, promote women's participation in development, promote the consolidation of civil society and protect the environment.

2-4-5 UNDP

Activities: Law experts were dispatched to the Ministry of Interior to help draft a commune election law. Under a joint project with the UNHCHR, assistance was provided to strengthen the functions of the National Assembly.

2-5 Consideration for future assistance

In the light of the above-mentioned history of democracy in Cambodia and the present situation of assistance in democratization, the following considers how assistance should be carried out in the future for further development of the field.

Democratization in Cambodia faces three challenges, namely, reform of the political system including the election system and civilian control, promoting freedom of speech, and strengthening the civil society. In the following, consideration will be given to Japan's future contributions to assisting the political process, establishing and promoting freedom of speech and the press, and strengthening the civil society.

In particular, the challenge of strengthening the civil society must be met from two aspects; one is the aspect of capacity building, and the other is the promotion of their participation in the society. The former concerns specific assistance measures, while the latter is related to the methodology essential for democratization assistance.

2-5-1 Political system

(1) Assistance for the local election law and holding elections

A success in local elections, such as for commune councils, is expected to contribute greatly to the concretization of the abstract concepts of democracy. Donors, many of which give priority to grassroots development, see a success in local elections held on Cambodia's own initiative as a good precedent towards the goal of ensuring participatory development and good governance. Such a success will also bolster the confidence of Cambodians. Promotion of free and fair local elections is considered to be one of the most important goals as it will help nurture trust between Cambodian voters and administrative organs, making long-term contributions to sustaining peace under democratic rule. Specifically, it is necessary to advise Cambodians on the technical aspects of drafting an election law. Technical assistance will also be required to help them cope with various problems in implementing an adopted election law. In this field, assistance is being extended by UN specialized organs and German aid agencies.²⁸

²⁸ These organizations dispatch experts to hold meetings with local counterparts.

(2) Strengthening civilian control

Stable democracy would not be secured unless civilian control is strengthened as a medium-term goal. Among the most important measures to this end is disarmament and demobilization in the shift from the time of war to the time of peace. Strengthening of civilian control will also help ensure the implementation of free and fair elections. It is thus necessary to continue assistance in disarmament, including a reduction in small arms and the removal of land-mines.

(3) Strengthening of representative democracy

As the contents of civilian control, it is important to enhance the capacity of the legislature as the representatives of the people, so as to ensure a longer-term stability for democracy. Particularly in Cambodia, it is said that the legislature, which lacks adequate capacity, is only an empty shell, unable to check the executive regarding its duty of administration based on law. To prevent a dictatorial government, it is necessary to improve the capacity of parliamentarians and the staff of the National Assembly who assist them in drafting laws. It is particularly important to allow those parliamentarians and National Assembly staff to learn about the legislative systems of other countries, including Japan, as well as their operation, with the aim of establishing as soon as possible a trustworthy National Assembly that can guarantee suprapartisan debate on various issues of national interest.

2-5-2 Establishment and strengthening freedom of speech and publication

(1) Technical assistance for journalism (mass media including broadcasting stations)

Journalism has a very important role to play in any democratic society. Journalism has a major role in the development of democracy in Cambodia, and at the same time, it is expected to face an increasing number of new challenges in the future. It is thus essential to extend assistance to establish an environment that will help nurture appropriate forms of journalism capable of neutral and fair reporting without any partisanship or political prejudice.

2-5-3 Developing the civil society and strengthening its activities

(1) Technical and financial assistance to NGOs and citizen forums in general

NGOs and citizens' groups that emerged in an earlier boom are now required to prove their legitimacy and improve their capacity. It is necessary for them to expand specialized activities, ensure financial transparency and be accountable to the beneficiaries. In particular, NGOs and other organizations engaged in the promotion of such issues as democracy, the rule of law and human rights can hardly implement their projects on their own due to both financial and technical difficulties. Those NGOs and citizens' groups deserve long-term financial and technical assistance toward the ultimate goal of achieving independence, since a democratic society that will never again resort to force cannot be created without the development of these NGOs and groups. As foreign NGOs promoting these causes often originate in Europe and the United States, it might be better to expand assistance through NGOs in Asian countries, including Japan, which have cultural backgrounds that are closer to Cambodia's.

(2) General education for democracy

To prevent the recurrence of Cambodia's past tragedy, it is necessary to create a society that respects life and human rights, and in particular, different viewpoints among members of the society. It is thus important to provide general education on human rights including democracy, to the younger generation who have only witnessed a long period of military conflicts, violence and cruel human relations. Ongoing assistance programs on democratization look into the defects of the existing system, but education has an important role in the long-term process of democratization. Some Cambodian NGOs have prepared textbooks on human rights and democracy, and hold student contests on related issues. Those NGOs, however, are limited in number, and assistance should be extended to them for long-term general education on democracy.

One of the indispensable factors in democratization is the establishment of the "rule of law". Democracy becomes meaningless if laws enacted based on democracy fail to work. On the contrary, majority rule, which

should be adopted in a democratic society, should not be elevated to the extent that it constitutes despotism by the majority. Democracy in its true sense should ensure equal opportunities under the law for both the majority and the minority, guaranteeing debate through freedom of speech. In other words, it should be understood as the very basis of a society that anyone can enjoy fundamental human rights. An independent judiciary is also indispensable to maintain a balance of power that can prevent despotism by the majority and abuses of power. In this sense, the realization of democracy and establishment of the rule of law are two sides of the same coin. Assistance for the rule of law, therefore, should be extended as part of assistance for democratization in a coordinated manner. Further details of such assistance are discussed in the following section “3. Human rights”, which concerns the protection and promotion of human rights, and “4. Legal system”, which concerns the independence and strengthening of the judiciary.

2-6 Direction of Japan's assistance

For Japan's assistance in the future, proposals are made in the above-mentioned three fields. In particular, nurturing a civil society is an indispensable prerequisite for a democratic society and at the same time an ultimate goal of it, although it is hard to present, at least for now, specific proposals for Japan's future assistance to this end. It can at least be said, as a matter of methodology for any cooperation project, that the need to strengthen the activities of NGOs and other citizens' groups should always be kept in mind to promote public participation in the society, which is an essential part of democracy.

2-6-1 Assistance in the political process

(1) Assistance for elections including local ones

Japan provided assistance in the 1993 and 1998 national elections by dispatching civil servants at the local administrative level to monitor the polls in Cambodia, which helped Japan accumulate experience in election monitoring and assistance with the election system. Japan not only should now send election observers to local elections in cooperation with other donors, but should also extend both material and financial assis-

tance for the holding of elections, in addition to assistance on the election law and the electoral system. Furthermore, Japan is expected to contribute to promoting the social reintegration of demobilized soldiers as part of efforts to strengthen civilian control.

(2) Strengthening of representative democracy

Japan has little experience in providing assistance to this field. Considering the unique characteristics of Cambodia and its government's high expectations of Japan, Japan can contribute in this field by having its Diet devise and implement a partnership program with Cambodia's legislature to help enhance the latter's legislative capacity.

2-6-2 Establishment and strengthening of freedom of speech and publication

Technical assistance to journalism (mass media including broadcasting stations) is expected to contribute to improving the communications and broadcasting infrastructure. To facilitate bilateral cooperation based on unity among professional journalists, Japan can contribute by sending journalists to Cambodia to provide advice and exchange of information on reporting techniques and ethical standards for journalists in general.

Japan should also consider new cooperation programs to offer hardware and software assistance to national broadcasting stations, and hold seminars for their administrative and technical staff to improve their capacity. Another possibility for Japan is to contribute to mending the strained relations between Cambodia's Ministry of Information and the nation's journalist groups, by inviting both ministry officials and group members to the same seminar opportunities in other countries for short-term or long-term training programs. Such joint seminars may help both parties learn to cooperate with each other. If Cambodians could learn about the management of the mass media in Japan and other countries and understand their relationship with the relevant authorities, it would be useful for the further promotion of freedom of speech and access to information in Cambodia.

2-6-3 Nurturing the civil society and strengthening its activities

NGOs and citizens' groups have played major roles in Cambodia and are expected to continue making contributions to the development of democracy in the future. It seems that Japan is not so experienced in this field. Japan, while continuing its assistance to enhancing the government's administrative capacity, should also direct its assistance efforts to education and awareness-raising among the general public concerning peace, democracy and human rights through NGOs and other organizations.

With the long-term aim of developing local human resources of the next generation, Japan is expected to extend assistance based on its experiences of education, including the production of educational programs for preschool children and youths. Such assistance should be made in line with Cambodia's culture, tradition and religious practices, through local NGOs and temples. People living in rural areas have access to information only through television and radio, which are thus the only media for enlightening these people as to the importance of peace, human rights and democracy. Assistance to these media in the production of educational programs and other activities may call for financial and technical cooperation between media organizations on the basis of professional unity.

The most important aspect of assistance for democratization is to ensure that every citizen takes part in the democratization process in order to make a contribution. In present-day Cambodia, however, NGOs and other grassroots organizations promoting such causes as democracy, the rule of law and human rights can hardly carry out their projects independently, both financially and technically. Japan's assistance should be directed to enabling these organizations to become independent based on self-discipline through indirect financial and technical assistance via foreign NGOs, including those from Japan. For such assistance, Japan can tap the financial resources of its grassroots grant aid as well as NGO subsidies and other related assistance, while extending technical assistance through the dispatch of Japan Overseas Cooperation Volunteers. As NGOs extending assistance in this field are often from Europe and the United States, it has been pointed out that Asian NGOs, including those from Japan, with a cultural background closer to Cambodia should expand their assistance. Ja-

pan should further extend the scope of its assistance to put more emphasis on NGOs.

3. Human rights

Yoichi YAMADA

3-1 Significance of human rights in good governance

Economic development used to center around macro-economic growth, with the protection of human rights and democracy underrated based on the assumption that they are an impediment to economic development. Donor countries continued to stress financial and technical assistance, giving little consideration to the human rights situation in the recipient countries. Human rights and democracy issues were considered to be internal matters for the country concerned, and any interference in relation to these issues was thought to be an infringement of the recipient's sovereignty. However, if the legitimacy of a nation derives from the agreement of the governed, "governance" should be the avoidance of despotism. Human rights, beyond their functional role of providing the basis for the free market economy, are in themselves the essence of each individual's quest for happiness. If development assistance is intended to achieve not only economic growth as shown by the statistics but also specific forms of human happiness, such assistance should necessarily cover the protection of human rights as part of its objectives, with efforts to make the governance "good" for the purpose of human rights protection. Based on such a viewpoint, donor countries and aid organizations have recently come to target "good governance" (in their assistance to promote human rights programs). Japan is also following this trend, with JICA's research work "Participatory Development and Good Governance," emphasizing human rights protection as an integral part of good governance.

3-2 Human rights situation in Cambodia

The Cambodian situation itself is a constant reminder of the infamous genocide by the Pol Pot regime of Democratic Kampuchea (1975-79). The damage done by the regime still remains in the human rights field in Cambodia. This fact has been drawing particular atten-

tion to human rights issues in Cambodia with the international society's regret that it left such outright infringement of human rights unchecked. For the purpose of Japanese human rights assistance, it is essential to survey the past situation of human rights protection in Cambodia as well as what assistance has already been provided in this field. The following is a review of human rights violations, along with the response of the government and donor organizations, as observed after the international society began full-scale efforts for peace and reconstruction in Cambodia under the transitional authority of UNTAC.

3-2-1 Period of UNTAC transitional authority²⁹

The UNTAC, bound by the Paris Peace Agreements to ensure the protection of human rights based on the recognition that such protection is indispensable for settling conflicts in Cambodia,³⁰ set up a human rights section to monitor the human rights situation, receive human rights complaints, investigate human rights abuse cases, and provide human rights training and education throughout the country of Cambodia. By November 10, 1992, the human rights section's Phnom Penh office received a total of 298 complaints of human rights infringement, which comprised: 118 cases of land-related disputes, 112 cases of intimidation, 63 cases of illegal confinement, 14 cases of murder, 5 cases of property destruction, 1 case of theft, 5 cases of cease-fire violation and 8 cases of wounding.³¹ By the end of the period of transitional authority, the UNTAC human rights section received more than 800 complaints regarding human rights violations, including those received at the section's regional offices.³² The cases of human rights violations included assaults by the Khmer Rouge (Pol Pot) faction, which did not take part in the 1993 national elections. Also included were many cases of politically-

motivated murder, kidnapping and attacks on political party offices.³³

As part of the Cambodian government's efforts on human rights issues, the Supreme National Council (SNC) in 1992 ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention relating to the Status of Refugees, and the Protocol relating to the Status of Refugees. In September of the same year, the council adopted the Provisions relating to Criminal Law and Criminal Procedure (the so-called UNTAC law)³⁴. In January 1993, the National Assembly adopted the Law on Criminal Procedure Law (so-called SOC law), the Law on Organization and Activities of the Adjudicate Courts of the State of Cambodia, and the Law on Court's Fees. However, Cambodia still lacked an effective judicial system that enforces the adopted laws, that is, there was virtually no formal organization to protect human rights.³⁵ In 1992, human rights NGOs such as ADHOC and LICADHO were set up one after another in Cambodia to start monitoring the human rights situation as well as related investigations, education and training. Under such circumstances, the national election was held in May 1993, followed in September of the same year by the promulgation of the existing constitution of the Kingdom of Cambodia.

3-2-2 Post-UNTAC situation through 1998 elections up to present

After UNTAC's withdrawal in September 1993, the UN Human Rights Center³⁶ set up its Cambodian office as its first field office to continue activities for the protection of human rights in Cambodia³⁷ in accordance with the resolution of the UN Commission on Human

²⁹ UN Doc. E/CN.4/1993/19

³⁰ Articles 15 and 16 of *the Agreements on a Comprehensive Political Settlement of the Cambodian Conflict*.

³¹ UN Doc. E/CN.4/1993/19

³² UNTAC Human Rights Component (1993) PP.3-4 / Kenji Yotsumono, *Cambodia Kenpo-ron* (Constitution of Cambodia), Keiso Shobo (1999), quoted in p.62. (*in Japanese*)

³³ According to Prince Norodom Ranariddh, a total of 18 Funcinpec members were killed and 22 wounded between November 2, 1992 and January 1993. Hughes (1996), quoted by Akio Kawamura (1998).

³⁴ Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (1992).

³⁵ Sato (1997)

³⁶ In 1997, the office was renamed the "United Nations Cambodia Office of the High Commissioner for Human Rights." However, the office is called the "UN Human Rights Center" throughout this report.

³⁷ UNCHR (1996)

Rights³⁸. In cooperation with this office, the Special Representative of UN Secretary-General on Human Rights in Cambodia annually reports to the UN Commission on Human Rights and the General Assembly on the human rights situation in Cambodia and his recommendations for future improvement. In addition, UNICEF and other UN organizations as well as domestic and international human rights NGOs actively work in the human rights field to achieve their respective goals. However, the human rights situation in Cambodia, as revealed by such activities of the relevant organizations, has yet to show improvement, as indicated in Box 1-1 (Human rights).

3-2-3 Institutions for human rights protection and the current state and trends of assistance

The human rights situation in Cambodia is being monitored, independently of the Cambodian government, by the UN Human Rights Center and local human rights NGOs such as ADHOC, LICADHO, VIGILANCE and KKKHRA. As of 1996, there were reportedly about 30 human rights NGOs in Cambodia.³⁹ These NGOs initiate investigation into specific human rights cases as a result of complaints from citizens. International NGOs concerned about human rights, such as Human Rights Watch and Amnesty International, also monitor and report on the human rights situation in Cambodia, but in terms of day-to-day monitoring and assistance for victims, local NGOs play a larger role due to their grassroots involvement in local areas. To promote cooperation among NGOs, local NGOs have set up such organizations as the Human Rights Task Force on Cambodia, the Cambodian Human Rights Coordination Committee, and the Human Rights Action Committee.⁴⁰ Local NGOs raise funds for their activities, mainly

from international organizations, international NGOs, foreign embassies in Cambodia, and bilateral donor organizations, including the UN Human Rights Center⁴¹, UNICEF, the Asia Foundation,⁴² USAID,⁴³ and AusAID⁴⁴. The UN Human Rights Center, UNICEF and international NGOs also provide local NGOs with materials and information for human rights education and training as well as relevant technical assistance.⁴⁵ These international human rights organizations and NGOs not only work on specific human rights cases but also make other efforts, including lobbying to redress the government's human rights abuses and ensure preventive measures for the future. They also take part in the process of drafting laws, providing opinions from the viewpoint of human rights protection. Information obtained through these activities is reported on both separately by each organization and collectively by the parties concerned at international forums.

Meanwhile, the judiciary, which is expected to play the leading role in correcting human rights violations as an integral part of the state system, is often subject to the criticism that it is not functioning properly. Among its other problems, the judiciary in Cambodia has yet to be established as a functioning institution⁴⁶ and has yet to gain independence within the overall state system, as its decisions are not respected.⁴⁷ The judiciary lacks even the legal infrastructure, as demonstrated by the absence of substantive and procedural laws. There is also a problem of human resources, with almost all judges, prosecutors and police officers in Cambodia assuming their duties without receiving formal education in law. As a procedural defect, judges often decide on their judgment before the judgment date, making subsequent hearings meaningless. There are additional criticisms that access to hearings and appeals is virtually unattainable⁴⁸ and that corruption is widespread. In addition to these problems in the judicial system itself, the

³⁸ Resolution 1993/6 of the UN Commission on Human Rights.

³⁹ Ibid., para. 166.

⁴⁰ UN Doc. A/50/681/Add.1 (26 Oct. 1995)

⁴¹ UNCHR, *supra* n.11, para. 166.

⁴² www.asiafoundation.org

⁴³ Democracy and Governance (www.usaid.gov).

⁴⁴ Cambodian Human Rights/Education Program (www.ausaid.gov.au).

⁴⁵ A/50/681/Add.1 (26 Oct. 1995)

⁴⁶ For instance, the establishment of the Supreme Council of Magistracy and the Constitutional Assembly, specified under the 1993 constitution, was delayed, and they are now said to be effectively defunct because of political conflicts.

⁴⁷ On attacks on court, UN Doc. E/CN.4/1997/85 (31 Jan. 1997)

⁴⁸ UN Doc. E/CN.4/2000/109 (13 Jan. 2000), para 51.

situation is further aggravated by the tendency of the police and the courts to give in to political pressure, with defendants in almost all cases of human rights violations circumventing criminal procedures with impunity.⁴⁹ The judiciary in Cambodia is thus too weak to resist the politically or economically strong. In 1993, a human rights committee was set up as a standing panel of the National Assembly⁵⁰, but it can hardly be said that the committee is working effectively. The Justice Ministry sometimes carries out independent investigations into some cases of human rights violations, such as the alleged torture of people under arrest or in custody. This can be regarded as the Cambodian government's efforts towards the protection of human rights, but such efforts have yet to be institutionalized and still lack effectiveness and procedural transparency.

In view of such a state of the judiciary in Cambodia, there have been attempts to train judges and prosecutors, including the Cambodian Court Training Project⁵¹ of the International Human Rights Law Group, an international NGO based in the United States, and the Judicial Mentor Programme of the UN Human Rights Center.⁵² Among local NGOs, the Legal Aid of Cambodia and the Cambodia Defenders Project offer legal assistance services to provide citizens with opportunities for legal remedy. AUSAID of Australia launched the Cambodia Criminal Justice Assistance Project in 1997, providing assistance for improvement in judicial facilities including courts, prisons and police stations.⁵³

3-3 Challenges for the Cambodian government

Under these circumstances, Cambodia must establish an institutional system of human rights protection as part of the overall governance structure. What should

Cambodia do to this end?

The division of power and the principle of legality are derived from historical wisdom to prevent the abuse of state power. The fundamental structure is that the legislature, which represents the people, draws up laws that bind the executive, whose legality is checked by the judiciary⁵⁴. Under this system, private citizens adversely affected by the executive are entitled to bring cases to court for remedy. Such a remedial system gives the state authority the incentive to observe laws, and law enforcement becomes foreseeable for people based on confidence that the state is governed according to the law. For instance, the principle of legality should strictly apply in criminal cases, within the framework of a clearly defined criminal law and its strict interpretation (the principle of *nulla poena sine lege*), accompanied by a detailed criminal procedural law that guarantees the procedural rights of the accused. In a broad sense, human rights violations in Cambodia, including extra-judicial executions and other forms of harm to individuals, bodily injury, and restrictions on freedom, fall under this category of problems. Human rights issues cover not only such harm to life and bodily injury but also broader issues such as environmental and business freedoms. For example, the issue of massive deforestation, a current controversial issue, can be managed with due consideration for the environment by establishing a clear, transparent legal framework concerning concessions for forest cutting. Such a framework will also help break the close ties between specific companies and the authorities, opening the market to other companies.⁵⁵

The above-mentioned systematic control of governance functions, when seen in the context of international assistance, exemplifies the concept of "good governance." Unlike formalistic legalism, this involves taking comprehensive approaches to achieving the goals.

⁴⁹ ADHOC, LICADHO and Human Rights Watch (1999). It has been seen as a particular problem that Article 51 of the Law on the Status of Public Servants (1994) gives a degree of impunity to public officials. The law, however, was revised by August 1999, making it possible to arrest public officials by notifying the head of the relevant government agency at least 72 hours before prosecution, instead of the previous provision that required prior approval by the head. Human Rights Watch, Human Rights Watch World Report 2000: Cambodia

⁵⁰ UNCHR, *supra* n.11

⁵¹ The project was later suspended due to the military conflict in Phnom Penh in July 1997.

⁵² UNCHR, *supra* n.11

⁵³ www.aisaid.gov.au

⁵⁴ In Cambodia, the constitution stipulates that administrative cases be adjudicated by an ordinary court, as in the case of Japan. (Article 109 of the Constitution of the Kingdom of Cambodia)

⁵⁵ However, in cases where administrative expertise is required, administrative discretion should inevitably be allowed to some extent, otherwise this would result in ineffective administration. In such cases, it would be still more important to intensify the judicial review on administrative procedures, guarantee due process and participation for private citizens in the administrative process, and promote the disclosure of relevant information.

Good governance thus requires strengthening of policymaking and administrative capacity as well as the human resources for more efficient management of the public sector. It is also necessary to ensure the accountability of the executive in order to maintain fairness in public-sector management. This specifically requires the establishment of the rule of law and an effective judicial system, supported by adequate information disclosure to ensure the effectiveness of these systems.⁵⁶

In the following, the challenges for Cambodia to achieve good governance are discussed from the three viewpoints of the judiciary, the government/administration, and the social system.⁵⁷

3-3-1 Judiciary

First of all, Cambodia should be committed to the principle of legality, or the “Rule of Law,”⁵⁸ as a buttress against the violation of human rights. Further detailed discussion of the issue is in 4-5 of “4. Legal system”.

3-3-2 Government and administration

As discussed earlier, the most critical factor for the protection of human rights is the government’s commitment to the cause of human rights. The government must possess the determination not to violate human rights, and, more specifically, must abide by the law and respect judicial judgment. The division of power is designed to ensure democratic control of the executive, through the government, by the legislature. However, this would not suffice to institutionalize the government’s commitment to human rights protection and ensure effective remedies against human rights violations. This would additionally require the establishment of monitoring systems within the government to enable the executive branch itself to straighten out violations and irregularities, if any, on its own initiative

through adequate execution of orders, personnel changes and disciplinary measures. Within the government, public officials must be properly motivated, through promotion and training systems, not to violate human rights. The government must clarify administrative procedures and make efforts to promote these so that they become prevalent among public officials and citizens.

It is also necessary to establish a legal framework to ensure public security for the physical safety and freedom of speech and other political rights of individuals. For the promotion of social rights, the government must work out affirmative policies related to the redistribution of wealth, the elimination of poverty, and the provision of education and healthcare. Implementation of social rights requires, by its nature, economic growth of the nation, and political commitment to allocating limited fiscal resources preferentially to the poor.

3-3-3 Social system

It is necessary to construct a society that guarantees human rights, backed by an effective judiciary. First of all, human rights education should be provided in every social sector including schools, communities, companies, the government and the judiciary. Secondly, NGOs and journalists should be guaranteed opportunities to monitor and report on human rights violations and related court proceedings, to make all activities of the state subject to public supervision. An ombudsman system may be needed to strengthen supervision of the more intricate aspects of the state organization. Thirdly, societal institutions should be established to protect the rights of the socially vulnerable, including workers’ rights (e.g., the right to organize, the right to collective bargaining, and supervision of a guaranteed minimum wage) and the promotion of NGOs.

⁵⁶ World Bank (1992)

⁵⁷ A governance system for human rights protection would founder if the state authority blatantly condones the organized violation of human rights, as in the case of a series of extra-judicial executions after the military clash in July 1997. In that sense, what counts is the government’s commitment to human rights protection and respect of the judiciary. From this point of view, diplomatic intervention from the outside, including aid-backed pressure, might become necessary if the government abandons its commitment to human rights and takes action that intentionally violates them.

⁵⁸ Although the “Rule of Law” in the context of “good governance” is sometimes used as a synonym for “formalistic legalism” in the sense that the executive is bound by the enacted laws, the concept of the rule of law (which originated in the Anglo-American common law) comprises independence of the judiciary and its precedence over the executive and the legislature, equality under the law, and the judicial protection of private citizens’ rights and freedom. The meaning of the concept, therefore, is not necessarily limited to simple legalism. In this report, executive control by the law is called the principle of legality for clarification.

3-4 Direction of future assistance

How should assistance be provided in view of the challenges faced by Cambodia as discussed above? In the following, the first issue to be examined is the future direction of assistance in the field of human rights protection.

3-4-1 Response to cases of human rights violations

The Cambodian government should do its utmost to establish a governance system including an appropriate judicial system and other mechanisms for the protection of human rights. The nation, however, still lacks an adequate governance organization for human rights protection and needs complementary assistance from outside.

(1) Monitoring

The core of assistance in human rights protection is monitoring, or “fact-finding.” The most important factor in analytical work on human rights is not statistical data but information on specific cases of human rights violations. Such information should be gathered through interviews and the collection of objective evidence in order to find out the facts. The government, although it is in the interest of Cambodia itself, sometimes sees assistance in human rights protection as undesirable interference, at least from a short-term point of view. The government, which may be held responsible for any violations, may choose not to cooperate with any investigation undertaken as part of assistance, or may even resort to outright attempts to obstruct the investigation.⁵⁹ This is the particular nature of human rights assistance.

Effective assistance for human rights protection throughout Cambodia requires an extensive network specifically for this purpose. Such a network needs to cover not only broad geographical areas but also organizations such as the police and courts to ensure easy ac-

cess for activists. Assistance should be based on effective cooperation between other NGOs and international organizations, and to some extent with the Cambodian authorities including government agencies and the courts. In extending assistance, verbal communication should naturally be in the local language, making it important to cooperate with local NGOs and journalists. For foreigners to extend effective assistance, cooperation from people with local language skills is indispensable.

(2) Response to human rights violations

Reporting and announcing the found facts of human rights violations is effective as this makes it possible to place the actions of the government under the scrutiny of the public and the international society. However, presentation of the facts of human rights violations will always be tantamount to a criticism of the government and will tend to cause friction between the donor and the recipient government.⁶⁰ It is also necessary to confirm and evaluate the facts of human rights violations before announcing them, and there should be careful consideration of who is to provide such confirmation and evaluation and for what purposes. For instance, information on human rights violations gathered by USAID is compiled into reports by the State Department for congressional testimony. Meanwhile, international NGOs dealing with human rights refer to these government reports and present their own conclusions. The human rights situation in a recipient country can thus be checked in an objective manner, which helps the US government in deciding on assistance and diplomatic policy, as well as meeting the requirements for accountability to the US taxpayers who are shouldering the cost of assistance.

It is also possible to urge the recipient government and related organizations to stop their actions and correct any human rights violations, or to help the victims to seek remedies (through assistance in the investigation, preservation of evidence and judicial remedy). Vic-

⁵⁹ Human rights activists, including those from the UN Human Rights Center, were often persecuted. For instance, in August 1997, an automatic rifle was fired into the air above UN Human Rights Center staff that were investigating the case of an extra-judicial execution. (Human Rights Watch 1998). On April 2, 1998, a Cambodian official of the UN Human Rights Center was assaulted by police officers (HR/98/23 (9 April 1998). In December 1998, an ADHOC official who was supporting a family that was urged to relocate was killed. Other reported cases include intimidation by the police of a KKKHRA official in February 1999 and similar intimidation of ADHOC and LICADHO members in July of the same year (ADHOC, *infra* n.70, pp.18-19).

⁶⁰ For example, Hun Sen, then second prime minister, criticized UN Human Rights Center's reports on a series of extra-judicial executions after the military conflict in July 1997. He contended that the reports were false and demanded that the center apologize for it and reshuffled its staff.

tims of human rights violations are often political minorities and the socially vulnerable, making it difficult to gain cooperation from the relevant organs in their local communities. As a more comprehensive remedial step, it is possible to cut back assistance whenever there is an infringement of human rights or to boost it when human rights protection is promoted.⁶¹ In this case, however, there should be careful consideration of who is to make the judgment on cutting back or boosting assistance, and whether reducing assistance in other fields could lead to increasing the burden on the general public.⁶²

3-4-2 Assistance to institutions to guarantee human rights

Assistance activities mentioned above are all carried out outside the Cambodian government. Since the ultimate goal for Cambodia as a nation is to establish a national system that prevents human rights violations and ensures the necessary remedies, human rights assistance to Cambodia should aim to help it work out such formal institutions on its own. Although monitoring and other assistance activities mentioned above are essential in establishing an appropriate governance system, it is desirable that more direct assistance should be provided to help Cambodia build such institutions. Such direct assistance should include support for Cambodia in meeting the earlier discussed challenges concerning the judicial system, the government and administration, as well as the social system. Specific assistance to that end includes the following.

(1) Assistance to the legislature

Refer to “4. Legal system” for details.

(2) Assistance to the government and administration

From the UNTAC years up to the present, human rights training for the administration, and especially its investigative bodies, has been provided in various forms by the UN Human Rights Center, local and international NGOs, and other groups. The Cambodian side has somehow taken such training seriously and achieved certain results. However, there would be little practical sense in educating people in relation to human rights norms if they are not backed by an adequate judicial system, and abstract norms that are not accompanied by specific examples of court proceedings would not be useful in actual cases, especially in difficult cases. What is needed at present is more specialized training beyond the scope of general human rights education; for example, training for police officers in compliance with criminal proceedings in investigations and ensuring that norms taught in such special training function as the basis of court proceedings.

An effective approach would also be to dispatch human rights specialists to investigative institutions. UNICEF, for example, dispatches specialists to the Cambodian Internal Ministry and offers technical assistance to police investigation officers from the viewpoint of children’s human rights⁶³. Other forms of technical assistance can be offered to work out master plans to ensure that the government’s commitment to human

⁶¹ In November 1996, the European Commission concluded an agreement with the Cambodian government on assistance for the reconstruction of Cambodia. A joint statement attached to the agreement stipulated that the Commission can stop any assistance in case of serious infringements of human rights. Human Rights Watch (1998).

⁶² It is worthwhile for future reference regarding “human rights” diplomacy to compare how major donors responded to the armed conflict between the People’s Party and the Funcinpec Party in Phnom Penh from July 5 to 6, 1997. Japan suspended assistance just after the conflict to secure safety of its staff, but the Foreign Ministry pledged the resumption of assistance on July 26 and then Prime Minister Ryutaro Hashimoto hinted that Japan would accept Ung Huot as prime minister. The United States stopped all its assistance for 30 days after the conflict and continued to suspend most USAID projects, except for humanitarian and democratization assistance that was not extended through the Cambodian government. However, the United States offered only restrained criticism of post-conflict arrests, extra-judicial executions and other forms of persecution of Funcinpec members. Germany took the severest step of condemning the conflict and suspending all assistance to the Cambodian government. Australia stopped its military assistance to Cambodia on July 15, but continued general humanitarian assistance. It was reported that Australia had informally supported Ung Huot as prime minister, who had dual citizenship of Australia. The ASEAN decided to postpone the entry of Cambodia into the association. The World Bank and the Asian Development Bank first announced that they would resume financing projects for Cambodia as soon as safety was restored. The World Bank, however, later followed the IMF when the latter moved to impose an indefinite suspension of assistance due to corruption and deforestation in the country in September 1997. The UN Accreditation Committee decided not to give Cambodia a seat at the 52nd General Assembly, in September 1997. (Human Rights Watch, (1998); Human Rights Watch (1997), Cambodia: Aftermath of the Coup (Aug. 1997))

⁶³ UNICEF, Law Enforcement against Sexual Exploitation of Children

rights protection is made firmer and more concrete⁶⁴, and to establish and reinforce the appellate system backing the administration and monitoring system. Furthermore, technical cooperation for mine removal, decommissioning of small arms, and other problems in relation to keeping peace and order should also be continued.

(3) Assistance for establishing the judicial system

Various forms of assistance can be recommended for establishing the judicial system. Refer to section "4. Legal system."

(4) Assistance for human rights education and research

It goes without saying that dissemination and education activities for the promotion of human rights are important, but Cambodia primarily needs for the present and in the future specialized training in all judicial fields beyond general human rights education. This requires the establishment of theoretical bases in legal fields not only on the definition of human rights but for specific ways to protect human rights. Therefore, assistance should be directed to improving education and research in jurisprudence in order to promote human rights protection. Such education and research should be pursued not only at universities but also at the government and NGO levels, in accordance with the characteristics of each organization. Refer to section "4. Legal system" for details of such assistance.

(5) Assistance to NGOs and journalists

In Cambodia, a system for guaranteeing human rights has yet to be established as part of the formal system. As a result, both NGOs and journalists play a major role in monitoring the human rights situation. NGOs, in particular, are indispensable for the development of a sys-

tem that can guarantee human rights through education, training, lobbying and other activities. Therefore, assistance to NGOs and journalists' activities is important not only for the development of democracy as pointed out in "2. Democratization," but also for human rights protection. NGOs are expected to tackle more specialized activities such as supporting victims in their lawsuits, training in criminal procedures, drafting laws and researching jurisprudence. Technical assistance to them should thus meet the need for these high-level specialized activities. Judicial assistance to the poor, for example, is now carried out by the aforementioned local NGOs, including the Legal Aid of Cambodia and the Cambodia Defender Project, with financial assistance from donors and technical assistance from foreign specialists in law. The Cambodian Bar Association recently invited Japanese lawyers as advisers under a project to establish a child protection unit of the association's legal aid bureau with assistance from UNICEF.⁶⁵

3-5 Direction of Japan's assistance⁶⁶

Taking into account the feasibility of assistance for human rights protection mentioned above, the following specific programs are proposed as part of a medium-term assistance plan from Japan in this field.

Firstly, technical cooperation and training for mine removal and police organizations should be continued and reinforced.

Secondly, the present WID program to improve the position of women should be reviewed from the broader perspective of guaranteeing the human rights of vulnerable groups, including children and women. Specifically, this program should be expanded to eliminate structural human rights violations such as the expanding slave trade, which is the most serious violation of human rights.

Thirdly, public awareness of human rights should be promoted in the society through assistance to local human rights NGOs. Some NGOs are making efforts to

⁶⁴ There are some reports with regard to governance, such as "Cambodia: Enhancing Governance for Sustainable Development" (April 2000), which was compiled by the Cambodia Development Resource Institute, a local NGO, for the Asian Development Bank, and "Cambodia: Governance and Corruption Diagnosis: Evidence from Citizens, Enterprises and Public Opinion Surveys" (May 2000) prepared by the World Bank for the Cambodian government.

⁶⁵ UNICEF, Legal Representation for Children in Need of Special Protection

⁶⁶ Japan's assistance in the field of human rights protection as part of its ODA program includes the dispatch of an election monitoring mission for the national elections of 1993 and 1998. As pointed out in Box 1-1, monitoring of just the process of voting and counting does not help in the protection of human rights before and after the election campaign period, or in judging whether the elections were held in a free and fair manner.

achieve a “peace culture” and “free and fair elections” through seminars on resolving conflicts as well as education on human rights, elections and measures for arms reduction, etc., while other NGOs aim to reinforce a fair and independent judicial system by offering legal assistance such as free provision of lawyers. (Assistance for democracy and the development of a judicial system are essential for human rights protection. Thus assistance for these challenges is in essence the same as assistance for human rights. For details, refer to proposals made in “2. Democratization” and “4. Legal system.”)

3-5-1 Reasons for the proposals

There probably is no need to offer reasons for the first and second proposals. The reasoning for the third proposal is as follows. Firstly, local human rights NGOs are critically important in the actual protection of human rights and establishment of the system required to achieve this. Secondly, local human rights NGOs do not have a sufficient financial base or human resources, thus they are in great need of assistance. Thirdly, as human rights have some political aspects, direct assistance to the recipient nation’s government may cause unnecessary friction. Fourthly, it is difficult for local NGOs to ensure competent staff on their own and establish an organization for practical fieldwork in a short period. Fifthly, information gathering on the human rights situation, which is always essential in starting full-scale assistance for human rights protection in Cambodia, will be made easy by assisting local human rights NGOs, allowing access to fresh information. Sixthly, supporting and nurturing local NGOs can help achieve a bottom-up development of Cambodian society. Seventhly, finding the truth is a major factor in assistance for human rights as mentioned above. Objective facts are not always available and direct top-down assistance through a single channel would not be effective.

3-5-2 Content of assistance through NGOs

(1) Financial assistance

Human rights NGOs, which are of course non-profit organizations, have no choice but to rely on outside financial assistance. Financial assistance is a key factor in support for local NGOs. Donor assistance, however, would not be effective without an understanding of the

recipient NGO’s activities, both for selecting the recipient and in managing and implementing the assistance after the selection. Therefore, information on the human rights situation and the specific activities of NGOs should be collected in Cambodia to make a fair evaluation.

(2) Technical assistance

For investigation into cases of human rights violations as a form of legal assistance to the victims, as well as for the general monitoring of the human rights situation, evidence collection and fact finding based on the evidence are essential. Monitoring by other countries is also important. Thus, it is significant that foreign legal specialists have extended help in the human rights field by offering their knowledge and experience about judicial proceedings. In Cambodia, especially, technical assistance from foreign specialists is indispensable in order to support NGO activities in special areas such as legal assistance and training in relation to criminal procedures.

(3) Specific assistance projects

Assistance as mentioned above should be offered to local human rights NGOs. As a specific example, it is proposed that the Japan Federation of Bar Associations assist its Cambodian counterpart in specialized fields. This proposal is to enable the Japan Federation of Bar Associations, an NGO, to play a major role in the related assistance from Japan and assist the Cambodian Bar Association financially and technically. This assistance should include legal aid for the poor, financial assistance for lawyer costs, provision of equipment and the coverage of costs for legal services in areas where lawyers’ services are not readily available, and technical assistance on human rights violations and other cases.

NGOs that are independent of the government are better placed to freely tackle human rights issues, and it is time for Japan to support the development of international NGOs involved in human rights protection. It is significant that NGOs play a major role in assistance from Japan and carry out relevant activities in a positive manner. The Japan Federation of Bar Associations and its members have already contributed not only to JICA’s related projects but also to assistance for the Cambodian judicial system. The Japan Federation of Bar Associa-

tions held a workshop in Cambodia in October this year based on a technical cooperation agreement with the Cambodian Bar Association. The federation has sufficient competence and has achieved enough as a major body to promote such assistance.

The Cambodian Bar Association is the only organization in Cambodia that local lawyers must join. It recently set up a legal aid section and started legal aid for the poor, as part of its effort for human rights protection. However, it still falls behind the Cambodia Defenders Project and the Legal Aid of Cambodia, both local NGOs providing similar legal aid services. Assistance from donor countries is so far limited, and there seems to be a substantial demand for assistance from Japan. The key to human rights protection is the establishment of an adequate judicial system, as discussed above. However, assistance for practical relief measures will also lead to establishing such a judicial system. JICA's "Consignment Program for NGOs, Local Governments and Industries" can constitute a framework for the projects of the Japan Federation of Bar Associations, with the federation being in charge of actual project implementation.

4. Legal system

Kazuyo SAKURAGI

4-1 Past and present situation of Cambodia's legal system

4-1-1 Changes and characteristics of the legal system in historical view

Cambodia's legal system has undergone drastic changes over the short period of 130 years since 1863.⁶⁷ The country first introduced French law,⁶⁸ which was followed by a lawless period.⁶⁹ It then tried to adopt a socialist legal system,⁷⁰ but before long, it moved to a liberalist legal system in the shift to a market economy. The country's legal system is thus characterized by its failure so far to see any systematic progress under any of the past regimes.

Pol Pot's "genocidal rule" between 1975 and 1979 brought a period of a legal vacuum and the complete absence of legal experts from the country,⁷¹ as the regime denied not only the legal system but also the very existence of legal experts. Even at present more than 20 years after the Pol Pot period, the legal system still remains impaired, with the country lacking legal experts trained to draft laws. In extending technical assistance to Cambodia in relation to its legal system, consideration must be given to such a lack of experts who are capable of making use of the assistance.

Under UNTAC's direction, basic laws were drafted and enacted to some extent, but the situation was still

⁶⁷ Before Cambodia became a French protectorate in 1863, no written laws existed, and customary rules regulated social activities in local areas. These rules, in general, were based on mutual agreement, which was developed by establishing traditional norms at local levels. They evolved under given circumstances, and village chiefs played major roles in settling conflicts, with the backing of the religious authority of the temples.

⁶⁸ When Cambodia became a French protectorate in 1863, "modern" legislation was introduced on the French model. The civil code and the civil procedural law, for example, were modeled after their French counterparts, while respecting customary rules in Cambodia. The legislation system and the judiciary were thus established based on the French system. The constitutional rule in the Sihanouk era until Lon Nol's coup d'état in March 1970 followed the highly centripetal Gaullism, while maintaining the previous legislature and judiciary. The Lon Nol regime instituted a constitution in 1972 by further strengthening the Gaullist national ruling organization, and shifted from a monarchy to a presidency, trying to expand the power of the president.

⁶⁹ The Khmer Rouge, who came into power in April 1975, adopted extreme nationalistic communism and physiocracy, destroying all the conventional legal and judicial systems, and bringing about an era of a legal vacuum.

⁷⁰ Although the Heng Samrin regime established with the support of Vietnam in 1979 instituted a Vietnamese style socialist government, the reconstruction of domestic legal and judicial systems was hampered by conflicts with the three opposition groups, which later formed an alliance against the regime.

⁷¹ Some judges survived the Pol Pot period, when many intellectuals were lost. They drafted a new constitution in 1980, and began to reconstruct the Ministry of Justice and the universities, while tackling other challenges to rebuild the nation. As for the re-establishment of the courts, surviving clerks, teachers and others more educated than ordinary people were assigned as judges. Civil and criminal codes and their procedural laws—which are the most significant for citizens—were not enacted. Notifications and government ordinances were issued instead, but they were not sufficient in terms of quality and quantity. Legal procedures, in particular, were changed from the French style with some socialistic elements into a severer inquisitorial style giving extensive authority to the judges.

far from satisfactory. The criminal affairs and criminal procedural provisions of 1992, for example, divided crimes into misdemeanors and felonies, under the strong influence of French law. Behind the division was the idea of dealing with misdemeanors and felonies under separate jurisdictions, but the 1992 provisions failed to provide for relevant jurisdictional separation. The criminal procedural law enacted in 1993 also failed to stipulate the separation. As for the training of specialists, however, judges and other legal staff were trained, at least to some extent, with the assistance of UNTAC and some international NGOs during the UNTAC period of authority.

In 1993, national elections were held to elect members of the Constituent Assembly, which later adopted Cambodia's new constitution. The Constitution guaranteed the multi-party system, and established the separation of the three powers. It also guaranteed broad freedoms to citizens under a revived monarchy. Legislation was enacted with regard to observance of human rights and promotion of democracy. Meanwhile, laws were also enacted to facilitate the transition to a market economy and make preparations for internationalization. However, the basic laws essential for the daily life of citizens—a civil code, commercial law and criminal law as well as their respective procedural provisions—have yet to be established, except for some criminal procedures.

4-1-2 Current state of the rule of law

The Constitution of the Kingdom of Cambodia of 1993 stipulates the separation of the three powers,⁷² guarantees “the independence of the judiciary” and provides that “trial in pursuit of justice must be conducted under the name of the Khmer people in accordance with existing laws and procedures.” In actuality, however, adequate laws have yet to be established in almost all

legal areas. Therefore, it is hard to say that the National Assembly keeps the executive under control by virtue of its legislative power, and it seems that the assembly is becoming a shell, ignored by the government.

Without legal norms, fair judgment through the fair application of the law is not possible. Laws concerning judges and prosecutors have not been adopted to ensure justice guaranteed under the constitution. Although the Cambodian Supreme Council of Magistracy, which was established to guarantee the independence of judicial members, is apparently gradually starting to function,⁷³ the existence of this council is not enough to ensure application of the rule of law. This requires the adoption of basic laws concerning the status of judges and prosecutors.

In Phnom Penh, a confrontation arose between the mayor and the local court over the dismissal of a corrupt judge in November 1999.⁷⁴ This episode underlines the difficult aspects of the vulnerability of judicial independence in Cambodia. The failure of the Cambodian Supreme Council of Magistracy to dismiss corrupt judges by exercising sufficient independence and neutrality will justify the administration's intervention in these matters, which threatens the fairness and independence of the judiciary. This constitutes a dilemma in terms of the fairness and independence of the judiciary. Unless the independence of the judiciary is guaranteed by law, it is impossible to exclude political interference in the judiciary. The politicization of justice leads to a loss of public trust in the judiciary, which would make it impossible to ensure effective and fair enforcement of the law, with money and violence seen as the only means to resolve conflicts. This results in a vicious circle that further weakens confidence in the judges and laws, with the judiciary unable to gain the trust of people due to corruption.

Current problems concerning the rule of law in Cambodia include not only the inadequacies of the laws

⁷² Constitution of the Kingdom of Cambodia (including the revision of 1999), Article 51.

⁷³ Refer to “Situation of Human Rights in Cambodia — Report of the Secretary-General,” E/CN.4/1999/101, 26 Feb. 1999, para. 61; A/54/353, 20 Sept. 1999, para. 63; and E/CN.4/2000/109, 13 Jan. 2000, para. 50 and so on.

⁷⁴ This incident strained the relationship between the local court, the mayor and the government for two months from late November 1999 to late January 2000. With the support of Prime Minister Hun Sen, the mayor of Phnom Penh, claiming that a judge accepted bribes and released a lot of felony criminals, arrested the released prisoners not based on law but under an administrative order and demanded a thorough investigation and public trial. Furthermore, the mayor dismissed the suspected judge without the judicatory proceedings required to be conducted by the Cambodian Supreme Council of Magistracy and other organs. The mayor faced the severe criticism that the city administration had illegally intervened in the judiciary and violated the principle of judicial independence. As for further details, refer to many articles of *The Cambodia Daily* between December 1999 and February 2000. As for the criticism, refer to the “Situation of Human Rights in Cambodia - Report of the Secretary-General,” E/CN.4/2000/109, 13 Jan. 2000, para. 55.

themselves but also the lack of judges, prosecutors, lawyers, policemen and other specialists who are directly engaged in ensuring the rule of law. This state of affairs is partly due to the extremely low remuneration for the general civil segments. At the same time, the low remuneration also makes it more likely that they will be prepared to take bribes or have part-time jobs.⁷⁵ Historic factors can also be pointed out as another problem affecting the establishment of the rule of law in Cambodia. Cambodia went through turbulent times, experiencing a military coup d'état, a period of genocidal rule and a communist regime faced with a civil war. In that process, the country lost even the concept of civilian rule and is now unable to comprehend the significance of the rule of law with an independent judiciary. Since soldiers and policemen won higher social respect and have had a greater influence so far than judges and jurists, the relationship between the courts and the army and police, or their social positions, cannot be changed so radically.

4-2 Legal and judicial reforms by the Cambodian government

4-2-1 Legal reform

Under the new Constitution, the cabinet is empowered to propose bills, as National Assembly members are, although under some restrictions. Within the cabinet, the relevant ministry first prepares a bill and sends it to the jurist committee of the Council of Ministers for examination. After examination and approval by the Council of Ministers, the bill is submitted to the National Assembly. The Standing Committee of the National Assembly sends the bill to the relevant expert commission for discussion and the expert commission reports its opinion to the National Assembly after deliberation. When the bill is adopted by the National Assembly and approved by the Senate, it is promulgated by the King.

Although the Cambodian government continued to

develop the legal system after 1993, civil and criminal codes and their procedural laws, which are closely related to the daily life of citizens, have not yet been established. This situation indicates that legal and judicial reforms are not proceeding smoothly. It is often pointed out that the Ministry of Justice in particular is not able to fully perform its duties. The main reason for the ministry's failure to function properly is the serious lack of human resources.

It should not be overlooked that the present situation is largely traceable to the history of the Ministry of Justice. The present ministry was reorganized in 1980, when it started to operate as an institution with a supervisory function in relation to the courts and prosecutors' offices under the Heng Samrin regime that claimed to stand for socialism. Due to its previous role as a supervisory institution, the ministry lacked the capacity to draw up bills. Even in 1998, judges in each province had to seek the opinions of the ministry about judicial decisions regarding individual cases.⁷⁶

The Pol Pot administration inflicted a huge amount of damage to the law education institutions that could have provided the bureaucrats and jurists required for the legal and judicial reforms.⁷⁷ Moreover, the low remuneration for instructors accelerated the loss of qualified human resources. Recently, the Ministry of Education started to collect tuition fees from law school students to reduce the government's fiscal burden. The ministry plans to cover all expenses through tuition fees in the future.

4-2-2 Judicial reform

The Cambodian government is planning judicial reform with international assistance. The following gives an account of the Cambodian Supreme Council of Magistracy that acts as a guarantor for the rule of law, the Constitutional Council that holds the power to conduct judicial reviews and the judicial reform planned by the Cambodian government.

⁷⁵ Sambath Thet (2000).

⁷⁶ In December 1997, an appellate court acquitted a Funcinpec member in a criminal case for lack of evidence. The judge was later suspended by the then justice minister, which indicates that the Ministry of Justice has failed to eradicate traditional malicious practices even under the new constitution.

⁷⁷ Although the Law and Economics Faculty of Phnom Penh University was reconstructed in 1980, the number of teachers that had received specialized education was insufficient and there were very few textbooks written in Khmer. Previously, the law and economics department was under the supervision of the Ministry of Justice, but is now under the Ministry of Education, Youth and Sport.

(1) Establishment of the Cambodian Supreme Council of the Magistracy

Based on Article 115 of the Constitution of 1993, a law was adopted in December 1994 to set up a Supreme Council of the Magistracy. The council was intended to function as a body to make judicial management completely independent from political influence. In actuality, however, many basic laws have yet to be adopted, and the council is still unable to avoid political interference. The organizational framework was introduced for judicial independence, but actual activities under the framework have yet to come up to expectations. The Asia Foundation and other international assistance institutions are examining their policy of direct aid to this council.

(2) Establishment of the Constitutional Council

Based on Chapter 10 (especially Article 125) of the Constitution of 1993, the law for establishing a Constitutional Council was adopted in March 1998. The council was set up to make final judgments on the judiciary's checking of the legislature and on various problems concerning elections. Established in June 1998, just before that year's national elections, the council received many petitions concerning election-related conflicts and gave judgments on them. Although there was some political concern about its inauguration process,⁷⁸ it is an important institution in the process of guaranteeing the rule of law and will play a major role for the future in assuring peace and justice in Cambodian society.

(3) Recent program for judicial reform

According to the Five-Year National Programme to Rehabilitate and Develop Cambodia 1996-2000,⁷⁹ judicial reform is one of the priority fields in the reform of state institutions. The contents of the judicial reform are as follows: i) To establish an institution framework in-

cluding establishment of a court on commercial affairs and education of judges, clerks and prosecutors, ii) To establish a legal framework including preparation and amendment of civil and criminal procedural laws, a civil code and other laws, iii) To develop human resources – undoubtedly training of judges and clerks has already been a priority matter, but it is important to plan for a training system that both satisfies the immediate demand and meets long-term personnel requirements, iv) To disseminate judicial information, and v) To reconstruct related buildings and to upgrade equipment.

4-3 Assistance by major donor countries and multilateral donors

Assistance for establishing or reforming the judicial system has been provided by major donor countries and multilateral donors since the UNTAC period.

4-3-1 France

France was the first donor to provide assistance for the establishment or reform of the judicial system. In 1993, the country dispatched two experts to Cambodia for legal training and drafting relevant laws. (One French expert is reportedly still there.) A draft law on criminal procedures was prepared with assistance from France, and was submitted to the Council of Ministers after debates at the Ministry of Justice and the Supreme Council of the Magistracy.⁸⁰

4-3-2 United States

The United States suspended its assistance to Cambodia after the armed violence of July 1997, except for humanitarian assistance. Before the suspension, USAID had given legal assistance since 1994 through the Asia Foundation, helping to draft a contract law and providing technical training to Cambodian legal practitioners. USAID dispatched an American expert of Cambodian origin who holds a doctorate degree in law from the US

⁷⁸ Refer to Pape (1998).

⁷⁹ Refer to "Development Objectives, Strategies and Programs of the Royal Government of Cambodia", Summarized from the National Programme to Rehabilitate and Develop Cambodia (NPRD) and the first Socio-economic Development Plan (SEDP) 1996-2000, p.6.

⁸⁰ France also actively assisted in legal education at universities. It helped construct a building for Phnom Penh University's Faculty of Law and Economic Sciences in 1993, and sent Prof. Maurice Guillard (professor at *Université Lumière Lyon II* (University of Lyon II)) as an adviser to the faculty's law department. Other French experts were also dispatched to the faculty in rotation as short-term lecturers.

to help draft a criminal law and a criminal procedure law to be applicable after the period of UNTAC authority to replace the 1992 transitional provisions related to the criminal law and procedure.⁸¹ To provide assistance in legal education, USAID first tried to cooperate with the Faculty of Law and Economic Science of Phnom Penh University, but to no avail. It then set up a separate law department at the Faculty of Business Management and dispatched an assistance team from the Law School of the University of San Francisco.

4-3-3 EU

The EU set up a section for assistance to Cambodia within the European Commission. It dispatched a survey team from 1995 to assess assistance in relation to the judicial system.⁸²

4-3-4 Australia

Through AusAID, Australia is providing assistance in the field of criminal justice, helping improve the police, courts and prison facilities, and distributing manuals on criminal procedures to practitioners. The same members of a survey team are in charge of the whole process from surveying and reporting to proposing and implementing measures for improvement. These members cooperate with their Cambodian counterparts from start to finish. The process from surveying, decision-making to the achievement of visible results is done very quickly, which has been evaluated highly by the Cambodian counterparts. This feature of Australia's assistance is worth closer consideration.

4-3-5 Japan

Japan has been providing assistance through JICA to help establish the legal system. In 1996, it began to invite Cambodian law experts to Japan to allow them to observe the legal and judicial systems in Japan. Another assistance program started in 1999 to help draft a civil code and a civil procedural law. The program is being carried out on a large scale by setting up working groups both in the donor and recipient countries, a new method that has not so far been adopted for conventional assistance related to the legal system. Assistance

to the Cambodian Bar Association began in October 2000 with cooperation from the Japan Federation of Bar Associations. Assistance is also being provided to reinforce the investigative capacity of the judicial police staff.

4-3-6 World Bank

The World Bank dispatched an expert to the Ministry of Commerce to draft a contract law. In 1997, the Ministry of Justice took charge of drafting the law. The World Bank helped the Ministry of Justice draft a commercial enterprise law and a commercial contract law, and is now working towards their enactment. The World Bank also conducted a legal and judicial diagnostic study on the whole legal system and held a workshop in April 2000, in which there were participants from the Cambodian government and various assistance organizations. The bank also managed a steering committee on the judicial system jointly with Bunchhat, chairman of the jurists' committee of the Council of Ministers. The Bank has thus continued to play a leading role in coordinating overall assistance concerning the judicial system. It plans to work out a legal and judicial reform strategy paper for distribution among the related organizations. It is noteworthy that the bank also plans to map out a Master Action Plan (MAP) in the near future and to propose it as the framework for all kinds of assistance in helping Cambodia improve its judicial system.

4-3-7 Asian Development Bank

The Asian Development Bank has been assisting Cambodia in revising the land law, and a revised bill was submitted to the National Assembly in August 2000. The bank plans to team up with the Ministry of Justice, its counterpart, to train experts ahead of the enactment of the revised land law.

4-3-8 IMF

There are no reports that the IMF is assisting Cambodia in any specific work on drafting laws. The IMF, however, is apparently conducting a basic study for an improved legal system from the viewpoint of enhancing the investment environment. The IMF reportedly has the

⁸¹ The expert drafted the two laws, but later left the post after France took charge of drafting.

⁸² The survey team should have prepared a report, but it is not known what proposals were made.

intention of extending assistance on a collateral trade law and execution law, but it is now observing Japan's activities that may overlap with those planned by the IMF.

4-3-9 Other legal assistance

The Phnom Penh office of the UN Human Rights Center is managing a judicial mentors program at each court. At present, the office is reportedly considering the possibility of assisting the Cambodian legislature to improve its legislative capacity.

4-4 Obstacles to the establishment of the rule of law

4-4-1 Delay in preparing legislation and the underlying causes

Delays in the law-making process under the jurisdiction of the Ministry of Justice have been pointed out ever since the pre-1998 election period. In particular, the absence of basic laws concerning the life of ordinary people is blamed on the delay in the ministry's drafting work. The main cause of the delay in preparing legislation is the lack of capable personnel. There are only a limited number of ministry officials who are sufficiently capable of working as bureaucrats to prepare legislation.⁸³ The ministry has many bureaucrats and judges under its jurisdiction who studied in socialist countries during the days of the Heng Samrin government. Their capacity may be high, but they lack understanding of the basic principles of the modern law of civil society and are unable to contribute to the establishment of an adequate legal system in Cambodia.

Another reason for the delay was the aforementioned traditional nature of the Ministry of Justice. The ministry lacked awareness that it had become the central force for promoting legislation work. The delay was also traced to the ministry's failure to educate its senior officials, who had studied in socialist countries, in the practical knowledge required in legislating for modern civil law. Furthermore, as the ministry was dominated

by bureaucrats with allegiance to the Cambodian People's Party, the appointment of Vithun as the new justice minister from the Funcinpec Party in a cabinet reshuffle after the 1998 elections seemed to have caused friction within the ministry.

4-4-2 Malfunctioning of the administration and its underlying causes

Refer to the following section of "5. Administrative functions".

4-4-3 Delay in judicial reforms and the its underlying causes

The causal factors mentioned in (1) brought about a delay in judicial reform at the same time. The Rule of Law according to the new Constitution can never be realized if the laws have not been established for the courts to apply. Without any measurement of justice or reason, it is hard for the courts to make judgments in line with the spirit of the rule of law. Even if the judgment is objectively fair and reasonable, the loser in a trial would see it as unfair and unreasonable, leading to distrust in the judiciary. Under such circumstances, it is impossible to gain public trust in the judiciary, especially when the corruption of judges is taken for granted among the citizens. Indeed, the judiciary in Cambodia is a long way from gaining public trust, which is a major cause of the delay in the judicial reform.

When there is no expectation that a conflict can be settled under the law, the factors that count are the power of strongmen and the power of the gun.⁸⁴ Present-day Cambodia is governed by the gun, not by law. The State, which is unable to cope with this situation, and the administration itself, are the very cause of the delay in judicial reform.

4-5 Challenges and direction of future assistance

Cambodia needs to legislate basic laws as soon as possible to cope with the delay in overhauling the legal

⁸³ In the new government launched after the 1998 national elections, UK Vithun of the Funcinpec Party assumed the post of justice minister. But the then Secretary of State Ly, who had been in charge of legislation work, was transferred to the appellate court to serve as judge. As a result, virtually no one was available in the ministry with the required capabilities to prepare legislation. JICA's assistance in drafting a civil code and civil procedural law, which started in 1999, was blocked for some time, apparently due to this personnel reshuffle.

⁸⁴ At a judicial reform seminar held in 1998, the then Justice Minister Snguon lamented that the prevalence of the gun prevents the court system from working properly.

system and executing the judicial reform. Donor countries, meanwhile, need to assist in strengthening the law-making process. The administration must also work according to the legislated laws, and this requires the establishment of legalism in the field of government administration, as further discussed in 4. As mentioned in “2. Democratization” and “3. Human rights”, the enactment of laws is meaningless if the courts fail to properly deal with and ensure remedies for infringements of human rights. Thus, it will be necessary to provide assistance for the judicial reform. As Cambodia lacks adequate human resources, assistance will also be needed in training legal professionals.

4-5-1 Challenges

The Cambodian government must tackle the following challenges from the perspectives of democratization and the protection of human rights.

- (1) Overhauling of the legislative system: It is essential to first strengthen the legislative system. The views of legalism requires that the executive and judiciary powers should be bound by laws enacted by representatives of the people in order to preempt arbitrary actions by the two branches. Therefore, any action by the government that could affect people's rights and freedoms must be clearly justified by law. Such law must not be modified according to the will of the ruling forces. It must reflect the realities of society and the will of the people. The content must be fair and reasonable to ensure socioeconomic development.

Even the “six basic laws” as they are called in Japan have yet to come into force in Cambodia, and preparatory work for those laws is not proceeding smoothly. Among some laws already in place are the press law, law on civil servants, nationality law, and political party law, all of which are being questioned as to their constitutionality. However, the Constitutional Council is not working and there exists no official occasion for examination of the constitutionality of those enacted laws. The government, meanwhile, is reportedly moving to enact an NGO law to control the activities of human rights NGOs that are critical of the government. The situation is rather that of “rule by laws.” Under these circumstances, the required laws must be put in place as soon as possible in all areas of

government administration. To ensure their effectiveness in achieving the above-mentioned spirit of the rule of law, it will be necessary to strengthen the process of law drafting, improve deliberations on bills in the National Assembly and establish an effective system of reviewing the constitutionality of enacted laws.

- (2) Establishment of the court system: It is necessary to establish the court system as well as its authority and relevant procedures to ensure that the courts can guarantee justice through adequate application of the law, independently of any political pressure. The specific means to this end include i) ensuring that the Supreme Council of the Magistracy and the Constitutional Council function effectively to deal with organizational and authority-related matters of the courts and judges, in order to establish a judiciary that is independent of political influence, ii) strengthening access to the courts in the first instance and then the appellate court, iii) improving out-of-court settlement procedures and integrating them into the official judicial system, and iv) guaranteeing the principle of non-interference by the police in civil affairs, making the courts the sole authority to confirm the facts of a case, handing down sentences and settling conflicts. For procedural improvements, it is necessary, among other steps, to clarify litigation procedures, guarantee procedural rights, improve court proceedings, and ensure an effective review system by the appellate court.

Improvement of the system of jurisprudence: It is also necessary to establish the official function of the courts in interpreting laws, through such means as announcement and publication of sentences and their justification, case-law making by the higher courts, and theorization of the legal structure to ensure smooth interpretation of the law.

Improvement of investigation and law enforcement functions: With a view to establishing an effective criminal justice system, it is necessary to strengthen investigation and law enforcement functions. As part of efforts to ensure fair court proceedings, objective and scientific investigation is required, avoiding excessive reliance on confessions by suspects and defendants. It is also necessary to provide adequate human and material resources to make sure that law enforcement is ef-

fective.

Information, transparency and accountability: Procedural transparency and implementational fairness must be ensured in the process of law enforcement. Court proceedings must be open in a way that is effective, with the results announced and made accessible to the general public. In cases of irregularities for which the state is responsible, citizens in their private capacity must be guaranteed an opportunity to appeal effectively.

- (3) Nurturing of judicial staff and legal services: The judicial system will be meaningless if it is not put into practice, making it indispensable to nurture capable legal professionals for effective implementation of the system. For citizens, there must be guaranteed access to judicial procedures and legal services.
- (4) Raising citizen's awareness in relation to the judicial system
- (5) Improvement of legal education and research

4-5-2 Direction of future assistance

The above-mentioned challenges and desirable direction for future improvements (proposals and means for their realization) are summarized in Table 1-2.

4-6 Direction of Japan's assistance

4-6-1 Significance of legal assistance by Japan

It is said that Japan has transplanted the legal and judicial systems of Western countries in the most comprehensive form and succeeded in the modernization process. However, this experience has not been appreciated by other nations since Japan has not so far contributed much to legal assistance for foreign nations. The Japanese government just started a legal assistance project with the Cambodian Ministry of Justice in 1996 through JICA, and it has not accumulated sufficient experience, including that which would help determine the best means of assistance.

Assistance in establishing a legal system, when extended by a foreign government, might risk being taken as encroaching on the recipient's sovereignty as a nation. Therefore, this issue should be treated carefully. Japan, in light of its military actions in other nations

half a century ago, should give special consideration in extending legal assistance. As already stated, in Cambodia there are still continuing conflicts among political parties that are beyond the imagination of people living in a peaceful Japan. The utmost care should thus be taken so that Japan's assistance is not caught up in political conflicts.

4-6-2 Criteria for rationality

As discussed in the preceding section, Japan's legal assistance activities present some important elements requiring special attention. Japan, however, does not have to hesitate to provide legal assistance just because of this. The intention of Japan's overseas assistance is to contribute to the independence and stability of the recipient nation, and therefore regard should be paid to the recipient's independence and self-help efforts. Since the above-mentioned risk of being misunderstood by the recipient often arises because of the target and method of assistance, the most important task is to appropriately determine what should be the coverage of assistance and how this assistance should be carried out.

In view of Japan's philosophy regarding legal assistance and the possible problems of legal assistance, the following points should be given priority as criteria for appropriate assistance in determining the coverage of assistance and the methods.

- (i) Respect for the recipient's independence;
- (ii) Guarantee of neutrality;
- (iii) Persuasiveness based on objective facts and scientific method;
(e.g. sustained efforts to conduct field surveys);
- (iv) Pluralism in values;
(e.g. information from NGOs, specialists from foreign nations); and
- (v) Transparency.

4-6-3 Reconsideration of evaluation methods

Since ODA is financed by the Japanese taxpayers, legal assistance should be endorsed by the Japanese people. For this to occur, there must be assurances that Japan's ODA funds are being used to promote peace and democracy according to Japan's constitution, and that they are being used in an effective way. This means that Japan should study the most efficient means of assistance, the most appropriate fields, and how the

Table 1-2 Goals of Legal Assistance and the Direction of Desirable Assistance

Goal	Scope		Content	Implementation method
Legislature reinforcement	1. Drafting of specific laws		<ul style="list-style-type: none">Establishment of six major laws (enactment and amendment)Enactment of related laws	<ul style="list-style-type: none">DraftingJoint drafting workAdvice on drafts prepared by the Cambodian side
	2. Restoration and adjustment of the overall coherence of the legal system* ¹		<ul style="list-style-type: none">Amendment and abolition of existing laws	<ul style="list-style-type: none">Joint work to determine incoherence in the laws and make any necessary revisionsAdvice on the amendment and abolition of inconsistent lawsIndication of inconsistencies
	3. Development of a master plan* ²		<ul style="list-style-type: none">To make a plan envisaging the overall legal system	<ul style="list-style-type: none">Preparation of a master planJoint work to prepare the master planAdvice on the plan given by the Cambodian side
	4. Proposals for policy-making* ³		<ul style="list-style-type: none">Assistance in policymaking for each ministry or department	<ul style="list-style-type: none">Policy proposals from a comprehensive perspective
	Developing human resources	5. Training of bureaucrats	<ul style="list-style-type: none">Development of legal capabilityTransfer of legislation expertiseTraining of staff drafting laws in the Ministry of Justice and other ministries	<ul style="list-style-type: none">Overseas training and observation on the systems of foreign countriesDispatch of instructors for lectures and seminarsRelevant technical assistance including provision of the required equipmentAssistance in the enactment of laws
		1" Training in the legislation process		<ul style="list-style-type: none">Training of staff drafting laws in the Ministry of Justice and other ministries
Judicial reform	6. Preparation of various procedural and related laws		<ul style="list-style-type: none">Assistance in the enactment of the above-mentioned laws	<ul style="list-style-type: none">Preparation of draft lawsJoint work to draft lawsAdvice on the drafts given by the Cambodian side
	7. Improvement and installation of equipment		<ul style="list-style-type: none">Improvement of the environment conducive to the realization of the rule of law	<ul style="list-style-type: none">Repair and construction of court buildingsSupplementation of the equipmentDistribution of law booklets*⁴Compilation of manuals
	Developing human resources	8. training of judges, clerks, prosecutors, judicial police and lawyers	<ul style="list-style-type: none">Promotion of human rights awarenessUnderstanding of the significance of the rule of lawRecognition of the roles of the judiciary*⁵Development and improvement of legal techniques	<ul style="list-style-type: none">Overseas training and observation on the systems of foreign countriesGeneral trainingSpecific training*⁶Advice
Legal aid	9. Legal-aid departments of the country, the Bar Association, NGOs		<ul style="list-style-type: none">Guarantee of the citizens' right to file lawsuitsGuarantee of the right to nominate lawyers for defenceFund-raising and investment	<ul style="list-style-type: none">Introduction of overseas legal aid systemsPromotion of exchanges between NGOs and the Bar Association, research meetings between the state and the NGOs, between NGOs, and the dispatch of advisersEstablishment of legal information centers of the Bar Association, etc. in each provinceFinancial assistance
Promotion of citizen awareness	10.Promotion of citizen awareness* ⁷		<ul style="list-style-type: none">Recognition of citizens' basic human rights as inherent rightsPromoting attitudes for resolving problems not by the gun but by the law	<ul style="list-style-type: none">Promoting awareness among and cooperation with local NGOsDistribution of posters, pamphlets, videotapes and other visual promotion mediaEstablishment of information centers with computers for public access to informationFinancial assistance
	11.Developing human resources		<ul style="list-style-type: none">Training activists for the promotion of awareness in the local community	<ul style="list-style-type: none">Cooperation with local NGOsFinancial Assistance

Table 1-2 Goals of Legal Assistance and the Direction of Desirable Assistance (Continued)

Goal	Scope	Content	Implementation method
Improvement of legal education	12. Faculty of law, graduate school of law	<ul style="list-style-type: none"> • Improvement of the curriculum • Rationalization of university management 	<ul style="list-style-type: none"> • Dispatch of advisers to the Ministry of Education, Youth and Sports • Invitation of trainees from the Ministry of Education, Youth and Sports • Inspection tours by university heads and managers to foreign universities • Dispatch of advisers • Dispatch of lecturers • Joint research on legal education at the university level • Acceptance of Cambodian students by overseas universities
Start of legal research	13. Research institutions	<ul style="list-style-type: none"> • Establishment of research institutions on legal matters 	<ul style="list-style-type: none"> • Establishment of research institutions after sufficient discussion with local people • Dispatch of staff in charge of institutional development

Source: Prepared by the author

Notes for Table 1-2

- ^{*1} Confusion remains in Cambodia as to the validity of laws enacted before the new constitution was established. Many laws enacted during and after the period of UNTAC authority were made by donor governments and organizations in accordance with their respective legal systems. Therefore, the Cambodian laws sometimes lack coherence, and need to be adjusted to form an integrated legal system. In addition, implementation regulations should urgently be prepared for those laws that remain ineffective due to a lack of such regulations.
- ^{*2} The above-mentioned two challenges—drafting of specific laws and the restoration and adjustment of the overall coherence of the legal system—should be dealt with urgently. At the same time, it is necessary to prepare an overall master plan for the legal system, in view of the future prospects. It is also necessary to produce a master plan for the cabinet, including each and every specific ministry and identifying the respective ministries that should be in charge of particular fields.
- ^{*3} With regard to legislation in Cambodia, more fundamental policy proposals should be made regarding the laws that should be enacted. Specific proposals will be required on the national goals sought by Cambodia and on the more urgent challenges of shifting to a market economy and internationalization. However, these proposals might lead to allegations of internal interference, therefore assistance should be provided only after careful consideration.
- ^{*4} Distribution of the compilation of existing law texts to judges, prosecutors, lawyers, clerks, and public officials will be very helpful in spreading awareness that conflicts should be resolved according to the law. This measure, although it may seem trivial, will be effective, and is definitely worth mentioning here. This task of compilation should be given not only to judges, but also to all administrative officials. Since “obedience to the law” may be too abstract to grasp, the compilation will be helpful for public officials to apprehend their duties as public servants and will encourage model practices.
- ^{*5} Bribery of judges and other judicial officers is one of the greatest obstacles to the judicial reform. It is well known that their remuneration is too low to support their families. The problem is also that of tax reform. Measures should be devised to improve the inadequate tax system and other real problems that need to be solved before contemplating legal considerations. Such an approach, essential for all reforms, is needed to root out malicious behavior.
- ^{*6} Although several international institutions and NGOs previously conducted training programs for court officials, prosecutors and lawyers, the situation is still inadequate. Research on such training should be continued based on reviews of previous training methods.
- ^{*7} It is necessary for citizens to deeply understand democratic procedures and rules. For Cambodian citizens who experienced the Pol Pot reign, the restoration of social awareness of the significance of compliance with the law is one of the greatest challenges in Cambodia.

assistance should be provided.

It thus becomes necessary to evaluate whether the assistance has achieved its purposes and whether it was carried out efficiently. The effectiveness of assistance for the legal and judicial systems cannot be measured in a short period nor be evaluated by conventional methods. This also requires review of the criteria for assistance evaluation. Such evaluation, of course, should not be made by the staff of the assistance project concerned. Methods for this type of evaluation have not yet been established. When the assistance project is evaluated by a third party, it is reasonable for the staff of the project to be given the opportunity to provide comments or rebuttals. Evaluation criteria and methods will gradually become more sophisticated with repeated application of the evaluation and rebuttal procedures.

Specific projects should all be reviewed concerning the object of assistance, methodology and present situation, with the results reflected in ongoing and future assistance. This process should not be neglected.

4-7 Content and scope of Japan's legal assistance (specific plans and priorities)

Since Japan's legal assistance should be offered not across the board but according to Cambodian requests, it is necessary for Japan for the moment to ensure the success of ongoing projects. Their success does not merely mean the drafting of laws, but also ensuring that these laws will pass the Council of Ministers and the National Assembly. In addition, after the laws are enacted, their effectiveness as norms in the actual society must be considered and they should be accompanied by measures to ensure this effectiveness. Only after completion of this process will Japan be trusted by Cambodia. Cambodia would indicate its confidence in Japan by requesting assistance for the next stage of legal assistance, and Japan should sincerely try to meet such requests.

Taking these viewpoints into account, Table 1-3 shows the assistance that has been specifically examined to identify the most appropriate measures for Japan to undertake in the promotion of legal assistance.

4-8 Points to be considered in implementing legal assistance

4-8-1 Importance of prior research

It is important to properly understand the existing legal norms, historical background and legal culture in the recipient country. Prior substantial field surveys are necessary to identify a legal system that would be suitable for Cambodia and in view of the necessity of amendment after enactment.

4-8-2 Effectiveness of joint work by bilateral working groups

Japan's assistance for the civil code and civil procedural law has adopted methods that respect the independence of Cambodia, so that the final decision is made by Cambodia after comprehensive study by the Japanese working group, presentation and explanation of the drafts, and the subsequent bilateral examination. Since this assistance method is different from the previous methods applied by western countries, it is drawing the attention of many countries and assistance organizations. It has been highly evaluated as a method of maintaining objectivity, neutrality, and a diversity of values.

On the other hand, there is criticism in Cambodia that it takes too long for codification. Therefore, it is extremely important for the Cambodian staff in charge of the legal drafting to fully understand the meaning and the necessity of codification based on careful research and examination that Japan is carrying out at home. Japan should also actively seek to gain their understanding.

It now takes considerable time to translate the huge volume of original drafts of the civil code and civil procedural law partly due to the lack of interpreters in Cambodia. Cambodian staff in charge of legislation therefore have no time to examine them in advance. Even though the materials are distributed in advance, thorough preparatory lectures by legal specialists should be offered due to the Cambodian staff's lack of the necessary understanding. However, the present Japanese assistance setting does not adequately respond to this requirement.

It is desirable, if possible, that specialists should be dispatched separately according to the requirements to work on each law. It is also necessary for interpreters,

Table 1-3 Content and Scope of Japan's Legal Assistance

, ○, and unmarked items indicate the priorities in different rankings, with meaning the highest priority.

	Scope, target	Implementation method	Significance Direction
Reinforcement of the legislation	1 a Enactment of each law Civil code, civil procedural law (in process)	Joint work (establishment of a working group from each side)	Essential conditions for a market economy Japan's future legal assistance depends on the success of this codification work. This is a top priority requiring substantial efforts. The Ministry of Justice is the current counterpart. Two working groups were set up, one each in Cambodia and Japan. The Japanese working group is fairly large, having 11 members including scholars and practitioners. An examination from the viewpoint of comparative law has been approved and is under way. Propagation of the project achievements will require measures mentioned in section 2-3-8 "Points to be considered in implementing legal assistance."
	b Laws related to a above Laws corresponding to the Real Property Registration Act, the Family Registration Act, the Residents Registration Act, the Execution Act, the Preservation Act, the Deposit into Justice Offices Act, the Bankruptcy Act, the Civil Conciliation Act and others in Japan	A joint working system or system of offering advice, in which a presented draft is amended by Cambodia and advice is provided by Japan. (Conferring Japan's proposals to technical aspects would save time)	Laws to ensure the effectiveness of the civil code and the civil procedural law Cambodia has already requested the preparation of laws based on the existing civil code and civil procedural law. Assistance according to local requests will promote self-help efforts. The examination of local requests and investigation of the present situation will be necessary before proceeding to the next stage. The investigation should have started by now. Dispatch of specialists is necessary to conduct research on the materials and equipment required in Cambodia.
	c Laws concerning the judicial police	Joint work Basic lectures Advice	Training of the police of the Ministry of Interior and prison officers has been provided so far by the Japanese government and the UN Far Eastern Asia Crime Prevention Training Center. There is enough room to consider legislative assistance for the administrative work of police and prisons. It is desirable to rely on field surveys by experts in order to be well-informed on the present situation to determine what assistance is necessary and feasible. Assistance should be comprehensive, as opposed to the previous ad hoc and sporadic type of assistance.
	d Other individual laws	Decided by discussion	Success in making the civil code and the civil procedural law mentioned above would enable Japan to win Cambodia's confidence in its legal assistance and lead to further requests from Cambodia. These requests should be seriously considered.
	1" Training in the drafting process for each law	Joint work or advice for the law-making process	Members of the Cambodian working group on the civil code and the civil procedural law will themselves have the opportunity to obtain the know-how through the legislative process.*1
	2 a Coherence of laws Coherence of the civil and the criminal procedural laws	Discussions are under way on the establishment of a Cambodia-Japan study committee	A coherent legal system is necessary for a unified state governed by law. It is desirable that both the civil and criminal procedural laws apply the same litigation system, otherwise, two kinds of civil procedures may exist in one nation. The most urgent task is to avoid such a situation.
	b Law corresponding to the Court Organization Act (The law on the organization of the courts has already been enacted and amendment is now under way. However, enactment of the procedural laws will require further amendment of the courts organization law.)	Since the law is now being revised, its may be sufficient just to give advice.	This relates to the issue of which court should be in charge of conflicts over the issue of succession in the family as stipulated in the Civil Code. The purpose is to ensure consistency with the substantive law. At present, there is only one Appeal Court, which is located in Phnom Penh. In order to guarantee the right to access to justice: A study group on the "family court," should be established if courts similar to the family courts in Japan are anticipated. The number of appeal courts should be increased.*2 *3

Table 1-3 Content and Scope of Japan's Legal Assistance (Continued)

	Scope, target	Implementation method	Significance Direction
	3 Master plan		
	a Master plan (MP) for the Ministry of Justice	Preparation of the MP	There are many problems at present even with fundamental rules.
	b Master plan for the whole administration	Joint preparation of the MP Advice on the MP prepared by Cambodia	To respect Cambodia's independence and to ensure political neutrality and objectiveness as well as evaluation from various viewpoints, a master plan should not be prepared from a short-term perspective.
	4 Policy proposals	Advice	The same concerns as mentioned above. This is possible only when there is a firm request from Cambodia and it should be implemented in accordance with the current rules.
	5 Training in the technique of legal drafting for bureaucrats of the Ministry of Justice and other ministries	Dispatch of instructors for lectures and seminars Provision of related technical assistance and materials/equipment required Assistance in the actual implementation stage	Many bureaucrats in the Cambodian administrative institutions have studied in either defunct or existing socialist regimes. They do not necessarily understand the principles of modern civil law. Their understanding of the principles and acquisition of the legislative know-how would be of great help to Cambodia. They will play a leading role in the next generation, who will lay the foundation for friendly and trustworthy relations with Japan. By referring to the laws to be enacted, concentrated lectures on legal principles, legal policy from the point of view of comparative law, legal know-how, and other issues should be provided by instructors dispatched from Japan. The program should have a long-term perspective. Invitation of bureaucrats from each ministry to Japan*4
Judicial Reform	6 Preparation of each procedural law, the court organization act and other related laws	Assistance for the drafting of each law mentioned above	The same as the drafting of each law mentioned above
	7 Improvement and installation of materials and equipment	Construction of the Appeal Court Case management using computers Distribution of law compilations in Khmer to all judges, clerks, prosecutors and lawyers Distribution of these to commune authorities Compilation of manuals for the settlement of cases based on the new procedures laws	Efforts to ensure an environment conducive to the rule of law Assistance should not overlap activities conducted by AusAID Financial support to the UN Human Rights Center conditional on the additional printing of law compilations for further distribution Compilation and distribution of manuals for the new civil procedural law in Khmer.
	8 Training and developing human resources (judges, clerks, prosecutors, judicial police officers and lawyers)	General training Specific training Observation tours and training abroad	Awareness of fundamental human rights, the rule of law and the roles of the judiciary*5 Development and improvement of legal know-how Assistance has started for the Cambodian Bar Association through the Japan Federation of Bar Associations Provision of forensic investigation techniques for judicial police officers (assistance extended in the past was as ad hoc projects) Lectures and seminars in view of the new procedural laws to be enacted will be necessary, (as follow-up assistance after the enactment).

Table 1-3 Content and Scope of Japan's Legal Assistance (Continued)

	Scope, target	Implementation method	Significance Direction
9	Legal aid system, financial input from the National Treasury, and legal aid provided by bar associations and NGOs	Introduction of legal aid systems around the world Coordination between NGOs, and between NGOs and bar associations Meetings between the government and NGOs or the like Dispatch of advisers Establishment of financial assistance to the legal information centers of bar associations and other offices in each province;	It is indispensable to ensure the right of citizens to have access to justice. There are two legal aid groups supported by overseas bodies, other than the legal aid programme run by the Cambodian Bar Association. This is a delicate issue. Cooperation of the Japan Federation of Bar Associations with the Cambodian Bar started in October 2000 and includes cooperation on legal aid. It is possible to expand the provision of information on a non-governmental basis. In modernizing the judiciary, lawyers play a major role, as is the significance of legal aid. In this sense, consideration should be given as to whether financial assistance is possible in this field.
10	Raising public awareness		It is said that mental and physical persecution under the Pol Pot regime was so severe that Cambodians have lost awareness of the significance of compliance with the law. In order to restore sound legal awareness, the legal system should be explained so that all can understand it. Distribution of posters and picture books, lectures using them, and the production and distribution of videotapes is recommended. It is vital to cooperate with local NGOs. Attention should be paid to developing human resources in local NGOs and this requires the cooperation of Japan's NGOs. Since the provision and disclosure of legal information for citizens should be guaranteed, assistance is necessary to provide facilities and equipment to allow easy access to the law using computers and other services. Financial assistance for these purposes
11	Developing human resources in communes and local communities	Lectures, seminars and visits overseas	Cooperation with NGOs Financial assistance
12	University education Law department of the law faculty of Phnom Penh University Law faculty of private universities Graduate schools	Improvement of the curriculum Rationalization of university management	Students are to play a leading role in establishing the foundation of the nation. Since it is necessary to develop human resources, which are now at insufficient levels in Cambodia, assistance should thus be offered to promote university education. It is now difficult to offer direct assistance to Phnom Penh University. It is possible to dispatch advisers and lecturers from Japan and to carry out joint research on legal education between Japanese universities and NGOs and their Cambodian counterparts. Bureaucrats of the Ministry of Education, Youth and Sport in charge of universities as well as university personnel can be invited to Japan. A system must be established to enable Japanese universities to easily accept law department students from abroad.*6
13	Setting up research institutions on legal studies		This should be an institution that plays the role of a think tank in promoting the self-reliance of Cambodia. The institution should be able to play a central role in the future of Asian legal research.*7 Establishment of a research institution after sufficient discussion with researchers in Cambodia, Thailand and other Southeast Asian and East Asian nations. Dispatch of officials in charge of setting up the institution

Source: Prepared by the author

Table1-3 (notes)

- *¹ This will be useful not only because sustainable impacts can be expected from such assistance as the training of trainers, but also because the political implications can be excluded to a certain extent as long as the trainees are properly selected. This is particularly meaningful in helping to cement ties with Japan.

When the new civil procedures law is enacted, the roles of judges, clerks and lawyers will be substantially different from the present ones. Training based on the new law is extremely important. In order to change the present concept of justice, which is more characteristic of the administrative branch, it is desirable for Japan, which has the same Asian culture as Cambodia, to dispatch three jurists to help develop human resources in Cambodia. The lectures provided in Phnom Penh by the Japan Federation of Bar Associations to Cambodian bar associations, which started in 2000, are significant. Such lectures will also be necessary for Ministry of Justice and court staff.

- *² Assistance is necessary for the construction of court buildings and drafting a law on the organization of courts to increase the number of appeal courts, to be conducted in the form of technical cooperation projects.

- *³ An example of tangible assistance: This is an example of assistance for which the earliest achievement is desired by the recipient. It is a form of assistance necessary to maintain mutual confidence.

- *⁴ Support for training in Japan: Legal practitioners have already been invited to Japan for judicial training. However, the program only lasts less than two months, and is a long way from yielding the expected results. Long-term training assistance is necessary so that Cambodian practitioners can understand the actual practice of legal and judicial systems in Japan and so that they will be able to prepare legislative plans in the future. For this purpose, a comprehensive training system should be established, in which trainees can study at the Japanese Ministry of Justice, district courts, high courts and the Supreme Court, as well as at law firms, as with students of the Legal Training and Research Institute. It will also be helpful for them to have the opportunity of further study at the research institutes of universities. Such training programs will also be necessary as part of future judicial assistance for nations other than Cambodia.

- *⁵ Assistance for independence of the judiciary

A priority matter for independence of the judiciary is to guarantee the status of judges. At present, bribery involving judges leads to unfair judgments and the loss of public confidence in the judiciary. It can be expected that reform of the litigation system will solve these problems to a certain extent, but a fundamental cause is the low remuneration for judges and other public officials. A solution to this is to improve the tax system and enact tax-related laws. However, politicians are often reluctant to enact such laws because it could threaten their political base. Research should also be carried out on an effective tax system.

In addition, people often carry guns even around the courts, which is a threat to the judges. Although an ordinance of the ministerial conference prohibits people from carrying guns, many guns remain in people's hands, both illegally and legally, making the ordinance virtually ineffective. One reason for the prevalence of guns in the society is the low level, nonpayment, or delayed payment of wages for public servants, which also highlights the problem of the tax system.

Openness is necessary to guarantee a fair trial. NGOs should be enabled to easily attend trials and report on cases to the public. The lawyers are concentrated in Phnom Penh, and it is necessary to enable as many lawyers as possible to act as representatives in lawsuits. Although a system of circuit lawyers can be recommended, the bar associations cannot afford the expenses. Research is necessary on this system. This relates to the future of legal aid.

- *⁶ At present, there is a severe shortage of teachers in Cambodia. Those who study abroad tend to stay there as they can earn little at higher education institutions in Cambodia. It is recommended that these people be given a scholastic position in Japan and then be dispatched to Cambodia by the Japanese government. This plan requires the full cooperation of Japanese universities, and the government should positively seek this.

- *⁷ Assistance from foreign governments and multilateral donors is only an interim measure. Under normal circumstances Cambodian citizens themselves should judge and determine the policy regarding the legal system of the State, and to this end, basic legal research should be guaranteed. This requires the establishment of a high-level research institute that studies the history of the legal system in Cambodia, identifies the present situation of the legal system, studies the legal systems of foreign countries and gathers legal materials required for the research. It is hoped that excellent researchers can be attracted, especially from Asia, and promising Cambodian researchers can be dispatched from Japan as specialists so that they can study at the institute. The institute should also become the place for nurturing Cambodian researchers. It is also advisable to prepare a list of specialists and dispatch experts selected from the list to other legislative organizations. Hopefully, this will become a center of Asian legal research that can pave the way for research to facilitate legal assistance to countries other than Cambodia. It is essential that human resources should be secured and developed, besides materials and equipment. Establishment of such research institutes is all the more necessary since Cambodian educational organizations are still at an immature stage of development.

who still lack the expertise, to take part in working group meetings and listen to deliberations there. More efforts should be made to improve the effectiveness of the group examination system through these measures.

4-8-3 Significance of assistance for the enactment of laws and their dissemination

It is necessary to enact the drafted laws and continue various forms of assistance to ensure that the laws are taken up by administrative and judicial institutions and citizens. It is also necessary to find competent officials among the staff and provide further training as supervisors of the legislation process after drafting. Also required is close communication with the minister in charge and the chairperson of the jurists committee of the Council of Ministers.

The dissemination of a new law involves explanation to the judges and prosecutors of each court as well as to lawyers, and training for the implementation of the new law by showing videos of mock trials of specific cases. Such steps will be necessary in view of the fact that many Cambodian jurists do not have a background education in law. If videos of mock trials on the new law are shown just after the drafting of civil and civil procedures laws, this would be extremely effective and helpful for the staff of the Ministry of Justice, the jurists' committee of the Council of Ministers, the Bar Association and other bodies to understand the general framework of the Law. Once the scenario for a mock trial is completed, modification is easy even if the laws are enacted with some amendments. In this sense, making videos is very useful due to its flexibility.

4-8-4 Coherence of the laws

The present situation is that each basic law is being drafted with the assistance of a separate donor, therefore efforts are necessary to ensure coherence between them. While the drafting of civil and civil procedural laws, for example, is assisted by Japan and that of criminal and criminal procedural laws by France, nothing has been decided about ensuring coherence between the two, such as the relationship between the civil procedures and the procedure for private party litigation as part of the criminal procedures. Occasions for research and examination should be made to bring the two proce-

dures close to each other, after discussions with the Cambodian government, so as to avoid incoherence between the two separate litigation systems.

It is also important not only to cooperate and coordinate with related organizations in Cambodia and donor organizations in the field of legislative assistance, but also to exchange views with human rights NGOs and other groups to guarantee the objectivity and rationality of laws and the diversity of values.

5. Administrative functions

Yasunobu SATO

5-1 Current state of the administrative and financial functions

In 1999, the number of civil servants was 163,000 representing 1.4% of the population. About half of the civil servants belong to the Ministry of Education, Youth and Sport. According to statistics in 1998, the number of servicemen was 143,000. The proportion of servicemen in Cambodia's population is the highest among the ASEAN countries. Although this section chiefly covers the administrative functions of civil servants, if necessary military reform will be mentioned since administrative reform extends to the military.

5-1-1 Transparency, efficiency, and accountability of the administration

The administrative mechanism by which documents related to administrative orders, cabinet decisions, and ministerial notices and orders reach private companies and the general public has still not been developed. Therefore, such documents are not easily available and do not reach many courts, police stations, and local administrative organs outside the capital, Phnom Penh. Local administrative organs can only get copies of them through multilateral donors or NGOs. Moreover, the Cabinet and its agencies do not openly make most orders or decisions needed to enforce codes or laws adopted by the National Assembly, and do not publish such orders or decisions or exchange opinions with people before the enforcement of codes or laws.

The system of communicating information is inadequate not only between the government and the people

but between the central government and local administrative bodies. As a result, administrative procedures or orders cannot be carried out effectively. Moreover, as explained below, persons in charge misinterpret opaque administrative rules or orders due to administrative problems, such as insufficient salaries and widespread corruption.

The National Assembly cannot fully exercise its authority to ask questions in writing to the administration or request a written or oral answer from the minister or the Prime Minister according to Article 96 of the Constitution of 1993 and Article 96 of the revised Constitution of 1999. As a result, the most important procedure for ensuring the accountability of the administration under Cambodia's parliamentary cabinet system is still not being carried out.

5-1-2 Capacity of civil servants

It is important for civil servants not only to improve their expertise, but also to enhance their foreign language ability. The training of talented people is necessary for the current administrative reform. Through training at home and abroad, Cambodia's civil servants will be able to acquire skills and knowledge by means of exchanging information and opinions with various foreign experts. For this purpose, civil servants need to learn foreign languages.

5-1-3 Finance (taxation system)

After the introduction of the value-added tax (VAT) in 1999, the National Assembly passed the Audit Law, which provides for the auditing of the ministries by independent auditors. Although the government has increased the number of personnel in the taxation section of the Economic and Financial Ministry, the financial reform cannot progress unless the addition of personnel leads to the eradication of corruption, which is a critical obstacle to the reform.

5-1-4 Administrative reform

To develop the country, the government made a plan

to drastically reform the post-war administrative and financial systems. Because there were insufficient domestic resources to carry out the reform, which was expensive and required specialist knowledge, the government began to seek support in 1994. Although the government solicited support from the UNDP, the World Bank, the ADB, the IMF, and several countries, the results fell short of its expectations due to domestic political confusion and the armed conflict in July 1997. In the end, after the election in 1998, the government announced the establishment of the Council on Administrative Reform to achieve the following five major reforms: economic reform, administrative reform, arms reduction, military reform, and judicial reform.

5-2 Significant challenge requiring resolution

The following are the most significant problems concerning administrative functions.

5-2-1 Spread of corruption

According to the World Bank's report issued on May 10, 2000, corruption among civil servants is one of the most serious problems for the public and companies in Cambodia. Corruption is especially serious among core national agencies, such as i) the courts, ii) tax offices, iii) customs offices, iv) licensing agencies, v) police stations, and vi) agencies checking standards and quality.⁸⁵ The additional costs of bribery never result in the improvement of services or quality standards. According to the World Bank's report, corruption among civil servants reduces the government's ability to provide services to the poor. In the end, the poor have to bear an excessive burden by having to pay the additional cost of corruption. Companies, especially foreign ones, may be directly affected by corruption, with the result that investment plans are suspended. In addition, corruption and misappropriation frequently occur in connection with foreign aid.⁸⁶

5-2-2 Low salaries for civil servants

The average monthly salary for a civil servant is as

⁸⁵ World Bank (2000), p.ii.

⁸⁶ A recent example is the CMAC scandal in 1999. See Part 2, Chapter 2, Section 6, 1-3-1.

little as about \$20.⁸⁷ This is the fundamental reason for the spread of corruption. With the economy shifting from socialism to capitalism, the government has stopped providing supplies to civil servants, and the cost of living in cities has been gradually rising. To survive in this situation, general civil servants have to take up another job in addition to their regular job. Although some teach private lessons or work as watchmen or taxi drivers, not all civil servants can do such jobs. Therefore, it is hardly surprising that many civil servants abuse their public positions and use the funds obtained from corruption to support their life. This creates a vicious circle: civil servants neglect their jobs; taxation becomes ineffective; government revenues do not increase; and the average salary for a civil servant does not rise. The low salaries for civil servants, which leads to corruption, is the fundamental cause of the various social problems in today's Cambodia.

5-2-3 Inadequate equipment, personnel system and taxation system

Since essential equipment for work, such as telephones, transportation, and depositories for files, is inadequate, civil servants cannot effectively enforce the laws, ensure security, or communicate with citizens. This problem is more serious in rural areas than in cities. Moreover, there are delays in the payment of salaries and nepotism. To strengthen the taxation system and eradicate tax evasion, it is necessary to introduce a monitoring system using highly effective technologies such as computers.

5-2-4 Shortage of capable human resources

The shortage of capable human resources is a general problem in Cambodia. The shortage of capable human resources in the public sector is especially serious since such people tend to go and work for companies that are flourishing under the capitalist economy, international agencies, and NGOs. The resolution of this problem in rural areas is important for good governance in Cambodia in relation to the policy of decentralization.

5-2-5 Decentralization

The commune election that the government is planning will increase the number of people who receive benefits from administrative services. It is necessary to carefully consider problems related to politics, human resources, and logistics as well as problems related to the decentralization of financial and administrative functions.

5-3 Measures by the Cambodian government and trends in development assistance

5-3-1 Participatory development policy

Through the CARERE/SEILA (also called "CARERE II") program started in 1996 supported by UNCDF of the UNDP group, each village, which is the smallest administrative unit, in five provinces has established a village development committee and elected the committee members from among the villagers. The committee carries out its village development plan in a bottom-up style. This program has been highly appreciated and is expected to carry out the following functions for development and democratization: i) experimentation on governance through decentralization; ii) promotion of reconciliation and peace at the grassroots level; iii) reduction of poverty; and iv) contribution to the government's formulation of policies. Because the SEILA program was successful, the government is planning to expand the program. To promote decentralization at the same time, in 1998 the government began to consider the establishment of a commune election system with the assistance and technical cooperation of the UNDP.

Since the public does not have much confidence in the national administrative and judicial organizations, it is appropriate for Japan not only to cooperate directly with the government in carrying out the policies, but also to cooperate indirectly through development NGOs including international NGOs and Cambodian NGOs. There is the possibility of separate funding, such as funding for NGOs that directly aid the grassroots

⁸⁷ See "Memorandum of the President of the International Development Association and the International Finance Corporation to the Executive Directors on a Country Assistance Strategy of the World Bank Group for the Kingdom of Cambodia," Document of the World Bank, Report no. 20077-KH, Southeast Asia and Mongolia Country Unit, East Asia and Pacific Regional Office, February 7, 2000, p.1.

through citizen groups, whether multilaterally or bilaterally. International or citizen groups tend to cooperate directly for community development such as rural development. Therefore, as one of the participatory development policies, donor organizations should facilitate NGO activities so that NGOs can obtain direct cooperation from the Cambodian government.

5-3-2 Various measures for administrative reform and their evaluation

According to the report the Cambodian Development Resource Institute (CDRI) prepared with the support of the ADB,⁸⁸ the Cambodian government is planning the following five measures: i) delivering resources quickly to public institutions, such as local hospitals, health centers, and offices for the rural development, through the following measures: Accelerated District Development (ADD), the Priority Action Programme (PAP), and the adoption of laws concerning the financial system and province and municipal ownership; ii) establishing independent auditing organizations and adopting audit laws; iii) conducting a statistical survey of civil servants and thoroughly analyzing and defining ministerial functions to enhance the efficiency of the administration; and establishing a system of information about manpower management, organizing a system for the Core Group that leads the administrative reform, and incorporating surplus personnel into the public sector; iv) decentralizing the power to plan administrative measures through commune elections; and v) promoting arms reduction, enhancing the professionalism of the military and security troops, and clearly defining the responsibilities and roles of the military and security authorities in the post-conflict society, so that military and security troops can have a proper function in the society.

The administrative reform should start with a statistical survey of civil servants all over the country, a thorough analysis and definition of ministerial functions, and reform of the salary system. Although this approach is highly appreciated, it requires a clear medium-range vision and model, wide support for the improvement of the capacity of civil servants, and close coordination with the reform of expenditure management.⁸⁹

⁸⁸ See Kato *et al.* (2000), pp. 13-16.

⁸⁹ See the memorandum listed in note 87, Document of the World Bank, Report no. 20077-KH, Southeast Asia and Mongolia Country Unit, East Asia and Pacific Regional Office, p. 2.

⁹⁰ *Ibid.*, para 47-49.

⁹¹ *Ibid.*, p. 17, box 7.

5-3-3 Building the capacity of counterparts to absorb aid

The Cambodian government's systematic and administrative ability to carry out development programs is extremely weak. In addition, there are many donor organizations and aid programs. Therefore, the Cambodian administration, which is short of human and other resources, cannot effectively carry out and coordinate development programs.

One of the solutions to this problem is that donor countries should choose various themes for the reform according to the cooperation framework agreed in the CG meeting in February 1999, and establish a cooperative working group to comprehensively deal with aid to several sectors. Donor countries are making efforts to develop an effective partnership approach, establishing counterpart groups in Cambodia, thoroughly monitoring the progress of the reform, and holding a meeting sponsored by the prime minister every three months to examine the results. This is called the Sector-Wide Approach (SWAP).⁹⁰ To succeed with this aid system, the Cambodian government must enhance the commitment and ownership of local administrative bodies and ask the parties concerned to agree on the system. Moreover, the government must plan a medium-range strategy for governmental policies, greatly improve the regulatory systems, and show leadership in drawing up a reasonable budget by preparing an outline for the financing.⁹¹

5-4 Direction of Japan's assistance

The objective of assistance for improving Cambodia's administrative functions is to make these governmental functions effective and efficient. Taking this objective into consideration, Japan's assistance will be examined in the following five fields. In each field, it is desirable to support as far as possible the Cambodian government's measures for administrative reform.

5-4-1 Administration according to the law

The concept of administration according to the law can be considered from the following two aspects: im-

provement of each civil servant's consciousness of the law; and the conformity of administrative procedures with the law. Although it is important to establish laws and rules, they cannot be enforced in reality without those who have the ability to do so. Therefore, it is essential to first improve civil servants' legal awareness so that they can effectively enforce administrative and other regulations.

(1) Improvement of civil servants' legal awareness

It is necessary to establish concrete administrative laws and systems. Assistance programs for this must be planned by taking into consideration the present state of each ministry or department and future demands. For example, Japan can assign legal experts, who will advise the staff of the ministries or departments and provide them with the legal knowledge necessary for administration under a democracy. Japan can also consider a long-range plan to support training in administrative law at Cambodia's administrative or law schools to raise the people's and civil servants' legal awareness. For this purpose, an effective approach is to seek the cooperation of Japan's universities.

(2) Promotion of administrative procedures

Legal experts from Japan should not only raise the legal awareness of civil servants, but also promote the establishment of basic laws, in the area of public administration and the identification of administrative procedures. Legal experts should be assigned to provide detailed advice over an extended period so that basic laws can be enforced effectively.

5-4-2 Improvement of administrative capacity and transparency

Administrative and fiscal reforms, which will lead to an increase in the national budget, are the first step to breaking the vicious circle of low salaries and corruption. The key to success in the reforms promoted by the government is the establishment of a taxation system and a personnel system for civil servants as well as development of human resources. Japan should contribute to this. In the long run, the training of specialists and core staff among civil servants and the introduction of a

national examination system will be necessary for neutral, specialized, and effective administration. Long-term training with practical experience should be included in the training for administrative officials provided by Japan.

It is also important to disclose information about the administration through the application of information technology in administrative bodies. Japan can offer financial and technological support in this regard. Information disclosure also reduces the chance of corruption. The application of information technology can ensure that the taxation system is effective and efficient and increase national revenues. The use of information technology facilitates the notification of laws and orders and improves the efficiency of the administration.

5-4-3 Improvement of the local administration's capacity

Newly elected commune representatives can acquire useful information and carry out effective administration in cooperation with NGOs that have a lot of experience in regional development and aid programs. However, because the direction of local autonomy cannot be clearly predicted, it may be necessary to delegate specialists who can assess the progress and advise on the long-term relationship with the central government and the means of coordination with other local bodies.

5-4-4 Creation of the environment to promote a market economy

To create an environment for the proper functioning of a market economy, Japan can support the government in making laws related to market economy, promote the private sector, and enhance the capacity of civil servants.

(1) Legal assistance

See Section "4. Legal system".

(2) Promotion of the private sector

The private sector includes small and medium-sized companies, which play the leading role in a market economy. Japan can help promote Cambodia's private sector by facilitating various forms of exchanges with

Japan's associations of small and medium-sized enterprises. See Part 2, Chapter 1, Section 2, "Improvement of the environment for industrial development."

(3) Enhancement of the capacity of civil servants

To cope with problems arising from the shift to a market economy, Japan should help enhance the capacity of civil servants. Moreover, Japan should provide the basic public goods necessary for market stability and ensure predictable administrative procedures.

5-4-5 Enhancement of aid absorption capacity of the counterparts

Since enhancement of the capacity of aid counterparts increases the number of capable people engaged in governance, Japan should make constant efforts to expand the training of counterparts. Moreover, to enhance the effectiveness of development assistance and to prevent duplication of effort, Japan should help establish a database in the Council for the Development of Cambodia (CDC) and enhance its ability to exchange information about development assistance, including aid from NGOs, and the ability to coordinate aid projects. It is also important for Japan to encourage NGOs to participate in assistance projects. In addition, Japan is expected to take part in the discussions on the SWAPs to resolve differences of opinion.

Box 1-1 Human Rights**Yoichi YAMADA****1. Human rights violations caused by political conflicts**

A coalition government was formed after the general election in 1993. The Funcinpec Party was dominant in the government, followed by the Cambodian People's Party. Soon conflict between the parties gradually started, leading to violence. In September 1995 a grenade was thrown into the office of Son Sann's Buddhist Liberal Democratic Party. In November, Prince Norodom Sirivudh, the Funcinpec Party's secretary, was arrested for conspiracy to take the life of the second prime minister Hun Sen (the arrest was regarded as oppression by Hun Sen since the conspiracy was not sufficiently corroborated as to be punishable by law).¹ In November 1996, Hun Sen's brother-in-law was assassinated.²

Violent attacks on journalists and their offices caused casualties and the destruction of offices. By 1996, four journalists had been killed.³ No assailants were arrested for any attack. When the office of New Liberty, a newspaper publisher, was attacked on October 23, 1995, the police identified a man as the attacker, but no criminal proceedings followed.⁴ When Thun Bun Ly, the editor of a newspaper called Khmer Ideal was murdered on May 18, 1996, policemen and officials of the Interior Ministry were reported to have carried away the bullets extracted from the dead body, indicating participation of the establishment.⁵ In addition, some journalists were arrested under Article 13 of the Press Law,⁶ on "False Information Insulting National Organs," or Article 63 of the UNTAC Law, "Insults."⁷

In March 1997, the year before the general election, a grenade was thrown among 170 to 200 participants at a meeting of the Khmer Nation Party in front of the parliament building, killing at least 16 people and injuring more than 100 people. Although it was inferred from the testimonies of witnesses and an investigation by the FBI⁸ that security guards of the second prime minister Hun Sen had committed the attack, no one was arrested.⁹

In the meantime, the Cambodian People's Party and the Funcinpec Party strengthened their military power, with the result that tension between the two parties increased. On July 5, 1997, when Prime Minister Ranariddh was traveling abroad, the army of the Cambodian People's Party attacked the Funcinpec Party's army. The battle ended the following day, with more than 50 people killed, many injured, and the destruction of many facilities, including the headquarters of the Khmer Nation Party.¹⁰ Moreover, soldiers plundered private residences. The second prime minister Hun Sen insisted that the Cambodian People's Party had attacked the Funcinpec Party to prevent the intrusion of the Khmer Rouge army, which had the intention of cooperating with the Funcinpec army. On July 7, however, Ho Sok, the Vice-Minister of Interior and a member of the Funcinpec Party, was taken into custody and executed, and then many Funcinpec members were taken into custody, tortured, intimidated, or executed. According to a report by the UN Centre for Human Rights, 41 to 60 persons (most of them were Funcinpec members; those killed in the battle were excluded from this number) were extra-judicially executed for political reasons from the beginning of the battle in Phnom Penh to August 21, when the report was made.¹¹ Several hundred Funcinpec members (chiefly soldiers, but including their wives and children) were taken into custody. Some suffered torture and confessed their connection with the Khmer Rouge (most of them were released during July, but some subsequently disappeared). Many members of the Funcinpec Party, the Buddhist Liberal Democratic Party, and the Khmer Nation Party (including not only government, military and police officers, but also assembly members, activists, supporters, and journalists) were

¹ Kawamura.

² UN Doc. E/CN.4/1997/85.

³ *Ibid.*

⁴ *Ibid.*

⁵ Amnesty International (1997).

⁶ The Press Law was adopted in July 1995.

⁷ Amnesty International, Amnesty International 1997: Cambodia; UN Doc. E/CN.4/1997/85.

⁸ Because one of the injured was an American, the FBI investigated the bombing. Although the FBI did not publish the results, US newspapers disclosed them.

⁹ UN Doc. A/52/489 (17 Oct. 1997).

¹⁰ For details, see Human Rights Watch, Human Rights Watch Cambodia: Aftermath of the Coup (August 1997).

¹¹ UNCOHCHR (1997). According to a report by Cambodia's Information Ministry, military movements continued from July 2 to July 7.

Box 1-1 Human Rights (Continued)

intimidated and claimed that their life was in danger. Many politicians who opposed the Cambodian People's Party escaped to foreign countries. Newspapers supporting the parties opposed to the Cambodian People's Party suspended publication.¹² Under this situation, Ung Hout, the Minister of Foreign Affairs, was appointed as prime minister by the National Assembly on August 6, 1997, although Ranariddh still held office as prime minister. In the event, as stated by Thomas Hammarburg, the Special Representative of the UN Secretary-General on the situation of human rights in Cambodia, the battle in Phnom Penh in July 1997 was actually a coup d'état by the Cambodian People's Party.¹³ Persecution of the opposition parties continued.¹⁴ According to the report of the UN Centre for Human Rights made in May 1998, 42 people were killed and 7 people disappeared in addition to the numbers indicated in the above-mentioned report. All the victims except for six people were Funcinpec members.¹⁵

In connection with the general election in July 1998, in February the army of the Cambodian People's Party and that of the Funcinpec Party stopped fighting through the intermediation of Japan. According to a scenario constructed beforehand,¹⁶ on March 4 and 17 the Phnom Penh Military Court held trials in absentia and sentenced Ranariddh to 5 years' imprisonment for the illegal importation of arms, 30 years' imprisonment for conspiracy with the Khmer Rouge against the government, and the payment of US\$56 million in damages. On March 21 King Sihanouk granted a pardon covering all the sentences. By the end of March, all politicians who had escaped to foreign countries, including Ranariddh, returned home.¹⁷ During this period, however, the Cambodian People's Party went house to house forcing people to join the party and collected election registration cards. The party also denied the opposition parties the opportunity to register for the general election, limited their access to the broadcasting media,¹⁸ and obstructed their election campaign by force.¹⁹

On July 27, 1998, international election observers confirmed the general election as free and fair. After the Cambodian People's Party won the election, Ranariddh and Sam Rangsai organized a demonstration of people who were not satisfied with the process of the election. The demonstration was broken up by the police, causing many casualties. Many were taken into custody, and some disappeared.²⁰ Although after the establishment of a new government in November, political violence was subdued for a while,²¹ persecution of those who opposed the Cambodian People's Party was reported in the second half of 1999.²²

Concerning the series of incidents of political violence as described above, the UN Centre for Human Rights and international and domestic human rights NGOs demanded that the Cambodian government intensify investigation and punishment and improve human rights conditions and the judicial system. In June 1998 the National Human Rights Committee was temporarily established in the Cambodian government by a decree.²³ The government, however, did not quickly deal with cases, and criminal procedures were hardly applied.²⁴ Although the National Task Force on Security for the Elections was established in the same month, all cases were concluded to be personal revenge or robbery.²⁵

¹² UN Doc. A/52/489 (17 Oct. 1997), para 43.

¹³ *Ibid.*, para 40-43, Amnesty International (1998).

¹⁴ Amnesty International (1999).

¹⁵ UN Doc. A/53/400 (17 Sep. 1998), para 32.

¹⁶ In this mediation, Japan made the following four proposals, which were accepted by Hun Sen and Ranariddh: (1) immediate cease-fire and integration of resistance groups into the government army; (2) cutting off the connection of Ranariddh with the Khmer Rouge; (3) trial in absentia of Ranariddh and a pardon by King Sihanouk; and (4) the government's guarantee of Ranariddh's safe return to Cambodia. See Human Rights Watch (1999).

¹⁷ Amnesty International (1999).

¹⁸ UN Doc. A/53/400 (17 Sep. 1998), para 62. Radio broadcasting was allowed for the Buddhist Liberal Democratic Party in May 1998 and for the Funcinpec Party in June 1998, but was never allowed for Sam Rangsai's party.

¹⁹ UN Doc. A/53/400 (17 Sep. 1998).

²⁰ Amnesty International (1999).

²¹ UN Doc. A/54/353 (20 Sep. 1999).

²² UN Doc. E/CN.4/2000/109 (13 Jan. 2000).

²³ UN Doc. A/53/400 (17 Sep. 1998), para 40.

²⁴ Only three men were imprisoned for the series of executions without trial from July 1997 which is described in the above-mentioned report by the UN Centre for Human Rights. UN Doc. E/CN.4/2000/109 (13 Jan. 2000), para 86.

²⁵ Human Rights Watch (1999).

Box 1-1 Human Rights (Continued)**2. Torture by the police²⁶**

Many suspects arrested by the police were tortured while in custody. In its report in June 1997, the UN Centre for Human Rights lists 32 means of torture used on those whom the police took into custody in the Province of Bat Dambang from May 1996 to March 1997. The police tortured them with blows, kicks, beating with a stick, solitary confinement, hunger, and various other means. Some were tortured to death. Although the purpose of the torture was usually to coerce suspects into making a confession, sometimes torture was carried out as punishment or to extort money. Not only men, but women and children also suffered torture.²⁷

3. Prisons²⁸

According to the report by the UN Centre for Human Rights in 1995, the prisons in Cambodia are under threat, the criminal procedures are confused, the prison facilities are literally collapsing, medical treatment is insufficient, and many prisoners suffer from illness and malnutrition.²⁹ There are not only problems regarding services, such as meals and medical care, but also cases where prisoners are released in exchange for bribes.³⁰ Prisoners frequently escape because of the defective facilities. When prison guards find a runaway, they may shoot him even after they capture him.³¹ However, there have been some improvements. For example, while prisoners were always tortured using handcuffs, fetters, solitary confinement, or other means in the past, such torture is reported to have stopped.³²

4. Persecution of the general public

Government officials, policemen, and soldiers frequently persecute the general public. According to its report, the ADHOC received 603 complaints about human rights in 1999.³³ The report divides the number of complaints into the following according to the content: extra-judicial executions 134; violence 147; torture 18; threats 78; disappearances 6; illegal arrest or imprisonment 44; illegal confiscation or destruction of property 127; human trafficking 8; abduction 25; and rape 16. Since the beginning of 1999 the number of complaints about land disputes has been rapidly increasing all over the country. There are many cases where government officials, policemen, or soldiers have illegally usurped land. Private individuals were killed in some cases.³⁴

5. Minority groups

As a minority group, the Vietnamese in Cambodia have always suffered persecution – especially from the Khmer Rouge, who attacked them on the basis of their ideology.³⁵ For example, at least four Vietnamese were killed by a mob in September 1998 because of a rumor that a Vietnamese had added poison to drinks.³⁶

When the Cambodian government tries to unify the country, it will face the following problems in dealing with the indigenous groups in the Province of Ratanak Kiri: their style of life does not match with the modern concept of ownership since they migrate from place to place; they act according to special religions; and their languages are different from Khmer. The problem of how to treat indigenous groups has already arisen while the government is planning deforestation and drafting land laws.³⁷

²⁶ Not only the police but also the gendarmerie have legal police powers.

²⁷ UN Doc. E/CN.4/1997/85.

²⁸ Including detention houses since there is no difference between prisons and detention houses in Cambodia.

²⁹ UNCHR, Report on the State of Cambodia's Prisons (1995).

³⁰ UN Doc. A/52/489 (17 Oct. 1997), para 102.

³¹ *Ibid.*, para 105.

³² *Ibid.*, para 107.

³³ ADHOC, Annual Narrative Report, March 1, 1999 – February 28 (2000).

³⁴ *Ibid.*

³⁵ UN Doc. A/54/353 (20 Sep. 1999), para 106; UN Doc. E/CN.4/2000/109 (13 Jan. 2000), para 72.

³⁶ Human Rights Watch (1999).

³⁷ UN Doc. A/54/353 (20 Sep. 1999), para. 108.

Box 1-1 Human Rights (Continued)

6. Rights of women and children

The most serious problem concerning women and children is human trafficking and sexual exploitation, such as prostitution. According to a survey, 30% to 35% of the prostitutes working in brothels are 18 years old or younger. Another survey shows that more than 60% of the prostitutes between the ages of 14 and 22 have HIV.³⁸ Most girl prostitutes were forced or deceived into prostitution or sold by their parents. Most of the income from prostitution is allotted to repayment of their debts. The Cambodian government is violating human rights in the sense that it is neglecting to carry out proper measures against human trafficking and sexual exploitation, such as criminal procedures and protection or relief for the victims. Although the Law on the Suppression of Kidnapping, Trafficking, and Exploitation of Human Beings³⁹ was enacted in 1996, the law has not effectively been enforced in reality. In addition, soldiers or policemen sometimes engage in these illegal acts. Since human trafficking is frequently carried out over the border with neighboring countries, such as Thailand and Vietnam, investigation and relief activities are carried out not only within Cambodia by NGOs and international organizations, but also across the border by international NGOs, such as the International Organization for Migration (IOM).⁴⁰

There are problems regarding criminal procedures for children. For example, the same procedures are applied to adults and children, and the reformatory system is inadequate.⁴¹ In addition, the Cambodian government has to deal with many other serious problems, such as street children, child labor, orphans, boy soldiers, and child abuse. To cope with this, the government established the Cambodia National Council for Children. The government also produced a Five-Year Plan against the Sexual Exploitation of Children with the support of international organizations and NGOs in 1999, following the 1996 Stockholm Declaration.⁴²

7. Rights of workers

In spite of the Labor Law, which came into effect in 1997, companies still arbitrarily dismiss union members and labor conditions remains poor. The government needs to monitor company compliance with the law and correct labor conditions.⁴³

8. Right to education

The rate of school enrollment is still low. The higher the grade, the lower the percentage rate. The enrollment rate for girls is lower than that for boys. Although elementary and secondary education is free under the constitution, the government expenditure for education accounted for less than 1% of GNP in 1998. Households and donors bear most educational expenses. The literacy rate is 79% for men and 55% for women. This prevents women from exercising their rights and participating in the society.⁴⁴

³⁸ UNICEF Cambodia (1999), Situation Analysis.

³⁹ (Translation into English) Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings (1996).

⁴⁰ Since 1997 the Mekong Region Law Center (MRLC), an NGO based on Thailand, has held workshops in the Mekong countries concerning measures against human trafficking – especially, the system of laws concerning human trafficking. Japanese Institute for Legal Development (JILD), a Japanese NGO, is assisting Cambodia's Law Ministry in drafting a bill against human trafficking. See its website, www.jild.org.

⁴¹ UN Doc. A/54/353 (20 Sep. 1999), para. 72; Legal Aid of Cambodia, Children Are Bamboo Shoots that Need Correction: Report on Incarcerated Children in Cambodian Jails, Analysis and Recommendations (April 1997).

⁴² CNCC (1999).

⁴³ UN Doc. E/CN.4/2000/109 (13 Jan. 2000), para. 66.

⁴⁴ UN Doc. A/54/353 (20 Sep. 1999), para. 88.

Box 1-1 Human Rights (Continued)**9. Health**

The rate of infant mortality and the death rate for pregnant women are still high. There are many contagious diseases, including malaria and tuberculosis. The number of those who have HIV is estimated to be 180,000 throughout the country. Although sanitary conditions are poor, the government only provides people with low quality, but expensive, health services. The government expenditure for health was 0.35% of the GDP in 1998. Households and donors bear most of the expenses for health services.⁴⁵

10. Environmental rights

It is reported that large-scale deforestation has been damaging the environment. Soldiers who cut trees threaten, or sometimes kill, local people or foresters who resist deforestation.⁴⁶

11. The Khmer Rouge tribunal

The United Nation and the Cambodia government are discussing trials in relation to the genocide that the Khmer Rouge committed during the Pol Pot era (1975-79). The focus of the discussion is to what extent the international organization can participate in the trials.

Although the United Nation demanded that a court should be held to judge the Khmer Rouge's inhuman crimes and its top executives, this was not seriously discussed until Ta Mok, one of the top executives of the Khmer Rouge, and Duch, the governor of Tuol Sleng prison, were arrested in March and May 1999 respectively for infringement of the Law Outlawing the Democratic Kampuchea Group.⁴⁷ The UN Secretary-General Kofi Annan delegated a legal expert, who suggested that a special international court should be held outside Cambodia because fair judgment could not be expected under Cambodia's legal system. After the UN Secretary-General agreed to the suggestion, a dispute arose between the UN and the Cambodian government, which had hoped that the trial would be held in a domestic court.⁴⁸ Apart from problems concerning the procedures, the discussion will focus on how to decide the scope of responsibility of the defendants – especially, how to treat the top executives of the Khmer Rouge who have already surrendered.

⁴⁵ *Ibid.*, para 90.

⁴⁶ Human Rights Watch (1998).

⁴⁷ The reason for the indictment was changed to a massacre specified by a law enacted in 1979. Under the law, Pol Pot and Ieng Sary were found guilty by trial in absentia in 1979. Ieng Sary was granted a pardon by the King when he surrendered to the government army, while Pol Pot died in April 15, 1998.

⁴⁸ Human Rights Watch (2000).

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