

Third Party Evaluation Report 2014  
Ministry of Foreign Affairs of Japan

# Evaluation of Cooperation for Legal and Judicial Reform

February 2015

Mitsubishi Research Institute, Inc.



## Preface

This report under the title of “Evaluation of Cooperation for Legal and Judicial Reform” was undertaken by Mitsubishi Research Institute, Inc., entrusted by the Ministry of Foreign Affairs of Japan (MOFA) in fiscal 2014.

Since its commencement in 1954, Japan’s Official Development Assistance (ODA) has contributed to the development of partner countries and to find solutions to international issues which vary with the times. Recently, more effective and efficient implementation of ODA has been required not only in Japan but also in the international community. MOFA has been conducting ODA evaluations every year mainly at the policy level with two main objectives: to improve the management of ODA; and to ensure its accountability. The evaluations are conducted by third parties to enhance their transparency and objectivity.

This evaluation study was conducted with the objectives of reviewing Japan's overall policies on assistance cooperation for legal and judicial reform, including the "Basic Policy on Assistance for Development of the Legal System" (enacted in April 2009 and revised in May 2013) drawing on lessons from this review to make recommendations for reference in policy planning on future assistance in this domain by the Government of Japan and its effective and efficient implementation, and ensuring accountability by making the evaluation results widely available to the general public.

Professor Yasunobu Sato served as a chief evaluator to supervise the entire evaluation process, and Associate Professor Kuong Teilee served as an advisor to share his expertise on legal and judicial reform. They have made enormous contributions from the beginning of this study to the completion of the report. In addition, in the course of this study both in Japan, Vietnam and Cambodia, we have benefited from the cooperation of MOFA, the Japan International Cooperation Agency (JICA), and the local ODA Task Force, as well as government agencies in Vietnam and Cambodia, donors, and non-governmental organizations (NGOs). We would like to take this opportunity to express our sincere gratitude to all those who were involved in this study.

Finally, the Evaluation Team wishes to note that the opinions expressed in this report do not necessarily reflect the views or positions of the Government of Japan.

February 2015

Mitsubishi Research Institute, Inc.

Note: This English version of the Evaluation Report is a summary of the Japanese Evaluation Report of Evaluation of Cooperation for Legal and Judicial Reform .

## Evaluation of Cooperation for Legal and Judicial Reform (Brief Summary)

### **Evaluators (Evaluation Team)**

• Chief Evaluator

Yasunobu Sato, Professor, The University of Tokyo, Graduate School of Arts and Sciences

• Advisor

Kuong Teilee, Associate Professor, Nagoya University, Center for Asian Legal Exchange

• Consultant

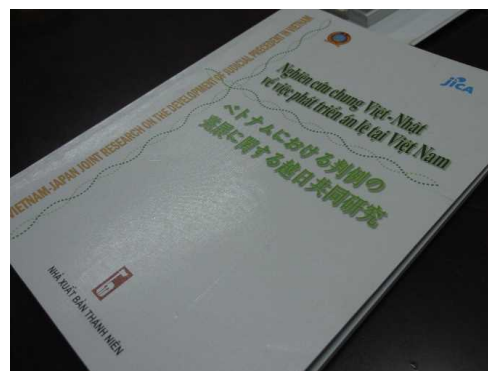
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### **Period of the Evaluation Study**

August 2014 – February 2015

### **Field Survey Country**

Vietnam, Cambodia



A Joint Research conducted through the Cooperation for Legal and Judicial Reform by JICA in Vietnam

### **Background, Objectives and Scope of the Evaluation**

The importance of cooperation for legal and judicial reform in developing countries is increasing. Japan formulated the "Basic Policy on Assistance for Development of the Legal System" (enacted in April 2009 and revised in May 2013). Against this background, this evaluation was conducted in order to comprehensively assess the performance of cooperation for legal and judicial reform and to make recommendations in order to carry out a more efficient assistance in the future. The main subjects of this evaluation were the Basic Policy on Assistance for Development of the Legal System (revised), the policies from Japan's ODA Charter and Japan's Medium-Term Policy on ODA related to cooperation for legal and judicial reform.

### **Brief Summary of the Evaluation Results**

Japan's cooperation for legal and judicial reform generally received high evaluations from development and diplomatic viewpoints.

#### **● Development Viewpoints**

##### **(1) Relevance of Policies**

The evaluation team assessed the Relevance of Policies of the cooperation from five perspectives: consistency with international priority issues, consistency with Japan's higher policies, place in Japan's diplomatic policy, consistency with the needs of the recipient countries, and Japan's comparative advantage. Overall, relevance of Japan's policies on cooperation for legal and judicial reform is ensured sufficiently. In particular, Japan's comparative advantage is worthy of high praise.

## **(2) Effectiveness of Results**

The four pillars of cooperation for legal and judicial reform are (1) establishment of rules, (2) capacity building of law operation agencies, (3) legal empowerment, and (4) training of human resources. In these terms, Japan's efforts to establish good governance and the rule of law were effective to a certain degree. On the other hand, it should be noted that continued monitoring is important as it takes some time for the outcome of cooperation for legal and judicial reform to become apparent. It was also pointed out that the corruption in the judiciary remains critical, and it needs to be addressed to improve the effectiveness of cooperation for legal and judicial reform.

## **(3) Appropriateness of Processes**

The evaluation team highly evaluated the fact that discussions with the recipient countries were held appropriately and skilled experts were sent to carry out highly professional assistance. However, there were several issues mainly concerning collaborations with other donors.

### **●Diplomatic Viewpoints**

Overall, cooperation for legal and judicial reform has contributed greatly to Japan's diplomacy. Active interaction at personal level is one of the noted features of Japan's cooperation for legal and judicial reform. The evaluation team evaluates highly of the fact that many of those who have become fond of and knowledgeable about Japan through the cooperation have become central figures in the administration and in the business circles.

## **Recommendations**

### **(1) Setting up policy-making opportunities for top-level government officials**

Discussions at a higher level in the government of Japan should be held more frequently than the revision cycle of the Basic Policy on Assistance for Development of the Legal System so as to establish a platform to review cooperation for legal and judicial reforms and actively develop related policies.

### **(2) Assistance to agencies responsible for political decision-making**

In addition to the conventional assistance at the field level, Japan should provide assistance to agencies with policy-making authority.

### **(3) Assistance for monitoring the operation of law**

In conducting cooperation for legal and judicial reforms in the future, organizing information to assist monitoring operation of law should be included as part of its assistance component.

### **(4) Strengthening promotional activities for better access to the judicial system**

It is indispensable to promulgate the legal and judicial system itself to the general public of recipient countries by actively advertising through instruments such as mass media of recipient countries.

**(5) Strengthening partnerships with other donors and international organizations**

Japan can increase its presence in the field of cooperation for legal and judicial reform among donors, by fully applying its comparative advantage and actively taking lead in the efforts for cooperation in this area.

**(6) Assisting the operation of the legal system in collaboration with the private sector**

It is important to establish a system in which the implementation agencies of the cooperation for legal and judicial reform led by JICA are able to increase its focus on cooperating with private sector such as Japan Federation of Bar Associations (JFBA). This will enable these agencies to dispatch lawyers more actively and to support them during their mission.

**(7) Active publication of documents produced through cooperation for legal and judicial reform activities**

Documents produced through Japan's cooperation for legal and judicial reform activities have been regarded very highly by seminar participants and local legal experts. These materials should be actively published in more accessible means to increase the effects of the assistance.

It is to be noted that MOFA and JICA are not the only partners of Japan's cooperation for legal and judicial reform. Other government agencies are also important partners, including the Ministry of Justice (MOJ), the Ministry of Economy, Trade and Industry (METI), the Ministry of Finance (MOF), and the Ministry of Education, Culture, Sports, Science and Technology (MEXT). Industrial institutions, universities, bar associations, and NGO's also play important roles. Therefore, in this evaluation, in addition to recommendations made directly to MOFA and JICA, the evaluation team has made recommendations for other partners involved in cooperation for legal and judicial reform. These are as follow:

Addendum

**(1) Expanding a system that responds to interests of Japanese companies**

**(2) Human resources development for cooperation for legal and judicial reform**



Meeting with the Ministry of Justice in Vietnam (Left) and Working Group in Cambodia  
(technical cooperation by JICA) (Right)

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## Chapter 1: Principle of the evaluation

### 1-1 Background and purpose of evaluation

Japan's Official Development Assistance (ODA) is one of the pillars of Japan's contributions to the international community. The implementation of ODA is anticipated to be effective, efficient and also to continue raising its quality, and MOFA has been making efforts to enhance its work through ODA evaluations. Cooperation for legal and judicial reform in developing countries helps establish an indispensable foundation to achieving sustainable growth, as well as assisting their self-help efforts based on good governance, and has been listed as an important item in MOFA's Priority Policy for International Cooperation.

After restating Japan's basic philosophy regarding cooperation for legal and judicial reform, the Basic Policy on Assistance for Development of the Legal System (Revised) in 2013 describes that Japan will continue its support in this area mainly in eight countries – Indonesia, Vietnam, Myanmar, Mongolia, Cambodia, Laos, Uzbekistan, and Bangladesh. In other parts of Asia and in Africa, it states that Japan will conduct future assistance according to the needs of each recipient country.

Moreover, in addition to conventional assistance, such as drafting civil code and other basic laws and building the capacities of law operation agencies such as judicial courts, Japan has also been providing assistance to develop soft infrastructure, such as assistance with customs to facilitate trade, and to establish an accreditation system.

Against this backdrop, this evaluation comprehensively assesses the performance of the cooperation for legal and judicial reform to date and gives constructive recommendation on the kinds of assistance that Japan should provide under its new Basic Policy. This evaluation also will publish its findings in order to ensure accountability to Japan's citizens and provide feedback to the countries involved.

### 1-2 Scope of evaluation

The subject of this evaluation is ODA policies on cooperation for legal and judicial reform, which is one of Japan's ODA priority issues .

In this report, definition of cooperation for legal and judicial reform follows that from JICA's Research Report on Governance: "[Cooperation for legal and judicial reform is] assisting the efforts of developing nations to establish a legal system, including not only assistance for drafting and enacting bills, but also for establishing systems to enforce and operate laws (judicial reform) and train legal professionals<sup>1</sup>." Specifically, the focus is on assistance for establishing basic laws (e.g. civil code) and economic laws, improving court practice, and training legal professionals. Note that assistance for

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<sup>1</sup> JICA "Research report: assistance for governance by JICA – establishment of democratic systems, improvement of administration function, and cooperation for legal and judicial reform" (2004)

police/security related activities and customs is beyond the scope of this evaluation, for interviews with concerned parties revealed that such assistance is carried out through a different system/aspect than the definition above.

As previously mentioned, Japan's policy document regarding cooperation for legal and judicial reform is the Basic Policy on Assistance for Development of the Legal System (enacted in April 2009, revised in May 2013), which describes the assistance policies in detail. In addition, there are references to cooperation for legal and judicial reform at the policy level in the ODA Charter, the Medium-term Policy on ODA, and Country Assistance Policy. Moreover, JICA, which implements the assistance, has developed guidelines for cooperation for legal and judicial reform. In consideration of these circumstances, the main subject of this evaluation are the policies set forth in the ODA Charter, the Medium-term Policy on ODA, and the Basic Policy on Assistance for Development of the Legal System. The evaluation team referred to relevant documents when there were certain points that were not clearly stated in the three targeted documents, created an objective framework, and conducted the evaluation.

The period subjected to evaluation begins in 1996, when Japan began full-scale cooperation for legal and judicial reform. However, the evaluation team took into consideration the fact that the ODA Charter, which is the primary policy of Japan's assistance, was revised in 2003. The evaluation team also took into account that this is the first third-party evaluation to be conducted by MOFA on cooperation for legal and judicial reform, and cases prior to 1996 were referred to where necessary.

#### Ultimate goal

- Establish good governance in developing countries
- Create a foundation that is necessary for a sustainable growth in developing countries

#### Basic policies

- 1) Establish the rule of law by sharing universal values, such as freedom, democracy, and fundamental human rights.
- 2) Establish an environment for sustainable growth and ensure compliance with global rules.
- 3) Share Japan's experiences and systems. Strengthen economic partnership with Japan. Build a base for regional partnership and integration.
- 4) Create a trading and investment environment that is effective for Japanese companies to expand internationally, and establish environmental safety regulations.
- 5) Increase the effectiveness of Japan's economic cooperation by enhancing governance, and help achieve international development goals

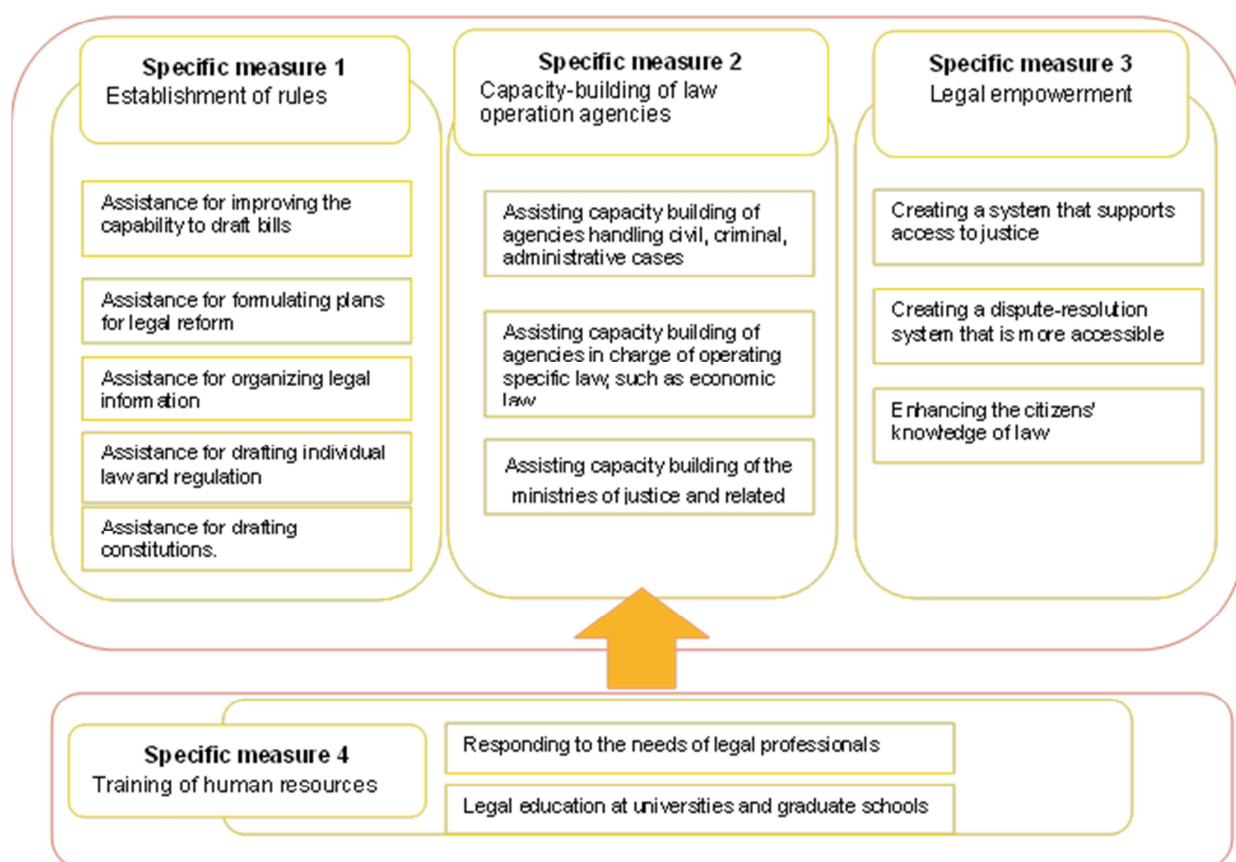


Chart 1-1: The objective framework of this evaluation

Created by the evaluation team based on the Basic Policy on Assistance for Development of the Legal System (May 2013) and others

### 1-3 Method of evaluation / Framework of evaluation

#### 1-3-1 Method of evaluation

This evaluation targets ODA policies regarding cooperation for legal and judicial reform, which is one of Japan's ODA priority issues. It assesses the "Relevance of Policies", "Effectiveness of Results", and "Appropriateness of Processes" from

development viewpoints, and comprehensively evaluates the policies from “Diplomatic viewpoints”. The evaluation conforms with the ODA Evaluation Guidelines (8<sup>th</sup> Edition), and uses the five criteria established by the OECD-DAC (Development Assistance Committee) as a reference.

#### 1-3-2 Framework of evaluation

The evaluation team made a framework which includes viewpoints, items, and indicators of evaluation.

## Chapter 2: Summary of evaluation and recommendations

### 2-1 Summary of evaluation

#### 2-1-1 Relevance of Policies

The evaluation team evaluated the relevance of policies from five perspectives; consistency with international priority issues, consistency with Japan's higher policies, place in Japan's diplomatic policy, consistency with the needs of the recipient countries, and Japan's comparative advantage. The evaluation team concluded that overall, relevance of policies is well ensured.

In particular, technical cooperation on legal and judicial reform by Japan, with its basis on the long-term dispatch of experts, provides a comparative advantage over other donors. It has been highly evaluated most notably by the recipient countries. Additionally, Japan's policies on cooperation for legal and judicial reform were confirmed to be coherent with Japan's ODA Charter, Medium-term Policy on ODA, and diplomatic policies. They are also consistent with the international trend to improve governance and achieve the Millennium Development Goals. Moreover, in countries where Japan has provided assistance, the country's own development programs clearly state the importance of judicial reform, market-oriented economic reform, and legal reform for economic activities, and it can be assessed that Japan's cooperation for legal and judicial reform had been planned well in accordance with the needs of the recipient countries.

#### 2-1-2 Effectiveness of Results

Under all four pillars of cooperation for legal and judicial reform—establishment of rules, capacity building of law operation agencies, legal empowerment, and training of human resources—Japan has made a certain contribution to the recipient countries to establish good governance and the rule of law. Especially in terms of law-drafting assistance and training of legal professionals, the results are more visible because the number of enacted bills and the number of alumni can be achieved as output. In regards to other two pillars, the hosting of seminars can be used as indicators of the outcome to a certain extent.

On the other hand, as for outcome, which is accumulation of output, it is difficult to obtain objective evidence of the effect. When it comes to cooperation for legal and judicial reform, time is needed for the outcome of assistance in judicial or legal administration to become recognizable.

In regards to establishment of rules, the effect of assistance is relatively apparent in the case of specific laws with limited scope, such as economic law. This is due to the fact that they are closely connected to practice, and improving operational efficiency leads directly to better outcomes. On the other hand, assistance for basic laws, such as civil code or civil procedure code, is mostly intended to reform the legal foundation itself,

and requires considerable time for changes in the fundamental concept of the law, judicial practice, society, and the people's legal sense to become recognizable. At the same time, such assistance historically has a great impact.

Next, in order for capacity building of law operation agencies to take place, it is a precondition that the above mentioned rules to be fully established, and its outcomes to have appeared gradually. Overall, in order for the drafted laws to operate appropriately, there must be no inconsistencies in each agency's understanding of the law, and related laws must be coherent. Japan will need to make further improvements on this issue. Japan's cooperation for legal and judicial reform is generally conducted through close communication with counterpart agencies. If the direct counterparts are judicial courts or prosecuting agencies, improvements can be seen through court practices. However, operating laws involves number of other agencies. Improving the operation of laws is difficult without working with these agencies.

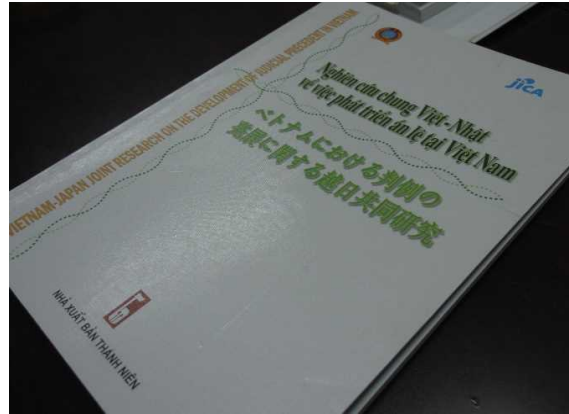
Effect was limited in legal empowerment.<sup>2</sup> Many of Japan's assistance are carried out through institutions. For example, the assistance for establishing ADR (Alternative Dispute Resolution) in Indonesia made a certain contribution to promoting an accessible option for dispute resolution. However, the citizens' grass-roots access to justice and protection of rights saw almost no substantial improvement despite measures such as legal clinics were implemented through bar associations.

Of the four pillars of cooperation, the most effective was training of human resources. Japan's assistance for training legal professionals directly made a difference in the recipient countries, which struggle from undeveloped legal education and a chronic shortage of legal professionals.

Finally, it should be noted that corruption in the judicial system affects all fields of assistance. Many recipient countries have only recently modernized their judicial systems, and corruption in the judiciary is a major issue. Under such circumstances, financial interests drive the judicial system with no consideration of legal perspectives or institutional efficiency, which makes it more difficult for the effects of cooperation to be identifiable. Good governance, which is the overall goal of cooperation for legal and judicial reform, requires corruption to be eliminated. Eliminating corruption will also be essential in maximizing the outcomes and impact of cooperation.

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<sup>2</sup> Legal empowerment is knowledge of the law and justice systems so that people can made decisions, act of their free will, and seek judicial relief when their rights are violated.



Photos: Products of cooperation for legal and judicial reform in Vietnam by JICA

### 2-1-3 Appropriateness of Processes

The evaluation team highly evaluated the fact that discussions were held appropriately with the recipient countries and that qualified experts were dispatched to provide highly professional cooperation for legal and judicial reform.

Several problems remain, however, in the appropriateness of processes. First of all, target issues must be handled and approached in a better manner. For example, of the aspects mentioned in the ODA Charter and the Medium-term Policy on ODA, the evaluation team recommends the following be addressed more proactively: 1) formulation of projects and provision of assistance that consider the self-help efforts by developing countries, as well as priority issue “poverty reduction”, 2) improvement of governance to ensure human security, 3) ensuring the rights of the underprivileged based on the principle of equality before the law in order to reduce poverty.

The evaluation team saw a certain degree of collaboration of Japan with other donors and international organizations relative to other sectors. Nevertheless, as coordination between donors is especially crucial in this assistance domain, the evaluation team encourages more active collaborations among them. The evaluation team also suggests that Japan work together more effectively with the multi-donor, which Japan contributes by funding.

As for implementation structure, in order to maintain the cooperation for legal and judicial reform in a sustainable manner, it is also required to embark on institutional support for lawyer led by bar associations and a reconsideration of their income level during and after dispatch as experts.

Finally, it should be noted that assistance in this domain has entered an important phase, where it is essential to provide assistance to the operation of laws which Japan has helped to draft. It is also essential to establish a system for monitoring the operation of laws within the context of cooperation for legal and judicial reform.

These issues are not based on negative feedback on appropriateness of processes. Japan has been conducting cooperation for legal and judicial reform for over 20 years and the fruit of its commitment has materialized in the recipient countries, and Japan

itself has learnt many lessons. At the same time, Japan's assistance is shifting from drafting assistance and training legal professionals to dispute resolution through practical operation of laws, the issues described above are mentioned in order to further increase the effects of cooperation. Therefore, Japan's cooperation for legal and judicial reform is considered appropriate to a certain degree in terms of appropriateness of processes.



Photos: Working Group (left) / meetings with Royal Academy for Judicial Profession (right)

#### 2-1-4 Evaluation from diplomatic viewpoints

Overall, cooperation for legal and judicial reform has contributed greatly to Japan's diplomacy. Active interaction at personal level is one of the noted features of Japan's cooperation for legal and judicial reform. Through the cooperation, many of those who have become fond of and knowledgeable about Japan have become central figures in the administration and in the business circles. This has been mentioned in conferences between state leaders and ministers, and has contributed to strengthening bilateral relations. Cooperation for legal and judicial reform also is crucial for creating soft infrastructure for investment in terms of institution and human resources. Although such cooperation indirectly encourages Japanese companies to start business in the recipient countries, this assistance is not well known among Japanese companies. It is expected that more direct benefits will be brought forth by cooperation for legal and judicial reform to work closely with economic partnership agreements (EPA) and other collaborations. Moreover, Japan's cooperation for legal and judicial reform is highly evaluated by other donors and is enhancing Japan's presence in the field of assistance. In general, it may be stated that Japan's cooperation for legal and judicial reform helps strengthen bilateral relations (political, social, economic, and academic), and contributes to the improvement of Japan's international presence and its soft power.



## 2-2 Recommendations based on evaluation

### 2-2-1 Recommendations

The following describes the recommendations based on the aforementioned evaluation. Japan's cooperation for legal and judicial reform has been making a shift in its approach. The conventional cooperation had been in the primary step of establishing a foundation for a legal system, such as assisting in the drafting process and the judiciary system. The cooperation is now placing more emphasis on assisting in the operation and implementation of laws by the local people and assisting so that the laws work in accordance with its fundamental objective through the judiciary. In other words, as the ultimate goal of cooperation for legal and judicial reform is to achieve the rule of law and ensure human security, more emphasis must be placed on improving access to justice through bottom-up, inductive assistance methods. The recommendations made below are based on such insight. It should be noted that when implementing these recommendations, the political system and the circumstances of the cooperation for legal and judicial reform of each recipient country must be considered individually, and discussions based on the sociology of law, the anthropology of law, and area studies must be held with multiple stakeholders, such as the government of the recipient country, the judicial authorities, related international organizations, non-governmental organizations, private companies, and universities.

#### (1) Setting up policy-making opportunities for top-level government officials

As previously stated, Japan's cooperation for legal and judicial reform has a comparative advantage over those of other countries, and its diplomatic effect has been significant. As the outcome and impact of the assistance materialize, they will induce further benefit not only the government of the recipient country, but also Japanese and foreign companies, the governments of neighboring countries, etc. Cooperation for legal and judicial reform contributes directly to human security and establishment of the rule of law, which are the crucial pillars of Japan's international cooperation. Japan's diplomacy would benefit strategically and politically by internationally enhancing and publicizing effects and impacts from this cooperation domain.

In order for these political intentions to be fully recognized, opportunities for policy-making at the higher level of the government should be more frequent than is currently provided by the revision cycle of the Basic Policy on Assistance for Development of the Legal System. The main purpose of this recommendation is to allow for more proactive and cross-ministerial cooperation at a higher policy level (e.g., the Cabinet Office) between public and the private sector partners to reflect their respective viewpoints. Use of existing platforms is encouraged, such as the Annual Conference on Technical Assistance in the Legal Field, the Ministerial Meeting on Strategy relating Infrastructure Export and Economic Cooperation, and Inter-ministerial Meeting for the Support of Japanese Firms in the International Legal Field. The evaluation team

suggests policies to be considered at a higher level while making full use of these existing platforms.

Collaboration between partners from both the public and the private sectors will enable cooperation for legal and judicial reform to be conducted more swiftly and flexibly. This will increase the effect of ODA<sup>3</sup> and positively influence Japan's diplomacy.

## (2) Assistance to agencies responsible for political decision-making

Previously, Japan's cooperation for legal and judicial reform mainly targeted frontline agencies that were directly responsible for establishing legal systems, as was the case for the Ministry of Justice in Vietnam and Cambodia. This level of cooperation undoubtedly helped each country to enact basic laws and establish governance under rule of law by training legal professionals. Cooperation at the operation level will remain essential for establishing the rule of law.

However, several issues must be addressed to ensure the success of Japan's cooperation for legal and judicial reform. It is important for Japan to communicate closely and continuously with agencies possessing policy-making authority in the recipient country, on the expected outcome of cooperation before and during its implementation. In particular, when assisting the drafting of laws, it is often necessary to introduce a new concept along with the law. Under such circumstances, it is essential to gain understanding and support by thorough explanations and discussions. This process should include not only the counterpart agencies but also the policy-makers.

Corruption in the judiciary is the largest obstacle to making the effect of cooperation for legal and judicial reform recognizable. Moreover, considering that Japan's aid policies, such as the ODA Charter, aim to eradicate corruption, it is crucial for Japan to address corruption in certain means.<sup>4</sup> Furthermore, in order to address human security, gender equality, and improved governance, which are pursued in the ODA Charter and the Medium-term Policy on ODA, it is also essential to make sure that the local people are able to benefit from the cooperation. In the light of these circumstances, cooperation should also involve policy-makers, along with conventional assistance at the operational level.

One way to prevent corruption is through the disclosure of judicial precedent. This ensures that judicial decisions are transparent, and will enhance the rule of law. It is required that its implementation is assisted through supporting policies as well as its application on the operating ground. However, there is fear that the bottom-up approach

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<sup>3</sup> In Japan, various government agencies are involved in providing aid. For example, the MOFA is in charge of bilateral aid and the Ministry of Finance is in charge of funding international development banks and financial institutions. By holding conferences at a higher level and promoting collaboration among multiple government agencies, aid should be more effective.

<sup>4</sup> The JICA and other agencies have already implemented many anti-corruption measures, but the purpose of tackling corruption in the context of cooperation for legal and judicial reform is to reveal the effects of the cooperation.

may not be successful due to the possible resistance from those involved in the corruption. Appealing to the center of the political power and supporting top-down implementation of anti-corruption measures will diminish opposition at the ground level. Furthermore, approaching policy makers will certainly encourage the impact of Japan's cooperation for legal and judicial reform, which continues to generate constant outputs at the grass-root level. .

Some may worry that reaching out to the center of political power would harm the neutrality of assistance. However, reflecting on the effect that Japan has brought upon through its cooperation for legal and judicial reform, it is Japan's responsibility to provide the right advice using the recipient country's trust as leverage. In addition, if the fear still cannot be allayed, Japan can limit its influence by collaborating with multiple donors.

During the field evaluation, the evaluation team heard a strong request for Japan to provide assistance at the policy level from a policy-making agency (Central Committee of the Communist Party of Vietnam). Such requests should be considered positively.

### (3) Assistance for monitoring the operation of law

Similarly, as Japan's cooperation for legal and judicial reform shifts its focus from establishing legal systems and training professionals to operating law, it is extremely important to monitor the operation of laws. However, in the countries which Japan has assisted, information related to the judiciary is not well organized and so the evaluation team expects monitoring to be difficult. In aforementioned section on Appropriateness of Processes, the evaluation team pointed out the need to work more proactively on improving governance for human security and ensuring the rights of the underprivileged. On the other hand, monitoring the outcomes of cooperation for legal and judicial reform is important from the aspect of eliminating poverty and gender inequality.

In light of these circumstances, adding assistance components, such as organizing information for monitoring the operation of laws, is worth considering.<sup>5</sup> This can be achieved in ways that consider the perspective of the local citizens to monitor the accessibility of justice and actual court operation at the grass-roots level. For example, Japan's assistance schemes (e.g., grants implemented at the grass-roots level and the application of NGO assistance, if applicable) may be used along with the ordinary technical cooperation. Moreover, human resources can also be provided from the Japan Federation of Bar Associations (JFBA), domestic and foreign NGOs, and universities, which are independent of MOFA or JICA, in order to ensure various information sources for the monitoring. Furthermore, Japan can promote examinations and feedback through collaborations with access-to-justice projects of international organizations such as United Nations Development Program or World Bank. It can also be useful to

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<sup>5</sup> "Monitoring" here refers to verifying the effect of cooperation at a local level (e.g., the usage of court services and consultations with lawyers), not monitoring the outcome of JICA's projects.

monitor improvement of capacity of legal professionals who have received training.

#### (4) Strengthening promotional activities for better access to the judicial system

As noted above in the sections on the Effectiveness of Results and the Appropriateness of Processes, improving the citizens' access to justice is important for enhancing the effect of cooperation for legal and judicial reform. A critical factor is that citizens are not fully aware of the justice system that was established with the assistance of Japan and others. It is crucial to spread awareness of the justice system through promotional activities using the media, etc. in recipient countries.

Apart from having diplomatic missions to enhance their regular PR efforts, options include creating and distributing promotional documents, developing promotional activities with technical cooperation from JICA, and assisting NGO's in providing education on accessing justice<sup>6</sup>.

Essentially, government agencies of the recipient country should be responsible for promotional activities along with the monitoring operation of law (mentioned in recommendation (3)). However, if such activities are not carried out appropriately, the related agencies could cast doubt on the impact of Japan's cooperation for legal and judicial reform. The evaluation team makes these recommendations based on our recognition that proving and demonstrating the effect of Japan's cooperation for legal and judicial reform is particularly important.

#### (5) Strengthening partnership with other donors and international organizations

Japan's cooperation for legal and judicial reform has been operated mainly through technical cooperation based on the long-term dispatch of experts. This gives Japan a comparative advantage over other countries. By fully applying this comparative advantage and leading the cooperation for legal and judicial reform, Japan can enhance its presence among donors. Japan is also expected to take the initiative in mitigating the harm caused by the lack of collaboration among donors, as explained in the section on Appropriateness of Processes.

Moreover, as there are examples of international organizations assistance activities funded by Japan in sectors similar to cooperation for legal and judicial reform, Japan can further enhance the effect of bilateral cooperation by coordinating with the assistance funds from such multiple donors.<sup>7</sup>

#### (6) Assisting the operation of legal system in collaboration with the private sector

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<sup>6</sup> Promotional activities already have taken place, but this recommendation calls for more initiatives.

<sup>7</sup> These funds are not limited to cooperation for legal and judicial reform. They include funds from the United Nations Development Program (UNDP) or the Asian Development Bank (ADB) and are intended for improving governance and eliminating poverty.

As can be seen in the cases of Vietnam and Cambodia, Japan's typical cooperation for legal and judicial reform has been centered on assistance for drafting basic laws or training legal professionals. Though in the coming years, transition will occur from assistance for drafting bills to assistance for operation of the laws. In order for the citizens of the recipient country to actually make use of the laws, some of which were drafted with Japan's assistance, and to benefit from fair trials, it will become increasingly important to train local lawyers who support the citizens' use of the laws. It would be beneficial to dispatch lawyers from Japan to provide technical cooperation since they serve a common role. However, until today, the grounds for sending lawyers as long term experts are not sufficient compared to support given to court judges and prosecutors. For example, there is not enough time provided to make best match of candidates and the recipient country or to prepare them for dispatch. Moreover, returning experts does not receive sufficient career support and are not guaranteed sufficient income after their dispatch. Contrary to judges and prosecutors, who receive support from their organization (such as International Cooperation Department, Research and Training Institute, Ministry of Justice) during their overseas dispatch in terms of professional knowledge, support to lawyers must depend on voluntary commitments from JFBA.

Hence, it is important to address such concerns, by cooperating with private legal organizations such as the JFBA, and, with the JICA leading the effort, building a backup system for the dispatch of lawyers and other legal professionals and providing them with continued support during their overseas assignments.

(7) Active publication of documents produced through cooperation for legal and judicial reform activities

Documents created from cooperation for legal and judicial reform have received high praise from seminar participants and local legal professionals. However, not all of these materials are publically accessible on the Internet, etc., and even if some are accessible, they are not widely known to the public. For instance, in Vietnam, manuals and guidelines on court judgments were produced as a part of an assistance project. They are highly appreciated by judges and utilized in practice, as well. Yet, local legal professionals have expressed concern that the existence of these materials may not be well known. The evaluation team recommends making these documents more accessible, such as by posting links on the websites of embassy of Japan, for example.

Wide recognition of the existence of useful documents created under Japan's cooperation for legal and judicial reform would help to resolve problems regarding the quality and quantity of legal professionals in developing countries. For instance, lawyers in remote areas who cannot attend seminars can still gain an equal amount of knowledge, which will improve the quality of lawyers in local areas, thus scaling up the effect of Japan's cooperation for legal and judicial reform.

## 2-3 Recommendations to partners of Japan's cooperation for legal and judicial reform

In the previous section, the evaluation team presented direct recommendations for MOFA and JICA. In this section, the evaluation team presents recommendations to all parties involved in Japan's cooperation for legal and judicial reform, for Japan's cooperation involves a wide range of partners, including MOFA, JICA, the Ministry of Justice(MOJ), Ministry of Economy, Trade and Industry (METI), the Ministry of Finance (MOF), and the Ministry of Education, Culture, Sports, Science and Technology (MEXT), as well as industry, academia, bar associations, NGO's, etc. Therefore, the following recommendations are addressed to all parties from the mid- to long-term perspective of increasing the impact of Japan's cooperation for legal and judicial reform. Note that the evaluation team anticipates communications and discussions on the authority and responsibility of MOFA and JICA, which are the leading agencies of ODA, in order to bring these recommendations forward.

### (1) Expanding a system that responds to interests of Japanese companies

The emphasis on national interests became more evident in the Development Cooperation Charter, which was approved by the Cabinet in February 2015. Japan's national interests in the cooperation for legal and judicial reform must be carefully considered from a long-term perspective. Especially in terms of the benefits for Japanese companies, it is necessary to communicate with the METI, MOF, the Financial Services Agency, and various economic organizations to help establish a long-term investment ecosystem. In particular, by following the ten principles of the United Nations Global Compact<sup>8</sup> and supporting the sustainable activities of Japanese companies that contribute to employment, the environment, human rights, and anti-corruption in the local area, the image of Japanese companies will improve and help establish a new global brand image. This will lead to greater trust in Japan and promote mid- to long-term national interests.

Under Japan's cooperation for legal and judicial reform, legal professionals learn considerably on the laws of the recipient country. The knowledge and experience that Japanese professionals gain from the technical cooperation projects could also be very useful for Japanese companies operating in the same region. For example, if commercial laws, etc., are revised in a way that affects operations of Japanese companies, Japanese professionals who have been sent to provide assistance could hold a seminar to explain the revisions to Japanese companies.<sup>9</sup>

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<sup>8</sup> The UN Global Compact is a voluntary measure that asks private companies and organizations to act as responsible members of society and achieve sustainable growth through responsible and creative leadership, which includes themes such as human rights, labor standards, the environment and anti-corruption.

<sup>9</sup> Japan's neutrality in its cooperation for legal and judicial reform has been well received by the recipient countries, and this neutrality must be maintained while promoting Japan's national

Moreover, if lawyers are able to understand the means of legal services that is in need from Japanese companies expanding overseas, Japanese law firms could strategically dispatch professionals for the cooperation for legal and judicial reform activities in anticipation of post-dispatch business opportunities. As a result, cooperation for legal and judicial reform benefits the training of lawyers in Japan, who then are able to help Japanese companies conduct free and fair business overseas, which would ultimately contribute to Japan's national interests.

Meanwhile, there are also Japanese law firms which have already established businesses in some of the recipient countries. Partnering with these lawyers, who are familiar with the local legal system and the needs of Japanese companies, and sharing their knowledge could serve Japan's national interests.

To create this positive cycle, a system should be introduced to collect information from Japanese companies and local NGOs on the effectiveness of the legal system and to respond to individual demand for consultations. This can be achieved by having embassies of Japan entrust legal advice jobs to the local branches of Japanese law firms, or having MOFA (or embassies of Japan) hire individual lawyers as fixed-term employees and set up a help desk for cooperation on legal and judicial reform at embassies of Japan. In countries with which Japan has active economic presence (especially countries with economic partnership agreements (EPAs)), the evaluation team recommends collaborating with local team for legal and judicial reform, through establishing an bilateral Alternative Dispute Resolution (ADR) (arbitration by a panel consisting of lawyers from Japan, the recipient country and a third country), which provides customized services for civil and commercial disputes that Japanese companies often encounter. In doing so, disputes would be resolved swiftly and fairly according to local laws, and Japanese companies, as well as local courts, would gain trust eventually.

## (2) Human resources development for the cooperation for legal and judicial reform

Japan has received high praise for its highly professional assistance provided by scholars from the Advisory Group in Japan and experts sent by MOJ, JFBA, JICA, etc. Such assistance is highly evaluated by both recipient countries and other donors. However, as the evaluation team mentioned at the beginning of these recommendations, Japan's cooperation for legal and judicial reform is entering the phase where it is required to implement the drafted laws and ensure the rule of law through an independent and fair justice system. Therefore, Japan is expected to learn how successfully people's rights have been realized, investigate the effectiveness of cooperation at the field level, obtain feedback on issues, and empirically and inductively identify the needed assistance.

There is a concern that the current structure for assistance can no longer respond to the changing needs for cooperation for it heavily depends on the expertise, experience, and efforts of individual professionals. In order to respond to the degree of cooperation executed in each recipient, and also considering that the ultimate goal of cooperation for legal and judicial reform is to enhance people's legal sense and respect for law-abidance, it is necessary to support training of diverse human resources to lead cooperation for legal and judicial reform. In order to do so, partners in each sector must fulfill their respective responsibilities. For instance, in order to meet the demand for empirical research, it is important to collaborate with academia, especially with experts on Asian law, law and sociology, and area studies. Law schools can also introduce courses on cooperation for legal and judicial reform, and send students to recipient countries for internships on legal clinics.

Additionally, the evaluation team recommends introducing courses on cooperation for legal and judicial reform in the legal apprenticeship program in the Legal Training and Research Institute of Japan (jurisdiction of the Supreme Court), or in the training program that is provided after formal qualification as legal profession. Moreover, MOFA and JICA could take the initiative in inviting law students, legal trainees, and legal practitioners from developing countries as exchange students by collaborating not only with the courts, MOJ, and bar associations but also with METI, MEXT, etc. MOFA and JICA also could help Japanese students, legal practitioners, and entrepreneurs better understand the legal systems in developing countries by utilizing the various functions (e.g., training and education programs, studies and research, and promotional activities) of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), the Japan External Trade Organization (JETRO), and others. JICA also has the option of sending legal practitioners to the field of South-South Cooperation and encouraging them to deepen their understanding of the legal practices in developing countries.

In universities, it would be beneficial to work with related academic societies (Japanese Association of Asian Law, Japan Chapter of the Asian Society of International Law, Japan Association of Sociology of Law, Japan Society of Comparative Law, Japan Society for International Development, etc.) and research groups (local initiatives such as Research Group on Comparative Law in Cambodia) to promote better understanding of the laws of each recipient country.

More importantly, the partners must successfully coordinate to enable government agencies and bar associations to actively dispatch legal practitioners to related international organizations (e.g. the World Bank and the United Nations Development Program). This would allow the dispatched practitioners to network at the headquarters and at the field levels, which would promote Japan's collaboration with these international organizations.

Training the future leaders of cooperation for legal and judicial reform, both globally



and locally, would promote mutual understanding between Japan and the recipient countries, as well as the growth and interaction among those responsible for the rule of law. This would eventually enhance Japan's soft power. In other words, comprehensive training of human resources for cooperation for legal and judicial reform is extremely important for establishing fair and sustainable market environment to achieve the rule of law and human security, benefiting Japanese companies, and practicing comprehensive, multidimensional diplomacy involving the public, private, industrial, and academic sectors.