

# Creating the First Unified Civil Code in South Asia

Providing assistance on legal system development for nation building in Nepal



Nepalese parliamentary members and other related officials visit Japan as part of Japan's assistance on the formulation of a civil law. (Photo: Takako Nagao)

After the civil war lasting 10 years was concluded in 2006 in Nepal, steady efforts are underway to develop a legal foundation that will help Nepal build a new nation. These efforts include the formulation of five major laws, namely a Civil Code, a Code of Civil Procedure, a Penal Code, a Code of Criminal Procedure, and a Sentencing Act.

In Nepal there is a code of law known as the Muluki Ain,<sup>1</sup> which was established approximately 150 years ago. It includes all the content of the five laws the parliament is aiming to enact and still has legal force. However, although it was once revised in the 1960s it has subsequently been unable to keep up with recent social developments and now lags behind international legal standards. In response to this situation, the Government of Nepal decided that as part of the building of the new nation, the Muluki Ain would be abolished and the abovementioned five new major laws would be enacted in its place.

Since 2009, Japan has been providing assistance to the Nepalese Civil Law Reforms and Improvement Task Force, which is comprised of legal and judicial experts in Nepal, on the formulation of a draft Civil Code. This assistance has been provided through a Japanese advisory group comprised of academics and legal experts.<sup>2</sup> This is the first time for Japan to provide assistance on the formulation of a civil code in South Asia.

The draft bill was completed in 2010 and submitted to the First Nepalese Constituent Assembly. However, due to political upheaval, the assembly was dissolved in 2012 before deliberations on the bill were concluded. However, in December 2013, work resumed on revisions to the draft bill almost at the same time as the inauguration of the Second Nepalese Constituent Assembly. The revised bill was resubmitted to the Constituent Assembly in December 2014 as the "Draft Civil Code Bill 2014." Following the enactment of the new constitution of Nepal on September 20, 2015, work began in earnest in the Legislation Committee of the Constituent Assembly towards the enactment of the Civil Code.

In April 2016, Nepalese lawmakers, including assembly members and officials from the Ministry of Law and Justice, visited Japan. They engaged in discussions with the members of the Japanese advisory group, deepening their understanding of the Civil Code Bill and confirming items that would require examination before finalization of the bill. Furthermore, in order to further improve the bill, public consultations are being held around Nepal to hear the opinions of judges, prosecutors, lawyers, administrative officials, citizens, non-governmental organizations (NGOs), and journalists.

Acting as a bridge between Japan and Nepal in these efforts is Ms. Takako Nagao, an attorney who was dispatched to Nepal in September 2015 as a JICA expert. Ms. Nagao has attended the public



A public consultation in Kathmandu (Photo: Takako Nagao)

consultations that have been held around the country and has shared the opinions and reactions provided in these fora with the members of the Japanese advisory group. In response, the advisory group has assessed whether the bill would meet international standards and provided advice.

Ms. Nagao says, "Based on recommendations from Japan, assembly members who serve on the Legislation Committee are working to compile a final draft of the bill. If everything goes according to plan it is forecasted that the bill will be approved and enacted by the Constituent Assembly by the end of 2016 (as of October 2016). However, the Civil Code is a law that directly affects all aspects of people's lives and there are sections of it that are dividing public opinion on whether it should be enacted or not."

There are deep-rooted opinions opposing the introduction of the Civil Code for various reasons. For example, there are concerns that the system for inheritance and testaments could be detrimental to women compared with the traditional distribution of property under the Muluki Ain. Also, there are fears that the system for international adoption could become a front for trafficking in persons.

Ms. Nagao explains, "It will be the people of Nepal who ultimately decide the laws of their country. Our work is to provide information that is thought to be useful and work together with the people to consider the best options for Nepal. Although there are some values that are universally common, we must be careful not to impose Japanese values."

The draft Civil Code is composed of 6 chapters and 743 articles. If it is enacted it would become the largest codified law in Nepal and also the first unified civil code in South Asia.

Speaking about the significance of Japan supporting the development of legal systems in Asia, Ms. Nagao says, "Just as Japan looked to Europe to modernize its laws at the end of the 19th century, it is Japan's duty as a leader in Asia to meet the expectations of other Asian countries who may be looking for assistance from Japan in modernizing their own laws. I think it could also be viewed as Japan giving something back for the things it has learned from other countries."

2016 marks the 60th anniversary of the establishment of diplomatic relations between Japan and Nepal. It now looks likely that in this milestone year, the results of Japan's assistance for legal system development in Nepal will come to fruition through the enactment of the Civil Code. Furthermore, legal system development assistance is an area that Japan is focusing on with a view to realizing fair and inclusive societies. Japan's support for legal system development will represent a major step forward for building such a society in Nepal.

\*1 This word means "law of the nation."

\*2 The advisory group is composed of the following members: Prof. Hiroshi Matsuo (Keio University Law School), Prof. Satoshi Minamikata (Faculty of Law, Niigata University) and Prof. Hiroyuki Kihara (Faculty of Law, Asia University) and the International Cooperation Department of the Research and Training Institute of the Ministry of Justice.