

**CAPACITY DEVELOPMENT  
FOR LEGAL AND JUDICIAL  
SECTORS  
IN DEVELOPING COUNTRIES  
- JICA's Cooperation for “Rule of  
Law” Promotion -**

June 2009

Public Policy Department  
Japan International Cooperation Agency  
JICA

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## Foreword

The Japan International Cooperation Agency (JICA) began its involvement with large-scale technical cooperation in the field of capacity development for judicial sectors in developing countries in 1996 with the launch of the Project in the Legal and Judicial Field in the Socialist Republic of Vietnam. Our technical cooperation in this field has expanded to Cambodia, Laos, Uzbekistan, Indonesia, China, and Mongolia. More recently, JICA has responded to assistance needs in states, such as Nepal and East Timor, that are in a reconstruction phase.

Japan reached a consensus at the 13th meeting of the Overseas Economic Cooperation Council in January 2008 to strategically promote the assistance for legal and judicial system development as a key economic cooperation area. The seven countries above (Vietnam, Cambodia, Laos, Uzbekistan, Indonesia, China, and Mongolia) were selected as priority recipients of Japan's capacity development for judicial sectors in the April 2009 Basic Policy on Capacity Development for Judicial Sectors in Developing Countries, which stemmed from the council's agreement.

Although projects relating to the support of legal development for these seven countries have been planned and implemented according to each country's needs, an overarching assistance methodology has not yet been established since the legal and judicial capacity development field is relatively new. At the same time, it is imperative that JICA mine the knowledge and lessons from previous cooperation experiences to implement more effective and efficient assistance and, thus, promote a higher standard of cooperation in the future. A third issue of importance is conveying Japan's assistance policies and past experiences with cooperation to domestic stakeholders and to the international aid community.

In this context, this project study set forth to arrange and analyze case studies of past JICA assistance projects and to form a general view of the positive attributes, validity, implementation frameworks, and other aspects of JICA's capacity development for legal and judicial sectors in developing countries. The project study group then looked at the history, outcomes, approaches, and future issues for assistance projects in specific countries and compiled its findings in this report. Professor Hiroshi Matsuo (Keio Law School, Keio University) chaired the study group, which consisted primarily of third-party experts on capacity development for legal and judicial sectors in developing countries. This study group met seven times between September 2008 and June 2009 and a consultant conducted field surveys in Vietnam (February 24 – 28, 2009) and Cambodia (February 28 – March 7, 2009).

It is our hope that this project study report will help broaden understanding of Japan's capacity development for legal and judicial sectors attributes in developing countries and serve to stimulate stakeholder discussions on further improvements in order to promote capacity development for legal and judicial sectors in developing countries in the future. This project study's implementation and compilation would not have been possible without the tremendous

contributions and valuable advice of the study group members and many other collaborators. I wish to offer my sincere thanks to everyone who assisted with this project study.

June 2009

Hiroaki Nakagawa  
Director General  
Public Policy Department  
Japan International Cooperation Agency

## List of Acronyms

AF	Asia Foundation
EWMI	East-West Management Institute
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
ICD	International Cooperation Department, Research and Training Institute, Ministry of Justice, Japan
JDS	Japanese Grant Aid for Human Resource Development Scholarship
JICA	Japan International Cooperation Agency
ODA	Official Development Assistance
PDM	Project Design Matrix
RSJP	Royal School for Judges and Prosecutors
UNAFEI	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Fund
UNTAC	United Nations Transitional Authority in Cambodia
USAID	United States Agency for International Development



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# **Executive Summary**



**CAPACITY DEVELOPMENT  
FOR LEGAL AND JUDICIAL SECTORS  
IN DEVELOPING COUNTRIES  
- JICA's Cooperation for “Rule of Law” Promotion -  
Executive Summary**

**June 2009**

**Japan International Cooperation Agency (JICA) <sup>1</sup>**

Since the middle of the 1990s, Japan International Cooperation Agency (JICA) has been supporting the efforts of developing countries in their pursuit of the “rule of law”. Technical cooperation projects have been conducted relating to the drafting of civil and commercial laws, training and educating of legal professionals, and improving of organizational capacity for the implementation of laws within countries including Viet Nam, Cambodia, Laos, Mongolia, China and Uzbekistan.

This paper is the executive summary of the JICA study report reviewing JICA’s experiences in assisting developing countries' initiatives concerning capacity development in legal and judicial sectors. This review begins with an analysis of features and approaches of JICA’s technical cooperation in this field, which stresses the development of the partner’s capacity in undertaking the “rule of law” promotion on their own, as well as Japan’s own development experience in customizing and adapting foreign laws to its culture and society. The study then examines the effectiveness of JICA’s support mechanism wherein resident long-term experts, backed by the Japanese advisory committees, attempt to provide practical and in-depth advice to local counterparts in a timely manner by utilizing a wide-range of resources including experienced academics, legal practitioners and development specialists. Finally, this paper puts forth possible paths to achieving more coherent and coordinated international cooperation by establishing commonly agreeable cooperation frameworks which lead to the development of sound legal systems in developing countries.

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<sup>1</sup> This report provides an analysis of information collected by the consultant with additional technical, independent reviews of JICA’s legal assistance arrangements provided by research group intellectuals. The research group chairman is Professor Hiroshi Matsuo of Keio Law School, Keio University. The members of the research group are Mr Kimitoshi Yabuki, Attorney at Law, Deputy Chair, Committee on International Relations, the Japan Federation of Bar Associations, Mr Taro Morinaga, Lecturer and Government Attorney, International Cooperation Department, Research and Training Institute, Ministry of Justice of Japan, Mr Masaki Nakamura, Assistant Professor, Centre for Asian Legal Exchange, Nagoya University, Mr Naoshi Sato, Attorney at Law, JICA Senior Advisors, Ms Miha Isoi, Attorney at Law, JICA Visiting Senior Advisor and Ms Kyoko Kuwajima, Executive Advisor to the Director General/ Deputy Director General (Governance Group), Public Policy Department, JICA (until June 2009).

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# 1. Support for Capacity Development in Legal and Judicial Sectors in Developing Countries:

## Definition, Aims and its Objectives

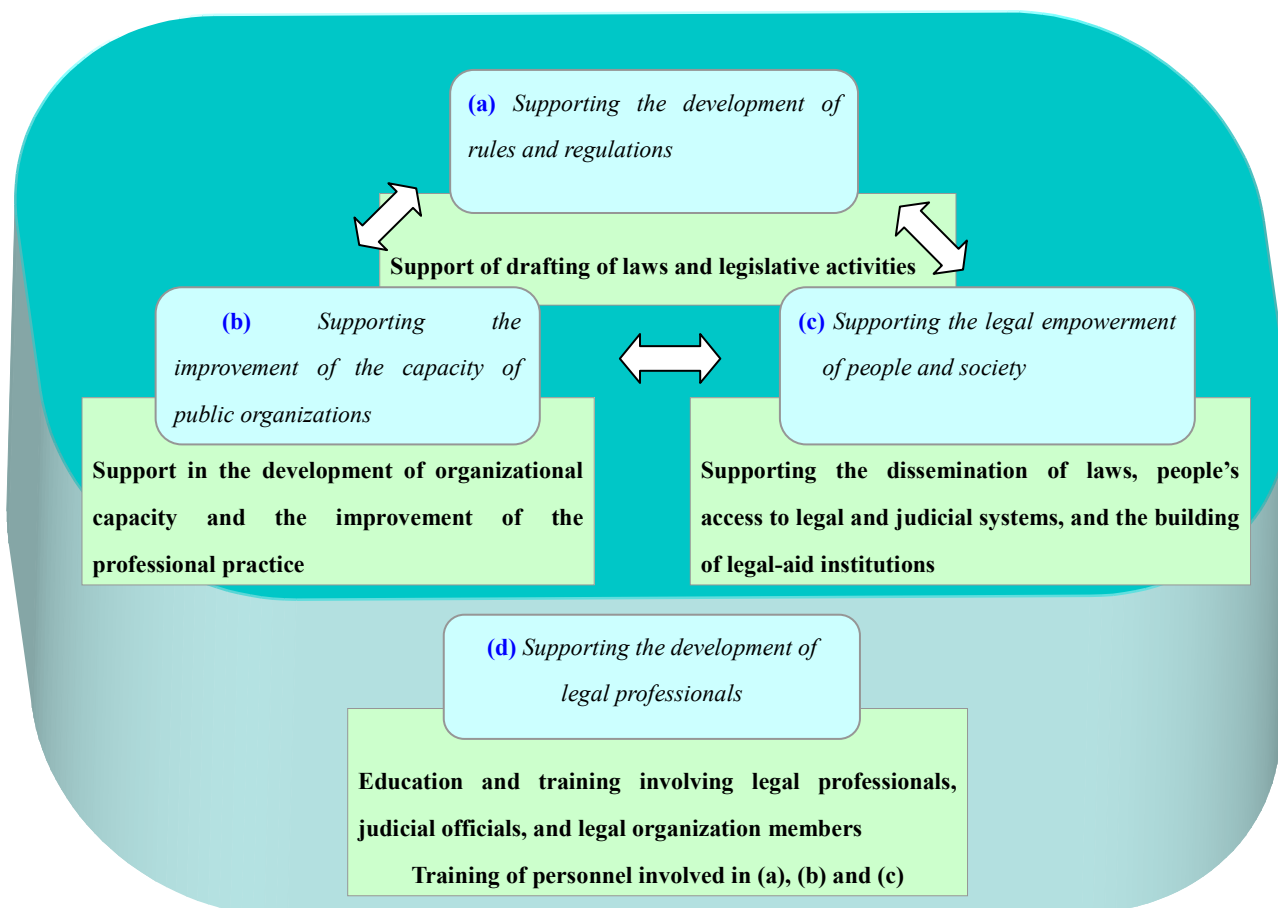
### 1-1 Definition

Providing support for capacity development in legal and judicial sectors relates to the support of efforts undertaken by developing countries to improve their legal and judicial systems.

JICA's support rests on the following three core elements: (a) *Supporting the development of rules and regulations* including the drafting of specific bills and their promulgation; (b) *Supporting the improvement of the capacity of public organizations* (the improvement of the capacity of the organizations that implement laws or apply laws to dispute resolution); and (c) *Supporting the legal empowerment of people and society* (the improvement of people's access to legal and judicial systems). As a foundation for these three elements, JICA's approach also stresses: (d) *Supporting the development of legal professionals*, including legal and judicial affairs officers, in order for them to independently promote legal and judicial development in the long-term.

JICA implements its support activities through the appropriate utilization of these elements according to the needs, developmental issues and situation of each individual country.

Figure 1-1 *The Three Pillars* of Capacity Development for Legal and Judicial Sectors in Developing Countries



## **1-2 Aims and Objectives**

Legal assistance relates to supporting the efforts of developing countries in their pursuit of "rule of law" promotion, and the development of corresponding rules and regulations. Japan's *Official Development Assistance Charter* regards legal assistance as a means of realizing good governance and states that the support of developing countries' self-help efforts is "the most important philosophy of Japan's ODA."

In pursuing good governance, new rules and regulations must be created and the government must possess the capacity to implement such rules, while also precluding abuse of and deviance from governmental authority. In order to fulfill these two seemingly contradictory goals, the legal system must reflect the people's will, and must be appropriately developed and enforced. In order to achieve these outcomes, government, civil society and the private sector must form a soundly balanced partnership. As such, there is a general demand for the "rule of law" in so much that the created rules and systems are legitimate, that a neutral dispute resolution system is developed, and a structure which assures access to this system is formulated.

## **2. The Japanese Experience of Legal Development and its Characteristics**

Beginning from the Meiji Restoration in the late 19<sup>th</sup> century, Japan, which had previously sought the development of legal systems in order to maintain of the existing social order and to facilitate national development during its history by both abolishing the closed-door policy and promoting industrial growth, has achieved the gradual formation of a "rule of law" through trial and error.

The comprehensive legal reforms preceding the modernization of the state and society in the post-Meiji Restoration period, and the legal reforms conducted under the indirect rule of the Allies with the aim of democratization and peace building following the Second World War were fundamental, full-fledged reforms which involved the revision of basic legal principles and systems. The Japanese experience has contained much useful knowledge that can contribute positively to the "rule of law" promotion processes, which many developing countries are undertaking today. These experiences include those of drafting, promulgating and revising laws and systems in accordance with the conditions and changes particular to the development of the nation (and at times conducted with the assistance of the international community) during such historical processes, and which has led to the upgrading of the legal systems in line with international standards and the realization of social stability and economic growth.

Moreover, while Japan has incorporated the advanced legal systems of other states, borrowing basic concepts from Continental Law centered around French and German legal traditions following the Meiji Restoration then becoming more heavily influenced by the American legal tradition during the period of indirect control by the Allies following the Second World War, it

has customized and adapted those laws to the cultural, and societal factors present within the existing system as opposed to simply ‘importing’ the foreign legal traditions. Such a process can be very informative for developing countries seeking to establish and/or improve existing legal systems so as to tailor them to the circumstances of a particular country while simultaneously receiving aid from donor countries/agencies.

This process in Japan has further nurtured a tradition among Japanese academics of conducting comparative studies regarding foreign laws that have contributed to the development of the Japanese legal system, which has in turn produced a significant number of legal professionals with seasoned knowledge of other legal systems in addition to Japanese Law. As a result, despite the fact that developing countries are receiving assistance from Japan, they are able to obtain knowledge on other legal systems in addition to those of Japan, which provides a comparative perspective of different legal systems and enables countries to choose legal systems that best suit their state. This is a distinctive quality of Japanese support.

### **3. JICA’s Support for Capacity Development in Legal and Judicial Sectors in Developing Countries: Basic Policy and its Strengths**

#### **3-1 Respecting Developing Countries’ Ownership of the “Rule of Law” Promotion Process**

In order to promote the establishment of the “rule of law” in order to achieve stability and development in developing countries, JICA respects each country’s ownership over the process and supports their self-help activities. The choice of legal systems and the path to “rule of law” promotion are matters of state sovereignty, and the appropriateness of various options is the sole purview of the state itself. Efforts directed toward the realization of the “rule of law” must be based on the individual situations of the respective countries. Thus, the ownership and efforts of the people who have deep understanding of their own culture and existing systems are crucial to the effective use of external support.

Accordingly, JICA facilitates the development of legal systems that suit the cultural, and societal factors present within the existing system of each developing country by providing knowledge of other countries’ systems and ideologies as points of reference, rather than imposing any specific system or idea of Japan or any other nation. Concisely put, JICA presents various ‘policy options’ via dialogue with the state in ways, such as introducing paradigm legislation from other systems, that allow each country to select those options best suited to its individual circumstances. Throughout this process the ownership of the developing countries remains highly valued.

#### **3-2 Modalities of Support Utilizing Diverse Assistance Resources**

With JICA’s legal cooperation approach, people with various backgrounds are involved in order to comprehensively cover the multitude of elements necessary for the realization of the “rule

of law.” In order to provide effective and efficient support, using these various resources, JICA supports the following six modalities.

First, JICA begins by dispatching long-term advisors (judges, prosecutors, lawyers, etc.) with extensive experience in Japanese legal practice who are able to comprehend the needs and actual conditions within the developing country. These advisors provide necessary advice based on their experience, and function as intermediaries between the developing countries and JICA. JICA is able to offer support that precisely corresponds to the needs of the developing country by drawing upon the opinions of the long-term advisors.

Secondly, JICA establishes advisory committees in Japan comprised of academics and practitioners in the field (judges, prosecutors, lawyers, etc.) to back-up the long-term advisors and provide appropriate advice to the developing country. In many cases, members of the advisory committees continue their support over an extended duration of time and across different phases of the projects, contributing to the achievement of support objectives via the accumulation of experience and knowledge, while also building mutual trust.

Thirdly, JICA dispatches experienced academics and legal practitioners, such as members of the advisory committee, on a short-term basis to the developing countries in order to hold onsite seminars. This provides a larger number of stakeholders with the opportunity to obtain knowledge directly from Japanese professionals, while at the same time allowing Japanese professionals to obtain an understanding of the on-the-ground situation in the developing country, which is necessary for providing proper advice.

Fourthly, JICA organizes a series of workshops/training in Japan and invites concerned counterpart personnel from developing countries. These workshops/training provide opportunities for participants to engage in intensive discussions with a wide-range of Japanese academics and legal practitioners, and to study multiple aspects of Japanese practice within related organizations.

Finally, JICA-net Conferences provided through the JICA-net System (a TV Conference System set up at JICA HQ, local offices and related organizations) facilitate smooth communication between concerned counterpart personnel in developing countries and advisory committee members in Japan by allowing direct face-to-face meetings. Additionally, this enables resident long-term advisors to attend advisory committee meetings held in Japan, and to work as a bridge providing information on existing systems, practices and the legal professionals’ way of thinking in the developing country.

Sixthly, schemes such as “Long-term Training” and the “Japanese Grant Aid for Human Resource Development Scholarship” have been implemented as means for training personnel in developing countries in the medium to long-term. “Long-term Training” entails personnel from developing countries coming to Japan as foreign students in Japanese graduate institutions, and residing in Japan for 2-3 years while seeking to obtain a doctorate or master’s degree in a particular field. For projects relating to the support of legal development, individuals from Laos have been accepted as long-term trainees. The “Japanese Grant Aid for Human Resource Development Scholarship” scheme (also referred to as “JDS Students”), which is one of the Grant Aid Projects,

has numerous students partaking in undergraduate law and graduate level legal studies programs. In addition to this, there is the "Training Program for Young Leaders" which is a program nurturing individuals who will lead future national development by inviting young candidates from selected countries to participate in training programs to develop technical knowledge and expertise, and which also includes a "Legal and Judicial System" course. In addition to the "Training Program for Young Leaders", JICA provides legal sector training programs through the "International Training and Dialogue (Group Training Course)," a training program covering a standard set of issues for all participants, and the "Region Focused Training and Dialogue," a training program for individuals from a specific region providing instruction in specific fields relating to that region.

By combining these methods as support tools, JICA is able to provide effective and efficient support.

**Box 1: Comments from Other Donor Countries/Agencies and Counterparts Regarding the Method of Support**

- Every long-term professional from Japan has expertise and provides in-depth advice in addition to being available for various follow-ups when necessary.
- The caliber of Japanese projects is derived from the long-term residence of the legal professionals, creating a state in which legal professionals possess a profound knowledge of the society and culture of Viet Nam and are able to respond to the needs of Viet Nam at all times.
- The Japanese advisors and their Vietnamese counterparts have discussions on a biweekly basis. This is a result of their continuously providing excellent knowledge and winning the trust of their Vietnamese counterparts.
- JICA fully utilizes its organizational network to support both short-term and long-term professionals.
- It is indeed amazing that over one hundred professionals work in a support structure that allows for assistance from Japan on a continuous, long-term basis. The coming and going of short-term professionals, enables to provide practical capacity development in legal and judicial sectors in developing countries.

Onsite interview survey conducted in Viet Nam by JICA (March 2009)

**3-3 Formulation of the Project Framework According to the Level of Development and Policy Issues of the Respective Countries**

The three of core elements of JICA's legal cooperation in developing countries [(a) *Development of rules and regulations*; (b) *Improvement of the capacity of public organizations*; and (c) *Legal empowerment of people and society*] compliment one another, and the establishment of the "rule of law" would not be possible should any of these elements be missing. Therefore, these core elements must be viewed in a holistic and cross-relational manner, being adequately selected or combined so as to guarantee the effective implementation of the support. This process should be based on sufficient consultations with and agreement of the respective developing country in accordance with their capacity, needs, and major policy issues.



### **3-4 Focus on Long-term Development of Human Resources for Enhancing Sustainable “Rule of Law” Promotion**

The development of human resources so as to be able to engage in each of the core elements (a), (b) or (c), set forth in 3-3 above, is indispensable to the pursuit of establishing and/or improving legal systems while simultaneously addressing their harmonization with the cultural and societal factors present within the existing systems of each developing country. Such development should be considered the cornerstone of (a), (b), and (c).

Hence, JICA places importance on the support process and the enhancing of the capacity development activities of the counterpart personnel by encouraging the creation of specific working groups in the developing country which are able to engage in joint operations with Japanese long-term advisors and the advisory committee in Japan, as opposed to unilaterally disseminating knowledge. For instance, in supporting the drafting laws, the drafted articles were reviewed one by one by the working group members in the developing country, Japanese long-term advisors and advisory committee members in Japan.

#### **Box 2: Changes in the capacity of counterpart personnel observed in the drafting of the Cambodian Civil Code and Code of Civil Procedure**

The most unfortunate issue for judges is that they are unable to obtain experience in considering what existing written statutes mean in their current form. That is to say, that they are in a situation wherein there are few written statutes. They have rarely had any training in written interpretation. In drafting specific articles, we reviewed the articles together, one by one. Through this work, they have come to think about what is written --- I think that is a big change. ...Moreover, in the process of reviewing each article, they have learned cross-referencing, looking at other uncited articles and finding relationships between the articles, and even went so far as to point out that when you change this article, you need to change that one as well. By continuing in this review work, I believe it has improved the legal thinking ability of the judges and enhanced their thought processes.

I. Sakano (2003), “From the Experience of Supporting the Drafting of Cambodian Civil Code and Code of Civil Procedure” *ICD NEWS*, Vol.7, pp.97-98

### **3-5 A Focus on the Cooperation for “Rule of Law” Promotion with Roots in the Society of the Developing Country**

A legal system that is inconsistent with the cultural and societal aspects of the existing systems in a developing country, however conceptually ideal, would not satisfy its objectives. As such, a legal system must be built gradually with the actual social situation of the state as its starting point.

For this reason, JICA attempts to cooperation for “rule of law” promotion which have firmly taken root within the existing society of the developing country and approaches this through the mutual understanding achieved by way of joint surveys and issue resolution via dialogue in manners consistent with the on-the-ground circumstances.

### **Box3: Joint Review of Existing Laws**

We conducted a social survey on how the Vietnamese Civil Code was functioning within Vietnamese society. Although the Civil Code has been enacted, it was not certain whether it was actually being utilized. What came to our attention was that the Civil Code was being implemented in a manner completely different from what was expected. For instance, in real property registration, circumstances differed from what was stipulated in the Civil Code. Given these circumstances, we conducted a social survey, although one quite small in scale. The Vietnamese Legal Science Institute of the Ministry of Justice conducted a local survey with the cooperation of universities and other organizations, and Japanese socio-legal researchers and long-term advisors provided advice on the planning of the survey. The intention was to have the people in Viet Nam understand that if law does not function within society, it has no meaning as law. The level of the social survey itself and its result were not the primary concern --- we wanted Vietnamese people to recognize how law functions in the actual society.

A. Morishima (2003), keynote speech “Support for the Development of Legal Systems in Viet Nam”, *ICD NEWS*, Vol.9, p.39

### **3-6 Using Japan’s Own Experience and Knowledge**

By drawing upon Japan’s own experience in customizing foreign legal systems to accommodate the cultural and societal elements of the existing Japanese systems in their diverse forms, JICA’s support for capacity development in legal and judicial sectors in developing countries seeks out a method optimally suited to the needs and conditions of the developing country itself. Advice on the legal systems of other nations should not be limited to technical aspects, but should also provide a “systematized knowledge” which includes the background of the Japanese legal system. This necessitates that such advice be provided in line with Japan’s own experience.

### **Box 4: Support Policy for the Drafting of the Cambodian Code of Civil Procedure**

First, the work of supporting the drafting of a fundamental code such as the Code of Civil Procedure is not completed by simply writing up the articles, it also involves providing the big “systematized knowledge” encompassing the legal skills and theories (judicial precedents and doctrines) behind the articles as well as the experience of importing foreign laws. What we, the Japanese academics and practitioners, can responsibly propose to another state is only the laws we are familiar with through our daily research, practice and education. Secondly, the Japanese Code of Civil Procedure is quite new and it was subject to a broad revision based on international standards and upon consideration from an advanced and wide-ranging comparative law perspective and a full understanding of the situation of legal practice in Japan. Thirdly, although the previous Cambodian system was attributable to Continental Law, heavily influenced by its former colonial master, France, and therefore making the adoption of ideas from Continental Law in drafting the new code appear easier, the legal society was left with very few professionals who could pass on the knowledge and experience of the former system due to the gross destruction of the legal system and the mass execution of intellectuals during the genocide throughout the period of civil war and confusion. As such, it was considered unnecessary to adhere to French Law.

T. Uehara (2008), “Enactment of the Cambodian Code of Civil Procedure – Looking back to the drafting support”, *Jurist*, No.1358, pp.27

## **4. Towards More Coherent and Coordinated Cooperation**

### **4-1 To the Realization of a Global Benefit**

Capacity development in legal and judicial sectors in developing countries should be offered through a commonly agreeable framework and should be conducted with the aim of constructing the most desirable legal system for the developing country via the sharing of experiences and knowledge between the donor countries/agencies and the developing country. With the establishment of the “rule of law” through such support, good governance within the developing countries will come closer to being realized leading not only to social stability and economic growth within developing countries, but would also contribute to the stability and prosperity of the international society as a whole. Capacity development in legal and judicial sectors in developing countries will benefit all relevant parties including donor countries/agencies, not to mention the developing countries themselves.

In the near future, a common understanding of the shared benefits should be created among all relevant parties including developing countries and donor countries/agencies, and the network that makes enhanced and efficient development of legal systems possible through the mutual cooperation established by such an agreement should be promoted.

### **4-2 Pursuing Meta-rules (rule to create rules) for Cooperation for “Rule of Law” Promotion**

In promoting “rule of law” of a developing country, the donor countries/agencies should develop the capacity of relevant governmental organizations and establish forums with donor countries/agencies under the ownership of the developing country government (or by using an existing coordination framework) for the purpose of creating rules to support the development of the relevant legal systems.

This process begins with the creation of “a rule to create rules” (aka meta-rule), which will help the developing country’s government grasp the entirety of the “rule of law” promotion picture. This process will help to avoid unnecessary redundancies and enhance synergies among multiple actors.

### **4-3 Sharing of Experiences and Knowledge among Donor Countries/Agencies**

It is important for donor countries/agencies to exchange information and share experiences through forums (thematic donor meetings, etc.) as well as by deepening the understanding of the importance of meta-rules mentioned in 4-2 above. It is expected that synergies will be realized from widely publicizing and sharing the fruits of donor assistance projects, such as in the form of textbooks, commentaries, and manuals.



# **Introduction**



# **Introduction**

## **Outline of the Project Study**

### **1. Background and Objectives of the Project Study**

Capacity development for legal and judicial sectors in developing countries is a comparatively new assistance field for JICA. JICA began providing assistance in this area in the form of technical cooperation projects in 1996 in Vietnam and have since launched assistance in a total of seven countries (Vietnam, Cambodia, Laos, Uzbekistan, Indonesia, China, and Mongolia). JICA have provided other forms of assistance, such as providing training for people involved in the legal and judicial fields in many developing nations, including those listed above, and offering legal young practitioners and students opportunities to study in Japan.

Although these collaborative projects have been planned and implemented according to each country's needs and circumstances, an overarching assistance methodology has not yet been established since the legal and judicial capacity development field is relatively new. But considering that more than 10 years have passed since JICA began providing assistance in the form of technical cooperation projects in this field, it is imperative that JICA organize the knowledge and lessons from previous cooperation experiences and get feedback on current programs in order to provide a higher standard of cooperation in the future. Related to this, Japan reached a consensus at the 13th meeting of the Overseas Economic Cooperation Council in January 2008 to strategically promote capacity development for legal and judicial sectors as a key economic cooperation area. This decision has resulted in the formation of “the Basic Policy of the Assistance for Legal and Judicial System Development”. In addition, to respond adequately to new needs for capacity development for legal and judicial sectors in reconstructing states, JICA must implement assistance more effectively and efficiently by taking advantage of our accumulated knowledge and experience. Another key issue is conveying Japan's assistance policies and past experiences with cooperation to domestic stakeholders and to the international aid community.

In view of these issues, a study group composed of third-party experts was formed to conduct this project study and to organize and analyze case studies of past JICA cooperation projects. The objectives of the project study were to examine (1) the objectives of JICA capacity development for legal and judicial sectors in developing countries, (2) the merits and validity of JICA capacity development for legal and judicial sectors in developing countries, (3) the implementation platforms and domestic support

frameworks for JICA capacity development for legal and judicial sectors in developing countries, (4) the history, experiences, outcomes, and approaches of assistance projects in specific countries, and (5) ongoing and future issues. The study group's findings have been compiled in this report.

## **2. Report Organization**

This report is divided into four chapters. The first chapter clarifies the aims and definitions of capacity development for legal and judicial sectors in developing countries and classifies capacity development activities for legal and judicial sectors into three pillars — (a) *Supporting the development of rules and regulations*; (b) *Supporting the improvement of the capacity of public organizations*; and (c) *Supporting the legal empowerment of people and society* — and a foundation for these three pillars — (d) *Supporting the development of legal professionals*. The second chapter (Japan's Experience with Legal Development and Its Characteristics) analyzes the ideology and characteristics of Japan's legal, which borrows from Japan's own experience with legal and judicial development. Chapter 3 (JICA's Support for Capacity Development in Legal and Judicial Sectors in Developing Countries) introduces Japan's approaches to capacity development for legal and judicial sectors in developing countries based on the ideologies explored in Chapter 2 and verifies the merits and validity of Japan's approach by looking at case studies primarily from Vietnam and Cambodia. Finally, the fourth chapter presents future issues for the whole aid community in the interest of further capacity development advancement for legal and judicial sectors.

Summaries of JICA capacity development for legal and judicial sectors projects in developing countries have been provided in the appendices at the end of the report.

## **3. The Project Study's Methodology and Implementation Framework**

### **(1) Methodology**

A study group for this project study was set up consisting of third-party experts on capacity development for legal and judicial sectors in developing countries and JICA international cooperation specialists and staff members (see section (2) below). This study group met seven times between September 2008 and June 2009 and examined JICA's capacity development for legal and judicial sectors in developing countries from a technical and practical point of view.

A consultant conducted field surveys in Vietnam (February 24 – 28, 2009) and Cambodia (February 28 – March 7, 2009) for this project. Interviews were conducted with local government officials and other donor country representatives about the merits,



effectiveness, and other aspects of Japan's assistance. The study group examined the surveys' findings and incorporated them in this report.

## (2) Implementation framework

### *Project study group*

#### • Chair

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#### • Members

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Naoshi Sato                              Attorney at Law/ JICA Senior Advisor

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# Chapter 1

## Aims and Definitions of Capacity development for legal and judicial sectors in developing countries<sup>1</sup>

### 1-1 Definitions

Capacity development for legal and judicial sectors in developing countries refers to the support of developing countries in the implementation of initiatives to establish, maintain, and improve legal and judicial systems as well as their associated frameworks (hereafter referred to generally as “legal systems”). Japan’s *Official Development Assistance Charter* regards capacity development for legal and judicial sectors as a means for realizing Good Governance and states that the support of developing countries’ self-help efforts is “the most important philosophy of Japan’s ODA.”<sup>2</sup>

For the purposes herein, Good Governance is defined as: “the ideal functioning of government<sup>3</sup> mechanisms and systems that efficiently mobilizes, allocates, and manages the resources of a country in a manner that reflects the intentions of citizens toward national stability and growth as well as the ideal, holistic orientation of system structures and operations through methods such as cooperation, collaboration, and decision-making between government, the private sector, and civil society.”<sup>4</sup> The process of constructing Good Governance first requires the creation of rules and developing the government’s institutional capacity so as to efficiently implement and enforce such rules. The process must at the same time reflect the will of the people and forestall any abuse or deviances by the governmental authority. These outcomes are predicated on the maintaining of a well-balanced partnership between government, the private sector, and civil society. To this end, establishing the “Rule of Law” — namely the assurance of the legitimacy of established rules, the construction of impartial dispute-resolution systems, and the guarantee of access to these systems — is essential to the building of good governance.<sup>5</sup>

This “Rule of Law” concept includes a myriad of factors, such as the public’s awareness of legal adherence; fixed procedures for the enactment (formulation) of law, judgment and enforcement based on formulated laws; and assurances that the laws are

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<sup>1</sup> “Capacity development for legal and judicial sectors in developing countries” has the same meaning as “assistance for legal and judicial system development” set forth within the Overseas Economic Cooperation Council and other venues use of “rule of law promotion” and “legal assistance.”

<sup>2</sup> Ministry of Foreign Affairs (2003). *Official Development Assistance Charter*. Section I 2(1).

<sup>3</sup> *Government* in this context refers to the entire system of government including legislating, administration, and the judiciary.

<sup>4</sup> JICA (2004). *JICA governance assistance: Democratic system building, administrative capacity promotion, and legal assistance*, p. 3.

<sup>5</sup> Matsuo, Hiroshi (2008). Root questions for law and development: Focusing on the relationship of the “rule of law” and good governance. *Law & Practice*, 2, pp. 25–29.

legitimate. The extent to which these various factors have taken root varies widely across nations. Any endeavor towards fostering a “Rule of Law” must, therefore, proceed in harmony with the local culture, traits, existing institutions, and other characteristic factors.<sup>6</sup>

## **1-2 Aims and Objectives**

### ***Three Pillars of Capacity Development for Legal and Judicial Sectors in Developing Countries***

JICA’s support rests on three fundamental pillars of capacity development for legal and judicial sectors in developing countries, which are set out as: (a) *Supporting the development of rules and regulations* including the drafting of specific bills and their promulgation; (b) *Supporting the improvement of the capacity of public organizations* (the improvement of the capacity of the organizations that implement laws or apply laws to dispute resolution); (c) *Supporting the legal empowerment of people and society* (the improvement of people’s access to legal and judicial systems). A fourth factor is also included, serving as a foundation for the other three pillars: (d) *Supporting the development of legal professionals*, including legal and judicial affairs officers, in order for them to independently promote legal and judicial development in the long-term.

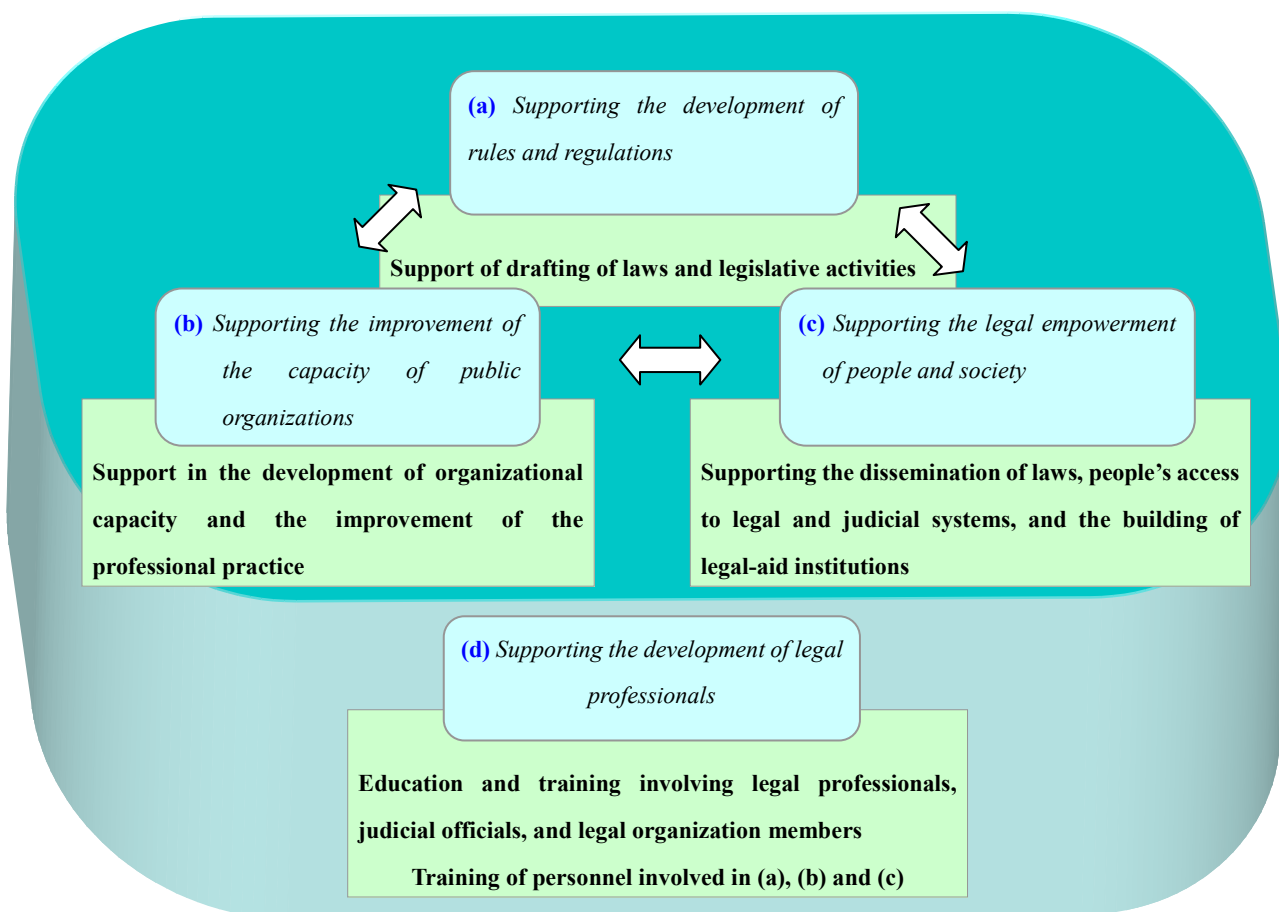
This final factor refers to the educating and training of legal professionals, judicial officials, and legal institution members who will enable the recipient country to independently maintain the Legal Systems in the future.<sup>7</sup> JICA implements its support activities through the appropriate utilization of these elements according to the needs, developmental issues and situation of each individual country.

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<sup>6</sup> There is a multiplicity of definitions for the “rule of law” concept. The following two concepts, however, are generally accepted as working definitions: 1. *Formal definitions* of the “rule of law” look at specific, observable legal and legal system criteria. Common criteria include a formally independent and impartial judiciary; laws that are public; the absence of laws that apply only to particular individuals or classes; the absence of retroactive laws; and provisions for the judicial review of government actions; and 2. *Substantive definitions* of the “rule of law” look at the contributions to the achievement of substantive outcomes, such as justice or fairness, within the legal system. Matsuo, Hiroshi (2008). The “rule of law” in international development assistance. *Journal of Social Science*, 56 (5/6), pp. 109–137. Stephenson, M. (2001). “Rule of law” as a goal of development policy. World Bank.

<sup>7</sup> As set forth later in this document, JICA provides assistance with a mix of priorities (a) through (d) since the scope and substance of the aid to individual recipient countries depends on their circumstances and needs.

Figure 1-1 *The Three Pillars of Capacity Development for Legal and Judicial Sectors in Developing Countries*



***[The Interlocking Relationship between Capacity Development for Legal and Judicial Sectors in Developing Countries and the Three Pillars for Capacity Development for Legal and Judicial Sectors]***

The “Rule of Law” cannot be instituted in a country that lacks any of the three fundamental pillars mentioned above. In other words, the formulation of the rules alone is not sufficient for facilitating a “Rule of Law”; the capacity of organizations overseeing the implementation and enforcement of laws must be strengthened simultaneous with the granting of legal empowerment to civil society through the raising of the public’s awareness of the legal system and improving access to justice.

For instance, the drafting of laws and ordinances and the establishing of rules alone do not lead to the achievement of a “Rule of Law” per se. If a rule is set out without a legal institution’s adequate exercising and enforcement of that rule and without dispute resolution based on that rule, the rule will become unenforceable — a “dead letter” rule, in effect — and the rights of citizens based on that rule will not be realized (hence, the

necessity of promoting the capacity of legal institutions). Furthermore, should the rule fail to be understood by the public and does not form a basis for dispute resolution, not only will the rule's existence become meaningless but contradictions between the rules and reality will arise, and predictability and transparency under the law will be lost (thus, the necessity of legal empowerment). The same interlocking relationship holds true for the other two pillars for the capacity development for legal and judicial sectors: developing capacity at legal institutions rests on rule establishment and legal empowerment<sup>8</sup>; and legal empowerment requires rule establishment and legal institution capacity-building.<sup>9</sup>

Consequently, capacity development for legal and judicial sectors in developing countries requires a comprehensive and cross-disciplinary approach to aid in all three areas. Assistance must also be planned so that all three elements are used in a complementary fashion to facilitate the "Rule of Law".

### ***[Human Resource Development as the Cornerstone of Legal Development]***

There are two essential aspects of human resources development in assisting an emerging country's self-help initiatives. Human resource development must be pursued with a long-term perspective, and the program approach must have sufficient timeframe flexibility and be examined in relation to the country's developmental process.

Legal development is an ongoing national task, and any given law or system will face continuous pressure for revisions to better reflect the country's development level, changing social conditions, and/or new emerging priorities among other issues. For example, a rule comes into existence through a process which recognizes the necessity of rulemaking, drafting a bill, and enacting the final law. Yet changing social conditions may prompt new requirements for the rule, and opportune revisions will have to be considered. The end objective of capacity development for legal and judicial sectors in developing countries must be to enable recipient nations to independently develop and improve their laws through this process.<sup>10</sup> Only when this has been realized can it be said that a country is on the path towards Good Governance based on the "Rule of Law".

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<sup>8</sup> Strengthening legal institutional capacity to enable the appropriate implementation and application of rules is inextricably linked to establishing rules that, by their nature, do not hinder their own implementation or application. Thus, bidirectional feedback between these two endeavors is indispensable. Similarly, fostering the public's legal awareness and improving the legal and judicial access of the people who are the recipients of agency (public institution) services is a key factor in strengthening capacity at legal institutions.

<sup>9</sup> The legal empowerment of people and society is dependent upon the establishment of rules that are in accordance with the indigenous culture, traits, and existing systems rather than rules alien to the society. Moreover, an essential part of improving the population's legal and judicial access is increasing, appropriately, the capacity of agencies mandated to guarantee legal and judicial access.

<sup>10</sup> The cycle of continual, timely review also applies to the establishment of legal institutions and to the promotion of access to legal and judicial systems.

Thus it is imperative, when considering independent development, that technical assistance be used to build the capacity of legal and judicial professionals in developing nations so as to allow them to correctly understand the established rules, legal institution functions, and means of legal empowerment of civil society. Another crucial aspect is for legal and judicial professionals to be given the ability to amend systems in the future to reflect changing social conditions. Human resource development is, accordingly, a fundamental issue for the capacity development of legal and judicial sectors and must be tackled with a long-term perspective.

## **Chapter 2**

### **Japan's Experience with Legal Development and Its Characteristics**

#### **2-1 Japan's Experience with Legal Development**

Beginning from the Meiji Restoration in the late 19<sup>th</sup> century, Japan, which had previously sought the development of legal systems in order to maintain of the existing social order and to facilitate national development during its history by both abolishing the closed-door policy and promoting industrial growth, has achieved the gradual formation of a “rule of law” through trial and error.

The comprehensive legal reforms preceding the modernization of the state and society in the post-Meiji Restoration period, and the legal reforms conducted under the indirect rule of the Allies with the aim of democratization and peace building following the Second World War were fundamental, full-fledged reforms which involved the revision of basic legal principles and systems. The Japanese experience has contained much useful knowledge that can contribute positively to the “rule of law” promotion processes, which many developing countries are undertaking today. These experiences include those of drafting, promulgating and revising laws and systems in accordance with the conditions and changes particular to the development of the nation (and at times conducted with the assistance of the international community) during such historical processes, and which has led to the upgrading of the legal systems in line with international standards and the realization of social stability and economic growth.

#### **2-1-1 The Process of Modernization Legal Reforms after the Meiji Restoration**

In the first years of the Meiji Era, Japan was forced to acquiesce to the extraterritorial demands of several Western powers due to Japan's lack of a modern legal system. Reforming these unequal treaties was a major political issue at the time, and Japan urgently began work to establish a civil code and other basic legal codes. Initially Japan considered “importing” legal codes by translating the Napoleonic code. But this was soon rejected as the country began tailoring a draft civil code particular to Japan's circumstances and centered on the Minister of Justice at the time. Between 1880 and 1883 all common law across the country were studied as they related to civil law. After a number of setbacks, Japan successfully drafted and concluded a civil code in 1896 (Law No. 89 of 1896 and Law No. 9 of 1898) that referenced the French civil code, the German Confederation's civil code, the first draft of the German Empire's civil code, the civil codes of several other countries, and other related legislation but still took into account Japan's customs and existing legal systems.

This method of drafting the civil code, the law underlying all private law, at the outset of Japan's development — namely the process of drafting legislation adapted to



local social and cultural norms while referencing the laws of other countries —had an enormous influence on later legislative drafting. Even in the modern day, Japan’s drafting procedures involve the surveying of the laws of other countries while incorporating aspects of Japan’s own traits, culture, and Legal Systems. Moreover, a tradition of comparative law has emerged among Japanese legal scholars in which foreign laws referenced by Japanese laws are studied in order to gain more precise insights into the Japanese laws themselves.

### **2-1-2 Legal Reforms as Part of the Postwar Reconstruction and Legal Reforms for Democratization**

Japan pressed ahead with reforms on many political, social, and economic fronts in the years following the Second World War while also receiving peace-building aid from the international community, particularly the Allied Nations. One of the main reform thrusts was the dissolution of the *zaibatsu* industrial and financial business conglomerates. The *zaibatsu* were first dissolved with the Holding Company Liquidation Order in November 1945, and then subsequently with the April 1947 Anti-Monopoly Law and later legislation which were enacted to guard against the reconstitution of the *zaibatsu*. In relation to land reforms, Japan adopted in October 1946 an agricultural land reform bill (the Owner-Farmer Establishment Special Measures Law and the amended Farmland Adjustment Law), which the Occupation Forces had a large part in creating. As a result of these reforms, approximately 80 percent of tenant lands changed hands, the percentage of farmland cultivated by tenant farmers fell from 46 percent to 10 percent, and landlord-ownership schemes were eliminated.

The new constitution enacted in 1945 advocated the sovereignty of the people, respect for fundamental human rights, and pacifism, which opened the way for a slate of reforms with labor reform as one example. The three rights of labor — the right to organize, the right to collective bargaining, and the right to strike — were recognized for the first time in the Trade Union Law promulgated in December 1945 and brought into force in March 1946. With the establishment of the Labour Relations Adjustment Law (September 1946) and the Labour Standards Law (April 1947), the three core labor laws were finally put in place. Another example of these reforms is the New Election Law in 1945, which made sweeping changes to the electoral system and gave women the right to vote.

Legal system development was thus integral to Japan’s postwar reforms and democratization. The establishment of a series of laws as a means of promoting reform made an incredible contribution to postwar Japan’s social stability, economic development, and democratization.

## **2-2 Characteristics of Japan's Legal Development**

### **2-2-1 "Customized" Laws Tailored to Local Culture and Society**

As seen in Section 2-1, while Japan has incorporated the advanced legal systems of other states, borrowing basic concepts from Continental Law centered around French and German legal traditions following the Meiji Restoration then becoming more heavily influenced by the American legal tradition during the period of indirect control by the Allies following the Second World War, it has customized and adapted those laws to the cultural, and societal factors present within the existing system as opposed to simply 'importing' the foreign legal traditions. Japan strove to build a transparent legal system, strengthen the capacity of institutions implementing laws, and promote education for legal and judicial professionals. At the same time, Japan worked to tie these efforts to social and economic stability and development. Prior to incorporating a foreign law, Japan would conduct various social research projects, both large and small, and canvass customs and existing legal systems (including informal systems) in the respective field.

Such a process can be very informative for developing countries seeking to establish and/or improve existing legal systems so as to tailor them to the circumstances of a particular country while simultaneously receiving aid from donor countries/agencies.

### **2-2-2 Legal Experts with Comparative Law Backgrounds<sup>11</sup>**

Japan has developed a pool of legal scholars and experts who are well versed in both Japanese law and the laws of other countries. This is a result of Japan's study and research of other nations' legal systems in order to customize foreign laws and to bring its legal system closer in line with the international community's standards. As mentioned above, Japan was first influenced by French, German, and other continental laws after the Meiji Restoration and later by the American (Anglo-American law) legal tradition in the wake of the Second World War. In a sense, this was a movement "to collect all the best aspects of the world's legal systems and congregate them in the Far East island state of Japan."<sup>12</sup> This process in Japan has further nurtured a tradition among Japanese academics of conducting comparative studies regarding foreign laws that have contributed to the development of the Japanese legal system, which has in turn produced a significant number of legal professionals with seasoned knowledge of other legal systems in addition to Japanese Law.

The current legal systems in many developing nations closely resemble those of their formal colonial powers. Working from these legal foundations, developing countries are striving to address the modern challenges of globalization and the market economy transition. Before attempting to give competent advice to a former colony nation one

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<sup>11</sup> See Mikazuki, Akira (2001). *Review of justice administration III*. Yuhikaku.

<sup>12</sup> Mikazuki, Akira (2001). *Review of justice administration III*. Yuhikaku, p. 14.

should naturally be well acquainted with the founding legal systems that influence its legal system (i.e., knowledge of the former colonial power's legal system). In this view, Japan's experience and the knowledge of Japan's legal experts are extremely beneficial when providing assistance attuned to the situation and circumstances of the recipient country.

In the process of developing its legal system, Japan has continually collected and stockpiled information concerning other nations' legal systems and has constructed a diversity of legal science fields and legal practices. With Japan's assistance, a recipient country is able to not only access Japan's experiences but also a wide range of information on the legal systems of other countries. This makes it possible to examine legal systems tailored to their own country by comparing and contrasting different legal systems. This approach of offering options while not imposing Japan's laws on the recipient dovetails with JICA's basic policy of respecting the recipient country's ownership. This is also a characteristic unique to Japanese capacity development for legal and judicial sectors not found with other donor nations' or institutions' assistance.

## Chapter 3

### JICA's Support for Capacity Development in Legal and Judicial Sectors in Developing Countries

#### 3-1 Basic Policy and Its Strengths

##### 3-1-1 Respecting Developing Countries' Ownership of the Capacity Development for Legal and Judicial Sectors in Developing Countries Process

In order to promote the establishment of the “rule of law” to achieve stability and development in developing countries, JICA respects each country's ownership over the process and supports their self-help activities.

The choice of legal systems and the path to “Rule of Law” promotion are matters of state sovereignty, and the appropriateness of various options is the sole purview of the state itself. Efforts directed toward the realization of the “Rule of Law” must be based on the individual situations of the respective countries. Thus, the ownership and efforts of the people who have deep understanding of their own culture and existing systems are crucial to the effective use of external support. On the other hand, capacity development for legal and judicial sectors that is imposed or compelled upon a country raises the question of sovereignty infringement as well as the possibility of arriving at a legal system that will never take root in the country.<sup>13</sup>

Accordingly, JICA facilitates the development of legal systems that suit the cultural, and societal factors present within the existing system of each developing country by providing knowledge of other countries' systems and ideologies as points of reference, rather than imposing any specific system or idea of Japan or any other nation. Instead, JICA provides the legal systems and philosophies of Japan and other countries as points of reference and assists recipient countries in constructing legal systems tailored to their own circumstances. Specifically stated JICA presents various “options” to the partner country with legislative examples from Japan and elsewhere, and then puts efforts into advancing dialogue and cooperation so that the country can choose the legal system that best fits its individual circumstances. It is through this process that JICA respects the ownership of recipient countries. Even in cases where JICA is forced to narrow the range of options due to capacity concerns, JICA still takes an approach that, while working in partnership with the country and engaging in dialogue, respects the country's ownership and final decision.<sup>14</sup> Concisely put, JICA presents various ‘policy options’ via dialogue with the state in ways, such as introducing paradigm legislation from other systems, that allow each country to select those options best suited to its individual circumstances.

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<sup>13</sup> Kaino, Michiatsu (2001). General Introduction: Legal assistance and issues of comparative law. Legal assistance and issues of comparative law. *Comparative Law Journal*, 62, p. 85.

<sup>14</sup> See Section 3-3-2.

Throughout this process the ownership of the developing countries remains highly valued.

### **3-1-2 Modalities of Support Utilizing Diverse Assistance Resources**

A diverse group of experts take part in JICA's efforts in capacity development for legal and judicial sectors in order to comprehensively cover the multitude of factors necessary to realize the "Rule of Law". To deliver assistance effectively and efficiently using these resources, JICA combines the resources and tools given below:

- † **Dispatching of Long-term advisors:** JICA begins by dispatching long-term advisors (judges, prosecutors, lawyers, etc.) with extensive experience in Japanese legal practice who are able to comprehend the needs and actual conditions within the developing country. These advisors provide necessary advice based on their experience, and function as intermediaries between the developing countries and JICA. Based on their practical experience, and taking into account the host country's legal culture, these experts dispense advice through frequent meetings with their counterparts in the host country. Long-term advisors also serve as intermediaries between JICA and the recipient country regarding the execution of assistance programs. JICA is able to offer support that precisely corresponds to the needs of the developing country by drawing upon the opinions of the long-term advisors.
  
- † **Establishing Domestic advisory committees:** JICA establishes advisory committees in Japan comprised of academics and practitioners in the field (judges, prosecutors, lawyers, etc.) to back-up the long-term advisors and provide appropriate advice to the developing country. In many cases, members of the advisory committees continue their support over an extended duration of time and across different phases of the projects, contributing to the achievement of support objectives via the accumulation of experience and knowledge, while also building mutual trust.
  
- † **In-country seminars:** JICA dispatches experienced academics and legal practitioners, such as members of the advisory committee, on a short-term basis to the developing countries in order to hold onsite seminars. This provides a larger number of stakeholders with the opportunity to obtain knowledge directly from Japanese professionals, while at the same time allowing Japanese professionals to obtain an understanding of the on-the-ground situation in the developing country, which is necessary for providing proper advice. The long-term advisors provide

coordination and assistance both before and after the in-country seminars and support the recipient country in assimilating the knowledge and suggestions from the visiting experts and putting the suggestions into practice.

† **In-Japan workshops/training:** JICA organizes a series of workshops/training in Japan and invites concerned counterpart personnel from developing countries. These workshops/training provide opportunities for participants to engage in intensive discussions with a wide-range of Japanese academics and legal practitioners, and to study multiple aspects of Japanese practice within related organizations.

† **JICA-Net system:** JICA-net Conferences provided through the JICA-net System (a TV Conference System set up at JICA HQ, local offices and related organizations) facilitate smooth communication between concerned counterpart personnel in developing countries and advisory committee members in Japan by allowing direct face-to-face meetings. Additionally, this enables resident long-term advisors to attend advisory committee meetings held in Japan, and to work as a bridge providing information on existing systems, practices and the legal professionals' way of thinking in the developing country. This sharing of information can improve the effectiveness of the advisory group's in-country seminars and in-Japan workshops/training.

† **Long-term human resources development:** Schemes such as "Long-term Training" and the "Japanese Grant Aid for Human Resource Development Scholarship" have been implemented as means for training personnel in developing countries in the medium to long-term.

"Long-term Training" entails personnel from developing countries coming to Japan as foreign students in Japanese graduate institutions, and residing in Japan for 2-3 years while seeking to obtain a doctorate or master's degree in a particular field. For projects relating to the support of legal development, individuals from Laos have been accepted as long-term trainees. The "Japanese Grant Aid for Human Resource Development Scholarship" scheme (also referred to as "JDS Students"), which is one of the Grant Aid Projects, has numerous students partaking in undergraduate law and graduate level legal studies programs.

In addition to this, there is the "Training Program for Young Leaders" which is a program nurturing individuals who will lead future national development by inviting young candidates from selected countries to participate in training

programs to develop technical knowledge and expertise, and which also includes a “Legal and Judicial System” course. In addition to the “Training Program for Young Leaders”, JICA provides legal sector training programs through the “International Training and Dialogue (Group Training Course),” a training program covering a standard set of issues for all participants, and the “Region Focused Training and Dialogue,” a training program for individuals from a specific region providing instruction in specific fields relating to that region.

The cooperation of Japanese legal scholars and practitioners is paramount to JICA’s efforts in the capacity development of the legal and judicial sectors. These people, who are well experienced in the practice of law, do not necessarily have in-depth knowledge or experience in the field of developmental aid. Therefore, JICA runs a month-long pre-departure training program for long-term, expert candidates that gives them opportunities to learn more about international cooperation and gain practical ability in such capacity development matters. JICA also plans to start skill development training for legal and judicial capacity development expert candidates in FY 2009. (This will entail training specialized for the capacity development for legal and judicial sectors field with an OJT component that is separate from the usual pre-departure training.)

### **3-1-3 Project Scope, Responding to Developmental Stages, and Policy Priorities**

As seen in Section 1-2, the three of core elements of JICA’s capacity development of legal and judicial sectors [(a) Development of rules and regulations; (b) Improvement of the capacity of public organizations; and (c) Legal empowerment of people and society] compliment one another, and the establishment of the “rule of law” would not be possible should any of these elements be missing. Therefore, these core elements must be viewed in a holistic and cross-relational manner, being adequately selected or combined so as to guarantee the effective implementation of the support. This process should be based on sufficient consultations with and agreement of the respective developing country in accordance with their capacity, needs, and major policy issues.

It is not feasible, however, to provide assistance that corresponds to all the diverse legal system issues and needs of a recipient country. Assistance must, therefore, be provided in a manner that extracts the maximum benefit from limited resources while at the same time maintaining a holistic, cross-disciplinary perspective. Since JICA’s capacity development of legal and judicial sectors is delivered on a project-type technical cooperation,<sup>15</sup> it is necessary to select the target area for the assistance and establish the

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<sup>15</sup> Collaborative project assistance is assistance provided after establishing the target area for the

project's scope.

Accordingly, JICA selects either (a) rule establishment, (b) improving legal institutional capacity, or (c) legal empowerment or else forms a project combining these factors after considering the developing country's needs, policy priorities, capacity, and other variables. This decision process is agreed upon in advance through dialogue with the recipient country. Furthermore, at points during the project or at the start of a new collaborative phase, the project is reviewed in response to changes in the recipient country's capacity, needs, or policy priorities and the project's scope and assistance areas are adjusted in order to deliver more applicable assistance.

### **3-1-4 Emphasizing the Long-Term Development of Professionals in Order to Sustain Independent Legal System Development**

As seen in Section 1-2, JICA emphasizes the long-term nurturing of legal and judicial professionals who are capable of leading independent legal system development. In addition to providing human resource development as part of its assistance programs for areas (a) through (c) above, JICA provides assistance earmarked specifically for the grooming of legal and judicial professionals, and the training of legal practitioners.

Hence, JICA places importance on the support process and the enhancing of the capacity development activities of the counterpart personnel by encouraging the creation of specific working groups in the developing country which are able to engage in joint operations with Japanese long-term advisors and the advisory committee in Japan, as opposed to unilaterally disseminating knowledge. For example, the legislative drafting assistance team does not submit bills created in Japan. Instead, JICA has the recipient country set up a working group of legal professionals and officials from legal and judicial institutions that work together<sup>16</sup> with the long-term advisors and the advisory group — a

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assistance, the desired outcomes, the counterpart institution(s), and a fixed collaboration duration. JICA provides project-based assistance for the following reasons:

- Incorporating desired outcomes and implementation activities in each project phase and sharing these among all partners clearly defines each phase's targets and objectives as well as the processes to be implemented so as to reach the targets, which leads to smoother implementation of collaborative activities.
- It is possible to select the appropriate counterpart institutions and officials, and assemble a cooperative framework for each project in keeping with the type of activities, which vary according to the stage of development.
- Project monitoring and assessments simplify the verification of each phase's attained outcomes in the target area, course corrections, and the determination of when the collaboration should be concluded.

<sup>16</sup> For example, an iterative process is followed when providing legislative drafting assistance: the aid-recipient country's working group will draft a bill, the long-term experts and the assistance committee in Japan will review and comment on the draft, and the local working group will review the comments. When necessary, in-country seminars, in-Japan meetings with visiting working group members, and the JICA-Net system (a teleconferencing system) are used for direct discussion and dialog in order to eliminate misgivings, present Japan's perspective on problem areas, and provide the



framework consisting of academic experts and legal practitioners in Japan — to draft bills and create training materials. It takes time, admittedly, for both sides with the drafted articles being reviewed one by one by the working group members in the developing country, Japanese long-term advisors and advisory committee members in Japan. However, it is through this process of joint study and joint improvement that JICA endeavors to nurture legal and judicial professionals who can bear the burden of future legal developments on their own.

### **3-1-5 Formulation of the Project Framework According to the Level of Development and Policy Issues of the Respective Countries**

A legal system that fails to conform with the country’s culture or society will never reach its objectives regardless of how conceptually ideal the legal system may be. For this reason, legal system establishment must start at the present state of the country’s society and proceed gradually from that point.<sup>17</sup> Without examining the technical aspects of legal rule — for instance, what issues is the rule trying to resolve or what is the objective of the rule’s creation — in the context of the country in question, there is a strong likelihood of introducing a “dysfunctional” Legal System that is at odds with its society.<sup>18</sup>

In this light, JICA aims to provide efforts towards capacity development for legal and judicial sectors grounded first and foremost in the society of the recipient country. More particularly, JICA takes the approach of first reaching a common perspective on problem areas — using such techniques as canvassing the public in cooperation with the partner country — and then, through ongoing dialogue, think of solutions that are consistent with local circumstances. Moreover, by stationing legal experts with experience in Japanese legal practices for long periods in the local country, JICA is able to form frameworks that can properly and accurately appraise the situation in the recipient country.

### **3-1-6 Using Japan’s Own Experience and Knowledge**

By drawing upon Japan’s own experience in customizing foreign legal systems to accommodate the cultural and societal elements of the existing Japanese systems in their diverse forms, JICA’s support for capacity development in legal and judicial sectors in developing countries seeks out a method optimally suited to the needs and conditions of the developing country itself. Advice on the legal systems of other nations should not be

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aid-recipient country with options while assisting in the drafting work.

<sup>17</sup> Morishima, Akio (2003). Legal assistance in Viet Nam [keynote speech]. *ICD News*, 9 (May 2003), p. 37.

<sup>18</sup> Morishima, Akio (2003). Experiences from assistance with drafting Cambodia’s civil code [special feature]. *ICD News*, 11 (Sep. 2003), p. 5.

limited to technical aspects, but should also provide a “systematized knowledge” which includes the background of the Japanese legal system. Japan’s own experience is useful to provide such advice.<sup>19</sup>

As has been seen, JICA deploys legal practitioners as long-term advisors and backs these experts with an advisory group of legal academics and practitioners in Japan. This framework allows JICA to deliver assistance that brings together expertise on a wide range of subjects based on Japan’s experience.

### **3-2 Validating the Effectiveness of the Approach**

JICA started project-based collaborative work in Viet Nam in 1996 and later extended this to Cambodia and Laos. As of April 2009, JICA has been involved in collaborative legal and judicial sector capacity development projects in nine countries: Viet Nam, Cambodia, Laos, Uzbekistan, Indonesia, China, Mongolia, East Timor, and Nepal.<sup>20</sup> In this section, attempts will be made to evaluate the effectiveness of JICA’s legal and judicial capacity development approaches using case studies from Viet Nam and Cambodia, the two states with the longest history of JICA involvement. Project summaries for case studies in other countries are set forth in Attachment 1.

#### **3-2-1 Analysis of JICA Collaborative Work in Viet Nam**

##### *Summary of JICA collaborative work in Viet Nam*

Viet Nam’s move towards a market economy was sparked by the introduction of the *Doi moi* economic reforms in 1986. As part of the many liberalization policies, the construction of a legal system suitable for a market economy was a pressing concern. The beginning of the 1990s saw Viet Nam pushing ahead with the establishment of a legal system with the cooperation of foreign governments and international organizations, but the country sorely needed to quickly develop legal professionals skilled in legal systems and law for the market economy.

In this context, Japan launched the Project in the Legal and Judicial Field in Viet Nam in 1996. (The program ran from January 1996 to November 1999.) The assistance project focused on legislative drafting. As a necessary preliminary step, much time and effort was devoted to social research and researching foreign laws, including Japanese law. In the initial stages, JICA’s involvement was limited to presenting Japan’s legal frameworks, but over time JICA’s role became more extensive, including the giving of specific comments on bills drafted by the Vietnamese side. Japan supplied a massive range of legislation as references for the drafting process. Although Phase 1 focused on assisting in the legislative drafting process, the scope of the assistance grew and the Japanese side frequently had to improvise as it responded to the occasional requests for information from its counterparts.

<sup>19</sup> Uehara, Toshio (2008). “Enactment of the Cambodian Code of Civil Procedure –Looking back to the drafting support,” *Jurisut*, No.1358,pp.27

<sup>20</sup> As of April 2009, JICA have only conducted in-Japan training and in-country seminars for East Timor and Nepal; JICA have yet to start any technical cooperation projects in these countries.

Legislation drafting occupied most of Japan's assistance activities in Phase 2 (December 1999 to March 2003). New activities did emerge, such as organizing the system of law, but over and above this was an awareness of the need to foster legal and judicial professionals to apply the laws. At the same time, the project's scope widened considerably with the full commencement of the revised Civil Code and Civil Procedure Code drafting and the addition of the Supreme People's Procuracy and the Supreme People's Court. Besides their normal drafting assistance activities, JICA's long-term advisors participated in the Legal Needs Assessment — the first integrated study of Viet Nam's legal system conducted by the Ministry of Justice with assistance from the United Nations Development Programme — and contributed recommendations on identifying and resolving problem areas in Viet Nam's Legal System.

As Phase 2 drew to a close, the drafting of the revised Civil Code was only partially completed, the drafting of the Civil Procedure Code was not yet complete, and, in view of establishing a civil law system suitable for a market economy, there was also a need to establish laws adjacent to the Civil Code. Moreover, there was a strong recognition of the ever-increasing urgency to develop a force of legal professionals to apply the new laws as legislation establishment moved forward. Consequently, Phase 3 (December 2003 to March 2007) put more weight on human resource development. In the first two phases, much of JICA's assistance consisted of responding to requests for information by the Vietnamese side in its various legislative-drafting operations. This led to domestic criticism that the assistance project was simply trying to please everyone and lacked any definitive objectives or outcomes. As a result, assistance in Phase 3 was divided into two sub-projects: Sub-project A for assisting the drafting of the Civil Code and related legislation for the market economy; and Sub-project B for developing legal professionals capable of competently implementing and applying the laws. Within each sub-project, targets, details regarding activities, and desired outcomes were defined and the scope of assistance established. Under strong pressure from the Vietnamese side, the Faculty of Law of Viet Nam National University, Hanoi was added to the assistance scope, and assistance for founding and operating a course on Japanese law in Japanese was added as a new human resources development component. Viet Nam's policy priorities were further clarified in 2005 (in Resolutions No. 48 and No. 49 of the Politburo of the Central Committee Communist Party of Viet Nam), making it possible to set better defined assistance activities.

From the first three phases, JICA discovered that assistance at the central level was not resulting in improved outcomes at the local level. Making use of past lessons, the current Project for the Project for the Legal and Judicial System Reform (April 2007 to March 2011) is working to resolve issues at the local level as well as at the central level. A pilot district has been set up, and the lessons and ideas gained from actual court proceedings in the district are used as feedback to central institutions. JICA is working to make further practical improvements by incorporating the lessons and approaches learned at the local level into the founding of rules and institutions, and in educating legal professionals.

### **(1) Respecting Recipient Country Ownership**

With the move to a market economy after the *Doi moi* economic reforms in 1986, Viet Nam started establishing the necessary legal platforms to sustain a market economy. Through the Legal Needs Assessment in 2002, Resolutions No. 48 and No. 49 of the Politburo of the Central Committee Communist Party of Viet Nam in 2005, the government spelled out a mid-term strategic roadmap for legal system development and

judicial reform. JICA has expanded the project, including cooperation with the Legal Needs Assessment, by flexibly adapting its collaborative activities and formats to meet Viet Nam's reform progress.<sup>21</sup> JICA's current project also structures its assistance activities in keeping with the priorities of Viet Nam's legal development plan.

In some cases, when assisting in the revised Civil Code drafting process for example, Viet Nam has rejected suggestions from Japan's civil code joint study group, but after verifying Viet Nam's reasons JICA has not attempted to impose its opinions and has continued to provide assistance in a way that respects Viet Nam's incremental legal reform efforts.

### **Box 3-1 The System of Judicial Supervision in Viet Nam's Civil Procedure Code**

The problem of judicial supervision in Viet Nam's Civil Procedure Code is illustrative of the difficulty of resolving ideological conflicts between the adversary system and the *ex officio* principle. The system of judicial supervision is a process in which the government holds special court sessions to reexamine judgments and rulings handed down through regular court proceedings. If it is deemed necessary, the government may repeal an earlier decision. During JICA's project to assist Viet Nam in drafting its Civil Procedure Code, there were repeated clashes between the Japanese advisors and the Viet Nam government over whether to include the system of judicial supervision in the Civil Procedure Code draft. The Viet Nam government was insistent that this provision be continued in the draft. ... Eventually, the system of judicial supervision was upheld, and the system was stipulated in Article 288 of the Viet Nam Civil Procedure Code.

Should the rules of judicial supervision be seen as inconsistent with the "Rule of Law" concept? (a) If stance that the rights and associated interpretations under the "Rule of Law" and the essence of the "Rule of Law" serve to limit government power is taken, then, the system of judicial supervision will likely be judged harshly as opposing the "Rule of Law".

It must be remembered, however, (b) many problems of this type crop up time and again in the process of reforming legal systems for the purpose of creating government mechanisms. In this sense, the system of judicial supervision should not be considered to be a unique or an exceptional problem. Furthermore, those who regard the system of judicial supervision as an inherent problem of socialism have failed to grasp the true nature of the issue. ... Rather than seeking a final answer, on the premise of a one-time solution, to problems of this nature, attempts should be made towards incremental legal reform, which is by nature a dynamic process.

Source: Matsuo, Hiroshi (2008). Root questions for law and development: Focusing on the relationship of the "Rule of Law" and good governance. *Law & Practice*, 2, pp. 36–37.

## **(2) Providing Assistance with a Combination of Diverse Resources**

JICA has been sending legal practitioners as long-term advisors to Viet Nam since the start of Phase 1 in 1996. In Phase 2, JICA set up a civil code reform joint study group and, in Phase 3, added joint study groups looking at the civil procedure code and the

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<sup>21</sup> JICA (2006). *Completion assessment report on the Project in the Legal and Judicial Field in Viet Nam (Phase 3)*, p. 22.

development of legal professionals. In the current project, JICA has established a civil code reform joint study group and a court proceedings reform joint study group.

Because Japanese legal practitioners are stationed in the country for long periods, their Vietnamese counterparts can discuss with them specific legal issues within the assistance scope at any time. The long-term advisors, who have a deep appreciation of Viet Nam's culture and society, are able to honestly gauge Viet Nam's needs. Moreover, advisory groups in Japan provide advice and suggestions from diverse viewpoints concerning the needs identified by the long-term advisors. Coordination between long-term advisors and advisors in Japan has led to frameworks better adapted to the needs of Viet Nam. For example, long-term advisors are able to locally track the activities, supervised by an advisor in Japan, over the long-term.

### **Box 3-2 Comments by Vietnamese Counterparts and Other Donors on Japan's Assistance Techniques**

- Every long-term professional from Japan has expertise and provides in-depth advice in addition to being available for various follow-ups when necessary.
- The caliber of Japanese projects is derived from the long-term residence of the legal professionals, creating a state in which legal professionals possess a profound knowledge of the society and culture of Viet Nam and are able to respond to the needs of Viet Nam at all times.
- The Japanese advisors and their Vietnamese counterparts have discussions on a biweekly basis. This is a result of their continuously providing excellent knowledge and winning the trust of their Vietnamese counterparts.
- While Western lawyers and experts seek outcomes by working individually, JICA makes maximum use of its organizational network and backs this with both long-term and short-term experts. No other country has put together such a system. On the other hand, other donors' projects rely on individual networks and don't provide the long-term and ongoing assistance like Japan does.
- It is indeed amazing that over one hundred professionals work in a support structure that allows for assistance from Japan on a continuous, long-term basis. The coming and going of short-term professionals enables JICA to provide practical capacity development in legal and judicial sectors in developing countries.

Source: Taken from interviews conducted in Viet Nam<sup>22</sup>

### **(3) Project Scope, Responding to Developmental Stages, and Policy Priorities**

From the outset, JICA's objectives have been to assist, through joint Viet Nam-Japan operations, the establishment of legislation that matches the reality in Viet Nam and which the Vietnamese can implement and enforce. As a result of this assistance, a number of laws crucial to the country's market economy transition have been established,

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<sup>22</sup> Surveys were conducted in Viet Nam (February 24 – 28, 2009) and Cambodia (February 28 – March 7, 2009) for this research project. Interviews were conducted with local counterparts and other donor country representatives.

including the Civil Procedure Code in 2004 and the Civil Code in 2005. The objectives of JICA's capacity development for legal and judicial sectors cannot be met, however, without adequate implementation and enforcement of these established laws. Consequently, a key issue has been capacity building in the institutions responsible for implementing and enforcing these laws.

From this perspective, JICA has increasingly focused assistance throughout the project phases on the implementation and enforcement of laws that JICA helped to draft. In the current Project for the Legal and Judicial System Reform in Viet Nam, JICA is assisting in the training of officials in Ministry of Justice agencies in order to assist in capacity building within the institutions responsible for implementing and enforcing the laws. JICA has also been active in improving legal and judicial practices in partnership with provincial and municipal courts in a pilot district, Bac Ninh Province, in agreement with Vietnamese counterparts. JICA's long-term advisors do the bulk of the assistance activities in the pilot district, working alongside Vietnamese working groups to monitor current court proceedings, verify current practices, identify problem areas, analyze the causes of the problem areas, and studying potential solutions. These results are reported back to the central judicial authorities, wherein they are used to revise procedural manuals created in previous assistance projects and to improve systems and techniques for communicating precedents and other legal information to local courts and responding to queries from local courts.<sup>23</sup> Knowledge gained from work in the pilot area is also being used for amendments to the Civil Procedure Code and the Civil Code. Assistance to local courts close to the people is being tied to improved access to the legal and judicial system for the population.

Our assistance, then, extends beyond the drafting of legislation and includes assisting in capacity-building at institutions charged with implementing and enforcing established laws. In this way, JICA is truly fulfilling the lawmaking objectives of the statutes JICA helped to draft. JICA has been able to construct systems that better reflect the reality on the ground by feeding back the information gained in its institutional capacity-building assistance into the rule establishment process. Finally, by improving access to the legal and judicial systems, JICA has brought the benefits of the laws JICA helped draft to civil society.

JICA's legal and judicial sector capacity development in Viet Nam has been effective because JICA provided assistance directed at establishing rules and regulations, building institutional capacity, and improving access to the legal and judicial system.

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<sup>23</sup> Inaba, Issei (2008). "Today's legal assistance projects," *Jurist*, 1358, p. 2.

**Box 3-3 Legal and Judicial System Reform Project Efforts (comments from other donor country representatives)**

- Japan is the only donor nation that has started assisting local organizations. From what I have seen, Japan has had remarkable success on the practical front.
- Japan's assistance has evolved to enforcement at the municipal level. Assistance at this local level is extremely challenging and innovative and we are very interested in what the results will be. That this is possible is due to Japan's fostering of trust with the Vietnamese side over more than 10 years. Even if other donor countries attempt the same approach, the Vietnamese are certain to have little to do with them.

Source: Taken from interviews conducted in Viet Nam<sup>24</sup>

**(4) Focus on Long-term Development of Human Resources for Enhancing Sustainable Capacity Development for Legal and Judicial Sectors in Developing Countries**

JICA has set up joint study groups in both Viet Nam and Japan, which jointly examines drafting issues in order to advance the Project in the Legal and Judicial Field. This process also attempts to develop legal and judicial professionals and is expected to lead to progress towards an independent legal system in the future.

For example, the Viet Nam civil code reform joint study group, which consisted of front-line civil law academics and lawyers with long track records in Japanese civil law, was very active in providing assistance with respect to the Vietnamese Civil Code amendment process in Phase 2 and Phase 3 of the project. But rather than just hand over drafted provisions to the Vietnamese side, this study group gave written comments on drafts prepared by the Vietnamese side at each stage. They also engaged in direct discussions and dialogue with their counterparts during theme-specific in-country seminars, meetings with drafting committee members invited to Japan, and JICA-Net teleconferences. Thus, the study group members assisted in Viet Nam's drafting process while supplying the Vietnamese side with the advice and information it needed through written comments and seminars, explaining what the Japanese side saw as problems and concerns through direct dialogue, and pointing out options and conceivable pitfalls through exhaustive discussion.<sup>25</sup>

Remarkable improvement was observed in the legal conceptualizing ability of the Viet Nam legal professionals and lawyers during these frequent discussions and collaborative work. Officials from counterpart organizations, in self-assessments, stated

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<sup>24</sup> Surveys were conducted in Viet Nam (February 24 – 28, 2009) and Cambodia (February 28 – March 7, 2009) for this research project. Interviews were conducted with local counterparts and other donor country representatives.

<sup>25</sup> As a result of this assistance, the final draft of the Civil Code amendments was presented to the National Assembly in April 2005. The new Civil Code was promulgated in May 2005 and went into force in January 2006.

that through this process they were better able to recognize the legislation needed for a market economy and the legal concepts and legal theories needed for international economic integration and more able to cope with problems independently and contribute to legislative drafting. Short-term and long-term advisors, after watching these logical thinking and planning activities over the course of the project, concurred that their counterparts became more proficient in executing their duties.<sup>26</sup>

### **(5) A Focus on the Cooperation for Capacity Development for Legal and Judicial Sectors with Roots in the Society of the Developing Country**

The initial period of JICA's Viet Nam capacity development project in 1996 was a feeling-out process. Nevertheless, JICA did not resort to simply passing over legal provisions drafted by Japan alone. Instead, as mentioned previously, JICA moved ahead with joint collaborative work, gaining an accurate picture of the situation in Viet Nam and the assistance demands, and worked together with their Vietnamese counterparts to find laws that suited Viet Nam's circumstances.

The fact-finding survey and social-research study<sup>27</sup> in Phase 1 on the enforcement status of the Viet Nam Civil Code became the baseline for adjusting its later legislative-drafting assistance to suit Viet Nam's social conditions. By emphasizing assistance based on the local social conditions and existing systems instead of merely providing aid on specific legal drafting questions, JICA has been able to offer assistance that is rooted in the social fabric of Viet Nam.

#### **Box 3-4 Social-Research Study for Viet Nam's Capacity Development for Legal and Judicial Sectors in Developing Countries**

We conducted a social survey on how the Vietnamese Civil Code was functioning within Vietnamese society. Although the Civil Code has been enacted, it was not certain whether it was actually being utilized. What came to our attention was that the Civil Code was being implemented in a manner completely different from what was expected. For instance, in real property registration, circumstances differed from what was stipulated in the Civil Code. Given these circumstances, we conducted a social survey, although one quite small in scale. The Vietnamese Legal Science Institute of the Ministry of Justice conducted a local survey with the cooperation of universities and other organizations, and Japanese socio-legal researchers and long-term advisors provided advice on the planning of the survey. The intention was to have the people in Viet Nam understand that if law

<sup>26</sup> JICA (2006). *Completion assessment report on the Project in the Legal and Judicial Field in Viet Nam (Phase 3)*, pp. 18–19.

<sup>27</sup> Japanese experts and Vietnamese Ministry of Justice officials together conducted 1,000 individual interviews in both Hanoi and Ho Chi Minh City. They also visited Viet Nam's urban areas, agricultural areas, and mountainous areas and held rotating meetings at other courts and judicial divisions to hear about problems with the existing Civil Code from people in charge of administering justice. For three years, the research team analyzed representative precedents collected from courts around the country as well as reference literature on the existing Civil Code, before publishing its findings.



does not function within society, it has no meaning as law. The level of the social survey itself and its result were not the primary concern --- we wanted Vietnamese people to recognize how law functions in the actual society.

Source: Morishima, Akio (2003). Legal assistance in Viet Nam [keynote speech]. *ICD News*, 9 (May 2003), p. 39.

### **(6) Transferring Japan's Experience and Knowledge**

To assist Viet Nam in improving its legal implementation and enforcement and in improving its legal practices, JICA deployed long-term advisors with backgrounds in prosecution and trial practice. These experts provided technical advice backed by their special knowledge and practical experience, and supplied recommendations with comparisons to Japanese legal practices from the advisory group in Japan, which was composed of experts with many years of trial experience.

### **Box 3-5 The Viet Nam Civil Procedure Code Joint Study Group**

Viet Nam began drafting a Civil Procedure Code in 1993, though it would take more than 10 years before the code was enacted. During this time, advanced nations and international organizations, at the request of Viet Nam, assisted with the drafting of the code ... in July 2003, as the drafting process was reaching its final stage, JICA launched the Viet Nam civil procedure code joint study group ... which lent considerable support to the assistance activities in Viet Nam from Japan. We must not forget that before the joint study group's formation Japanese academics and lawyers, at JICA's request, had made significant contributions to the drafting process. Nevertheless, the activities of the joint study group, which was formed after Viet Nam was well into the drafting process, had a different tenor from that of previous assistance activities. Although JICA had been obtaining materials from Viet Nam as needed to prepare in-country seminars and in-Japan training, the joint study group obtained drafts of the Civil Procedure Code elements and provided the Vietnamese side with pertinent advice while vetting every word of each proposed article.

*[Ed. The Viet Nam civil procedure code joint study group consisted of two prosecutors from the Japanese Ministry of Justice and three lawyers (one of whom was a former judge) who at the time were a professor emeritus, a visiting graduate school professor, and a full-time graduate school professor.]*

Source: Maruyama, Tsuyoshi. Establishment of the Viet Nam Civil Procedure Code: Japan's aid in legislative drafting [special feature]. *ICD News*, 21 (May 2005), p. 8.

### **3-2-2 Analysis of JICA Collaborative Work in Cambodia**

#### ***Summary of JICA collaborative work in Cambodia***

The Pol Pot regime caused the complete collapse of Cambodia's justice system, and nearly all the country's lawyers and officials who once supported the justice system were killed. Consequently, the entire task of rebuilding the country's legal and judicial system fell to foreign countries after UNTAC's establishment. JICA, given this situation, began assisting the drafting of the country's civil code and code of civil procedure at Cambodia's request. Four short-term resident experts surveyed conditions in Cambodia and reviewed the details

of Cambodia's request before JICA eventually launched the Legal and Judicial Development Project in March 1999. In Phase 1, which lasted from March 1999 to March 2003, JICA set up an organization to assist the legislative-drafting process and train legal officials, especially those in Cambodia's civil affairs field. Joint Cambodia-Japan efforts produced civil code and code of civil procedure drafts in both Khmer and Japanese.

In Phase 2, which ran from Apr 2004 to Apr 2008, assistance was given to promote the legislation and enactment of the draft civil code and code of civil procedure, and associated implementing regulations and adjacent statutes were drafted. JICA also worked to raise the proficiency of Cambodia's working group with textbooks and clause-by-clause explanations from the Japan advisory group. Recognizing the need to foster legal and judicial professionals to internalize the draft civil code and code of civil procedure in Cambodian civil society, the Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (from November 2005 to March 2008), which opened in 2003, was started. Under this project, the curriculum in the area of civil law, created teaching materials, and trainers and prospective trainers were developed by JICA. And, since the training of lawyers, one of the three actors of the judicial system, is necessary in view of instilling laws and proceedings into practice, JICA began assisting the Cambodian Bar Association in 2001 with the cooperation of the Japan Federation of Bar Associations.

Phase 3, which will run from April 2008 to March 2012, will continue Phase 2's drafting, establishment, and dissemination activities for laws associated with the civil code and code of civil procedure. JICA will also assist in the formation of the Ministry of Justice frameworks as part of its policy of assisting the gradual independence of the Cambodian side. Phase 2 of the Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (April 2008 to March 2012) will continue to create teaching materials and train prospective trainers with the aim of raising the self-development ability of the Royal School for Judges and Prosecutors.

### **(1) Respecting Recipient Country Ownership**

Because of Cambodia's recent history, including the Pol Pot regime's destruction of the justice system and the overwhelming lack of legal professionals, JICA took a different approach to its legislative-drafting assistance from the approach used in Viet Nam. The Japanese side drew up outlines for each provision and worked to draft the provisions through discussions with Cambodian counterparts.

As in Viet Nam, though, JICA still paid close attention to ensure that JICA did not impose any unilateral provisions or ideas on the Cambodian side. For example, JICA first reached an agreement with respect to drafting the code of civil procedure provisions with the Cambodian side through the following discussion: "Our aim is not to simply sanction the existing Kingdom of Cambodia's litigation practices as they stand and give them a legal grounding, but to draft a code of civil procedure based on the litigation principles of democratic, constitutional nations that will withstand future international scrutiny. At the same time, JICA will strive to ensure that the drafted code is in harmony with the Kingdom of Cambodia's social and economic interests as well as its traditional

legal systems and legal consciousness.”<sup>28</sup> Through exhaustive discussions, the two sides settled on the goal of completing a draft code of civil procedure in Khmer.<sup>29 30</sup> The assistance process was also collaborative: the Cambodia working group deliberated over every clause of the text outline prepared by the Japanese drafting advisory group and engaged directly with the Japanese drafting advisory group to resolve any questions concerning the outline. The outcome of this approach was that the civil code and code of civil procedure drafts took into account Cambodia’s circumstances and past trial practices: for example, stipulating Cambodia’s unique real rights provisions — though they resembled Japan’s in some aspects — and requiring the assignment of a preparatory proceedings date before the oral proceedings date. That the Cambodian government positively received both drafts<sup>31</sup> also validated that its assistance respected the ownership of the Cambodian side.

## **(2) Providing Assistance with a Combination of Diverse Resources**

JICA deployed long-term advisors to Cambodia and organized an advisory group in Japan at the outset of its assistance project, just as was done in Viet Nam. A civil code working group and a code of civil procedure working group composed of legal academics and practitioners were set up to assist legislative-drafting. Together, these long-term advisors and working group members have provided assistance through direct dialogue with Cambodian officials from the start of the legislative-drafting process, more than 10 years ago, through the present. JICA also established a legal training study group (renamed the legal training advisory group in FY 2008) composed of legal practitioners involved in legal training in Japan to assist the Royal School for Judges and Prosecutors. This group advises the school on legal training using examples from Japan.

We have also made positive use of in-Japan training to educate legal and judicial professionals from Cambodia. In Phase 1 of the Legal and Judicial Development Project, JICA invited a total of 48 judicial professionals to five special country-specific training sessions in Japan over three years. These training sessions were highly regarded by the participants because, in addition to legislative-drafting workshops, the sessions allowed

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<sup>28</sup> Takeshita, Morio (2003). Significance of the code of civil procedure drafting assistance in the Kingdom of Cambodia and the fundamental drafting principles. *ICD News*, 7 (Jan. 2003), p. 33.

<sup>29</sup> Misawa, Azumi (2004). Legal assistance issues and future developments: Cambodia. *ICD News*, 16 (July 2004), pp. 8–9.

<sup>30</sup> In the initial stages of discussing the assistance agenda with the Cambodian government prior to commencing assistance, some elder Cambodian lawyers called for Japan to prepare a draft on its own as soon as possible without examining the issues together with Cambodian experts since the drafting process would take too much time (and because the Cambodian lawyers wouldn’t understand the issues even if they examined them together). Morishima, Akio (2003). Experiences from the drafting assistance process for Cambodia’s civil code. *ICD News*, 11 (Sep. 2003), p. 7.

<sup>31</sup> *Ibid.*

the participants to obtain immediate answers to questions posed directly to members of Japan's advisory group.

**Box 3-6 Comments by Cambodian Counterparts and Other Donors on JICA's Approach to Capacity Development for Legal and Judicial Sectors in Developing Countries**

- In Japan's approach, short-term and long-term advisors work directly with Cambodian government officials, with support from an advisory group in Japan and extensive follow-up to questions from the Cambodian side. Other donors do respond to legislative-drafting queries, but their support is not as comprehensive as Japan's.
- In France, laws are said to be created from a single mind, and laws are even named after individuals. No one genius, however, exists who can resolve all problems. This is why we feel that the presence of an advisory group, like Japan's, that creates legislation drafts with the combined wisdom of a range of field-specific experts results in better legislation.

Source: Taken from interviews conducted in Cambodia<sup>32</sup>

**(3) Project Scope, Responding to Developmental Stages, and Policy Priorities**

JICA's assistance to Cambodia began with aiding the country's civil code and code of civil procedure drafting process. In Phase 1 of the Legal and Judicial Development Project, Japan and Cambodia worked together to complete drafts of Cambodia's civil code and code of civil procedure. JICA's mandate in Phase 2 was to help promote the enactment of these two pieces of legislation as well as the drafting of related implementing regulations and adjacent statutes. The project's scope in Phase 3 is to promote the Cambodian side's initiative in gradually taking over the drafting of laws associated with the civil code to facilitate Cambodia's self-reliance and to strengthen the civil law capacity of the Ministry of Justice.

In parallel with this project, JICA launched the Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions together with the school, which opened in 2003, in recognition of the need to nurture legal and judicial professionals to ensure the civil code and code of civil procedure are properly applied and internalized in Cambodian civil society. JICA, with the cooperation of the Japan Federation of Bar Associations, has also been assisting the Cambodian Bar Association as of 2001 since fostering lawyers — one of the three actors of the justice system — is vital to establishing legal practices and benefiting civil society.

This demonstrates that the scope of its legal and judicial sector capacity development in Cambodia has not been limited to just legislative-drafting assistance.

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<sup>32</sup> Surveys were conducted in Viet Nam (February 24 – 28, 2009) and Cambodia (February 28 – March 7, 2009) for this research project. Interviews were conducted with local counterparts and other donor country representatives.

JICA have responded to changes in Cambodia's circumstances — such as Cambodia's chronic shortage of legal and judicial professionals and the opening of the Royal School for Judges and Prosecutors — by widening its assistance scope. The project now includes the training of Ministry of Justice officials, judges, public prosecutors, and lawyers with the aim of strengthening institutional capacity and training attorneys and lawyers with the aim of improving people's access to the legal and judicial system.

#### **(4) Emphasizing Long-Term Development of Professionals to Sustain Independent Legal System Development**

JICA's civil code drafting assistance followed the same structure used for the code of civil procedure drafting assistance; the civil code working group in Japan, consisting of civil law academics and other experts, first prepared draft provisions and then the Cambodian working group deliberated on the drafts line by line. Before drafting the actual text of the law, the Cambodian legislative drafters were invited to Japan where they engaged in intensive legislative drafting with members of the civil code working group. This process was exceptionally valuable because it gave the Cambodian side an opportunity to study the significance of the civil law system and the technical structure of the provisions.<sup>33</sup> Another aim of this process was to give the Cambodian side the capacity to make their own civil code amendments as needed in the future after the National Assembly of Cambodia has finally passed the draft into law.

As in Viet Nam, this process has had benefits for the human resource development side. Through these activities and investments, Cambodian working group members involved in legislation preparations gained a deeper understanding of the draft law's provisions. Moreover, debating the civil code and code of civil procedure — in which these working group members explained the details of the draft to the ministerial council of jurists, interministerial council members, and National Assembly members and responded competently to questions — was successful in increasing lawmakers' understanding of the bills and fostering a cooperative environment for the legislating of both laws. As a result, the Code of Civil Procedure went into force in July 2006 (and was implemented in July 2007) and the National Assembly of Cambodia passed the Civil Code Draft in December 2007 (the date for its implementation has not been set). The members of this working group have become competent in technically advanced interpretations and some are now lecturing on the new Civil Code and Code of Civil Procedure at the Royal School for Judges and Prosecutors, the Lawyer Training Center, and universities.<sup>34</sup>

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<sup>33</sup> Morishima, Akio (2003). Experiences from the drafting assistance process for Cambodia's civil code. *ICD News*, 11 (Sep. 2003), p. 7.

<sup>34</sup> JICA (2007). *Completion assessment report on the Legal and Judicial Development Project in Cambodia (Phase 2)*, p. 9.

### **Box 3-7 Cambodia Counterparts' Capacity Improvements Observed while Assisting in the Civil Code and Code of Civil Procedure Drafting**

The most unfortunate issue for judges is that they are unable to obtain experience in considering what existing written statutes mean in their current form. That is to say, that they are in a situation wherein there are few written statutes. They have rarely had any training in written interpretation. In drafting specific articles, we reviewed the articles together, one by one. Through this work, they have come to think about what is written --- I think that is a big change. ...Moreover, in the process of reviewing each article, they have learned cross-referencing, looking at other uncited articles and finding relationships between the articles, and even went so far as to point out that when you change this article, you need to change that one as well. By continuing in this review work, I believe it has improved the legal thinking ability of the judges and enhanced their thought processes.

Source: Sakano, Issei (2003). Experiences from the civil code and code of civil procedure drafting assistance project in Cambodia. *ICD News*, 7 (Jan. 2003), pp. 97–98.

### **Box 3-8 Events Leading to the Formation of the Local Working Group during the Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions in Cambodia**

Cambodia's initial requests to Japan were all dependent on Japan: Cambodia wanted JICA to develop educational materials in Khmer with the cooperation of Japanese experts [*Ed. both long-term advisors and experts in Japan*], Japanese judges to serve as instructors at the Royal Academy for Judicial Professions, and Japan to accept students from the Royal Academy for Judicial Professions for practical training at Japanese courts. Japan, in response, suggested to the Cambodians that forming a working group would be effective, based on the results with the previous legislative-drafting assistance projects. Through counterpart training, the Cambodian and Japanese sides were able to reach a shared understanding of the issues, and an approach was undertaken wherein a working group of Cambodian professors was formed [*Ed. a working group of academy professors was established*] and their formal abilities were improved through various inputs to the working group and, thus, realizing improvements in the practice of law in Cambodia. The project focused on two areas of the professors' knowledge. The first was to improve their knowledge of the legal practices under the new civil code and code of civil procedure that would come into effect shortly as well as their technical skills including trial management — in other words, to improve their skills as judges. The second area was instilling and improving their know-how, as Royal Academy for Judicial Professions professors, by determining curriculum and preparing educational materials. Because it was essential that the Cambodian side worked independently to reach these objectives, it set up a working group of professors. The Japanese side also set up a correlating working group to advise the professors on their draft curriculums and education materials. The Japanese working group also provided input on requirements, trial practices, and other matters.

Source: Yabuki, Kimitoshi & Misawa, Azumi (2005). Legal education assistance in Cambodia. *ICD News*, 20 (Mar. 2005).

### **(5) Emphasizing Assistance Grounded in the Recipient Country's Society**

As described in Section 3-2-2-1, JICA has emphasized providing assistance that is

rooted in Cambodia's society and has assisted with the drafting of the civil code and code of civil procedure with repeated reference to Cambodia's circumstances and previous trial practices.

This emphasis also contributed to the drafting process, which progressed by translating sample draft texts into Khmer, which had first been prepared in Japanese. This approach was taken so as to avoid inconsistencies due to translating text via English, a language foreign to both countries' legal system. An extremely important aspect of this process was ensuring uniform interpretation of legal terms. Failing to oversee whether the concepts the Japanese side assumed in Japanese law are being expressed in the Khmer language without omission or error would complicate the creation of proper translations. More to the point, the details of Japan's sample drafts would in such case not be conveyed properly to the Cambodian lawyers. To avoid this situation, a terminology definition panel met weekly, and occasionally on holidays, in Cambodia to define in Khmer the key legal terms that appeared in the draft articles. The Cambodian side was very satisfied with the terminology definition panel because it was useful not only in defining appropriate Khmer legal terms but also in furthering their understanding of the sample draft articles themselves.<sup>35</sup> Although it was a very difficult undertaking, the members of the local working group took on this work independently with a common understanding that the drafting of Cambodia's civil code and code of civil procedure could not proceed without completing this definition work.

### **Box 3-9 Terminology Definition Panel of the Legal and Judicial Development Project in Cambodia**

The terminology definition panel played a critical role in the drafting of the code of civil procedure. The terminology definition panel, which was apparently suggested by a long-term advisor stationed in Phnom Penh, came to consist of long-term advisors, the Ministry of Justice's working group, and judges who concentrated on the key legal terms appearing in the draft texts that we prepared. We have heard that the panel began meeting weekly sometime last year, and occasionally meets on holidays as well. This represents remarkable progress and a dramatic turnaround compared to the Cambodian side's lack of independent motivation when the project began — in the early going, even when they attended our local workshops, they would only half listen without taking any notes on the lecture or Q&A session. It would be a mistake, however, to view this terminology definition panel's work as simply a translation exercise. When strict attention was not paid to how well the Japanese law concepts were being conveyed in the Khmer language, we would run into translation problems and problems with even conveying the details of our legal drafts properly to the Cambodian lawyers. No matter how diligently we crafted our drafts, it would amount to nothing. In this sense, the terminology definition panel, which emerged through the local officials' explorations, has proved to be a venue for the critical work of correctly understanding and conveying the meaning of our legal drafts. No doubt, the long-term

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<sup>35</sup> JICA (2002). *Completion assessment report on Key Public Policy Assistance in the Kingdom of Cambodia, "Legal System Establishment" Project (Phase 1)*, p. 20.

resident advisors' awareness of the issues lay in the same place. ... The terminology definition panel initially simply read through the supplied draft texts and then began meeting four times a week for three-hour sessions last year. Beginning this year, the panel's intensity has picked up, meeting nearly every day for intensive discussions and querying the Japanese experts on everything they don't understand. The terminology definition panel's role in genuine human development and the emphasis on dialogue to further understanding are what makes this project remarkably different from the projects of other donors.

Source: Uehara, Toshio, Takeshita, Morio, Ohmura, Masahiko, Miki, Koichi, Matsushita, Junichi, Yabuki, Kimitoshi & Tanaka, Kazuko (2003). Current legal assistance conditions and issues: Experiences from the code of civil procedure drafting assistance in Cambodia [roundtable discussion]. *Jurist*, 1243, pp. 80–81.

## **(6) Transferring Japan's Experience and Knowledge**

A crucial issue prior to the legislative-drafting assistance was the determining of which country's law to use as the foundation of Cambodia's code of civil procedure. In the end, Japanese law was selected as the foundation for starting work on the code of civil procedure draft. Toshio Uehara, from the code of civil procedure working group, described the reasons for this selection as follows. "First, the work of assisting the drafting of a fundamental law, such as the code of civil procedure, is not a matter of merely writing down a sequence of articles; it is the provision of a single, large "*systematized knowledge*" that draws together the legal techniques and legal theory behind each article (the judicial precedents and doctrines) and the experience of incorporating foreign laws. Since the responsibility of this work fell to us, the only law we, being Japanese legal scholars and practitioners, could conceivably suggest to another country with confidence was the law we are intimately familiar with through its daily research, training, and practice. The second reason was that Japan's Code of Civil Procedure is very recent, having been completely revised after a sophisticated and broad comparative study and being based on global legislative trends while fully acknowledging the state of Japanese legal practices. Third, JICA concluded that continental law traditions would be easier for the Cambodian side to accept since Cambodia's former legal system belonged to the continental law system and was influenced greatly by its former colonial power, France. At the same time, there are very few legal and judicial professionals today with knowledge and experience with the old system because of the unprecedented legal system destruction and the mass murder of intellectuals during the civil war and internal turmoil period. Thus, we decided that given the present situation there was no need to stick rigorously to French law."<sup>36</sup>

<sup>36</sup> Uehara, Toshio (2008). "Enactment of the Cambodian Code of Civil Procedure –Looking back to the drafting support," *Jurist*, No.1358, pp.27



### **Box 3-10 Assisting in the Drafting of Cambodia’s Code of Civil Procedure Using Japan’s Code of Civil Procedure as a Reference**

Although Japan’s Code of Civil Procedure is a very new piece of legislation, its enactment was the product of compromises, and therefore it still contains imperfect areas and unresolved areas. At the same time, there are many articles in the legislation that can be understood only in the context of Japan’s law-making development since the Meiji Era and of well-established civil procedural theory and practice. There are also problems with the lack of provisions on basic and critical principles, such as the adversary system. For these reasons, if we transplanted Japan’s articles as is in Cambodia, which lacks the theoretical and practical premises that we consider obvious, the articles would run the risk of being difficult to understand or even misconstrued. The aim of our working group, then, must be to construct superior, easy-to-conceive laws that are compatible with Cambodia while accounting for these above points.

Source: Uehara, Toshio (2001). “Kingdom of Cambodia’s code of civil procedure drafting assistance operations,”. *Comparative Law Journal*, 62, p. 104.

Japan’s experience of adapting foreign laws — mainly French and German law in the Meiji era and American law after the Second World War — was used to suit its social conditions in the in-Japan training and seminars to introduce the trial-and-error process of independently establishing a legal and judicial system while incorporating elements of foreign law. The Cambodia government found Japan’s experience very thought provoking, given that it is currently attempting to compare and select foreign laws while ensuring they conform to Cambodia’s culture and values.<sup>37</sup>

### **3-3 JICA Capacity Development for Legal and Judicial Sectors in Developing Countries Issues and Initiatives**

#### **3-3-1 The Information-Gathering Process Prior to Beginning Assistance**

When embarking on project-based assistance, it is necessary to gather adequate advance information in order to collaborate in full knowledge of the recipient country’s systematic and cultural differences, even though the assistance scope and details are discussed in detail with the recipient country. Capacity development for legal and judicial sectors in developing countries, in particular, requires as much understanding as possible of the differences in the existing systems and culture from that of Japan since the legal capacity development for legal and judicial sectors has a profound association with the recipient country’s institutional design.

To develop a solid understanding of the country’s systems and culture and to examine the assistance scope, JICA gathers information by sending a short-term study group to the country, deploying short-term resident experts (typically for a stay of several months), and hosting discussions with the country using the in-Japan training scheme.

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<sup>37</sup> From Cambodia Ministry of Justice officials’ comments in Q&A sessions during our February 2009 in-Japan training program.

Note that the discussions using the in-Japan training scheme are not only an opportunity for Japan's officials to gather information, but also an opportunity for the recipient country to learn about Japan's systems. Through these discussions, the two sides can examine the assistance scope through a common understanding.

### **3-3-2 Selecting Assistance Approaches According to Recipient Country Capacity<sup>38</sup>**

Although JICA collaborated with both Viet Nam and Cambodia via joint work proceedings, the approach JICA took in each country was different.

In Viet Nam, the assistance approach consisted of *advising* and *providing options*. In other words the recipient country kept the drafting initiative, while JICA offered comments and advice on the preliminary legal drafts. This approach is agreeable in the sense that it respects the partner country's ownership. Nevertheless, JICA must still monitor to what extent the partner country has understood its advice and comments in order to prevent its assistance from consisting of *only* advice and comments. Particularly when multiple donors are providing assistance to a country, if JICA fails to keep close watch over whether the recipient country has properly scrutinized the presented options and selected a suitable framework (has the partner country adopted Japan's advice or has it simply selected the most convenient options without proper evaluation (or no evaluation at all)), JICA is merely respecting ownership in name only and its assistance will have been futile (not only will this neglect result in wasted effort, it may turn out to be harmful). An important component of this type of monitoring is ascertaining the recipient country's thinking and background knowledge. JICA must also maintain close regular communication with its counterparts and gather information on what assistance other donors are providing.

Cambodia, on the other hand, asked Japan for assistance with drafting its civil code and code of civil procedure while Japan and other countries were helping the country rebuild after the peace agreement. Because there were only a handful of legal and judicial professionals in Cambodia at the time, JICA were forced to start its assistance with a very limited number of Cambodian counterparts. The joint work operations ended up with the Japan-based advisory group creating the first legislation drafts and then the few counterparts in Cambodia debating the draft legislation's details. Although, as mentioned earlier, these joint work operations did result in raising the counterparts' formal skills, JICA were obliged to focus its attention on working with its direct counterparts because of the urgency, both inside and outside Cambodia, to enact a civil code and code of civil procedure. This meant that JICA were not able to devote sufficient resources to training officials at the Ministry of Justice (such as legal officials at the Civil Affairs Division). A

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<sup>38</sup> See Matsuo, Hiroshi (2006). Significance and issues of civil code establishment in legal assistance. *Keio Law Journal*, 4.

further complication was that although its counterparts, through the joint work operations, understood the legislation in detail, other officials (including Ministry of Justice officials and lawyers) needed time to comprehend some of the more sophisticated parts of the draft legislation. An ongoing challenge for JICA is the increasing of the number of people with a solid understanding of the civil code and code of civil procedure even after these are enforced.

JICA has implemented assistance while tailoring the approach to the local situation and needs. Rather than categorically settling on one superlative method, JICA may take multiple assistance approaches in keeping with the local situation and needs. Nevertheless, examining assistance from the point of view of the law users, the citizens, is always important regardless of the situation. Cambodia provides an example of how its assistance approach can evolve over time. After reconsidering its lack of success in broadening Cambodia's legal and judicial professional pool, JICA revamped its approach in Phase 3, which started in 2008, to include civil law capacity-building at the Ministry of Justice with the ultimate aim of enabling Cambodia to draft legislation independently.

### **3-3-3 Project Scope According to Recipient Country's Capacity**

With project-based assistance, a project framework is worked out in consultation with the recipient country prior to implementing of the project. To formulate a project framework, the project's scope must be determined in view of the recipient country's capacity.

The countries JICA partners with have different capacity expectations. For instance, when there is a reasonable expectation that the partner country has the capacity to draft legislation on its own, arrange structures to implement and enforce laws, and ensure legal and judicial access, it is logical to limit the project's scope to the country's precise needs among the three pillars of legal capacity development for legal and judicial sectors outlined in Section 1-2. But the situation is more complex when there is little expectation for the country's self capacity. Even if the project's envisioned scope is legislative-drafting assistance, the country may lack the institutional ability to implement and enforce the laws or improve legal and judicial access. It is even possible there are not enough trained people to support these activities. Therefore, to ensure the laws targeted under the legal and judicial sector capacity development project actually function, it is often necessary, in addition to legislative-drafting assistance, to assist in institutional capacity-building, legal and judicial access improvements, and training the supporting legal and judicial professionals. Such assistance assumes a broad mandate and a long duration.

As this shows, the necessary scope of assistance depends on the recipient country's capacity. When starting a project, then, the recipient country's capacity for establishing

rules and regulations, building institutional capacity, providing legal and judicial access, and developing legal and judicial professionals must be gauged accurately before setting the project framework and the assistance scope needed to achieve the assistance objectives. The potential for very broad assistance scopes and lengthy project durations is particularly high<sup>39</sup> when assisting the drafting of basic laws. Officials on both sides, therefore, must come to a common understanding about the concept and duration of the assistance scope at the project's inception.

Furthermore, legislative-drafting assistance projects often do not proceed according to the envisioned schedule as the final law-making process is a domestic governmental matter. Thus, JICA must be prepared to be flexible regarding schedules when setting the length of assistance. Depending on the recipient country's capacity, JICA must measure the level of commitment (by the counterpart organizations) to promote the national parliament's understanding of the bill. But since this is also a domestic matter, JICA must adopt a humble stance after prudent studying when dealing with its counterparts on this issue.

### **3-3-4 Flexible Responses within Project-Based Assistance**

Project-based assistance involves setting in advance the assistance scope and goals to be reached as well as defining the duration of the assistance. This is an effective means of obtaining the maximum benefits from limited resources. On the other hand, project-based assistance tends to be seen as being incapable of dealing flexibly with changes in priorities over the course of the project. This is not entirely true, as there are project mechanisms, such as the project design matrix (PDM), created at the project's conception, with the partner country's agreement, that allow for revisions when agreed to by both sides in order to handle changes in the progress of activities, the needs of the partner country, or the implementation framework.

Since capacity development for legal and judicial sectors in developing countries is a process of gradually developing a legal framework in response to the country's presumed situation, and to later situational changes, it is nearly impossible to forecast the final methods or timeframes at the onset and there are many issues that require flexible, trial-and-error approaches. Similarly, needs and priorities may change due to

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<sup>39</sup> For example, JICA assisted Cambodia in the drafting and enacting of its civil code and code of civil procedure. But since Cambodia's government lacked adequate internal mechanisms to resolve differences between laws, the project had to include assistance with adjusting laws, such as civil code and code of civil procedure, which are basic laws, assisted by other donors. Consequently, the project's scope had to be extended well beyond its original envisioned scope (drafting the civil code and code of civil procedure). Although related to the recipient country's capacity, assisting in the adjustment of basic laws, which are the underpinnings of a country, and internalizing them in the country can require enormous costs in countries which lack sufficient law-adjustment mechanisms since so many other laws are associated with the basic laws.

administrative or law-making policy changes, and the positive influence of the assistance itself may engender administrative policy changes.

JICA assembles a multilayered assistance framework, with an advisory group in Japan in addition to deploying long-term resident experts, to implement its capacity development efforts. This has the benefit of providing technical expertise and recommendations that suit the local context, but it can be criticized as lacking flexibility in some facets due to the large number of participants, which makes it impractical for experts on the ground to modify the project's framework and activities on an ad hoc basis.

Therefore, the local experts must continually keep up to date on the latest circumstances and needs, and JICA must be prepared to respond flexibly when assistance activities must be revised. Furthermore, officials from the recipient country and Japan must both recognize that parts of the assistance activities and PDM should be revised in keeping with situational developments and changes. Both sides must continually monitor for these possibilities.

### **3-3-5 Sharing Attainment Goals for Development Implementation**

JICA aims to implement its capacity development for legal and judicial sectors activities in keeping with the recipient country's development process. Still, JICA must adequately examine how to set the desired outcomes (attainment goals) of this assistance.

For example, it is feasible to set "legislation draft completion" as the attainment goal when only providing legislative-drafting assistance to a country with sufficient capacity to prepare law implementation and enforcement frameworks on its own and to arrange for citizen access to the legal and judicial system. It is much harder, on the other hand, to set unambiguous criteria — such as defining the institutional capacities to be strengthened and to what extent or defining the legal professionals to be trained and to what extent — when the recipient country requires institutional capacity-building and human resource development in order to properly implement and execute laws. In this case, it is necessary to fully understand the country's circumstances and consider the desired situation (attainment goals) given the country's context. Moreover, the recipient country's officials and Japan's officials must reach, through adequate discussion, a shared recognition of the desired outcome.

It is also important to note that the relationship with the country and the country's officials is not severed when the assistance ends; rather, the completion of assistance marks a new starting point for migrating to equal, collaborative relations and communication between the two countries.<sup>40</sup> Accordingly, in addition to discussing and

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<sup>40</sup> The Aichi Bar Association deployed short-term and long-term experts to Mongolia and assisted in training Mongolian legal professionals as part of the Legal Reform Support Project in Mongol. Later, in 2008, the Aichi Bar Association entered a friendship accord with the Association of Mongolian Advocates, its former counterpart in the project.

reaching a common understanding of the assistance's goals and the attainment approach, officials on both sides should recognize the possibilities for a new cooperative relationship after the assistance ends.

### **3-3-6 Strategic Integration of Development Measures**

As described in Section 3-1-2, JICA uses a diverse mix of resources to provide assistance. An issue for JICA in the years ahead, however, will be the strategic integrating of development methods into its long-term human resource development work.

JICA accepts long-term trainees who plan to obtain master's degrees or doctorates at Japanese universities as a means of implementing long-term development of legal and judicial professionals in emerging countries. But since its organizational merger in October 1, 2008,<sup>41</sup> the new JICA has taken over responsibility for training assistance grants ("Japanese Grant Aid for Human Resource Development Scholarship" or JDS students), part of the Ministry of Foreign Affairs' grant aid, and trainee and overseas student programs backed by concessional loans. Thus, JICA now has a richer diversity of assistance means. For example, while JICA accepted 25 long-term trainees for post-graduate legal courses between 1999 and 2008, there have been 205 JDS exchange students between 2000 and 2008. The Ministry of Education, Culture, Sports, Science and Technology also places overseas students throughout Japan. And yet, despite these numbers, there are few instances of former overseas students becoming involved in its assistance projects or being accepted as long-term trainees by its project counterparts after they return to their country. Similarly, there are few cases where the research themes of trainees and overseas students are linked with the assistance topics of its projects. JICA has not strategically integrated its various assistance measures for long-term professional development and, thus, JICA is not seeing the maximum benefits from these programs.

At the start of this report, the three pillars of capacity development for legal and judicial sectors in developing countries were defined. It also cited the importance of human resources development as the foundation of these pillars. Consequently, the development of legal and judicial professionals who can play central roles in capacity development of legal and judicial sectors in recipient countries by strategically coordinating human resource development with other assistance measures rather than just incorporating it as part of its project activities needs to be examined.

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<sup>41</sup> The Japanese government grouped its ODA functions into one agency to improve ODA quality, resulting in the formation of the "new" JICA in October 1, 2008. The "new" JICA takes over the overseas economic cooperation affairs (loan aid) of the Japan Bank for International Cooperation (JBIC) and the grant aid activities of the Ministry of Foreign Affairs (excluding grant aid directly managed by the ministry as a matter of foreign policy).

### **3-3-7 Promoting Coordination and Cooperation with Other Donors**

Problems with inconsistencies and discrepancies have cropped up in the past when donor countries and organizations have pursued their own legal and judicial sector capacity development prerogatives under their own policies without regard to consistency or integrity with laws being assisted by other donors.

There have been cases where laws have had to be adjusted, sometimes significantly, because of conflicts between laws drafted with Japan's help and laws drafted with another donor's help. When ironing out these discrepancies for consistency between laws, the parties must heed the differences in recognition of such law adjustments: for instance, between Japan, whose awareness is based on continental law concepts, which are premised on the construction of a systematic code of law, and donors, whose awareness is based on Anglo-American legal concepts, which do not have this premise. Another complicating factor is that some donors have conditionality clauses — such as establishing a specific law in a short timeframe — attached to funding, which is the antithesis of Japan's approach of taking time to ensure the assistance is well grounded in the social and cultural fabric of the recipient country.

There are two issues underlying these problems: some developing countries have not taken sufficient initiatives to regulate discrepancies between laws, and donors have failed to coordinate and cooperate sufficiently. Therefore, two things are necessary to develop a consistent legal system and promote consistent legal and judicial reforms. First, it is important that the recipient country and all donors coordinate and cooperate through regular meetings and other avenues. Moreover, it is also necessary to prevent duplication and contradictory assistance activities and to promote appropriate role-sharing and assistance synergies between donors by adequately sharing information on assistance plans and assistance execution.

The continuing legal education program (for active judges) at Cambodia's Royal School for Judges and Prosecutors (RSJP) provides a good example of the assistance synergies that can result when donors work together. Since it would be inefficient for each donor individually to invite active judges to the capital for continuing legal education, the donors agreed to run a joint continuing legal education program. The donors were central to putting the program together in the initial stage of cooperation with Cambodia in 2006, but as the RSJP gradually gained its own initiatives in 2008, it began to indicate to the donors the required courses for the program and to work out role-sharing with the donors. The scheduled continuing legal education program for 2009 will consist of a civil affairs block (RSJP: 3 days, JICA: 1 day, EWMI.<sup>42</sup> 1 day) and a criminal affairs block (RSJP: 3 days, UNICEF: ½ a day, GTZ: ½ a day, Asia Foundation: 1 day).

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<sup>42</sup> EWMI, the East-West Management Institute, is a U.S. not-for-profit organization that runs USAID(United States Agency for International Development) contract projects.

It is crucial when providing legal and judicial sector capacity development that JICA work to promote information sharing and coordination with other donors.

Another necessity for JICA is to work proactively to have other donors understand Japan's assistance activities and policies by providing project information in English and holding briefing sessions on its progress.<sup>43</sup>

JICA's capacity development for legal and judicial sectors in developing countries emphasizes capacity development and human resource development so that legal and judicial professionals on the developing nation's side can continue to independently review and revise their Legal System. To work steadily toward tangible collaborative outcomes, it is felt that it is important to set targets and monitor results on a per-project basis based on dialogue and the agreement of the recipient country. This is why JICA has not participated in "common basket" financial assistance approaches (in which contributions are made to a common fund) to assistance coordination.

Japan, however, does provide financial assistance to poverty reduction schemes in Viet Nam and Cambodia, among others, through ODA loan assistance and other means. A future issue JICA will have to consider is incorporating the promotion of legal and judicial system reforms targeted under technical cooperation in the conditionality clauses in these financial aid modalities. Closely related to this, JICA added financial cooperation projects to its mandate in October 1, 2008. As a result, JICA will be studying the effectiveness of combining loan assistance with technical cooperation in its legal and judicial sector capacity development activities.

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<sup>43</sup> During in-country interviews with other donor organizations, JICA heard comments to the effect that: "From the perspective of assistance coordination, JICA have little information on what Japan's assistance has actually achieved and with what approach."



## **Chapter 4**

### **Towards More Coherent and Coordinated Cooperation**

Section 3-3 described the project procedural expertise, the issues, and the lessons JICA has gained from its Capacity development for legal and judicial sectors in developing countries experiences. Nevertheless, these issues, particularly those relating to coordination and cooperation with other donors in Section 3-3-7, cannot be dealt with by JICA alone. Accordingly, this chapter arranges the Capacity development for legal and judicial sectors in developing countries issues confronting the entire aid community.

#### **4-1 To the Realization of a Global Benefit**

Capacity development for legal and judicial sectors in developing countries in the 1990s was symbolized by what was occasionally dubbed as the “advice wars” and the “clash of systems.” It was not uncommon for inconsistent aid strategies to result in obfuscated legal development and for disputes to surface between donors around contradictory legal systems and other issues. In recent years, however, the situation has improved significantly after coming through this chaotic period. Donors have learned from this counterproductive experience and are gradually recognizing the importance of regularly exchanging information with other donors and calibrating their aid strategies for greater overall efficiency.

Instead of each donor facilitating legal development with its own policy and terms, the aim of Capacity development for legal and judicial sectors in developing countries should be to build the most appropriate legal system for the recipient country and to establish the “Rule of Law” by pooling the legal experience and knowledge of all donors in partnership with the country’s government. This collaborative form of Capacity development for legal and judicial sectors in developing countries brings Good Governance closer to reality by first entrenching the “Rule of Law” in the country. This has the benefit of encouraging social stability and economic development in the recipient country, which in turn contributes to stability and development of the international community. In other words, Capacity development for legal and judicial sectors in developing countries is an activity that brings real benefits to all stakeholders: the recipient country, naturally, as well as donors and other countries. The international aid community should strive to construct networks where it is possible for the recipient country, the donors, and all other stakeholders to come to an agreement on this point and to use this agreement as the foundation for more efficient and enhanced Capacity development for legal and judicial sectors in developing countries through joint international collaborations.

#### **4-2 Pursuing Meta-rules (rule to create rules) for Cooperation for Capacity Building of Legal and Judicial Sectors in Developing Countries**

In promoting “rule of law” of a developing country, the donor countries/agencies should develop the capacity of relevant governmental organizations and establish forums with donor countries/agencies under the ownership of the developing country government (or by using an existing coordination framework) for the purpose of creating rules to support the development of the relevant legal systems. In a country trying to enact legislation with assistance from multiple countries, it is hard to overstate the importance of the government’s role in ironing out differences and ensuring consistency between laws created with the help of different donors. (This is particularly true of the role of the ministry of justice and other agencies that regulate the differences between laws.) And, since in many instances each donor works with a specific counterpart agency, regulating differences between donors often involves mediating differences between ministries and agencies within the recipient government itself. In practice, however, these governments lack the capacity to mediate differences between agencies and between donors and to ensure consistency between laws. Moreover, the ministry of justice and other agencies that regulate differences between laws do not necessarily have a powerful position within the government. As a result, international aid organizations occasionally find cases of inconsistencies between new laws or inconsistencies between new laws and existing laws.

The international aid community should do two things to combat this problem when offering legal and judicial reform assistance to a recipient country. First, the community should undertake capacity development in the relevant government bodies and, secondly, it should set up forums with donors (or make use of existing cooperative frameworks) and create rules governing the progress of capacity development for legal and judicial sectors in developing countries under the ownership of the local government.

An example of this can be found in Meiji Era Japan. When developing its legal system, Japan first created the Code Investigation Committee Regulations, an Imperial edict, the Code Investigation Rules, which were stipulated under the authority of the Prime Minister as proxy for the Emperor, and the Code Investigation Policy, which was agreed to at the first code investigation committee meeting in consultation with the Prime Minister and which embodied the Code Investigation Rules. Only after this legislation came the first decision drafts made on the organization of the entire code of law and salient points of the system. This was followed by clause-by-clause discussions.

This process of creating “rules for creating rules” (i.e., meta rules) is useful because the recipient country’s government, as the responsible agent, can get an overall view of the code of law. Meta rules can also conceivably avoid the confusion and inefficiencies that arise when multiple players conflict with each other.

### **Box 4-1 Setting Meta Rules**

It is advantageous to first institute (1) model rules that govern the integration of received laws and indigenous laws (customary laws, written laws, and other informal rules); and (2) model rules that govern the integration of common law systems and civil law systems. The focus here is on law models (type 2) that have high scientific value from a jurisprudence point of view.

Also important are (3) model rules associated with sequencing law fields in the development of laws.

*[Text omitted]*

Additionally, (4) a rule-based “Rule of Law” project is necessary for better procedural meta rules. For example, when a certain aid entity is about to start a legal assistance project in a certain target country, it should always, in the preliminary stages, set up an assembly or conference open to all entities conducting related projects in the country, describe its project concept and plan, and create rules that obligate certain deliberation processes.

Source: Matsuo, Hiroshi (2009). Handout materials from the 10<sup>th</sup> Legal Assistance Liaison Meeting, pp 19–20.

### **4-3 Sharing of Experiences and Knowledge among Donor Countries/Agencies**

With the deepening appreciation of the value of meta rules given in Section 4-2, it is important that the international aid community move forward with the sharing and exchanging of experiences and information among donors through forums (theme-specific donor meetings, etc.) where all donor countries and organizations can interact with each other and the recipient country’s government under the ownership of the local government. Because adjustments to plans for capacity development for legal and judicial sectors in developing countries, where needed, must be made at the earliest possible stage, donors can use such venues to share their capacity development for legal and judicial sectors plans and concepts in the planning stages with both the relevant government bodies and other donors active in the same field.

We should also push for further disclosing and sharing of deliverables created during the course of collaborative projects (such as textbooks, kommentars, and manuals), since the international aid community can expect better assistance synergies by broadly sharing such resources.



# **Appendices**



## List of Project Summaries

As of April 1, 2009

### 1. Viet Nam

- (1) Project in the Legal and Judicial Field (Phase 1) with a detailed report
- (2) Project in the Legal and Judicial Field (Phase 2) with a detailed report
- (3) Project in the Legal and Judicial Field (Phase 3) with a detailed report
- (4) Project for the Legal and Judicial System Reform

### 2. Cambodia

- (1) Legal and Judicial Development Project (Phase 1) with a detailed report
- (2) Legal and Judicial Development Project (Phase 2) with a detailed report
- (3) Legal and Judicial Development Project (Phase 3)
- (4) Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 1) with a detailed report
- (5) Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 2)
- (6) Project for Legal and Judicial Cooperation for the Bar Association (Pilot Development Partners Program)
- (7) Project for Legal and Judicial Cooperation for the Bar Association (Development Partners Program)
- (8) Project for Legal and Judicial Cooperation for the Bar Association

### 3. Laos

- (1) Legal and Judicial Development Project

### 4. Uzbekistan

- (1) Commentary of Bankruptcy Law Project
- (2) Project for Legal Assistance for Improvement of Conditions for Development of Private Enterprises

### 5. China

- (1) Economic Legal Development Project
- (2) Improvement of Civil Procedure Law and Arbitration Law Project

### 6. Mongolia

- (1) Legal Reform Support Project

### 7. Indonesia

- (1) Project on Improvement of Mediation System

### Notes:

1. Detailed reports of past technical cooperation projects in Viet Nam and Cambodia are also included.
2. Detailed project reports are scheduled to be updated annually.

## 1. Viet Nam

### (1) Project in the Legal and Judicial Field (Phase 1)

<b>Project Name</b>	Project in the Legal and Judicial Field (Phase 1)
<b>Period</b>	Dec. 1, 1996 to Nov. 30, 1999
<b>Expenditures</b>	See Phase 2 below
<b>Counterpart</b>	Ministry of Justice
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 1 (1 attorney)
	Short-term experts: total of 40
<b>Project Objectives</b>	
<b>Main Activities and Outcomes</b>	<p><u>Presentation of Japan's legal system and assistance with drafting principle laws</u> Presented, by such means as in-country seminars run by short-term experts and in-Japan training, several of Japan's legal systems (including the offenders rehabilitation system, the Cabinet Legislation Bureau, and the prosecution system). Assisted the drafting of fundamental laws, such as the Civil Procedure Code, the Civil Execution Law, the Intellectual Property Law, as well as the Antitrust Law, Maritime Code, and the ASEAN Investment Law and other economic-related laws.</p>

### (2) Project in the Legal and Judicial Field (Phase 2)

<b>Project Name</b>	Project in the Legal and Judicial Field (Phase 2)
<b>Period</b>	Dec. 1, 1999 to Mar. 31, 2003
<b>Expenditures</b>	494.221 million yen (including Phase 1)
<b>Counterparts</b>	Ministry of Justice, Supreme People's Court, Supreme People's Procuracy
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 7 (2 judges, 2 public prosecutors, 1 attorney, 1 coordinator)
	Short-term experts: total of 50
In-country seminars	80 seminars held
In-Japan training	12 sessions with a total of 115 attendees 6 long-term trainees accepted
Domestic advisory group	Civil Code Reform Joint Study Group
<b>Project Objectives</b>	To have Vietnamese legal and judicial officials acquire expert knowledge about and experience with laws — particularly Japan's civil and commercial law, law system approaches, and systems for developing legal professionals, and to promote the development of Viet Nam's legal system.
<b>Main Activities and Outcomes</b>	<p><u>Law-drafting assistance</u> Assisted the legislation of individual statutes through seminars, in-Japan training, and the advice of resident experts. Law-drafting assistance proceeded relatively smoothly through a process of holding seminars on the target laws, having the Vietnamese side draft the laws based on the seminars, during which local experts provided advice on individual statute matters.</p> <p><u>Blueprint construction</u> Assisted the creation of an overarching blueprint for the investigation of legal system approaches. Translated analyses of individual statutes in the Civil Code already completed by the Ministry of Justice, and determined classification topology in order to organize individual statutes to facilitate the identification of contradictions and duplications between laws in a format limited to civil and commercial laws.</p> <p><u>Civil Code revision assistance</u> As investigations of legal system approaches moved forward based on the blueprint creation, the project's plan was revised since the scope was expanded from a partial amendment of the Civil Code to a complete revision. After organizing the laws related to the existing Civil Code and identifying problem areas, an actual draft of the new Civil Code was</p>



	<p>created that incorporated study findings. The Vietnamese working group organized the laws related to the existing Civil Code and identified problem areas and ran workshops on the implementation status of the existing Civil Code four years after its enforcement. The draft was completed through a series of workshops with the Japanese working group on different areas of the Civil Code.</p> <p><u>Legal professional training</u> In addition to running in-country seminars and in-Japan training in coordination with the law-drafting process, guidebooks for judges were drawn up. Resident experts gave lectures on Japan's systems for judges, public prosecutors, and attorneys and taught a course on Japanese law at the Viet Nam National University, Hanoi. Resident experts also dispensed advice on creating legal professional training systems and a plan was completed for the establishment of a national judicial academy to consolidate training in the three legal professions.</p>
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## (3) Project in the Legal and Judicial Field (Phase 3)

<b>Project Name</b>	Project in the Legal and Judicial Field (Phase 3)
<b>Period</b>	July 1, 2003 to Mar. 31, 2007
<b>Expenditures</b>	343.035 million yen
<b>Counterparts</b>	Ministry of Justice, Supreme People's Court, Supreme People's Procuracy
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 10 (3 judges, 3 public prosecutors, 2 attorneys, 2 coordinators) Short-term experts: total of 37
In-country seminars	16 seminars held during visits by short-term experts
In-country working sessions/JICA-net seminars	78 sessions
In-Japan training	5 sessions with a total of 56 attendees
Domestic advisory groups	Civil Code Reform Joint Study Group, Civil Procedure Code Joint Study Group, Legal Professional Training Joint Study Group, Joint Study Group on the Establishment of Written Judgments and Precedents
<b>Project Objectives</b>	Sub-project A: To establish fundamental civil and commercial laws consistent with a market economy through improvements in the law-drafting capacity of departmental officials involved in legislation planning. Sub-project B: To establish systematic frameworks for training professionals in the legal and judicial field.
<b>Main Activities and Outcomes</b>	<p><u>Sub-project A: Assistance with the establishment of fundamental civil and commercial laws consistent with a market economy and with capacity building for departmental officials involved in legislative planning</u> The Civil Procedure Code was established in June 2004; the Law on Business Bankruptcy was established in June 2004; the revised Civil Code was established in June 2005; and the Intellectual Property Law was established in November 2005. Advanced preparations of drafts for the State Redress Law, the Sentencing Enforcement Law, the Real Estate Registry Law and other legislation related to the Civil Code.</p> <p><u>Sub-project B: Assistance with the establishment of a framework enabling the training of highly qualified legal professionals</u> Made improvements to the training programs and teaching resources at existing training institutions with an eye to establishing a unified legal professional education institution. Prepared guidebooks for judges. Arranged information on legal precedents that can be accessed by all legal professionals by standardizing judicial decision forms. Provided assistance for Japanese law lectures at the Faculty of Law, Viet Nam National University, Hanoi.</p>

## (4) Project for the Legal and Judicial System Reform (currently underway, results as of April 1, 2009)

<b>Project Name</b>	Project for the Legal and Judicial System Reform
<b>Period</b>	Apr. 1, 2007 to Mar. 31, 2011
<b>Expenditures</b>	453.647 million yen
<b>Counterparts</b>	Ministry of Justice, Supreme People's Court, Supreme People's Procuracy
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 5 (1 judge, 1 public prosecutor, 1 attorney, 1 coordinator) Short-term expert: 1 academic expert
In-country seminars	4 seminars held during visits by the short-term expert 79 seminars led by resident experts
Local WG meetings	0
In-Japan training	4 sessions with a total of 46 attendees
JICA-net seminars	0
Domestic advisory groups	Civil Code Joint Study Group, Court Proceedings Reform Joint Study Group
<b>Project Objectives</b>	To accumulate experience with increasing the capacity of subsidiary judicial authorities in the pilot district (Bac Ninh Province) with respect to administration, judgments, and court proceedings. To encourage central judicial authorities and bar associations to assimilate, analyze, and apply this accumulated experience and thereby improve the central judicial authorities' and bar associations' assistance frameworks for judgments and court proceedings and improve their ability to direct, advise, and aid regional judicial organizations.
<b>Main Activities and Outcomes</b>	<p><u>Build the trial and court proceedings capacity of judges, public prosecutors, lawyers, and other legal officials at regional judicial authorities and related organizations in the pilot district of Bac Ninh Province and gain experience through the capacity-building process</u> Conducting studies and workshops and compiling joint reports and recommendations on problems with civil and criminal case procedures in Bac Ninh Province. Also, holding workshops to discover and build common awareness of solutions to practical problems in the three legal professions and workshops on writing legal documents.</p> <p><u>Use the lessons and ideas gained from the Bac Ninh pilot project to assist the systematic capacity building of central judicial authorities and the unified bar association (preparations for establishing a unified bar association are underway) to supervise, direct, and/or assist regional judicial authorities and lawyers</u> Assisting the construction of central platforms using the experiences gained through activities in the Bac Ninh Province, by monitoring and evaluating central judicial authorities and the unified bar association, by preparing comprehensive joint recommendations on utilizing activity outcomes to increase and enhance the capacity of regional judicial authorities and lawyers, and by running seminars on how to apply judicial precedents.</p> <p><u>(As needed and when appropriate) Deciding on legal normative documents (LNDs) that are helpful in improving judgments and enforcement practices</u> Assisting the drafting of the amended Civil Procedure Code and the amended Criminal Procedure Code. Also continuing to assist the drafting of the State Redress Law, the Sentencing Enforcement Law, the Real Estate Registry Law and other legislation from Phase 3.</p> <p><u>Enhancement of the necessary systematic capacity for nurturing legal professionals</u> Assisting the creation of reports to have the Bac Ninh pilot project experiences and knowledge incorporated in training programs at the national judicial academy, and assisting the revision of textbooks to be used in common curriculums for all legal professions.</p>

### Detailed Report on the Project in the Legal and Judicial Field (Phase 1) for Viet Nam

- Record of in-country seminars (under study)
- Record of in-country working group activities (under study)
- Record of in-Japan training

Training Period	Themes	Attendees	No. of Attendees	Remarks
May 22 – 30, 1996	(1) Japan's law and politics aspects and administrative practices (2) Separation of legislative, executive and judicial powers (3) Relationship between central administration and regional governments (4) Involvement with political party activities and national politics (5) Bill drafting process		5	
Aug. 18 – 31, 1996	(1) Overview of criminal law (2) Criminal procedure code (3) Specific criminal law statutes, such as corruption, misfeasance, criminal offenses (4) Drug laws (5) Correction and rehabilitation		5	
Aug. 29 – Sep. 21, 1996	(1) Japan's legal system (2) Judicial system (3) Real estate registry (4) Commercial law (5) Corporation law (6) Commercial registration system (7) International trade laws (8) Alternative (extra-judicial) dispute resolution procedures (9) Lawyer training system (10) Unfair competition prevention and consumer protection systems		10	
June 11 – July 6, 1997	(1) Registry systems (2) Real estate registry (3) Deposition system (4) Commercial registration system (5) General commercial law rules (6) Corporation law (7) Civil code (8) Family law (9) Public notary system (10) Family registry system (11) Judicial system (12) Judicial scrivener system		8	
Oct. 7 – Nov. 2, 1997	(1) Judicial system (2) Civil procedure code (3) Civil proceedings system (4) Civil execution laws (5) Alternative (extra-judicial) dispute resolution process (6) Civil preservation system (7) Real estate registry (8) Enforcement procedures (9) Dispute resolution processes at corporations (10) Real estate auctions and land appraisals		7	

June 10 – July 12, 1998	<ul style="list-style-type: none"> <li>(1) Corporation law</li> <li>(2) Laws on bills of exchange, promissory notes and checks</li> <li>(3) Judicial system</li> <li>(4) Commercial registration system</li> <li>(5) Share issuance practices</li> <li>(6) Securities trading systems</li> <li>(7) Laws regulating securities and trading</li> <li>(8) Activities of securities and other oversight commissions</li> <li>(9) Regulations on corporate activities</li> <li>(10) Practices concerning general stockholders meetings</li> <li>(11) Trading company functions</li> </ul>		9	
Sep. 30 – Nov. 1, 1998	<ul style="list-style-type: none"> <li>(1) Overview of intellectual property rights and specific issues (industrial property rights and copyrights)</li> <li>(2) Judicial system</li> <li>(3) Summary of intellectual property rights administration</li> <li>(4) Policing violations of intellectual property rights</li> <li>(5) Overview of international protection of intellectual property rights, Japan's investigations, and Japan's judgments</li> <li>(6) Corporate practices with respect to protection of intellectual property rights</li> <li>(7) Disputes surrounding intellectual property rights and the role of lawyers</li> <li>(8) Industrial property rights practices</li> <li>(9) Intellectual property rights and antitrust laws</li> <li>(10) Control of imitation brand products</li> <li>(11) Overview of copyright systems and international developments</li> <li>(12) Unfair competition prevention laws and protection of intellectual property rights</li> <li>(13) Roles and obligations of patent attorneys</li> <li>(14) Import/export regulations and imitation brand products</li> </ul>		6	
June 2 – July 3, 1999	<ul style="list-style-type: none"> <li>(1) Substantive criminal law</li> <li>(2) Criminal trials</li> <li>(3) Criminal indemnity and state redress</li> <li>(4) Economic crimes</li> <li>(5) Roles of lawyers in the administration of justice</li> <li>(6) International cooperation in the administration of justice</li> </ul>		10	
Sep. 29 – Oct. 30, 1999	<ul style="list-style-type: none"> <li>(1) Tort liabilities</li> <li>(2) Contractual liabilities</li> <li>(3) Product liability laws</li> <li>(4) State redress laws</li> <li>(5) Intellectual property laws and civil liabilities</li> <li>(6) Japan's attorney system, judicial system, and insurance system</li> </ul>		5	

## Detailed Report on the Project in the Legal and Judicial Field (Phase 2) for Viet Nam

- Record of in-country seminars

### Lawmaking operations

Date	Theme	Summary
Mar. 2000	Bankruptcy Law seminar	Short-term experts presented common bankruptcy law principles
June. 2000	Bankruptcy Law seminar (SPC)	Seminar was well received by the Vietnamese side and helped build a trust relationship with the SPC
July. 2000	Revised Bankruptcy Law	Submitted the first draft of the revised bankruptcy law to the SPC
Oct. 2000	Criminal Procedure Code	Engaged in further revision work with the SPP. Aim to complete draft by the end of FY 2002.
Nov. 2000	Civil Execution Law	Short-term experts conducted a workshop
Nov. 2000	Criminal Procedure Code	Short-term experts conducted a workshop
Dec. 2000	Attorney system	Long-term experts conducted a workshop on Japan's attorney system
Jan. 2001	Police investigations	Long-term experts conducted a study of police investigations in Viet Nam
Mar. 2001	Family Registration Law	Long-term experts conducted a seminar on the Family Registration Law
Mar. 2001	U.S.-Viet Nam trade agreement	In this seminar on U.S.-Viet Nam trade agreements, focused on dispute settlement (intermediation, etc.) related to the Ministry of Justice, intellectual property rights, and transparency assurance
Apr. 2001	Commercial arbitration	Conducted a commercial arbitration seminar
Apr. 2001	Bankruptcy Law	Determined the schedule and agenda for the Bankruptcy Law seminar
July. 2001	Bankruptcy Law	Short-term experts conducted a Bankruptcy Law seminar
Aug. 2001	Criminal justice reform	Short-term experts conducted a seminar on criminal justice reform
Oct. 2001	Financial leases	Project specialists presented the financial lease systems of the U.S. and Japan and conducted a mini-workshop on comments on a proposed draft
Nov. 2001	International justice cooperation	Short-term and long-term experts conducted a seminar on international justice cooperation
Nov. 2001	Civil liability and criminal liability	Long-term experts conducted a mini-seminar on civil liability and criminal liability for the Department of Criminal Enforcement Laws at the Ministry of Justice
Dec. 2001	Law on Legal Normative Document Promulgation	Short-term experts conducted a seminar on the Law on Legal Normative Document Promulgation
Dec. 2001	Foreign arbitral awards	Long-term experts prepared a report on the current state of acknowledgement and enforcement of foreign arbitral awards in Viet Nam and on problem areas
Jan. 2002	Intellectual property rights	Short-term experts conducted a seminar on intellectual property rights with the Vietnamese civil code revision working group at the Ministry of Justice
Apr. 2002	Secured transactions	The Ministry of Justice's Secured Transactions Registration Department submitted an issue paper on the upcoming secured transactions seminar and long-term experts reported on the issues that should be taken up at the seminar
Apr. 2002	Civil Procedure Code	The SPC submitted an issue paper on the upcoming Civil Procedure Code seminar and long-term experts reported on the issues that should be taken up at the seminar
May. 2002	Items on the securities registration application form	Long-term experts conducted a mini-seminar to explain the items required on the securities registration application form to the Securities Registration Department
May. 2002	Secured transactions	Short-term experts conducted a seminar on secured transactions and registration with the Ministry of Justice
June. 2002	Civil Procedure Code	Short-term experts conducted a Civil Procedure Code seminar, a workshop on Draft No. 7 of the Civil Procedure Code, and a workshop on judicial precedents
Sep. 2002	State redress and criminal indemnity systems	Short-term experts conducted an in-country seminar on state redress and criminal indemnity systems

## Blueprint preparation

Date	Theme	Summary
Nov. 2000	Information collection	While some 12,000 ordinances were collected in the SIDA project, examined how to organize these ordinances without completely understanding all their details
Mar. 2001	Work procedure	Decided to proceed by organizing and examining legal normative documents and statutes related to the Civil Code followed by doing the same for the Commercial Law
Apr. 2001	Laws and regulations collection	Completed collection of all Civil Code-related laws, regulations, and statutes
May. 2001	Confirm details of collection	Confirmed details about the collection of Civil Code-related laws, regulations, and statutes
Nov. 2001	Civil Code provisions, related regulations, and provision correlation tables	Requested the Vietnamese side for the Civil Code provisions, related regulations, and provision correlation tables, and plan to complete this work
Nov. 2001	Comprehensive legal system review work	Work on a comprehensive review of the Vietnamese legal system under Decision No. 355 of the Prime Minister started in 1997 reached a standstill because the Department of Criminal Enforcement Laws at the Ministry of Justice, which is in charge of the review, has not appointed an official to oversee the review and because of a lack of capacity and staffing and a lack of cooperation between administrative bodies
Dec. 2001	Civil Code provisions, related regulations, and provision correlation tables	The Ministry of Justice submitted materials on Civil Code provisions, related regulations, and provision correlation tables
Jan. 2002	Confirm direction	Classify provisions for each act and transaction stipulated in the Civil Code based on existing reports and at the same time identify provisions that correspond to the same acts and transactions in the Decree on Economic Contracts and the Commercial Law
Feb. 2002	Confirm direction	Classify provisions for each act based on the original blueprint and analyze the Decree on Economic Contracts and the Commercial Law following this classification scheme
May. 2002	Section draft	Submitted a section list for the revised blueprint
June. 2002	Classification items	Revised classification items for tort section
Aug. 2002	Classification items	Vietnamese side submitted the final proposal for classification items
Oct. 2002	Blueprint preparation operations	Work began on preparing the blueprint based on the classification items

## Revised Civil Code

Date	Theme	Summary
July. 2000	Civil Code revision study organization	Vietnamese side agreed to accept a study organization, with preliminary work centered on the Ministry of Justice's Civil and Commercial Affairs Department
Nov. 2000	Working session	Vietnamese side conducted a working session of the Vietnamese working group and invited long-term experts
Jan. 2001	Secured transactions	Long-term experts conducted a study on secured transactions
Jan. 2001	Issues for the revised Civil Code	Long-term experts worked primarily with officials from the Ministry of Justice's Civil and Commercial Affairs Department and analyzed issues connected with the revised Civil Code as envisioned by the Vietnamese side
Mar. 2001	Workshop	The Civil Code Reform Joint Study Group conducted a workshop
Apr. 2001	Secured transactions	The Civil Code Reform Joint Study Group presented the basic concepts in Japanese law on secured transactions to the Vietnamese working group
May. 2001	Position of the Civil Code	Short-term experts conducted a workshop
July. 2001	Civil liability	Short-term experts conducted a workshop on civil liability
Aug. 2001	Contract Law	Short-term experts cooperated on an individual basis with the Vietnamese side on the Contract Law
Oct. 2001	Inheritance study	The Ministry of Justice submitted a report in English to the project on an inheritance study in Hanoi, Ho Chi Minh, and Can Tho

Nov. 2001	Land Law	Short-term and long-term experts attended a workshop on the Land Law by Professor Dung from Can Tho University of the civil code revision working group
Nov. 2001	General Civil Code principles	Short-term experts participated in discussions at a meeting on general Civil Code principles with the Vietnamese working group
Dec. 2001	Inheritance	Long-term experts analyzed judicial precedents on inheritance and compiled a case research report
Dec. 2001	Civil Code revision work direction	Participated in discussions with Mr. Thun, General-Director of the Civil and Commercial Affairs Department. The Ministry of Justice submitted the first draft of the revised Civil Code in mid-December 2001.
Jan. 2002	Contracts and liabilities, securities system, ownership, and inheritance	Held theme-specific Civil Code workshops on contracts and liabilities, securities system, ownership, and inheritance
Feb. 2002	Land-use rights, and civil affairs relations including external affairs factors	Held theme-specific Civil Code workshops on land-use rights and civil affairs relations including external affairs factors
Feb. 2002	Hearings	Held hearings to gather opinions from judges, people's councils, governments, and businesses on the current problems with the revised Civil Code broken into five themes: unions, ownership registries, community property, contracts, and external affairs. Held four times in Da Nang, Ho Chi Minh, Nghe An province, and Hoa Binh. Scheduled to be held next month in Da Nang (conducted by long-term experts).
Mar. 2002	Hearings	Continuing from February, held three public hearings in Ho Chi Minh (conducted by long-term experts), Nghe An province (conducted by long-term experts), and Da Nang (conducted by long-term experts)
May. 2002	Local discussions	Long-term experts conducted hearings about the reality of the securities system with the Ministry of Justice, the State Bank, and others
June. 2002	Intellectual property rights	Short-term experts conducted a working session on intellectual property rights at the Ministry of Justice
June. 2002	Hearings	The Ministry of Justice's Research Department conducted a working session on Civil Code revisions in Hanoi
July. 2002	Rights infringements and relief	Short-term experts conducted a working session on rights infringements and relief at the Ministry of Justice
July. 2002	U.S.-Japan trade negotiations	Short-term experts gave a lecture at the Ministry of Justice on Japan's experience with U.S.-Japan trade negotiations as it related to U.S.-Viet Nam-Japan trade agreements
July. 2002	Inheritance Law	Short-term experts conducted a working session on Inheritance Law at the Ministry of Justice
July. 2002	Inheritance Law	Short-term experts conducted a hearing on inheritance with Professor Dung from Can Tho University
Sep. 2002	Contracts	Short-term experts conducted a working session on contracts with the Vietnamese working group at the Ministry of Justice

#### Training for legal professionals

Date	Theme	Summary
Nov. 2000	Judicial Academy activities	Long-term experts held discussions on activities at the Judicial Academy
Nov. 2000	Hanoi Prosecutors' College activities	Long-term experts held discussions on activities at the Hanoi Prosecutors' College
Dec. 2000	Judicial Academy activity report	Long-term experts issued a report on discussions on activities at the Judicial Academy
Dec. 2000	Hanoi Prosecutors' College activity report	Long-term experts held discussions on activities at the Hanoi Prosecutors' College
Jan. 2001	Survey of law education conditions	Long-term experts visited their counterpart organizations and the Hanoi Law University and conducted a survey on law education conditions in Hue and Da Nang

Mar. 2001	Justice system and the judiciary	Long-term experts gave a lecture on Japan's justice system and judiciary
Mar. 2001	Criminal justice system	Long-term experts conducted a survey on Viet Nam's criminal justice system
Mar. 2001	Law education	Long-term experts conducted a survey on Viet Nam's law education
Apr. 2001	Justice system and the judiciary	Long-term experts gave a second lecture on Japan's justice system and judiciary and also conducted a general study of activities at the court training school
July. 2001	Textbook assistance	Long-term experts held discussions on assisting the publication of textbooks for the Judicial Academy. The textbooks will be used as practical guidebooks for judges and training judges. An editorial committee will be formed in August 2001 and will aim to complete the textbooks at the end of December 2001.
Aug. 2001	Judge guidebook assistance	Started concrete work on editing judge guidebooks
Oct. 2001	Guidebook assistance	Translated into Japanese the contents of the criminal law chapters and administrative case chapters from textbooks created and published by the Judicial Academy for law and judicial students
Nov. 2001	Activity assessments and plans	Long-term experts held discussions on this fiscal year's activity assessments and next fiscal year's plan
Nov. 2001	Prosecutor system	Long-term experts gave a lecture on the prosecutor system for students of SPP's prosecutor school
Jan. 2002	Judge guidebook assistance	Vietnamese version of the judge guidebook was completed. Discussed with the Vietnamese side the creation of an English version.
Jan. 2002	Japan's justice system and judiciary	Long-term experts discussed Japan's justice system and judiciary with training judges at the Judicial Academy
Feb. 2002	Training course	Conducted a six-month training course for lawyers at the Judicial Academy, which had arranged a training system, and created four textbooks for the Academy
Mar. 2002	Viet Nam National University, Hanoi	Experts conducted study meetings about once every three weeks at the Faculty of Law, Viet Nam National University, Hanoi, in response to the strong demands for knowledge about Japanese law. The study meetings covered both civil law and criminal law.
Apr. 2002	Preparation of test questions	Arranged discussions with the Judicial Academy and the Ministry of Justice's International Cooperation Department on the creation of lawyer guidebooks and test questions and began preliminary discussions on the budget for this assistance
Apr. 2002	Viet Nam National University, Hanoi	Started a course at the Faculty of Law, Viet Nam National University, Hanoi introducing the Japanese law system and the basic concepts of the Japanese Civil Code
May. 2002	Viet Nam National University, Hanoi	Long-term experts started a course at the Faculty of Law, Viet Nam National University, Hanoi that focused on the Civil Code and particularly the representation system
June. 2002	Viet Nam National University, Hanoi	Started a course on the Criminal Code and Civil Code at the Faculty of Law, Viet Nam National University, Hanoi
Aug. 2002	Preparation of test questions	Agreed to cooperate with preparing test questions on civil affairs and economics and discussed the direction of these preparations
Oct. 2002	Guidebook for lawyers	Worked on revising the summary of the guidebook for lawyers
Oct. 2002	Viet Nam National University, Hanoi	Started a Civil Code course on double transfers at the Faculty of Law, Viet Nam National University, Hanoi

• Record of in-Japan training

Training Period	Themes	Attendees	No. of Attendees	Remarks
May. 28 – July. 1, 2000	Japan's criminal record and family registration system		10	
Sep. 10 – Oct. 14, 2000	Japan's attorney system and WTO membership issues		10	
Oct. 9 – Nov. 11, 2000	Exercising prosecution rights: current status, problems, and policies		10	



Nov. 13 – Dec. 16, 2000	Bankruptcy Law: current status, problems, and policies		9	
May. 7 – June 9, 2001	The role of public prosecutors in civil and criminal cases and training of personnel		10	
June. 11 – July. 14, 2001	Training of legal professionals and the attorney system		10	
Sep. 10 – Oct. 13, 2001	Civil suit procedures		10	
Feb. 18 – Mar. 21, 2002	(1) Civil code reform joint study (general principles, contracts, secured transactions) (2) Comparison of the Japanese and Vietnamese justice systems (3) Attorney system (4) Basic concepts and general procedures of civil suits		8	
May. 6 – June. 8, 2002	Criminal regulations on economic activities to promote a market economy		9	
June. 17 – July. 20, 2002	Securities trading market legal systems and their application		10	
Sep. 9 – Oct. 12, 2002	Assisting the drafting of the Civil Procedure Code		10	
Feb. 10 – Mar. 8, 2003	Secured transactions legal systems and their application		9	

### Detailed Report on the Project in the Legal and Judicial Field (Phase 3) for Viet Nam

• Record of in-country seminars (by short-term experts)

Dates	Theme and Related Outcomes	Instructors' Affiliation	No. of Attendees	Attendees' Affiliation
Nov. 1 – 2, 2004	Final drafting of the revised Civil Code (related to outcome 1)	Working group member (academic expert)	37	
Nov. 3, 2004	Acquiring basic knowledge on intellectual property legislation (related to outcome 2)	Working group member (academic expert)	40	
Mar. 11 – 12, 2004	In-country seminar on the Civil Procedure Code	Working group member (academic expert)	70	
Mar. 15 – 16, 2004	In-country seminar on the Bankruptcy Law	Working group member (academic expert)	83	
July. 28 – 29, 2005	Drafting the Sentencing Enforcement Law	Working group member (academic expert)	61	
Dec. 4 – 5, 2003	Enhancing educational institutions for legal professionals	Academic experts and long-term experts	29	
Aug. 4 – 6, 2004	Enhancing educational institutions for legal professionals	Academic experts	101	
Oct. 20 – 21, 2006	Enhancing educational institutions for legal professionals	Academic experts	41	
June. 1 – 3, 2005	Standardization of judicial decision formats and organizing, releasing, and promoting judicial precedents	Academic experts and long-term experts	101	
Oct. 10 – 11, 2005	Intensive course	Academic experts	10	JA
Oct. 20 – 26, 2005	Intensive course	Academic experts	10	JA
Dec. 12 – 16, 2005	Intensive course	Academic experts	10	JA
Dec. 21 – 28, 2005	Intensive course	Academic experts	10	JA
Jan. 2 – 6, 2006	Intensive course	Academic experts	10	JA
Jan. 20 – 24, 2006	Intensive course	Academic experts	10	JA
Feb. 22 – 28, 2005	Intensive course	Academic experts	10	JA

• Record of in-country working sessions and JICA-net seminars

Dates	Activities	Instructors' Affiliation	No. of Attendees	Attendees' Affiliation
Sub-Project A				
Drafting the final draft for the revised Civil Code				
Nov. 3 – 5, 2003	Working session	Long-term expert	61	
Dec. 22 – 23, 2003	Working session	Long-term expert	53	
Sep. 30, 2004	JICA-net working session	Working group member (academic expert)	13	
Nov. 11, 2004	JICA-net working session	Working group member (academic expert)	16	
Dec. 4, 2004	JICA-net working session	Working group member (academic)	10	
Dec. 16, 2004	JICA-net working session	Working group member (academic expert)	10	
Dec. 17, 2004	Follow-up working session	Long-term expert	10	

Jan. 13, 2005	Follow-up working session	Long-term expert	5	
Jan. 24, 2005	JICA-net working session	Working group member (academic expert)	19	
Feb. 1, 2005	Follow-up working session	Long-term expert	5	
Feb. 18, 2005	JICA-net working session	Working group member (academic expert)	7	
Mar. 18, 2005	JICA-net working session	Working group member (academic expert)	7	
July. 19, 2005	JICA-net working session: explanation of the civil code by the Vice-Minister	Working group member (academic expert)	15	
Acquiring basic knowledge on and drafting intellectual property legislation				
Mar. 18, 2005	JICA-net working session	Working group member (academic expert)	7	
Drafting the final bill for the Civil Procedure Code and the Bankruptcy Law				
Aug. 6 – 8, 2003	Civil Procedure Code working session		115	
Mar. 25, 2004	JICA-net working session	Working group member (academic expert)	12	
Drafting the Real Estate Registry Law				
Sep. 22, 2003	Working session	Long-term expert	11	
Oct. 27, 2003	Working session	Long-term expert	20	
Oct. 18, 2004	Working session	Long-term expert	22	
Oct. 22, 2004	Working session	Long-term expert	19	
Jan. 26, 2005	Working session	Long-term expert	31	
April – May, 2006	Study on the implementation of the real estate registry (all 18 provinces)			
June. 30, 2005	Working session	Long-term expert	22	
Aug. 9, 2005	Working session	Long-term expert	26	
Sep. 14, 2005	Working session	Long-term expert	29	
Sep. 15, 2005	Working session	Long-term expert	21	
Nov. 18, 2005	JICA-net working session	Working group member (academic expert)	17	
Jan. 19, 2006	Working session	Long-term expert	34	
Jan. 20, 2006	Working session	Long-term expert	17	
Feb. 10, 2006	Working session	Long-term expert	24	
Mar. 6, 2006	Working session	Long-term expert	20	
Secured Transactions Registration Ordinance				
Jan. 7, 2004	Working session	Long-term expert	24	
Aug. 27, 2004	JICA-net working session	Working group member (academic expert)	9	
Drafting the Sentencing Enforcement Law				
Oct. 14, 2004	Working session	Long-term expert	7	
May. 18,	Working session	Long-term expert	21	

2005				
June. 16, 2005	Working session	Long-term expert	17	
Drafting the State Redress Law				
Dec. 19, 2005	Working session	Long-term expert	31	
Jan. 16, 2006	Working session	Long-term expert	28	
Feb. 16, 2006	Working session	Long-term expert	32	
Legal system study ahead of economic integration				
Apr. 21, 2004	Working session	Long-term expert	35	
Nov. 21 – 22, 2004	Working session	Long-term expert	65	
Sub-Project B				
Enhancing educational institutions for legal professionals				
Sep. 18, 2003	Working session	Long-term expert	21	
Oct. 18, 2003	Working session	Long-term expert	16	
Nov. 14, 2003	Working session	Long-term expert	15	
Jan. 7, 2004	Working session	Long-term expert	17	
Mar. 23, 2004	Working session	Long-term expert	18	
Apr. 20, 2004	Working session	Long-term expert	12	
Oct. 6, 2004	Working session	Long-term expert	18	
Nov. 23, 2004	Working session	Long-term expert	31	
Nov. 25, 2004	Working session	Long-term expert	NA	
Dec. 1, 2004	Working session	Long-term expert	NA	
Dec. 22, 2004	Working session	Long-term expert	25	
Jan. 20, 2005	Working session	Long-term expert	19	
Feb. 22, 2005	Working session	Long-term expert	21	
Apr. 26, 2005	Working session	Long-term expert	26	
Oct. 12, 2005	Working session	Long-term expert	26	
June. 28, 2006	Working session	Long-term expert	27	
Sep. 22, 2006	Working session	Long-term expert	29	
Oct. 18, 2006	Working session	Long-term expert	19	
Nov. 15, 2006	Working session	Long-term expert	15	
Preparation of a guidebook for judges				
Oct. 26, 2004	Working session	Long-term expert	16	
Dec. 28, 2004	Working session	Long-term expert	20	
Jan. 20, 2005	Working session	Long-term expert	18	

2005				
Aug. 18 – 19, 2005	Working session	Long-term expert	84	
Aug. 29 – 30, 2005	Working session	Long-term expert	100	
Sep. 8 – 9, 2005	Working session	Long-term expert	100	
Standardization of judicial decision formats and organizing, releasing, and promoting judicial precedents				
Oct. 20, 2003	Working session	Long-term expert	21	
Dec. 15, 2003	Working session	Long-term expert	17	
Jan. 15, 2004	Working session	Long-term expert	19	
Feb. 20, 2004	Working session	Long-term expert	24	
Apr. 26, 2004	Working session	Long-term expert	21	
Dec. 27 – 28, 2004	Working session	Long-term expert	47	
Jan. 24, 2005	Working session	Long-term expert	14	
July. 7, 2005	Working session	Long-term expert	17	
Feb. 13, 2006	Working session	Long-term expert	3	
Japanese law courses at the Faculty of Law, Viet Nam National University, Hanoi				
June. 9, 2004	Kick-off meeting	Long-term expert	7	
Aug. 20, 2004	Working meeting	Long-term expert	7	
Oct. 5, 2004	Start of course ceremony			

• Record of in-Japan training

Training Period	Themes	Attendees	No. of Attendees	Remarks
Feb. 2 – Mar. 5, 2004	Building capacity at educational institutions for legal professionals	JA, MOJ, SPC		
Jan. 21 – Feb. 5, 2005	Developing curriculums for legal professional training	JA, bar associations, SPC		
Feb. 20 – Mar. 5, 2005	Revised Civil Code	MOJ, bar associations, and others		
Sep. 4 – Sep. 17, 2005	Standardization of sentencing forms	SPC and other courts		
Feb. 5 – 18, 2006	Building capacity at educational institutions for legal professionals	JA and bar associations		

SPC: Supreme People's Court  
 MOJ: Ministry of Justice  
 JA: Justice Academy

## 2. Cambodia

### (1) Legal and Judicial Development Project (Phase 1)

<b>Project Name</b>	Legal and Judicial Development Project (Phase 1)
<b>Period</b>	Mar. 5, 1999 to Mar. 4, 2003
<b>Expenditures</b>	301.249 million yen
<b>Counterpart</b>	Ministry of Justice
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 4 (3 attorneys, 1 coordinator)
	Short-term experts: total of 117 (77 academic experts, 4 attorneys, 2 judges, 2 Ministry of Justice officials, 34 interpreters)
In-country seminars	26 seminars (14 on the Civil Code, 12 on the Code of Civil Procedure)
In-country WG meetings	70 meetings of the terminology definition panel
In-Japan training	5 sessions with a total of 81 attendees
JICA-net seminars	0
Domestic advisory groups	61 meetings of the Civil Code Working Group and 60 meetings of the Code of Civil Procedure Working Group
<b>Project Objectives</b>	To assist the Ministry of Justice draw up a draft Civil Code and a draft Code of Civil Procedure that match Cambodia's circumstances.
<b>Main Activities and Outcomes</b>	<p><u>Establishment of an organization for law-drafting operations</u> For nearly two years after the project began, the law-drafting operations were not sufficiently well organized because of a lack of manpower at the Ministry of Justice and political factors. A working group was formed in the third year, however, through encouragement from Japanese stakeholders and personnel changes at the Ministry of Justice.</p> <p><u>Implementation of training for legal and judicial professionals with a focus on Cambodian civil law</u> Implemented training for the Cambodian side through the deployment of short-term experts and in-Japan training. The terminology definition panel played an important role as a follow-up to the short-term experts' workshops.</p> <p><u>Creation of draft laws in Japanese and Khmer through collaborative Japan-Cambodia operations</u> A joint drafting team was established by the Cambodian working group (consisting of vice-ministers of the Ministry of Justice, judges, etc.) and the Japanese working group (consisting of legal researchers and practitioners). The joint drafting operations proceeded through the following process: the Japanese working group created a Japanese version of the draft, which was then translated into Khmer. Comments were collected from the Cambodian working group through workshops and the terminology definition panel, after which the final draft was completed. Drafts of the Civil Code and the Code of Civil Procedure were completed and submitted to the Cambodian government.</p>

### (2) Legal and Judicial Development Project (Phase 2)

<b>Project Name</b>	Legal and Judicial Development Project (Phase 2)
<b>Period</b>	Apr. 9, 2004 to Apr. 8, 2008
<b>Extension Period</b>	Apr. 9, 2007 to Apr. 8, 2008
<b>Expenditures</b>	216.380 million yen
<b>Counterpart</b>	Ministry of Justice
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 3 (2 attorney, 1 coordinator)
	Short-term experts: total of 8 (6 academic experts, 2 attorney)
In-country seminars	During visits by short-term experts — 2 seminars on the Code of Civil Procedure

	Led by local experts — 13 seminars on disseminating the Code of Civil Procedure
In-country WG meetings	233 meetings
In-Japan training	2 sessions with a total of 14 attendees
JICA-net seminars	5 seminars
Domestic advisory groups	43 meetings of the Civil Code Working Group and 42 meetings of the Code of Civil Procedure Working Group
<b>Project Objectives</b>	To establish various conditions to promote the legislation of the Civil Code and the Code of Civil Procedure
<b>Main Activities and Outcomes</b>	<p><u>Promotion of the legislation of the Civil Code and the Code of Civil Procedure</u> The Code of Civil Procedure went into force in July 2006. The Civil Code was promulgated in December 2007.</p> <p><u>Capacity building for the Cambodian working group</u> Increased the working group's understanding of the bills through presentations of the bills to ministerial council of jurists, inter-ministerial council members, and National Assembly members during the course of debate on the Civil Code and Code of Civil Procedure bills. Endeavored to improve the Cambodian working group's understanding of new laws through the use of point-by-point explanations and textbooks created by the Japanese working group.</p> <p><u>Drafting the relevant laws and regulations</u> Drafted transitional measures and regulations to accompany the enforcement of the Civil Code and the Code of Civil Procedure. The Code of Civil Procedure Transitional Measures were drafted as an inclusion in the main rules of the Code of Civil Procedure. The Civil Code Application Law is under deliberation. As for the relevant laws to the Code of Civil Procedure, drafts have been prepared of the Personal Status Litigation Law bill, the Civil Correctional Penalty Procedural Code bill, the Civil Non-Contentious Cases Procedural Code bill, and the Court Execution Officers Law bill. Because the relevant laws to the Civil Code required significant arrangements with other ministries, it was decided that drafting them was not feasible during Phase 2.</p>

## (3) Legal and Judicial Development Project (Phase 3) (currently underway, results as of April 1, 2009)

<b>Project Name</b>	Legal and Judicial Development Project (Phase 3)
<b>Period</b>	Apr. 9, 2008 to Mar. 31, 2012
<b>Expenditures</b>	396.928 million yen
<b>Counterpart</b>	Ministry of Justice
<b>Resources Deployed (as of April 1, 2009)</b>	
Dispatch of experts	Long-term experts: 4 (2 attorneys, 1 expert in legal and judicial sector, 1 coordinator) Short-term experts: 3 (2 attorneys, 1 academic expert)
In-country seminars	1 seminar on the civil code and the land law
In-country WG meetings	43 committee meetings (law-drafting groups have also met)
In-Japan training	1 session with 14 attendees
JICA-net seminars	1 seminar on the Code of Civil Procedure
Domestic advisory groups	5 meetings of the Civil Code Working Group and 3 meetings of the Code of Civil Procedure Working Group
<b>Project Objectives</b>	To assist the Ministry of Justice with taking the necessary policies and measures to properly implement the Civil Code and the Code of Civil Procedure.
<b>Main Activities and Outcomes</b>	<p><u>System construction at the Cambodian Ministry of Justice</u> Make arrangements with the Cambodian Ministry of Justice and transfer operations presently handled by the project office to the Ministry of Justice (operations necessary for law-drafting such as the management of law data and the distribution of textbooks).</p> <p><u>Drafting the relevant laws and regulations Civil Code statutes</u> Although the Japanese working group had drafted the laws until Phase 2, drafting of the</p>

	<p>relevant laws and regulations requires arrangements with other government bodies and consideration of local circumstances as well as increased capacity on the Cambodian side. Therefore, providing assistance to the Cambodian side so it can take the initiative in law drafting.</p> <p><u>Dissemination of the Civil Code and the Civil Procedural Code</u> Through such assistance as creating textbooks and conducting dissemination seminars, helping the Cambodia side to broadly disseminate understanding of the Civil Code and the Code of Civil Procedure.</p>
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### Detailed Report on the Legal and Judicial Development Project (Phase 1) for Cambodia

- Record of in-country workshops on law drafting

Period	Theme, number of workshops	Instructors' affiliation
Mar. 1999 – Mar. 2000	5 workshops on the Civil Code	Working group member (academic expert)
	5 workshops on the Code of Civil Procedure	
Apr. 2000 – Mar. 2001	9 workshops on the Civil Code	
	4 workshops on the Code of Civil Procedure	
Apr. 2001 – Mar. 2002	4 workshops on the Code of Civil Procedure	

- Record of terminology definition panel meetings

Period	Number of meetings	Remarks
Mar. 1999 – Mar. 2000	1	
Apr. 2000 – Mar. 2001	1	
Apr. 2001 – Mar. 2002	68	

- Record of in-Japan training

Period	Format and Theme	Attendees	No. of Attendees	Remarks
Mar. 1999 – Mar. 2000	Individual training		1	
	Country-specific training: Civil Code course, visit to the Japan Federation of Bar Associations, etc.	Ministry of Justice officials, court judges, attorneys	15	
	Nagoya University accepts overseas students		2	
	Group training: training on international civil and commercial law		2	
Apr. 2000 – Mar. 2001	Individual training		2	
	Country-specific training: Civil Code terminology definition panel	Ministry of Justice officials, court judges	6	
	Country-specific training: terminology definition panel, Civil Code drafting	Ministry of Justice officials, appellate court judges, Ministry of Land Management Urban Planning and Construction officials	11	
	Accepted researchers under the Japanese Ministry of Justice's budget		6	
	Nagoya University accepts overseas students		4	2 new students
	Group training: training on international civil and commercial law		2	
Apr. 2001 – Mar. 2002	Country-specific training: Code of Civil Procedure terminology definition panel	Committee members	8	
	Country-specific training: Civil Code	Committee members	8	
	Nagoya University accepts overseas students		4	2 new students
	Group training: training on international civil and commercial law		2	

- Drafted bills, forms, educational materials, etc.

<i>Legislation</i> Civil Code draft (Japanese, English, Khmer) Code of Civil Procedure draft (Japanese, English, Khmer)	
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### Detailed Report on the Legal and Judicial Development Project (Phase 2) for Cambodia

• Record of in-country seminars (during visits by short-term experts)

Date	Theme	Instructors' Affiliation	No. of Attendees	Attendees' Affiliation
Mar. 5, 2007	Basic procedural course for civil actions in the court of first instance	Code of Civil Procedure Working Group (2 academic experts, 1 attorney)	80	Judges affiliated with SC and AC and public prosecutors
	Basic and critical principles and general rules for civil actions		80	
Mar. 6, 2007	Practical exercises (applying general rules to specific cases)		80	
	Appellate court procedures (discussions)		80	
Mar. 7, 2007	Basic procedural course for civil actions in the court of first instance		120	Attorneys
	Basic and critical principles and general rules for civil actions		120	
Mar. 8, 2007	Practical exercises (understanding court of the first instance procedures using specific cases)		120	
Jan. 7, 2008	Code of Civil Procedure dissemination seminar (answers to FAQs)	Code of Civil Procedure	N/A	Judges affiliated with SC and AC and MOJ officials
Jan. 8, 2008	Code of Civil Procedure dissemination seminar (answers to FAQs)	Working Group (2 academic experts)	N/A	

SC: Supreme court  
AC: Appellate court

• Record of in-country seminars (conducted by MOJ officials and local experts)

Date	Theme	Instructors' Affiliation	No. of Attendees	Attendees' Affiliation
Apr. 10, 2007	Code of Civil Procedure dissemination	Vice-Minister, SC officials, long-term experts	N/A	Judges affiliated with SC and AC
Apr. 24, 2007	Code of Civil Procedure dissemination		N/A	
May. 8, 2007	Code of Civil Procedure dissemination, preparatory proceedings		N/A	
May. 22, 2007	Code of Civil Procedure dissemination, preparatory proceedings		N/A	
July. 3, 2007	Code of Civil Procedure dissemination, appeals, reviews, transition measures, court enforcement, civil preservation		N/A	
July. 10, 2007	Code of Civil Procedure dissemination, appeals, reviews, transition measures, court enforcement, civil preservation		N/A	
July. 27, 2007	Code of Civil Procedure dissemination, appeals, reviews, transition measures, court enforcement, civil preservation		N/A	
Aug. 3, 2007	Code of Civil Procedure dissemination, civil execution, civil preservation procedures		N/A	
Aug. 27 – 29, 2007	Code of Civil Procedure dissemination (Battambang)	Vice-Minister, long-term experts	70	Courts of first instance judges and clerks
Sep. 10 – 12, 2007	Code of Civil Procedure dissemination (Kampong Cham)		N/A	
Sep. 18 – 20, 2007	Code of Civil Procedure dissemination (Kratie)		N/A	
Sep. 26, 28, 2007	Code of Civil Procedure dissemination (Sihanoukville)		N/A	
Oct. 3 – 5, 2007	Code of Civil Procedure dissemination (Phnom Penh)		100	

## • Record of in-country working group meetings

Date [No. of meetings]	Matters Examined
Apr. 2004 [4]	Revising explanatory comments in the draft Code of Civil Procedure
May [6]	ibid.
June [8]	ibid.
July [6]	ibid.
Aug. [5]	ibid.
Sep. [8]	ibid.
Oct. [1]	ibid.
Nov. [6]	Revising explanatory comments in the draft Code of Civil Procedure
[2]	Personal Status Litigation Law WS (in-country seminar)
Dec. [7]	Completed revising explanatory comments in the draft Code of Civil Procedure
Jan. 2005 [5]	Examine draft Civil Code
Feb. [1]	Examine preparation of a civil procedural manual for courts of the first instance
Mar. [8]	Examine preparation of a civil procedural manual for courts of the first instance
[1]	Law-drafting assistance
Apr. [1]	Discussions on circumstances surrounding the Secured Transaction Law
[2]	Examine preparation of a civil procedural manual for courts of the first instance
[1]	Model lecture on substantive law and ultimate facts
May [3]	Examine the table of contents in the court of first instance manual
[3]	Text revisions to the Land Law, changes to the Civil Code, and revisions to the Code of Civil Procedure to harmonize the Civil Code and the Land Law
[2]	Civil Code transitional measures WS (JICA-net seminar)
June [4]	Meetings on RSJP mock trials
July [7]	Creation of the court of first instance manual and its reading
Aug. [4]	Examine preparation of a civil procedural manual for courts of the first instance
[5]	Examine precedent practices for Civil Code interpretations
Sep. [4]	Examine comments on Civil Code precedent practices and Civil Code provisions
Nov. [2]	Examine point-by-point explanations of the Civil Code
[2]	Meeting on the Civil Code course materials used in RSJP's next-term curriculum
[1]	Point-by-point examination of the draft International Adoption Law (interministerial council schedule)
Dec. [1]	Point-by-point examination of the draft International Adoption Law (interministerial council schedule)
[7]	Examine material in the civil procedural manual for courts of the first instance
Jan. 2006 [6]	Examine comments on the Civil Code (sections on natural persons and juridical persons)
Feb. [2]	Examine comments on the Civil Code (sections on natural persons and juridical persons)
Mar. [first half]	Examine explanations of real rights details
[second half]	Examine material in the civil procedural manual for courts of the first instance (sections on mediation procedures and judicial decisions)
[1]	Examine the civil procedural manual for courts of the first instance (JICA-net)
Apr. [1]	Examine the civil procedural manual for courts of the first instance
[2]	Define terminology in the draft Personal Status Litigation Law
[2]	Civil judicial decision writing seminar (JICA-net)
May [?]	Examine the Financial Lease Law
	Examine the Civil Code provision explanations
June [0]	No meeting because the Vice-Minister was on a visit to the U.S. and could not attend
July [5]	Examine the Civil Code provision explanations (usufructuary rights and easement)
Aug. [5]	Examine the Civil Code provision explanations
Sep. [2]	Examine the Civil Code provision explanations
[4]	Examine the Financial Lease Law
Oct. [3]	Examine the Financial Lease Law
[1]	Revise Civil Code provisions
[1]	Plan legislation of adjacent statutes to the Code of Civil Procedure
[3]	Joint assessment of termination evaluation

[4]	Prepare mock records
Nov. [1]	Share problems with the draft Secured Transaction Law and the draft Civil Code
Dec. [3]	Code of Civil Procedure seminar (JICA-net)
[1]	Examine the Judgment Deposit Law
[2]	Examine the Financial Lease Law
[2]	Relationship between the Land Law and the Civil Code
Jan. 2007 [1]	Examine the Financial Lease Law
[1]	Decree on Procedures to Revise the Personal Registry and the Civil Code
[1]	Current state of the Secured Transaction Law
[1]	Examine the Civil Correctional Penalty Procedural Code
Feb. [1]	Examine the Civil Non-Contentious Cases Procedural Code
Mar. [4]	Code of Civil Procedure promotion seminar (conducted by short-term experts)
Apr. [6]	Examine the Civil Non-Contentious Cases Procedural Code, Code of Civil Procedure promotion seminar
May [4]	Examine the Civil Non-Contentious Cases Procedural Code, Code of Civil Procedure promotion seminar
June [3]	Prepare MOJ ordinances to enforce the Code of Civil Procedure
July [8]	Prepare MOJ ordinances to enforce the Code of Civil Procedure
Aug. [6]	Matters related to the revision of Civil Code articles 1018 and 1033, and matters related to the case studies in the Code of Civil Procedure promotion seminar
[2]	Code of Civil Procedure promotion seminar (case studies) (JICA-net)
Sep. [2]	Confirm participants in the promotion seminar and questions from the seminar participants
Oct. [3]	Requests for the Code of Civil Procedure promotion seminar
Nov. [7]	Confirm the law-drafting framework for Phase 3, assign priorities, Court Execution Officers Law, dispatch reports, Financial Lease Law, etc.
Dec. [7]	Examine provisions of the Non-Contentious Cases Procedural Code and Civil Code Application Law, and the current state of the draft Commercial Court Law
Jan. 2008 [5]	Examine provisions of the Personal Status Litigation Law, the Non-Contentious Cases Procedural Code, and the Civil Code Application Law
Feb. [5]	Examine the Phase 3 framework, and examine provisions of the Civil Code Application Law and the Judgment Deposit Ministerial Ordinance

• Record of in-Japan training

Period	Theme	Attendees	No. of Attendees	Remarks
Jan. 31, 2005 Feb. 18, 2005	Discussed Civil Code enforcement laws and real rights lectures	Committee members	8	Described the background to the Civil Code revisions due to the Land Law discussions
Feb. 6, 2006 Feb. 18, 2006	Examined the civil first court manual, examined the transitional measures for the Personal Status Litigation Law, discussed the Civil Code enforcement laws, discussions on the Correctional Penalty Procedural Code, and discussed the Court Execution Officers Law	Committee members	6	

• Drafted bills, forms, educational materials, etc.

<p><i>Legislation</i></p> <p>Civil Code (Japanese, English, Khmer)</p> <p>Code of Civil Procedure (Japanese, English, Khmer)</p> <p>Civil Correctional Penalty Procedural Code (Japanese, English, Khmer)</p> <p>Personal Status Litigation Law (Japanese, English, Khmer)</p> <p>Non-Contentious Cases Procedural Code (Japanese, English, Khmer)</p> <p>Interpretation guidelines for the Law on Marriage and Family (Japanese, Khmer)</p>
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MOJ ordinance on the cost of litigation and other matters (Japanese, English, Khmer)  
MOJ ordinance on the transfer of civil case jurisdiction (Japanese, English, Khmer)  
MOJ ordinance on court execution officers and officials conducting judicial proceedings (Japanese, English, Khmer)

*Explanatory materials on legislation*

Explanation of Code of Civil Procedure provisions (Japanese, Khmer)  
Summary of the Code of Civil Procedure (judicial decision procedures) (Japanese, English, Khmer)  
Summary of the Code of Civil Procedure (court enforcement and preservation) (Japanese)  
Glossary of Code of Civil Procedure and Civil Code terms (lexicon) (Khmer, English, French)  
Explanation of Civil Code provisions (partial) (Japanese, English, Khmer)

*Forms*

Dispatch reports (English, Khmer)  
Public notice dispatch reports (English, Khmer)

*Lecture transcripts*

Code of Civil Procedure seminar for the Supreme Court and appellate courts (Jan. 8, 2008) (Japanese, Khmer)

## (4) Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 1)

<b>Project Name</b>	Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 1)
<b>Period</b>	Nov. 10, 2005 to Mar. 31, 2008
<b>Extension Period</b>	None
<b>Expenditures</b>	12.095 million yen
<b>Counterpart</b>	Royal School for Judges and Prosecutors, Royal Academy for Judicial Professions
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 2 (1 public prosecutor, 1 coordinator) Short-term experts: total of 15 (12 Ministry of Justice instructors, 3 attorneys)
In-country seminars	6 seminars during visits by short-term experts 0 seminars led by local experts (however, seminars have been conducted with local WG meetings)
In-country WG meetings	157 meetings (61 meetings of the Instructors Working Group and 96 meetings of the Prospective Trainers Working Group/Mock Record Working Group)
In-Japan training	3 sessions with a total of 38 attendees
JICA-net seminars	15 seminars (Code of Civil Procedure seminar, drafting legal briefs, mock records, writing decisions, preservation/enforcement)
Domestic advisory group	11 meetings of the Legal Professional Training Study Group
*Number of short-term experts also includes the personnel deployed during the project launch.	
<b>Project Objectives</b>	To assist RSJP in providing the necessary education on the (draft) Civil Code and the Code of Civil Procedure for judges and prosecutors.
<b>Main Activities and Outcomes</b>	<p><u>Framework establishment for RSJP civil law instructors to improve teaching methods</u> Because the original counterpart members were fully occupied with court affairs and other matters, the originally planned activities could not be carried out. Instead, a new Prospective Trainers Working Group and a Mock Record Working Group were set up.</p> <p><u>Revision and setting of the (draft) Civil Code/ Code of Civil Procedure curriculum at RSJP</u> Analyzed reconsiderations and issues with the previous year's curriculum and revised the curriculum.</p> <p><u>Arrangement of civil law educational materials and syllabuses at RSJP</u> With the assistance of the Japanese working group, assistance was given to preparing education materials in line with the new Civil Code and Code of Civil Procedure. A Civil Code syllabus, a Civil Code resume, and a civil procedural manual for courts of the first instance were prepared.</p> <p><u>Training of RSJP prospective trainers</u> Assisted the capacity building of new prospective trainers with respect to the (draft) Civil Code/ Code of Civil Procedure through training and other programs.</p>

## (5) Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 2) (currently underway, results as of April 1, 2009)

<b>Project Name</b>	Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 2)
<b>Period</b>	Apr. 1, 2008 to Mar. 31, 2012
<b>Extension Period</b>	
<b>Expenditures</b>	263.558 million yen
<b>Counterpart</b>	Royal School for Judges and Prosecutors, Royal Academy for Judicial Professions
<b>Resources Deployed as of April 1, 2009</b>	
Dispatch of experts	Long-term experts: total of 2 (1 public prosecutor, 1 coordinator) Short-term experts: total of 3 (2 Ministry of Justice instructors, 1 attorney)
In-country seminars	2 seminars on mock trials and enforcement/Civil Code cases

In-country WG meetings	29 meetings on preparing educational materials
In-Japan training	2 sessions with a total of 11 attendees
JICA-net seminars	1 seminar on preservation/enforcement
Domestic advisory group	2 meetings of the Legal Professional Training Study Group
*Number of short-term experts also includes the personnel deployed during the project launch.	
<b>Project Objectives</b>	To enable RSJP to autonomously provide necessary instruction on civil law judicial procedures (civil law education) based on the Civil Code and the Code of Civil Procedure for judges and prosecutors.
<b>Main Activities and Outcomes</b>	<p><u>Accumulation of expertise for organized school management</u> The project is assisting the accumulation of expertise and knowledge so that RSJP can carry out organized school management by holding regular meetings and assisting with curriculum decisions and the training of prospective trainers.</p> <p><u>Accumulation of expertise for creating and revising educational materials</u> In Phase 1, Japanese experts led the creation of educational materials. In this phase, the project is assisting prospective trainers lead the preparation of educational materials to further their independence.</p> <p><u>Implementation of continuing civil law education</u> The project is assisting continuing education in the civil law field as part of the continuing education efforts with other donors. Because of the need to sort out the ideas and objectives of continuing education and to distinguish this from the Ministry of Justice's dissemination seminars, approaches to continuing education will be studied with RAJP/RSJP from the second year of the project on.</p>

**Detailed Report on the Project for the Improvement of Training on Civil Matters at the Royal School for Judges and Prosecutors of the Royal Academy for Judicial Professions (Phase 1) for Cambodia**

• Record of in-country seminars (during visits by short-term experts)

Period	Theme	Instructors' Affiliation	No. of Attendees	Attendees' Affiliation
June. 20 – 29, 2005	Mock trials	2 Ministry of Justice instructors	65	First term RSJP students and Lawyer Training Center students
Aug. 14 – 18, 2006	Special course on the Civil Code	2 Ministry of Justice instructors and 1 attorney	55	Second term RSJP students
Aug. 21 – 25, 2006	Special course on the Civil Code		55	
Dec. 12 – 15, 2007	Mock trials	2 Ministry of Justice instructors and 1 attorney	Approx. 100	Second term and third term RSJP students
Nov. 13 – 16, 2007	Mock records preparation, Civil Code course	1 Ministry of Justice instructor	7	Prospective trainers
Feb. 14 – 19, 2008	Decision drafting course and practical exercises	1 Ministry of Justice instructor and 1 attorney	55	Second term RSJP students
Feb. 20, 2008	Civil preservation	1 Ministry of Justice instructor	55	

• Record of in-country working group meetings

*For instructors*

Date [No. of Meetings]	Matters Examined
Mar. 2006 [1]	Civil Code (general rules)
Apr. [4]	Civil Code (persons), JICA-net seminars
May [3]	Civil Code (persons, liabilities, contracts)
June [4]	Civil Code (agents)
July [2]	Civil Code (debt defaults, trade)
August [6]	Civil Code (trade, torts), seminar on conviction formations in judicial decisions, writing legal briefs
Sep. [2]	Civil Code (real property rights changes, movable property rights changes)
Oct. [4]	Items to be included in legal briefs, writing legal brief drafts
Nov. [1]	Civil Code (real property rights changes, movable property rights changes)
Dec. [7]	JICA-net seminars (Civil Procedural Code)
Jan. 2007 [3]	Revising legal brief drafts, enforcement, procedural course at civil courts of the first instance, differences between assertions and evidence
Feb. [1]	Procedures at civil courts of the first instance
Mar. [2]	Revising defense answers, preparatory documents, and evidence submissions, preparation of Code of Civil Procedure resumes
Apr. [1]	Preparation of Civil Procedural Code resumes
May [3]	Special Civil Code course
Oct. [1]	Mock records preparation
Dec. [6]	JICA-net seminars on preparing mock records
May 2007 [2]	JICA-net seminars
Aug. [2]	JICA-net seminars
Sep. [2]	JICA-net seminars

*Workshops for prospective trainers and mock record workshops*

Date [No. of Meetings]	Matters Examined (conducted as mock record workshops)
Mar. 2006 [1]	Civil Code (general rules)



Apr. 2006 [4]	Civil Code (persons), JICA-net seminars (decision writing)
May. 2006 [3]	Civil Code (persons), Civil Code (liabilities, contracts)
June. 2006 [4]	Civil Code (agents), Civil Code (defects in declarations of intention)
July. 2006 [2]	Civil Code (debt defaults), Civil Code (trade)
Aug. 2006 [6]	Civil Code (trade), Civil Code (torts), seminar on conviction formations in judicial decisions, writing legal briefs (four of these meetings were conducted as mock record workshops)
Sep. 2006 [2]	Civil Code (real property rights changes), Civil Code (real and movable property rights changes)
Oct. 2006 [4]	Activity intention explanations (mock records preparation), items to be included in legal briefs, writing legal brief drafts (all four of these meetings were conducted as mock record workshops)
Nov. 2006 [1]	Civil Code (real and movable property rights changes)
Dec. 2006 [7]	JICA-net seminars (Code of Civil Procedure seminars, legal brief drafts, basic structure of the Code of Civil Procedure) (all seven of these meetings were conducted as mock record workshops)
Jan. 2007 [3]	Revising legal brief drafts, enforcement, procedural course at civil courts of the first instance, excuses of the defendant, differences between assertions and evidence (all three of these meetings were conducted as mock record workshops)
Feb. 2007 [1]	Procedures at civil courts of the first instance (conducted as a mock record workshop)
Mar. 2007 [2]	Revising defense answers, preparatory documents, and evidence submissions, preparation of Code of Civil Procedure resumes (one meeting was conducted as a mock record workshop)
Apr. 2007 [1]	Preparation of Code of Civil Procedure resumes
May. 2007 [8]	JICA-net seminars (role plays of preparatory proceedings), preparation of Code of Civil Procedure resumes (three of these meetings were conducted as mock record workshops)
June. 2007 [9]	Preparation of Code of Civil Procedure resumes, role plays of preparatory proceedings, preparation of oral proceedings and cross-examination matters, procedures at civil courts of the first instance, and explanations of the Code of Civil Procedure (four of these meetings were conducted as mock record workshops)
Aug. 2007 [3]	Q&A session on preservation and enforcement, JICA-net seminars (dissemination seminars) (two of these meetings were conducted as mock record workshops)
Sep. 2007 [4]	JICA-net seminars (mock records and decision documents, preservation and enforcement) (all four of these meetings were conducted as mock record workshops)
Nov. 2007 [7]	Civil Code course, mock records preparation
Dec. 2007 [14]	Civil court of the first instance DVD, mock trials
Feb. 2008 [8]	Drafting legal briefs, seminars for second-term students (drafting legal briefs, compulsory enforcement, preservation), points when applying the Code of Civil Procedure
Mar. 2008 [1]	Points when applying the Code of Civil Procedure

• Record of in-Japan training

Period	Themes	Attendees	No. of Attendees	Remarks
Sep. 25 – Oct. 15, 2005	Study the civil court of the first instance manual, study approaches to civil decision documents and Civil Code cases, study the curriculum for second-term RSJP students	School director, instructors	7	
Feb. 18 – Mar. 3, 2007	Run mock preparatory proceedings and first oral proceedings, prepare various statement documents	Mock Record WG members	16	
July. 8 – 21, 2007	Run mock trials and oral proceedings, practical exercises with the Code of Civil Procedure	Mock Record WG members	16	

• Prepared educational materials, etc.

<p><i>Educational materials</i>  Civil court of the first instance guidebook (prepared jointly by RSJP instructors and MOJ project officials)  Civil Code resumes (prepared by the RSJP Instructors WG)  Mock records (prepared by the Mock Record WG)  Civil Code case studies (prepared by the RSJP Instructors WG)  Code of Civil Procedure resumes (prepared by the RSJP Prospective Trainers WG)  Civil Code resumes (prepared by the RSJP Prospective Trainers WG)  DVDs on procedures at the civil court of the first instance (multimedia educational material)</p>
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## (6) Project for Legal and Judicial Cooperation for the Bar Association (Pilot Development Partners Program)

<b>Project Name</b>	Project for Legal and Judicial Cooperation for the Bar Association (Pilot Development Partners Program)
<b>Period</b>	June 28, 2001 to June 27, 2002
<b>Expenditures</b>	8.862 million yen
<b>Counterpart</b>	Bar Association of the Kingdom of Cambodia (BAKC)
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: 0 Short-term experts: total of 19 attorneys
In-country seminars	4 seminars during visits by short-term experts (role of attorneys and lawyer ethics)
In-country WG meetings	None
In-Japan training	None
JICA-net seminars	None
Domestic advisory group	None (project conducted on a contract basis with the Japan Federation of Bar Associations)
<b>Project Objectives</b>	
	To establish basic structures in Cambodia to support the creation of systematic lawyer training and a legal aid system.
<b>Main Activities and Outcomes</b>	
	<u>Conduct seminars</u> Held a total of four seminars: three seminars on “the role of lawyers in civil court proceedings” and one seminar on “lawyer ethics.”
	<u>Establishment of a legal aid system</u> Conducted field surveys in Cambodia of the demand for legal services, the state of justice administration, and the circumstances surrounding lawyers. Studied the establishment of a legal aid system based on the field surveys and engaged in talks with the local bar associations. Compiled recommendations for the establishment of a Cambodian legal aid system in May 2002.

## (7) Project for Legal and Judicial Cooperation for the Bar Association (Development Partners Program)

<b>Project Name</b>	Project for Legal and Judicial Cooperation for the Bar Association (Development Partners Program)
<b>Period</b>	Sep. 1, 2002 to Aug. 31, 2005
<b>Expenditures</b>	100.185 million yen
<b>Counterpart</b>	BAKC
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: 0 Short-term experts: 1 academic expert
Domestic advisory group	None (project conducted on a contract basis with the Japan Federation of Bar Associations)
<b>Project Objectives</b>	
	<ul style="list-style-type: none"> <li>• To implement enhanced training at the Lawyer Training Center and provide continuing education for newly registered lawyers.</li> <li>• To provide continuing education for lawyers and to improve the quality and technical skills of lawyers.</li> <li>• To improve the quality and technical skills of lawyers specializing in gender issues and to stimulate interest in gender issues among the public at large and at the BAKC</li> <li>• To introduce a legal clinic as part of the Lawyer Training Center’s curriculum as a means of providing practical and effective training for students and to provide legal services to the public at large.</li> </ul>

<b>Main Activities and Outcomes</b>	<p><u>Establishment and operation of the Lawyer Training Center</u> Reinstituted the Lawyer Training Center, which had been suspended, and provided training to a total of about 180 lawyers over the five years of this project and its successor. Gave recommendations on creating the curriculum and texts, gave technical direction with tutors on each subject, and gave recommendations on school administration.</p> <p><u>Continuing lawyer education (maintain and expand the outcomes of the Pilot Development Partners Program)</u> To maintain and expand the outcomes of the Pilot Development Partners Program, provided ongoing education to current lawyers (on the role of lawyers in civil court proceedings).</p> <p><u>Enhance education and consciousness of lawyers related to gender issues</u> At continuing education seminars for lawyers and other opportunities, pushed the BAKC to establish the topic of gender issues as an assistance subject, and established a gender division within the bar association. Surveyed jurists on gender issues.</p> <p><u>Design and implementation of a legal aid (legal counseling) system</u> Trainees ran a legal aid project together with lawyers at the legal clinic affiliated with the Lawyer Training Center. During the project, an organization was formed, counseling and trials were practiced, and a curriculum established.</p>
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## (8) Project for Legal and Judicial Cooperation for the Bar Association (currently underway, results as of April 1, 2009)

<b>Project Name</b>	Project for Legal and Judicial Cooperation for the Bar Association
<b>Period</b>	June 11, 2007 to June 10, 2010
<b>Extension Period</b>	June 11, 2009 to June 10, 2010
<b>Expenditures</b>	157.098 million yen
<b>Counterpart</b>	BAKC
<b>Resources Deployed as of April 1, 2009</b>	
Dispatch of experts	Long-term experts: 1 attorney Short-term experts: 16 attorneys
In-country seminars	6 seminars during visits by short-term experts (on the Code of Civil Procedure)
Domestic advisory group	None (project conducted on a contract basis with the Japan Federation of Bar Associations)
<b>Project Objectives</b>	To have the Bar Association of the Kingdom of Cambodia and Lawyer Training Center (LTC) provide necessary education for the development of lawyers.
<b>Main Activities and Outcomes</b>	<p><u>Improvements in LTC management</u> Assisted curriculum streamlining, the proper implementation of examinations, and capacity building for LCT officials in the area of school management.</p> <p><u>Improvements in the quality of civil law education at LTC</u> Made use of materials created in other legal development projects at LTC and in continuing education, and assisted improvements in the quality of civil law education through seminars and routine advice from long-term resident experts.</p> <p><u>Improvements in the quality of continuing education by the BAKC</u> The Japan Federation of Bar Associations and long-term resident experts ran three continuing education sessions each year for local lawyers.</p> <p><u>Capacity development at the BAKC toward fostering improved civil proceedings for lawyers</u> Set up a working group within the BAKC on improving civil proceedings and established a guidebook for improved civil proceedings and administration.</p>

## 3. Laos

## (1) Legal and Judicial Development Project

<b>Project Name</b>	Legal and Judicial Development Project
<b>Period</b>	May 26, 2003 – May 25, 2007
<b>Extension Period</b>	May 25, 2006 – May 25, 2007
<b>Expenditures</b>	232.356 million yen
<b>Counterparts</b>	Ministry of Justice, Office of the Public Prosecutor General, People's Supreme Court
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: total of 4 (1 attorney, 1 Ministry of Justice deputy director, 2 coordinators)
	Short-term experts: total of 16 (3 attorneys, 9 academic experts, 4 Ministry of Justice instructors)
In-Japan training	6 sessions with a total of 66 attendees
Domestic advisory group	None. Cooperation was extended by individual researchers primarily from Nagoya University and the International Cooperation Department, Research and Training Institute, Ministry of Justice
<b>Project Objectives</b>	To strengthen the organizational capacity of legal and judicial institutions (Ministry of Justice, Office of the Public Prosecutor General, People's Supreme Court) to raise the legal understanding and practice of legal and judicial officials.
<b>Main Activities and Outcomes</b>	<p><u>Creation of a Civil Code textbook, a Corporation Law textbook, a legal database, and a legal terminology glossary through activities with a Ministry of Justice working group</u> The WG revised a draft of the Civil Code textbook and completed a final draft through in-Japan training. Although work on the Corporation Law textbook was delayed because the scope was changed from business law to corporation law, a draft was completed in March 2006. After completion of the Civil Code textbook and the Corporation Law textbook, a convenient legal terminology glossary was prepared to aid the use of the textbooks.</p> <p><u>Creation of a public prosecutor's guidebook through activities with a Office of the Public Prosecutor General working group</u> Created two editions of the public prosecutor's guidebook — a personnel organization edition and an investigation edition — incorporating revisions to the Criminal Procedural Code and the Civil Procedural Code. Seminars to promote the public prosecutor's guidebook were also held.</p> <p><u>Creation of a decision-drafting guidebook through activities with a People's Supreme Court working group</u> Created a compilation of judicial precedents for judges and distributed it to all 61 courts. Held a promotion seminar on the decision-drafting guidebook that was attended by 40 people from provincial and capital district courts and from the southern and capital appellate courts and by 10 people from the People's Supreme Court.</p> <p><u>Regional promotion seminars run by members of each working group</u> Members from the Ministry of Justice's, Office of the Public Prosecutor General's, and People's Supreme Court's working groups led promotion seminars on textbooks and guidebooks for, respectively, regional Ministry of Justice officials, public prosecutors, and judges. By leading the seminars, working group members became more proficient as instructors.</p>

## 4. Uzbekistan

## (1) Commentary of Bankruptcy Law Project

<b>Project Name</b>	Commentary of Bankruptcy Law Project
<b>Period</b>	Aug. 30, 2005 – Sep. 30, 2007
<b>Expenditures</b>	63.741 million yen
<b>Counterpart</b>	Higher Economic Court
<b>Resources Deployed</b>	
Dispatch of experts	Long-term expert: 1 attorney Short-term experts: total of 11 (2 academic experts, 4 attorneys, 5 Ministry of Justice instructors)
In-Japan training	6 sessions with a total of 17 attendees
Domestic advisory group	24 meetings of the Advisory Group on the Drafting of Bankruptcy Law Comments
<b>Project Objectives</b>	
	To maintain up-to-date comments on bankruptcy-related laws to ensure their effective and unified application and to establish a framework to ensure these comments are widely used by judges.
<b>Main Activities and Outcomes</b>	
	<u>Creation of bankruptcy law commentary through joint operations by the Uzbekistani working group and Japanese experts</u> The Uzbekistani working group (Higher Economic Court judges and others), working together with Japanese experts through the deployment of short-term and long-term experts and in-Japan training, prepared a draft commentary on the Bankruptcy Law. (After being prepared in Russian, the draft was translated into Uzbek, Japanese, and English.) During the process of creating the commentary, the members of the Uzbekistani working group gained a deeper understanding of legal interpretations, especially as they apply to the consideration of the intent of legislation.  <u>Distribution and promotion of the commentary</u> 3,000 copies of the commentary were published in Russian and placed in all economic courts in Uzbekistan as well as distributed to trustees and other bankruptcy system officials and university officials. Seminars were held in the capital and other regions to encourage the use of the commentary.

## (2) Project for Legal Assistance for Improvement of Conditions for Development of Private Enterprises

<b>Project Name</b>	Project for Legal Assistance for Improvement of Conditions for Development of Private Enterprises
<b>Period</b>	Nov. 30, 2005 – Dec. 31, 2008
<b>Extension Period</b>	Oct. 1, 2008 – Dec. 31, 2008
<b>Expenditures</b>	120.036 million yen
<b>Counterpart</b>	Ministry of Justice
<b>Resources Deployed</b>	
Dispatch of experts	Long-term experts: 2 academic experts Short-term experts: 25 academic experts
In-Japan training	1 sessions with a total of 10 attendees
Domestic advisory groups	Database Committee, Administrative Procedure Law Committee, Mortgage Law Committee
<b>Project Objectives</b>	
	To provide legal information to the public at large, and to arrange and improve the operation of legislation that guarantees the activities of small businesses
<b>Main Activities and Outcomes</b>	
	<u>Public release of a legal database</u> Through in-Japan training, trained the Uzbekistani side on technical matters needed to create a database. The legal database was opened to the public in July 2007.

	<p><u>Assistance with the drafting and operation of the Administrative Procedure Law and related legislation</u></p> <p>Assisted drafting the administrative procedure bill and creating adjacent statutes (general implementation framework and model hearing rules). Through discussions between Japanese experts and the drafting committee in charge of drafting the bill, the Administrative Procedure Law was designed to allow small businesses to operate more freely. Drafting of adjacent statutes is ongoing with priority on constructing enforcement mechanisms.</p> <p><u>Assistance with drafting and operation of the Mortgage Law</u></p> <p>At the start of the project, the Mortgage Law bill had already been introduced in parliament, so the project had much less involvement with assisting the drafting of the Mortgage Law than initially believed. Instead, the project assisted the creation of an interpretation guide to the Mortgage Law for Ministry of Justice officials. The project is also assisting the Ministry of Justice's revision work on the secured transactions section of the Civil Code.</p>
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## 5. China

## (1) Economic Legal Development Project (currently underway, results as of April 1, 2009)

<b>Project Name</b>	Economic Legal Development Project
<b>Period</b>	Nov. 18, 2004 – Nov. 17, 2009
<b>Expenditures</b>	506.435 million yen
<b>Counterparts</b>	Legislative Affairs Office, State Council, and Ministry of Commerce
<b>Resources Deployed as of Nov. 2008</b>	
Dispatch of experts	Long-term experts: 0
	Short-term experts: total of 73 (50 academic experts, 5 attorneys, 9 Fair Trade Commission officials, 3 Ministry of Justice officials, 1 Ministry of Economy, Trade and Industry official, and 5 others from the private sector)
In-country seminars	6 seminars
In-Japan training	18 sessions with a total of 173 attendees
In-country exchange forums	20 meetings
Domestic advisory group	Corporation Law Domestic Advisory Group
<b>Project Objectives</b>	To raise the capacity of officials affiliated with China's law-making institutions and legal enforcement institutions, to promote the establishment of highly transparent economic and corporate legal systems that incorporate Japan's expertise, and to advance harmonization with international rules.
<b>Main Activities and Outcomes</b>	<p><u>Revision of the Company Law</u> The amended Company Law was established in October 2005 and entered into force in January 2006.</p> <p><u>Assistance with the legislation and enforcement of the Anti-Monopoly Law</u> The Anti-Monopoly Law was enacted in August 2007. In terms of assisting the enforcement of the Anti-Monopoly Law, the project is introducing Japan's anti-monopoly guidelines, providing advice on constructing organizations at enforcement institutions, and identifying and recommending solutions to enforcement issues.</p> <p><u>Research into the legislation of laws related to market circulation</u> The Franchise Business Management Regulations were enacted in May 2007. The project is giving assistance with legislating individual laws associated with establishing a market economy (retailing regulations, installment sales, automobile transactions, etc.).</p>

## (2) Improvement of Civil Procedure Law and Arbitration Law Project (currently underway, results as of April 1, 2009)

<b>Project Name</b>	Improvement of Civil Procedure Law and Arbitration Law Project
<b>Period</b>	Nov. 1, 2007 – Oct. 31, 2010
<b>Expenditures</b>	164.314 million yen
<b>Counterpart</b>	Legislative Affairs Commission, Standing Committee, National People's Congress
<b>Resources Deployed as of April 2009</b>	
Dispatch of experts	Long-term expert: 1 attorney
	Short-term experts: total of 5 (4 academic experts, 1 attorney)
In-country seminars	1 seminar held during visits by short-term experts
In-Japan training	3 sessions with a total of 27 attendees
Domestic advisory group	6 meetings of the Civil Procedure Law and Arbitration Law Study Group
<b>Project Objectives</b>	To promote the establishment of a Civil Procedure Law and an Arbitration Law that are more

<b>Main Activities and Outcomes</b>	<p>efficient and more harmonious with international rules, including Japanese rules.</p> <p><u>Assistance with revision examinations of China's Civil Procedure Law and Arbitration Law and exchanges between Japanese and Chinese legal and judicial officials on the following topics during in-Japan training and in-country seminars</u></p> <ul style="list-style-type: none"> <li>• Comparative study of Japanese and Chinese laws, regulations, and court proceedings connected with the revision of China's Civil Procedure Law</li> <li>• Study of issues arising in legislative debates on China's Civil Procedure Law: in particular, civil law enforcement, retrials, small claims actions, simplified procedures, public interest litigation, rules of evidence, and the instance system</li> <li>• Comparative study of Japanese and Chinese laws, regulations, and arbitration proceedings connected with the revision of the Arbitration Law</li> <li>• Study of issues arising in legislative debates on the Arbitration Law: in particular, independence of the arbitration panel, extraordinary arbitration, status of the arbitration association, consent to arbitration, rights and obligations of the interested parties, the arbitral tribunal, and the arbitrator, ethical regulations on arbitrators, and the enforcement and preservation of arbitration decisions</li> </ul>
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## 6. Mongolia

## (1) Legal Reform Support Project

<b>Project Name</b>	Legal Reform Support Project
<b>Period</b>	Sep. 15, 2006 – Nov. 30, 2008
<b>Extension Period</b>	Sep. 16, 2008 – Nov. 30, 2008
<b>Expenditures</b>	46.799 million yen
<b>Counterpart</b>	Ministry of Justice and Home Affairs
<b>Resources Deployed</b>	
Dispatch of experts	Long-term expert: 1 attorney Short-term experts: total of 13 (9 attorneys, 4 academic experts)
In-country seminars	11 seminars (International Covenants on Human Rights, mediation seminars, legal ethics, methods of using precedents, etc.)
In-Japan training	3 sessions with a total of 24 attendees
Domestic advisory group	None
<b>Project Objectives</b>	To form and have function a bar association that can provide high-quality services to citizens and represent the interests of many lawyers with differing viewpoints.
<b>Main Activities and Outcomes</b>	<p><u>Assistance with the revision of the Practicing Law of Advocacy</u> Collected and analyzed information on various issues with the revision of the Practicing Law of Advocacy and on the laws of other nations for comparison, and heard the opinions of a number of interested parties. The Ministry of Justice and Home Affairs' final draft gives the bar association more independence than in the current and draft law.</p> <p><u>Assistance with the operation of the bar association</u> Assisted the production and distribution of the bar association's bulletins and register. The bar association bulletin is now published regularly every month and contains articles on the association's activities and information relevant to lawyers. The association's register has been revised once since its initial creation.</p> <p><u>Operational and capacity improvements for the mediation center</u> Provided technical assistance to improve the capacity of mediators, and provided publicity assistance to raise general awareness of the mediation system and the mediation center. The center is now used for an average of 30 to 40 legal consultations and 3 to 4 mediations a month. Legal officials were given training, in-country seminars were held, and awareness of the center was raised through TV and other publicity means.</p> <p><u>Capacity building of lawyers</u> Held seminars for a total of 379 people on topics that are rarely touched on in Mongolian legal training (legal ethics, application of precedents) and on topics of growing importance in Mongolia (the Real Estate Security Law and the International Covenants on Human Rights).</p>

## 7. Indonesia

## (1) Project on Improvement of Mediation System

<b>Project Name</b>	Project on Improvement of Mediation System
<b>Period</b>	Mar. 1, 2007 – Mar. 31, 2009
<b>Extension Period</b>	None
<b>Expenditures</b>	62.677 million yen
<b>Counterpart</b>	Supreme Court
<b>Resources Deployed</b>	
Dispatch of experts	Long-term expert: 1 attorney
	Short-term experts: total of 6 (1 attorney, 3 academic experts, 2 Ministry of Justice instructors)
In-country seminars	3 seminars (mediation techniques)
In-Japan training	2 sessions with a total of 24 attendees
Domestic advisory group	10 meetings of the advisory group
<b>Project Objectives</b>	
	To improve the system of judicial compromise and mediation.
<b>Main Activities and Outcomes</b>	
	<p><u>Assistance with the revision of the Supreme Court's rules on judicial compromise and mediation</u> The Supreme Court's regulations were revised and the revisions went into force in August 2008. Mediations based on the revised regulations were verified at four pilot courts in the Jakarta district. A collection of Q&amp;As on the revised regulations and a draft commentary on the revised regulations were completed and approved by the Supreme Court.</p> <p><u>Assistance with the preparation of a curriculum and training materials needed to develop mediators</u> Held three TOT training courses for pilot court judges and court recorders. Prepared a curriculum, syllabus, and mediator training DVD.</p> <p><u>Assistance with the development of promotional tools to publicize the mediation system to the public</u> Produced pamphlets on the revised regulations and distributed them at a national judges' conference. Held two promotion seminars.</p>

## **Legal and Judicial System Development Assistance from the Japanese Government**

The Japanese government generally provides legal and judicial system development as part of its official development assistance (ODA). The majority of ODA legal assistance is given in the form of technical cooperation, but not all legal assistance can be neatly accommodated in technical cooperation frameworks. For instance, legal assistance includes grant aid for training legal and judicial professionals. The technical cooperation budget accounts for close to 40 percent of the ODA budget, which is split among a number of ministries and agencies. JICA is the central organization that manages more than half of the technical cooperation budget. It should be noted that JICA usually embeds legal assistance within the governance technical cooperation field. JICA's governance cooperation is dependent on assistance from academic experts, the Supreme Court, the Ministry of Justice, and legal and judicial practitioners.

One legal assistance project run by a government body other than JICA is the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of the Offenders (UNAFEI), operated by the Research and Training Institute under the Ministry of Justice. (UNAFEI is a regional UN training institute set up in 1962 based on an agreement between the UN and the Japanese government with a mandate to encourage the sound development of criminal justice administration and to promote bilateral cooperation. It is operated by the Research and Training Institute's United Nations Training Cooperation Department.) For more than 40 years, UNAFEI has run international training programs, seminars, and studies targeting primarily Asian-Pacific legal and judicial practitioners in order to develop personnel for the criminal justice field, including crime prevention and better treatment of offenders. The Research and Training Institute set up the International Cooperation Department in 2001 as a specialized department to handle legal assistance affairs within the institute. In addition to cooperating with JICA, this department has conducted studies and research and held symposiums on the legal systems of Asian-Pacific countries.

The Ministry of Finance provides assistance for international training under JICA or World Customs Organization schemes (for example, JICA's Capacity Building of Master Trainers for Modernization of Customs Administration Project in Vietnam or foreign customs agents accepted for training at the Ministry of Finance's Customs Training Institute). In terms of multilateral aid, the ministry makes regular contributions to international finance organizations as well as donations to special funds (Japan Fund). Legal assistance draws on these funds as well.<sup>1</sup>

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<sup>1</sup> Some funds receiving contributions include (1) the Policy and Human Resource Development Fund

The Ministry of Economy, Trade and Industry is involved in a variety of preparatory activities to assist the establishment of economic laws in Asia-Pacific Economic Cooperation (APEC) countries and regions (such as commercial laws, corporation laws, bankruptcy laws, and competition laws). For example, the Japanese government proposed the Economic Legal System Development Initiative to create transparent, stable regional market rules to APEC, which was aiming for sustainable economic growth through stronger market functions, after the Asian economic crisis in 1997. Based on this initiative, the ministry has run training programs, dispatched experts overseas, and conducted comparative studies of different countries' legal systems to build the needed capacity in recipient nations for legal reforms, government organizational reforms, and better corporate governance. Three priority areas have been corporation laws, competition laws, and personnel development.<sup>2</sup>

The Ministry of Education, Culture, Sports, Science and Technology, in addition to government-sponsored foreign student programs, runs the Young Leaders Project and offers programs to legal professionals in developing nations to obtain Master's degrees and other degrees in law. The ministry has also formulated assistance strategies for education programs to increase the awareness and conceptualization of copyrights in developing Asian nations and for the establishment of copyright systems. There are also opportunities for academic research into legal assistance through grant-in-aid for scientific research and legal assistance through grant-in-aid for special educational research (Nagoya University's Education and Research Center for Japanese Law projects in Uzbekistan, Mongolia, Vietnam, and Cambodia).

The Ministry of Foreign Affairs accepts overseas students from developing nations through its Grant Aid for Human Resource Development Scholarship system and it accepts students into law schools as well. The ministry selects nations for assistance primarily from Asia, taking into account bilateral relations with Japan. The Japan Foundation, inaugurated as a semi-governmental corporation under the jurisdiction of the Ministry of Foreign Affairs, is engaged in producing dictionaries of legal terms.

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(PHRDF), (2) the Japan Consultant Trust Fund (JCTF), (3) the Japan Social Development Fund (JSDF), (4) the Japan Special Fund (JSF), (5) the Japanese Trust Fund for Consultancy Services (JCF), (6) the Japan Special Fund Poverty Reduction Program (JPO), (7) the Japan Fund for Poverty Reduction (JFPR), and (8) the Japan-Europe Cooperation Fund (JECF). Funds (1) to (3) are set up within the World Bank, funds (4) to (6) within the Inter-American Development Bank, fund (7) within the Asian Development Bank, and fund (8) within the European Bank for Reconstruction and Development. These funds are used for the establishment of economic laws and other positive laws, justice system reform, and land system reform.

<sup>2</sup> For example, METI's Study Group on Debt Collection Procedures in APEC Economies, set up in May 2003, analyzed the legal systems related to debt collection (bankruptcy, business restructuring, and securities systems), the status of the legal systems' operation and enforcement, and the state of the justice system and credit markets that allow for the smooth functioning of these systems. The activities of this study group prompted information sharing among APEC governments and industries and an increase in legal system transparency.

The Cabinet Secretariat's Promotion Office of Justice System Reform has embarked on a project to establish foreign language translations of Japanese laws. In addition to translating laws and ordinances, the office has started creating a standard bilingual dictionary and releasing the dictionary and law translations on the Cabinet Secretariat's Web site. This project is hoped to disseminate knowledge about Japanese laws internationally and to raise the transparency of Japan's law.<sup>3</sup>

The Supreme Court dispatches personnel overseas (UNAFEI), runs in-Japan training, conducts in-country seminars and workshops, organizes domestic advisory committees for law-drafting assistance and recommendations, provides long-term resident experts, and accepts trainees from other countries.

As this description illustrates, the Japanese government's legal assistance spans many organizations, which utilize a wide range of assistance techniques. Nevertheless, there is a shared conviction that, regardless of the assistance format, aiding the recipient country to develop the most advantageous legal system for that country profits both the nation and its citizens and thus, both directly and indirectly, promotes the interests of Japan. This understanding is the philosophical bedrock of Japan's assistance activities and has been acquired consciously and unconsciously through Japan's own experiences with legal system development, as mentioned earlier. This philosophy should be practiced in legal assistance activities and should be shared with greater numbers of recipient countries and organizations.

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<sup>3</sup> In addition, the Cabinet Office established (in November 2001) a panel on consumer policies in developing countries under the Quality-of-Life Policy Bureau and instituted assistance projects for consumer policies in developing countries, mainly targeting East Asian countries.

