

JICA's world



Special Edition

**Japan and its cooperation in
legal and judicial development**

**Protecting people,
building nations.**

Protecting people, building nations.



Ever since the Meiji Restoration, Japan has adopted, while customizing, European and American law, learning from foreign government advisors during the Meiji period to establish a legal culture unlike anywhere else in the world. Today this experience is helping to build nations through the legal and judicial development in developing countries.

The burning desire of Meiji Japan to transform the nation into a global leader

Japan's first real legal system was established in the beginning of the 8th Century. It is believed that its beginnings date back to the establishment of the Taiho Code, which was modeled on China's legal system based on the philosophies of Confucianism and Chinese Legalism. Since then, over a period of approximately 1,300 years, Japan's legal system has continued to evolve in tune with the changing times. Presently (as of March 01, 2011) 1,829 laws and acts including the Civil Code, the Commercial Code, the Penal Code, the Civil Procedure Code, the Criminal Procedure Code with the Constitution of Japan forming the capstone of the pyramid of Japanese laws and subordinate regulations and ordinances have been systematically established and each and every one of these serves to maintain social order and support further development of Japan as a nation.

Japan's present legal system only came about in the period following the Meiji Restoration. Japan's legal system towards the end of the Shogunate period was regarded as outdated and Naoshi Sato, JICA senior advisor (attorney at law) states that Japan was forced to enter into unequal treaties under the overwhelming force of the US and Europe. At the time, the majority of countries with a modern constitutional law were concentrated in Europe. He explains how it was Japan's desire to establish a modern legal system as soon as possible so that it could join the other nations that at the time were regarded as global leaders.

Japan's unique legal culture

Japan channeled its energy into the learning of modern laws, with a focus on laws of civil law countries, such as France and Germany, sending students overseas to study. In the time following, the man who was to become Japan's first Prime Minister, Hirobumi Ito, spent over one year from 1882 studying the constitutional systems of countries, such as Germany, Austria and England. Japan also

invited a number of foreign government advisors to Japan, including the likes of Gustave Émile Boissonade, a French legal scholar known as the founder of modern Japanese law and worked together with them in an effort to develop Japan's legal system.

Those responsible for drafting Japan's legal codes during this process were opposed to the idea of simply adopting foreign legal codes (the laws of France), an opinion which was supported during the establishment of the Meiji Government. They claimed that simply "importing" European laws into Japan would not work as it had no roots in the country.

Those tasked with drafting Japan's legal codes set about "customizing" foreign laws to suit Japanese society and culture and preexisting systems, choosing an approach which involved selecting elements of foreign law that would complement Japan's own legal code.

This spirit is still alive in Japan today. Although legal reforms implemented following the Second World War were largely influenced by laws of common law countries under the occupying forces, these were adopted in a manner so as not to conflict with the existing legal system and even now, the development of new legislation is done through a process of comparing and analyzing the legal systems in regions such as Europe, the US and Asia. Naoshi Sato explains that as a result, Japan has established a unique legal culture, adopting a mix of Civil Law and Common Law.

Why is Japan's legal system garnering so much attention from developing countries?

In recent years, Japan's unique legal culture is garnering attention from developing countries, racing to develop their own legal system in order to ensure independent and sustainable development and to breathe new life into the market economy. Senior advisor, Naoshi Sato states that developing countries, while having their own unique legal culture, are pursuing a legal system based on an international standard amidst the trend of increasing social globalization. The "process" by which Japan, a nation which

overcame a range of issues through trial and error and developed a legal system tailor-made to its own needs by adopting elements of foreign law and has grown into a leading global economy, now serves as a point of reference.

Yet another reason why Japan's legal system is garnering so much attention from developing countries stems from the willingness of legal professionals in Japan to embrace comparative law.

Throughout history, the Japanese have studied the legal systems in Europe and the US and continue to keep abreast of changes in these countries, with an understanding that the legal system in Japan is not the be all and end all when it comes to law. Developing countries have opined that by studying the legal system of Japan, it is also possible to understand the legal systems of countries such as France, Germany and the US.

JICA's cooperation based on a respect for ownership

Harnessing this experience gained throughout Japan's history, JICA has carried out

A large number of Japanese crossed over to Europe in the early years of the Meiji period in order to study modern law. Kenjiro Ume (center), upon his return to Japan from studying in France and Germany played a central role in drafting Japan's Civil Code. In recognition of this achievement, he is currently known as the father of Japan's Civil Code.

(Source: Hosei University Historic Materials Committee)

French legal scholar, Gustave Émile Boissonade, known as the founder of modern Japanese law. In 1873, he was invited to Japan as one of many foreign government advisors to assist the Japanese government in drafting its legal codes and to provide education in law to aid Japan as it set about modernizing its legal system. Although he played a key role in drafting Japan's Civil Code based on the Civil Code of France, Japan had aborted the idea of simply adopting foreign laws and sought to customize these to suit the social and cultural environment and existing systems of Japan.

(Source: Hosei University Historic Materials Committee)

a number of cooperation projects in the field of legal and judicial sector with the Asian countries since the 1990s. Naoshi Sato reports that these projects have come principally in the form of human resource development to enable developing countries to draft and enforce the necessary laws and to establish an environment in which the general public has easier access to legal and judicial services. In the process of establishing laws that will form the foundation of a nation, it is extremely important to have some kind of vision as to what kind of state you wish to establish, or in other words, a sense of national ownership. JICA has the greatest respect for the independence and autonomy of these countries and is working closely together



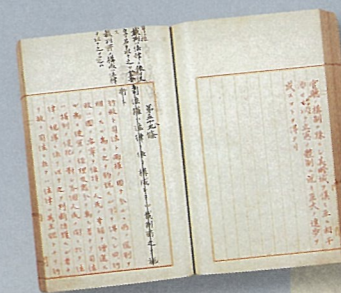
with them to establish laws which best suit the circumstances in each country. The legal system of Japan is just one of myriad options. The development of legislation is a process that must be done together.

Another remarkable characteristic of Japanese legal cooperation projects is that their activities are supported by relevant organizations all over Japan such as the Ministry of Justice, the Supreme Court, the Japan Federation of Bar Associations (JFBA) and universities, which makes it possible to dispatch a legal professional, practitioner or scholar in a balanced manner. JICA has also established advisory groups, comprised of both legal scholars and practitioners, for each project to provide support from within Japan via video conferences etc. (see adjacent column) There is no one correct answer when it comes to law. That is why it is so important to listen to advice from a variety of professionals and to develop laws that best suit the requirements of their societies, on their own initiative.

JICA's cooperation in legal and judicial development in developing countries will also have an impact on our lives at home.

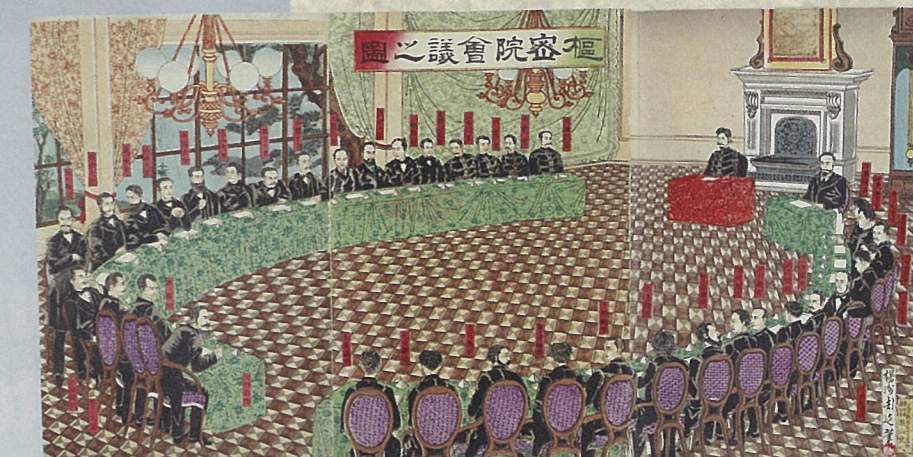
For example, the establishment of laws and systems to support the transition to a market economy in emerging countries, such as China and Vietnam, would make it easier for Japanese and foreign companies to implement economic activities in/with those countries. Further, in post conflict countries looking to rebuild, such as Cambodia, Nepal and East Timor, reestablishing legal and judicial systems that have been lost would help to ensure that disputes were resolved through laws, not violence, which would help to promote peace. Naoshi Sato states that it is extremely important for Japan and the rest of the world to promote further international stability around the world.

Making laws is, in a sense, building nations. Every country is unique, which is why it is important to work together to think about and establish laws that fit. If we can achieve this goal, a rich and prosperous society in which people can live in peace awaits.



Each of the articles contained in the initial rough draft of Japan's constitution penned by those such as Hirobumi Ito, was further discussed and revised before Hirobumi submitted the first draft to the council in March 1888 where he is said to have penciled in the suggested corrections. The photo shows a colored print of the Privy Council of Japan (bottom) and the constitution of Imperial Japan with corrections penciled in by hand.

(Source: National Diet Library)



Advisory group member on the Civil Code of Nepal, Laos, Cambodia and Vietnam

Prof. Hiroshi Matsuo

Keio University Graduate School of Law

Learning together for better cooperation in legal and judicial development

JICA advisory groups supporting legal and judicial development in developing countries are, in addition to legal scholars, comprised of a range of legal practitioners from legal circles in Japan, including judges, prosecutors and attorneys. There is no one answer when it comes to law. For example, even the Civil Code can be divided into myriad fields and interpretation can vary from person to person. That is why when supporting the drafting of new laws, it becomes important to maintain a multi-faceted perspective rather than rely on the advice of one sole specialist.

The role of JICA advisory group is only to provide options or alternatives. Our goal is to maintain a healthy respect for their ownership and identity and provide backup support to enable developing countries to arrive at an optimal solution. There is nothing more rewarding than reaching an alternative solution born from an amalgamation of ideas of our counterpart and JICA advisory group as a result of the discussion.

Japan's current legal system is also a

product of a long history of trial and error and this process is still continuing today. That's why there is so much experience and knowledge that has been gained through this process and they would be helpful to solve the problems faced by developing countries. On the other hand, working together with developing countries has also helped realize some weaknesses in practice of Japanese law and legal academia in Japan where the basis for a particular rule, that to date has escaped scrutiny, was somewhat obscure.

While JICA has been engaged in cooperation projects in this area only for the past dozen years, more recently it has been the topic of discussion in domestic conferences and interest in this area is increasing. In actuality, there are also moves to apply the results of efforts in Vietnam and Cambodia to revisions of the Civil Code of Japan currently taking place. It is my hope for us to continue working and learning together with developing countries in pursuit of establishing better legal and judicial system.

from VIET NAM

A fair and transparent legal and judicial system for a market economy

How did Japan establish its own legal and judicial system in the course of becoming one of the world's leading economies?

Vietnamese wants to know why, which triggered commencement of JICA's cooperation with Vietnam.

That was 15 years ago.

We visited Vietnam, currently in the process of revising its legal and judicial system in pursuit of "good governance".

Text/photo: Mika Tanimoto (photographer)



The courtroom at Hanoi City District Court built during Vietnam's colonization under French rule. In the middle sit the judge and the lay judge, the people's representative and to the left and to the right sit the prosecutor, the attorneys and the court clerk. JICA continues to cooperate with Vietnam to ensure fair and transparent trials.

Doi Moi – Introduction to a market-oriented economy The rapid establishment of laws in Vietnam

15 years ago in 1996, a single Japanese was sent to Vietnam. This person was attorney at law, Shiro Muto. He was the first JICA expert to be involved in drafting new laws in a developing country.

Vietnam at the time was in its approximately 10th year of the Doi Moi reforms. The country was in the process of making the transition from a planned economy to a market economy and economic activity was booming. However, as the existing civil and commercial laws were not suited to a market economy, Vietnam was forced to rush ahead to draft new laws that would work in the new market economy.

Shiro Muto introduced to officials of the Ministry of Justice a number of Japanese laws in order to help Vietnam in drafting their own. Nguyen Thi Thu Ha, a project member who has been involved with JICA's cooperation activities since, said "I had no knowledge of the law or in fact the job of an attorney until I met Mr. Muto. Looking back now, the majority of Vietnamese at the time were the same". The idea of going to see an attorney when you were faced with a problem and solving it through the court procedure based on the law was not, at the time,

common practice.

Following Shiro Muto, over 20 prosecutors, judges, attorneys and project coordinators were sent as JICA experts to Vietnam where four still remain. One of these coordinators, Izumi Yamamoto, remembers the rapid transition to a market economy which took place from 2000 to 2009. Over the approximate 10-year period up until 2007, JICA has provided a variety of support to develop numerous laws, including Vietnam's Civil Code, Civil Procedure Code and Bankruptcy law. JICA has also continued to play an active role in creating learning materials used at training centers and at the Judicial Academy. Further, as part of the Technical Assistance for the Legal and Judicial System Reform (Phase 2) project launched in 2007, JICA has worked together with the Ministry of Justice, the Supreme People's Court, the Supreme People's Prosecution Office and the Vietnam Bar Federation with the objective of achieving a fair, compelling and transparent legal system, establishing new laws and the training of legal professionals, including judges, prosecutors, attorneys and court enforcement officers.

Helping to establish new laws, not through coercion, but through dialogue

Civil Code. This is a basic rules and regulations for people to live together as part



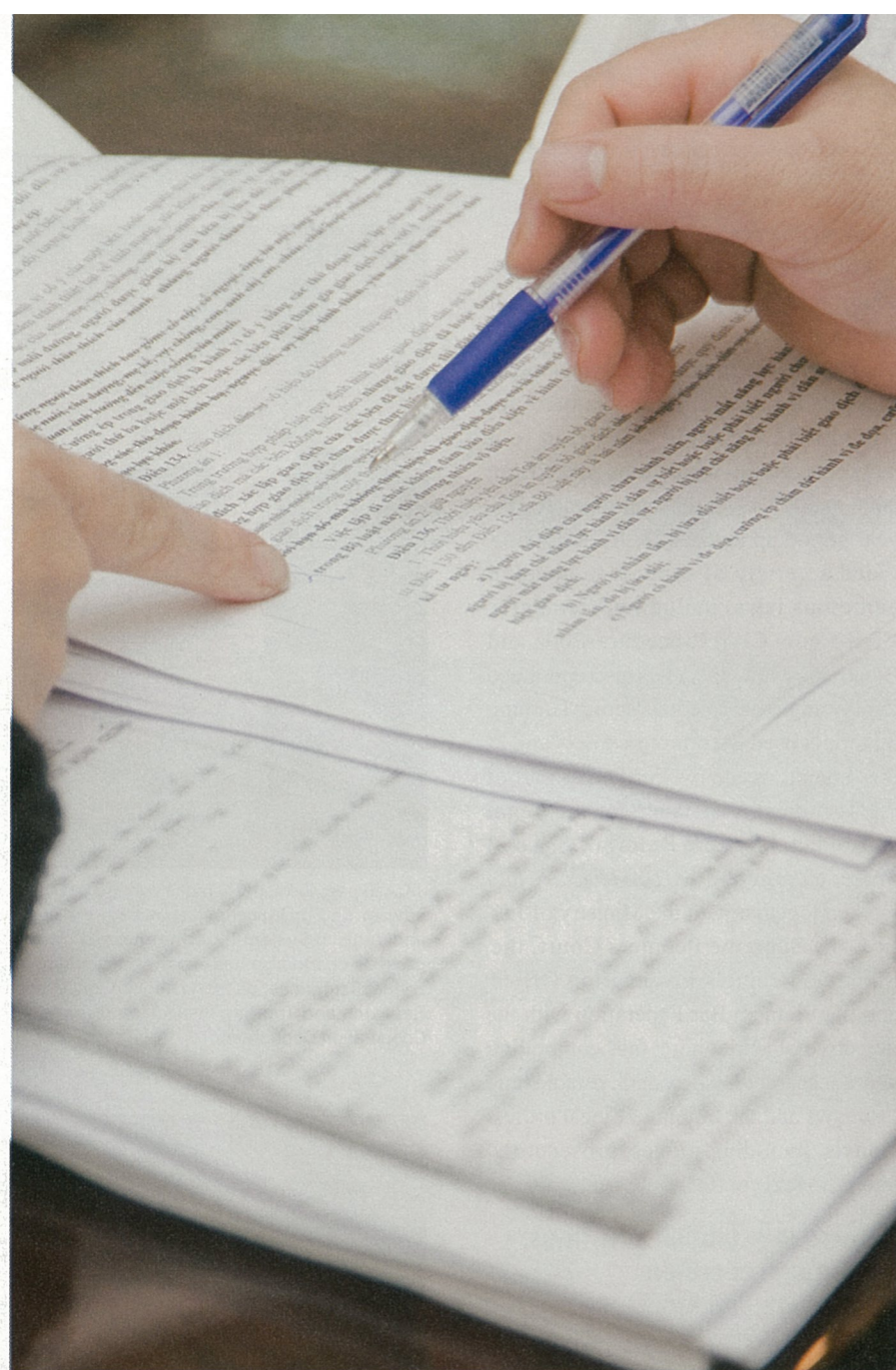
JICA expert, Takeshi Nishioka, working as chief advisor on "Technical Assistance for the Legal and Judicial System Reform (Phase 2)" was a prosecutor and also has experience working as an instructor in Japan at the Ministry of Justice, Research and Training Institute, International Cooperation Department.



Project staff member, Nguyen Thi Thu Ha (left) is delighted to have had the opportunity to contribute to the revision of the Civil Code of her homeland. Project coordinator, and local expert, Izumi Yamamoto (right) provides backup support to other legal experts.

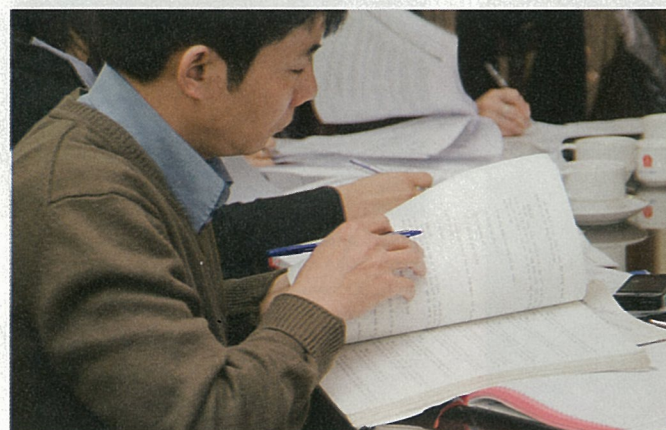


The bustling capital city of Hanoi, gradually making the transition to a market economy. The volume of bikes and cars on the roads can be daunting.



of society. Although Vietnam's current Civil Code was revised with the cooperation of JICA in 2005, there are now new calls for further revision of the code to match the growing market economy. The current revision work places an emphasis on comparative research between Vietnam's Civil Code and that of other countries, including Japan, Germany and France. At the Ministry of Justice, located in the heart of the capital, there is one person feverishly reading over and over a copy of the Japanese Civil Code that has been translated into Vietnamese. This person is Nguyen Hong Hai, Civil Code Director of the Department of Economic-Civil Legislation at the Ministry of Justice, Vietnam. JICA expert, Takeshi Nishioka, also a prosecutor and working as chief advisor talks about how he wants to avoid coercion tactics to encourage Vietnam to adopt Japan's laws but to focus on dialogue and comparisons with laws in other countries to assist in the development of laws that respect the historical and cultural background of Vietnam. It would have been an arduous task for Director Nguyen, a Vietnamese national, to understand Japan's Civil Code, one drafted based on the social and cultural environment of Japan. It would have been no easy task for the four JICA experts, including Takeshi Nishioka, Yoko Obata (attorney), Osamu Nishimura (court judge) and Izumi

Vietnam's Civil Code that carries remnants of the country's time under a planned economy. The code is reviewed over and over while drawing comparisons with Japan's Civil Code (bottom).



Civil Code Director of the Department of Economic-Civil Legislation, Nguyen Hong Hai, looks over Japan's Civil Code while listening to the advice of the JICA experts. Seminars held by short-term JICA experts and training programs in Japan are complemented by advice offered by the long-term experts during working sessions on civil law.



JICA expert and practicing attorney, Yoko Obata, explains the system in Japan during a training course on State Compensation Act.



Dinh Thi Bich Ngoc, Section Chief at the Department of International Cooperation at the Ministry of Justice explains how Japan's approach of sending over experienced legal professionals is testimony to their level of dedication to the project.



Deputy Director of the Department of Economic-Civil Legislation at the Ministry of Justice, Nguyen Thanh Thien talks about how JICA's cooperation has helped raise awareness of the importance of the State Compensation Act.



State Compensation Act training course held in Yen Bai in the country's north, following similar courses that were held in the central and southern parts of Vietnam.

Yamamoto to understand the unique Civil Code of Vietnam.

Not to mention the fact that drafting new laws is very serious and important work which relates to the governing of a nation. These four experts have spent years in Vietnam and regularly receive advice from advisory group members in Japan, including Japanese legal scholar, Akio Morishima, via video conference etc.

Last February, shortly after the Chinese New Year, 14 officials of the Ministry of Justice, Department of Economic-Civil Legislation, including Director Nguyen, and the four JICA experts eagerly went through a revised draft of Vietnam's Civil Code during a working session in a conference room in the Ministry of Justice. While the four experts provided their ideas based on advice received from Japanese legal scholars, the officials of the Ministry of Justice made feverish notes in their notebooks.

However, it was not as though any pressure was being applied to adopt Japan's Civil Code. Comparisons were made between the laws of both countries, and at times, comparisons were drawn with other countries, including France and Germany to enable the Vietnamese to draft a code, sentence by sentence, that would best suit the social environment of Vietnam. It was all very hands-on work. These kinds of work

sessions continue to be held approximately once a month.

Dinh Thi Bich Ngoc, Section Chief at the Department of International Cooperation at the Ministry of Justice explains how JICA's cooperation, repeatedly drawing comparisons between the laws of the two countries is a method unique to Japan. She also explains how the opinions of the four JICA experts are

valued within the Ministry of Justice because they understand Vietnam's Civil Code and have been there for so long, working side by side and exchanging ideas until the revised draft is complete. It is this sober and dedicated joint activity that plays an important role in enhancing the country's ability to develop its own legislation.



Early morning in Yen Bai. Bikes carrying vegetables and meat to the local market mingle with those travelling to work and school.



A large number of textbooks, including Civil Case Resolution Manuals, used at the Judicial Academy have been created as a result of JICA's cooperation.

Managing newly established laws

While the revision of the Civil Code is moving ahead with JICA's cooperation, JICA is also involved in supporting the development of new law. One of these is State Compensation Act. This is a law that establishes a state or public organization's liability to compensate an individual or persons who have incurred damages as a result of failure of a public servant to perform their duty correctly. JICA has cooperated to draft this law over four years, which was enacted in June 2009. Although the law came into force in January 2010, in order to properly manage the complicated compensation procedures, there is still an urgent need for local legal professionals and public servants to learn the ins and outs of the new law.

With JICA's cooperation, training courses on State Compensation Act are being held in locations across Vietnam in order to apply the new law properly. On this day approximately 80 people, including directors and staff from local justice departments in 12 provinces from the mountainous regions in the country's north attended a training course held in a hotel conference room in Yen Bai, a town located to the north east of Hanoi.

While litigation cases in connection with State Compensation Act are occurring in the town of Yen Bai due to the destruction of housing foundations resulting from the construction of a large-scale bridge in the area, the number

of cases over the last year has only totaled two. Those attending the course voiced the opinion that because the law is still relatively new they still don't understand the complexity of enforcing it which proves that the level of understanding among local department staff is still quite shallow.

Deputy Director of the Department of Economic-Civil Legislation at the Ministry of Justice, Nguyen Thanh Thien, who was involved in drafting the law, expressed his expectations from future cooperation, stating that to date, even if a member of the public wished to sue the state for compensation, there had been no system in place to allow them to do so. He stated that this was not acceptable to the international community and further reinforced his point by adding that similar laws were enacted in Japan as early as 1947 and that the explanations regarding the new law provided by experienced legal professionals from Japan would aid Vietnam in managing the new law appropriately.

JICA expert, Takeshi Nishioka further reinforced this point, stating that there is no point in establishing new laws if they are not managed appropriately. He also stated that it would be important to create more opportunities where local staff could ask questions directly to staff from the Ministry of Justice. Supporting the appropriate management of the new State Compensation Act will help to protect the rights and interests of the people of Vietnam.

Establishing access to legal services

Ngo Cuong, from the Director of International Cooperation Department, Supreme People's Court of Vietnam states that together with developing legislation that meets the needs of today's Vietnam, it is also necessary to ensure the general public has access to legal services. What people do not have access to legal service means that the courts are not readily accessible and laws are difficult to understand in the eyes of the general public. JICA expert, Osamu Nishimura, asserts that in order to help the socially vulnerable, it is necessary to make it easy for them to have access to the courts. The difference in skill levels of court judges and prosecutors in central and regional areas is particularly severe and it will be essential to eliminate this gap in order to achieve uniform application of the law across the country. To address this need, JICA has launched a project setting Bac Ninh Province, located to the east of Hanoi, as a pilot area. Workshops have continued to be held in courts and the People's Procuracy to ensure that court judges follow proper litigation procedures and prosecutors perform effective criminal prosecution. Vu Van Moc, Vice director, Institute for procuratorial science, Supreme people procuracy states that the skill levels, including the content of indictments prepared by prosecutors in Bac Ninh Province, have improved as a direct result of these workshops. Vu Van Moc has expressed his enthusiasm announcing that he intends to share the experience gained through the workshop in Bac Ninh Province by delivering a workshop report totaling over 600 pages to district procuracy across Vietnam in the near future.

The stage for the training of human resource development has been at times, implemented also in Japan. Luu Tien Dung from the Vietnam Bar Federation and Chairman of the International Cooperation Committee is just one of the people who have visited Japan on a JICA training program. Luu Tien Dung talks about how impressed he was about the work of the Japan Federation of Bar

Associations to increase the number of practicing attorneys without compromising quality. JICA expert, Yoko Obata, states that an effective court and legal system cannot be achieved without a sense of trust and that it is necessary to increase the competency levels of legal professions so that they can be trusted and relied upon. In this sense, taking the time to train competent personnel will be important in JICA's role of supporting the reforms to the legal/judicial system in Vietnam.

Each of the four JICA experts in Vietnam are unanimous in their opinion that it is not their sole objective to develop the necessary legislation. It is also important to foster human resource development and to create an environment by which people can have access to legal services more easily. Only then can problems be resolved through application of the law and not force and this

will lead to a society when people can live and feel safe. Japan has developed its legislation, trained its human resources and established a legal system through a long process of trial and error. This experience is being harnessed in order to provide long-term cooperation with Vietnam



Ngo Cuong, from the Director of International Cooperation Department, Supreme People's Court of Vietnam explains how legal literature was scarce during the period when Vietnam still divided between the north and south however now, the drafting and revision of legislation is moving forward.



Vu Van Moc, Vice Director, Institute for procuratorial science, Supreme people procuracy has served for over 10 years coordinating the activities of JICA.



JICA expert and court judge, Osamu Nishimura explains how both countries share the same ideal of gathering as much information as possible in order to pass the best possible judgment.



The French colonial architecture is defining characteristic of the Supreme People's Court of Vietnam.

Clearing the way for reconstruction



Cambodia's Ministry of Justice with which JICA is cooperating in the training of human resources.



Phnom Penh

Cambodia lost its legal system and legal professionals due to the conflict resulting from the reign of Pol Pot and the ensuing civil war. Over a period spanning more than 10 years, JICA has been cooperating with Cambodia in the legal and judicial development in order to build the foundations required to rebuild the country.

The negative legacy of the Pol Pot regime

A JICA Tokyo seminar room in Hatagaya, Tokyo in early February. Sitting around a table discussing a diagram on a whiteboard is a group of legal practitioners and scholars with years of experience in Japan's legal circles.

The theme on this day is the joint ministerial ordinance concerning the immovable registration currently being drafted in Cambodia with the cooperation of

JICA. Personnel from the Ministry of Justice in Cambodia and its Ministry of Land Management, Urban Planning and Construction, visiting Japan on a 10-day training program, are enthusiastically throwing questions at the Japanese legal experts.

Large numbers of intellectuals and professionals were massacred under the rule of Pol Pot in late 1970s eliminating legal professionals from Cambodia in one foul swoop. The majority of legal literature was also burnt and at the end of the civil war, Cambodia was left with next to no legal professionals or literature. The UN took the first step in the reconstruction process by working on drafting a national constitution. However in the 1990s there was still a serious lack in necessary laws and legal systems. It was at this time that the Minister of the Ministry of Justice heard of the reputation of JICA and the work it had done in supporting Cambodia's neighbor, Vietnam, in drafting its legislation.

This reputation spoke of Japan's unique method of steering away from coercion and working together with developing countries to support them in establishing the necessary legislation. This reinforced the minister's desire to learn from Japan and improve the laws of Cambodia.

In answer, JICA launched its Legal and Judicial Development Project (Phase 1) in 1999. From a number of basic laws, JICA chose to focus on the Civil Code

Yukiharu Kobayashi (left) Deputy Representative of the JICA Cambodia office presenting university staff with a manual published as part of the Legal and Judicial Development Project Phase 3 in order to ensure further penetration of Cambodia's Civil Code developed together with the cooperation of JICA.

and the Code of Civil Procedure, both codes designed to protect the lives and rights of the people. The first step of this process involved a Japanese task force, comprising of Japan's leading legal scholars and veteran legal practitioners, working together with JICA staff in Cambodia to analyze existing laws and customs etc. and preparing initial drafts. These were discussed and reviewed article by article together with officials from Cambodia before the final draft was completed in 2003.

However, the completion of the drafting laws was not the end of the process. As part of Phase 2 of the project, JICA continued to provide support in the form of explaining and further revising the laws to ensure they would be passed by parliament. Their efforts bore fruit and by the end of 2007, had succeeded in developing Cambodia's Civil Code and Code of Civil Procedure.

Sacrificing sleep to learn from Japan

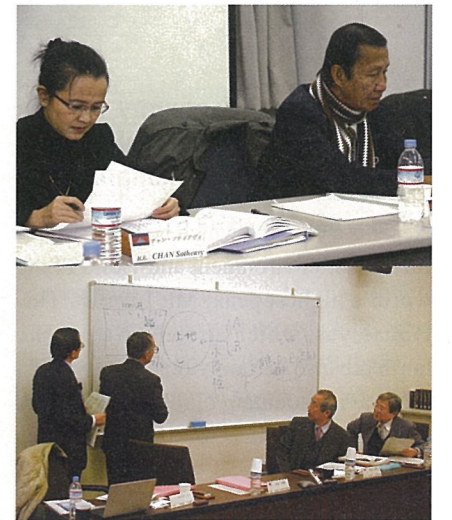
The Project Phase 3 involves cooperation to develop the necessary, auxiliary laws and ordinances to ensure the appropriate management of these two laws. JICA is currently working on drafting these together with the Ministry of Justice.

One prominent feature of this phase is that officials of Cambodian government became in charge of drafting laws as opposed to drafting by Japanese professionals. JICA expert and attorney at law, Masayoshi Harada, explains as it would be difficult to draft, from scratch indi-

vidual articles, officials from Cambodia were asked to draft an outline of the ministerial ordinance in order to help them understand its framework and composition, which is then reviewed together with project members from JICA. Project team members from Cambodia share a common goal of creating better laws, and are sacrificing sleep as they work hard towards achieving their goal.

The joint ministerial ordinance concerning the immovable registration in connection with which training was provided in Japan is just one of these ordinances. JICA expert and judicial scrivener, Emiko Kanetake talks about how Japanese are protected by various laws from the moment they are born and how we take things like the law for granted. The people in Cambodia are not so lucky. There are still many areas that require improvement, including the establishment of a system for the registration of land titles etc. in order to protect property rights already established in the Civil Code.

Part of this training included learning about the "binder format" of recording real estate, a concept which may significantly change Cambodia's property registration system. Emiko Kanetake explains that Japan used to use the same system however Cambodia still uses a single "book" to register land titles. She explains how individual title information is recorded on a single page therefore the pages soon become full. Any additional information cannot be added to the same page and as a result, information becomes



As part of the training program on immovable registration held in Japan in early February we also visited the Tokyo Legal Affairs Bureau and the Japan Federation of Shihō-Shoshi Lawyer's Associations. Assistant Director Chan Sotheavy (photo top left) from the Ministry of Justice and Special Advisor from the Ministry of Land Management, Urban Planning and Construction, Mr. Lim Voan (photo top right) resolved themselves to emulate the meticulous legal system of Japan.

fragmented. Using a binder system, additional pages can be added making it easier to read and understand. While the number of title registrations is still relatively small, application of the Civil Code should see the number of registration applications increase and project members are exploring alternatives for a new system. Seeing that the Tokyo Legal Affairs Bureau employed a binder system, members from the Ministry of Justice and Ministry of Land Management, Urban Planning and Construction were confident that a similar system would work for them.

Secretary of State of the Ministry of Justice in Cambodia, Ms. Chan Sotheavy, who was involved in the drafting of the Civil Code and the Code of Civil Procedure, spoke enthusiastically, mentioning that although it will be a long time before Cambodia achieves a legal system such as that in Japan, they have grown so much under JICA's cooperation projects. She spoke of how she intends to continue to learn from JICA and channel her energy into the reconstruction of Cambodia, saying that although we may one day die, the law will live on.

It is our hope that all the people of Cambodia can one day experience peace. We pray that this day will come under a new legal system.



Regular meetings are held with concerned parties in Cambodia. The draft from Cambodian officials is projected onto a wall and each word carefully reviewed.

Rebuilding a new country at the end of 240 year's rule under the Nepalese monarchy

Nepal is a country, which boasts a beautiful natural environment and views of the world's highest peak, Mt. Everest. The Himalayas, which stretch away in the north are also certainly on the bucket list of all avid mountain climbers. 2011 was declared as Nepal's tourism year and a

variety of events were planned over the course of the year in an effort to attract more foreign visitors.

However, just several years ago, Nepal was a country torn by civil war. Movements by the people of Nepal calling for change to democracy only began to gain momentum in the early 1990's. In 1996 this escalated to the People's war, an armed conflict between government forces and the anti-government

Maoists (communist party of Nepal). Fierce fighting could be found across the country each day, resulting in the death of approximately 13,000 people.

Even so, both parties came to a compromise in 2006 and signed the Comprehensive Peace Accord bringing to an end 10 years of civil war. Then in April 2008, a general election for the Constituent Assembly was held and in the following month in May, the Constituent Assembly

was opened. The Constituent Assembly announced the end of the approximately 240 years lasting regime of the Nepalese Monarch, giving birth to the Federal Democratic Republic of Nepal.

The international community came together to support the building of a new nation. In 2007, the United Nations established the United Nations Mission in Nepal (UNMIN) and in order to support the transition to a democracy, JICA has conducted cooperation projects on three fronts; Poverty alleviation in rural areas, Peace building and steady transition to democracy, and Building social and economic infrastructure.

Cooperation in drafting and establishment of the Civil Code for the people

As part of support for peace building and steady transition to democracy, JICA launched a program for promoting democratization process. Under the slogan of "building the framework to avoid a return to civil war", JICA is providing comprehensive support to facilitate the transition to democracy. Supporting the drafting and establishment of

Nepal's Civil Code, a code designed to support the people, which play a key role in any democracy, is just one of these initiatives. In Nepal, while the Constituent Assembly works to draft a new constitution, basic rules of the civil and criminal codes still follow the National Code (Muluki Ain) established more than 150 years ago.

This National Code includes a number of detrimental elements. For example, while it has been repeatedly amended, it does not meet the needs of the current social environment. Further, it places a focus on ethical elements based on Hinduism and as a result, the consequences of breaking the law can be vague and it has been reported that it is difficult for judges to use as a standard to deliver judgments. Because the Muluki Ain did not sufficiently reflect "the rights of the people" which is protected by the new constitution, the government of Nepal planned drastic revisions of the civil and criminal codes that would result in revision and separation from the Muluki Ain.

In answer to calls from the people of Nepal to establish laws that conformed to international standards while also con-

forming to tradition and the social environment of Nepal, JICA launched a cooperation program to assist in the drafting of Nepal's Civil Code. A taskforce appointed by the Prime Minister, comprised of legal professionals, set to work on drafting the articles that were to make up the code and serious talks were held via video conference with the advisory group in Japan and over the course of seminars in Nepal and Japan.

Justice of the Supreme Court of Nepal, Khil Raj Regmi, appointed to head the taskforce, explains that there were many elements that needed to be considered in order to make the transition to a democracy, including abolition of discrimination against women, resolution of the disputes concerning land ownership and contractual relationships etc. He also spoke of his desire to learn more of Japan's experience in adapting its own laws to meet the needs of the times.

Effecting drastic changes to and redrafting the Civil Code is no easy feat. However Prof. Hiroshi Matsuo from Keio University's Faculty of Law expresses that the Nepalese are more than capable and have a strong awareness as legal

from **NEPAL**

Working to build a democratic nation that won't revert back to civil war

Nepal experienced a severe civil war that spanned a period of over 10 years starting in the mid 1990's.

Following the signing of the Comprehensive Peace Accord, JICA has been strengthening its assistance in the governance sector in order to support Nepal as it starts its journey as a nation towards democracy.



A heated discussion was held between concerned parties, including the Ministry of Information and Communications, Radio Nepal and JICA at a Joint Coordinating Committee meeting on the Capacity Development Project of the media sector.



The meeting is held with Nepal via video conference system so that contents of the discussion can be shared in real time.

professionals, also stating that there were a lot of things we could learn from them.

Following four consultations with legal personnel in regional areas, in March 2010 in the capital of Kathmandu, judges from the supreme court and district courts, prosecutors, officials from the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, and representatives from the Nepal Bar Association, Universities and NGOs came together to discuss the first draft of the newly revised Civil Code. Participants were divided into three groups to cover family law, property law and contract law and while each group made lively discussions, Prof. Matsuo explains how new provisions regarding gender equality were incorporated into the law, which at times resulted in heated discussions. Prof. Matsuo particularly remembers that female participants voiced their opinions actively and dignifiedly.

The revised draft of the Civil Code was completed in August 2010, two years after the commencement of the cooperation program. After the new law was passed to cabinet for discussion, it was presented to the Constituent Assembly in February 2011. The new law is scheduled to be

discussed at the Constituent Assembly as Nepal moves towards drafting a new constitution. JICA is currently considering providing further cooperation in drafting the Explanatory Note on the new Civil Code to ensure that it is properly understood by legal professionals and citizens alike and can be adapted into society so as to form basic rules to protect the livelihood of the people of Nepal.

Cooperation in the media sector and community mediation

As part of the program for promoting democratization process, in addition to providing support to draft the revised Civil Code, JICA is also supporting for the election committee, the media sector and the community mediation.

In Nepal, while television is generally only found in city areas, newspapers, magazines and the radio form the primary source of information for those living in rural areas. However, the Ministry of Information and Communications has no firmly established policy on screening and registration, and as a result, there are close to 300 broadcasting stations in Nepal. Further, Nepal has a history where on the several occasions

those in positions of power have used the media to suit their vested interests and persecution of journalists takes place therefore in reality, the media has yet to function as an accurate, impartial and fair



JICA expert, Tetsuya Ota (broadcasting technology) discusses ways to improve the broadcasting network with a technician from Radio Nepal as part of efforts to improve the capacity of the media sector.

watchdog of the people. In light of this, starting in November 2010, JICA has been focusing on improving the capacity of journalists, revising relevant laws including broadcasting and radio laws and strengthening the capacity of Radio Nepal, the only state-run broadcasting station with the ability to cover the whole country. Through these projects, JICA aims to promote the provision of fair information throughout the important transition to democracy and foster the development of a strong media.

Amidst the political and social unrest in the wake of the civil war, there is still fighting amongst communities in rural areas. It is said that this localized fighting could trigger another large-scale conflict. In response, the Nepalese government has introduced a community mediator system as a temporary and alternative mechanism to resolve disputes in rural areas with insufficient access to legal services. Starting in January 2010, JICA, working together with the Nepalese government and local NGOs, have established two districts in the mountainous



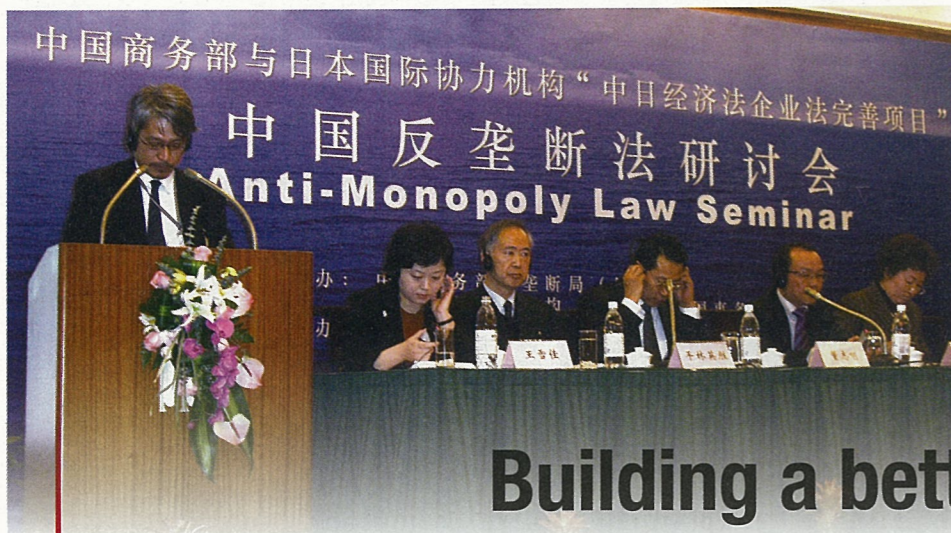
The topic of this session was the divorce process under the Japanese Civil Code. During this session each item of the initial draft for Nepal's Civil Code was discussed while using Japan's Civil Code as a point of reference.

and low-lying areas in the center of Nepal as pilot areas and have been working on transferring the know-how required to put into practice dispute management and community mediation measures in order to maintain stability in these areas.

The country of Nepal is working hard, employing various means to establish the foundations for democracy. JICA is also working alongside the local people in moving forward so that a shining light will guide the people towards a new future.



JICA vice president, Izumi Arai (middle), together with the members of the Nepal Civil Code revision taskforce on a goodwill visit during the seminar in Japan.



Seminar on Anti-Monopoly Law. This law, established after a long 15 years of discussion, aims to prevent the abuse of market dominant position and business alliances that have the potential to limit or eliminate market competition.

from **CHINA**

Building a better business environment

JICA has provided a comprehensive range of support in the area of legal and judicial development in China, a country which, in line with the transition to a market economy, has experienced rapid economic growth, including the rise of a large number of start-up companies.

To date, JICA has been supported the drafting of China's revised company law (enacted 2005), anti-monopoly law (enacted 2007) and China's tort law (enacted 2009). JICA has also provided support for the revision of China's code on civil procedure and introduced Japan's court judge training program to China. We asked two Japanese residents in China about the effect that JICA's legal and judicial development support may have on corporate activities currently and in the future in China, a country into which a large number of Japanese corporations have made inroads.



Takuya Eguchi

Mori Hamada & Matsumoto
Beijing Office Representative

To date, any foreign firm that had opened up in China wishing to purchase a local company could not use more than 50% of its retained earnings* in the purchase. In reality, this is the same as imposing price restrictions to prevent foreign companies from acquiring Chinese interests. However this rule was abolished in line with revisions to China's company law and this has effectively removed one obstacle to conducting business in China.

In other areas, China's tort law has had a noticeable impact on e-commerce. By clarifying the joint responsibility of providers, now when fake brand products appear on China's largest online shopping sites, they are forced to shut down.

In the area of civil procedure, there is a need to improve specific areas of the law itself, including its rigidity and it is extremely important to improve the training of court judges. At present, courts in China rely heavily on direct evidence whereas judges in Japan will gather circumstantial evidence to verify the facts of a case and are renowned around the world for this ability.

In this sense, the support currently provided by JICA aiming at improvement of training for court judges is really making use of Japan's strengths and is extremely significant in the process of ensuring the effective management of Code of Civil Procedure in China.

*Net assets of an organization from which capital and capital reserves have been deducted. This indicates the accumulation of corporate earnings and is used as a standard to calculate the amount distributable to shareholders.



Kenji Shimizu

JETRO Beijing Center
Economic Information Manager

Japanese businesses expanding into China are faced with a variety of problems, including trade and taxation procedures. 2010 in particular was a year marked by unparalleled labor issues fueled by wage increases and a large number of industrial disputes.

In light of this situation, areas in which Japanese organizations in China are calling for improvement include detailed framework required in fields such as logistics, energy conservation, the environment, innovation and intellectual property rights and a uniform and consistent interpretation of the law, which seems to differ greatly by region and individual. In other words, what is necessary in China is changing from the establishment of a legal system to its effective enforcement.

In order to address these issues, JICA should be focusing its support on offering proactive advice on how to improve the existing legal system through the use of case studies and lessons learnt in Japan, Europe and the US. In addition to this process, I believe it would be beneficial if groups, such as JETRO (Japan External Trade Organization) and the Japanese Chamber of Commerce and Industry in China (group of Japanese corporations in Beijing) could collect information from Japanese businesses in China concerning problems they are experiencing with the existing legal system in day-to-day business and suggestions for improving these systems and propose these to the Chinese government with the support of JICA and the Embassy of Japan. If JICA could participate in the working group currently involved in writing the White Paper on the Chinese Economy and Japanese Corporations in 2012, and provide advice as to what kind of support is possible in the area of legal and judicial development, we would be able to incorporate more practical and convincing arguments.

Serving as bridge between Uzbekistan and Japan

Mr. Sharipov serves as a bridge between Uzbekistan and Japan with the aim of aiding legislative development in the country.

The JICA Uzbekistan office is located in the country's capital, Tashkent. National staff member, Mr. Sharifzoda Sharipov, or "Sharif", as he is affectionately known by his colleagues has been busy working day after day researching and analyzing the information necessary to implement the project. He has worked tirelessly paying careful attention to each and every detail. The driving force behind his hard work and dedication is his passion for providing support in the area of legislative development, a role he has played for nine years.

Sharif's dreams were answered when he was employed by the JICA Uzbekistan office in 2002. To date, Sharif had been involved in support in the field of education however the area in which he held most interest was in the provision of support for legislative development. "The law shares an equal importance with the minimum necessities of life, such as food and education. Granting rights to people and organizations has the power to protect lives and further promote corporate activities." Over the course of carrying out his work, Sharif realized the need for more practical knowledge of the law and while working at JICA, attended university and obtained a degree in law.

One particular project that impressed on him to date was the project for the preparation of explanatory notes for bankruptcy law launched in 2005. New bankruptcy laws were formulated in line with the privatization of state-run organizations following independence however it failed to take root in the short time after the law was enforced due to a lack of reference material and bankruptcy procedures remained inconsistent. It was at that time that JICA was tasked with providing support for the formulation of explanatory notes for the bankruptcy law scheduled to be issued

by the Supreme Economic Court of the Republic of Uzbekistan and the dissemination of these notes among court judges and entrepreneurs.

Specialists from Japan and Uzbekistan worked side-by-side to prepare the notes. At the time, there were only plans to publish the notes in Russian. However thanks to the strong backing from Sharif based on the need to publish the notes in Uzbek in order for more people, including those in regional areas, to familiarize themselves with the new law, it was decided that the notes were also to be published in Uzbek. Former JICA specialist and lawyer, Kie Matsushima, who was working together on the project at the time, states that it was no easy feat for Sharif, who continued to work on editing the notes from his hospital bed when he was admitted for pneumonia.

Ultimately, the notes were published in four languages, including Uzbek, Russian, English and Japanese. Then one day, Sharif happened upon something that made all the hard work seem worthwhile. From the inside of a bus, Sharif saw a student holding nothing other than the notes they had prepared over the course of the project. It was then that Sharif realized that he had helped answer the need of the people to have access to material that explained the law in language they could understand.

In Sharif's view, law is empowerment. The law has aided Sharif count-

Mr. Sharifzoda Sharipov



Mr. Sharipov (second from the left) and Mr. Nihei (far left) in discussions with members from the JICA Uzbekistan Office. All the members of the Uzbekistan office work closely together as part of one big family.

less times in his daily life leading him to appreciate its importance. As a result his desire to succeed in developing legal infrastructure that will benefit the people of Uzbekistan is strong. Kie Matsushima refers to Sharif as "Comrade" and Mr. Nihei to him as his "Alter Ego". As these terms suggest, Sharif plays an integral role in bridging the gap between JICA and the parties concerned from Uzbekistan. Sharif is familiar with JICA and Uzbekistan and the role he plays is a significant one.

There are still many laws in Uzbekistan that require improvement, including administrative procedure law, which remains conflicting and ambiguous in some areas. Harnessing the knowledge and experience he has in the area of law, Sharif hopes to continue to contribute towards the further development of Uzbekistan. Together with JICA employees, specialists and counterparts, Sharif's challenge will continue.



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