

Assisting Legal and Judicial Development in Cambodia

A Decade Spent Creating Autonomous Cambodian Codes of Civil Law and Procedure

On February 26, 2009, Professor Toshio Uehara (a specialist in the law of civil procedure), Professor Tsuneo Matsumoto (civil law), and Professor Kazuhiko Yamamoto (law of civil procedure) were presented with Royal Order of Sahametrei medals (Friendship Decorations) by the Government of the Kingdom of Cambodia. These were to show appreciation for their distinguished service to the Legal and Judicial Development Project in Cambodia for more than ten years since 1998, making major contributions to the drafting of a civil code and code of civil procedure as well as related draft laws, the enactment of laws, and their execution.

This project was inaugurated by the Ministry of Foreign Affairs, the Ministry of Justice, and the Japan International Cooperation Agency (JICA), based on an agreement with the Cambodian Ministry of Justice.

Japan's experience of having actively accepted laws and legal principles from Western Europe when developing its own legal and judicial systems represents a uniquely Japanese approach that is very different from that of Western countries. This also presents a good opportunity for Japanese researchers to review their country's current laws, and has opened up assistance for legal and judicial system development as a new career path in jurisprudence.

(See also the following:

Toshio Uehara, "Kanbojia minji sosho hoten no seiritu" [Enactment of Cambodia's Code of Civil Procedure], *Jurist*, no. 1358, P.26.

Tsuneo Matsumoto, "Indoshina shokoku ni okeru minpoten no seibi to kaihatsu: minjiho seibi shien he no sanko wo tsujite kanjita koto" [The Establishment of Civil Code in Indonesia Countries and Its Impact on Their Economic Development: Impressions After Participating in the Assistance for the Establishment of Civil Codes], *The Hitotsubashi Journal of Law and International Studies*, vol. 2. no.1, P.390.

Kazuhiko Yamamoto, "Sekai wo toku: Kanbojia ni okeru ho seibi jigyo" [Working out the World: The Legal and Judicial Development Project in Cambodia], pp. 14-15 here.)



The lingering impact of *The Killing Fields*

It was in 1998 that the Legal and Judicial Development Project in Cambodia was commenced by the Ministry of Foreign Affairs, the Ministry of Justice, and JICA.

Made famous by the film *The Killing Fields*, Cambodia under the Pol Pot regime was the scene of genocide that exterminated intellectuals, including lawyers, and students. To make matters worse, all laws preceding the Pol Pot regime were nullified. In a situation in which laws had to be made from scratch, there were very few people competent in this area. Consequently, the Cambodian Government requested assistance for legal and judicial development from other nations, with the result that many countries and international institutions, including France (the former colonial power), Sweden, Australia, and the World Bank, became involved in assisting the development of Cambodia's legal and judicial systems.

Japan took charge of the Civil Code and Code of Civil Procedure. Since multiple countries with diverse traditions of jurisprudence have been assisting in the creation of legal and judicial systems in a vertically segmented way for specific ministries and agencies of the Cambodian Government, some adverse effects have become apparent. Making adjustments to these will be a major issue in the future.

Repeated workshops to work out the details of draft laws

"Japan's history featured the introduction, during the Meiji Period, of a Western European legal system and the use of that system as if it were its own. As a result, Japan is currently providing assistance for legal and judicial system development based on its own experience in this regard. Japan is, so to speak, exporting the legal system that it once imported." (Professor Matsumoto). This uniquely Japanese experience of adapting Western laws to Japanese society equips it to assist Cambodia, which is



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now faced with the same issue that Japan once was, with law and a judicial system developing in a manner quite different from those in Western countries.

The initial phase of legal and judicial development focused primarily on assistance in drafting a civil code and code of civil procedure. In the next phase, phase 2, we were assisting with the enactment of laws and also the drafting of related laws and promulgation activities. In the current phase 3, in order to enable the Cambodian Ministry of Justice to administer the Civil Code and Code of Civil Procedure autonomously, we are providing assistance for the drafting of related laws and their promulgation.

The basic policy of the working group is “to repeat the discussions at workshops and formulate drafts for appropriate clauses based on an understanding on the Japanese side of the actual situation in Cambodia. The Cambodian side will gain a good understanding of the content, and after assenting to it will start concrete preparatory work toward enacting their own legislation. And once laws are enacted, they have to be positioned so that they can actually be applied in reality.” (Professor Uehara).

Consideration is given to avoiding the imposition of pro-

visions drafted in a theoretical vacuum, which tends to happen when Western countries engage in legal and judicial development, and to drafting laws in a way that matches the actual circumstances in Cambodia. Also, in the process of drafting the text of provisions, we hold repeated discussions through workshops, etc., providing us with a deeper understanding of the underlying legal theories and the modes of practical application. This will, in turn, lead to the nurturing of competent individuals who will be necessary in the future in Cambodia.

“Due to the impact of the Pol Pot regime, there is only a thin elite class in Cambodia, making it impossible for them to draft laws by themselves. Therefore, the approach adopted was for us to produce drafts and hold detailed discussions in Cambodia and additionally in Japan. This method was ultimately the reason why we won the trust of the Cambodian side.” (Professor Yamamoto).

Discussions in Japanese and Khmer only

More specifically, the Japanese and Cambodian sides have each formed a working group and through close liai-



son we have had repeated discussions with each other and produced draft laws. In addition, through workshops held in Phnom Penh more than ten times, and joint activities such as intensive discussions in Japan, we have been making progress toward creating of draft laws that match local realities. We have also held promotional seminars approximately thirty times.

“I have been going to Cambodia once or twice a year. Although I have traveled by air, I have stopped over for one night on my way to Phnom Penh, and normally the trips have each taken one week or so.” (Professor Yamamoto). Such physical restrictions have been overcome by enthusiasm and the assistance provided.

Working group meetings in Japan are held approximately once a month, and discussions last for more than four hours. The number of meetings of the working group for drafting the Civil Code totals around 110, and for the Code of Civil Procedure, over 90.

“With regard to the code of civil procedure, based on the policy of Professor Morio Takeshita, chairman of the working group (Professor Emeritus, Hitotsubashi University, and President, Surugadai University), we have shared the drafting of approximately four hundred clauses and have all participated in discussions to formulate the original drafts.” (Professor Uehara).

These are then translated into Khmer and sent to Cambodia. After being reviewed both internally and outside the Ministry of Justice, workshops are held locally for discussion. Two or three persons with expert knowledge participate from the Japanese side, while there are numerous participants from the Cambodian side, including persons in charge of legislation at the Ministry of Justice,

judges, prosecutors, lawyers, and people in charge of legislation in other ministries and agencies.

Discussions are held through interpretation in Japanese and Khmer. By avoiding the intervention of other languages such as English, we prevent the mixing of different concepts such as UK and US laws, and facilitate direct conveyance of the concepts in the drafts. Of course, just translating Japanese into Khmer is not enough: it is essential to have personnel able to compare and review the original Japanese from both a theoretical and practical perspective. This will also be a major issue to address in the future.

Much also to be gained by Japanese researchers

At the first workshop, the discussion was at a level at which even persons in charge of legislation at the Cambodian Ministry of Justice repeatedly asked contradictory questions. “It was similar to the period when freshman students start to discuss laws.” (Professor Matsumoto). They then began to pose high-level questions as we had more meetings. “They are the people who would promulgate laws domestically in the future, so we not only engaged in the drafting of bills, but also developed their capabilities.” (Professor Uehara). “It was epoch-making even by world standards to have researchers so deeply involved and pouring so much energy into assisting legal and judicial development.” (Professor Yamamoto).

From the stage of having discussions based only on seeing provisions set out on paper, it has been possible at the workshops recently to pose questions along the lines of actual cases. There are also matters that could be issues in Japan. As more cases emerge in the future, we should be able to engage in mutually meaningful exchanges. The working group for the Code of Civil Procedure works in close liaison with the program to assist in the training of local judges that is implemented by the Japanese Ministry of Justice. It is already doing things such as preparing manuals on how to write judgements. In future activities it will surely be necessary not only for researchers but also for many lawyers, judges, and others to get involved.

“We do a considerable amount of comparative legal research, but nevertheless the knowledge we have is based on Japanese law. I think that through participation in this assistance program I have come to see more clearly the good and bad points of Japanese laws, which form our starting point.” (Professor Uehara).

“As we were going to transplant Japanese laws to a country in which the societal base and social postulates are totally different, it became necessary to examine meticulously things that we had never questioned before. For example, the allocation of cases among judges. In Japan, we do not need to think about this very deeply, but in essence, arbitrary allocation is used to prevent wrong-



doing such as bribery. As a researcher, it was very interesting to be able to revisit such basic matters” (Professor Yamamoto).

The program of assistance for legal and judicial development in Cambodia has indeed proved very fruitful for the professors who have participated in it.

Helping to create a citizen-oriented democratic country

“When I visited Cambodia the year before last for the first time in seven years, I found that towns that had been dark before had been completely transformed into bright places. The number of cars had also increased. Cambodia is now in a phase where it has become necessary to build institutional infrastructure. Amid the legal and judicial development, the Civil Code will pave the way toward a citizen-oriented democratic country. It is necessary to establish rules properly and to make things move smoothly.” (Professor Matsumoto).

Assistance for the development of legal and judicial systems is unlike economic and other types of assistance insofar as it is difficult to assess visually, but it is nevertheless important assistance. For Cambodia, this is a major revolution in its civil justice system, and in order to ensure that it takes root, it will be essential to continue close support in the future in a way that bridges the physical distance which separates Japan and Cambodia.

Behind the smooth progress that has been made in this assistance project, there have been long-term experts (lawyers) and highly competent interpreters dispatched by JICA who have been in constant contact with Ministry of Justice officials. In addition, new academic disciplines have recently emerged, such as law and development that undertakes international assistance for legal and judicial development. In fact, a graduate of the Hitotsubashi University Law School who has passed the bar exam has gone to Cambodia to assist. It could be said that this has created and widened the career paths for graduates of graduate schools of law and law schools in Japan.

The Code of Civil Procedure was promulgated in July 2006 and came into force in July 2007. The Civil Code was promulgated in December 2007 and applicable laws for the Civil Code are now being prepared. It will be very interesting to see how the legal text created through the joint efforts of Japanese and Cambodian researchers and practitioners will bud and bloom. Watching that process will be beneficial not only for researchers but also for undergraduates and graduates.

(Note: Professor Toshio Uehara retired from the Hitotsubashi University Graduate School of Law on March 31, 2010, and is currently serving as a Professor at Meiji University.)

The first step toward being a jurist assisting developing countries

Akiko Nagato

Completed the course for non-law graduates at Hitotsubashi University Law School in 2009.

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During my time at senior high school, I learned the realities of developing countries, and an idea that evolved gradually within me was to get involved in supporting them. Then, while studying international law and politics at university, I felt the need for a basic education as a legal practitioner as a means of playing a role in making international contributions, so I enrolled in the Hitotsubashi University Law School. Luckily, I passed the new bar exam, but I postponed my entry into the legal apprentice training course by one year in order to engage in assistance activity in Phnom Penh. This was because I thought that for assisting developing countries in fields such as the development of legal and judicial systems, it is essential to have hands-on understanding of local conditions.

My choice of Cambodia was motivated by the fact that I saw the movie *The Killing Fields* in a class at high school, and also because one of my friends actually worked as a volunteer here. Furthermore, the assistance for legal and judicial development is being conducted very actively in Cambodia. Currently I work as an adjunct instructor for the Nagoya University Research and Education Center for Japanese Law, which is located at the Royal University of Law and Economics in Phnom Penh. I will work as a student advisor until March and then take charge of a civics class from April onwards.

I have finally taken the first step!

(Based on interview in April 2010)



Ms Nagato is in the middle of the back row wearing a white T-shirt.