

Terminal Evaluation

Asia

1. Outline of the Project

Country:

Cambodia

Project title:

Japanese Cooperation to Support the Formulation of Key Government Policies on the Judicial System in the Republic of Cambodia

Issue/Sector:

legal and judicial system

Cooperation scheme:

Expert Team Dispatch Program

Division in charge:

Regional Department I, Indochina Division

Total cost:

301 Million Yen

Period of Cooperation

5 March 1999 - 4 March 2002

Partner Country's Implementing Organization:

Department of Justice

Follow-up:
5 March 2002 - 4 March 2003

Supporting Organization in Japan:

Research and Training Institute of the Ministry of Justice, Nagoya University, Japan Federation of Bar Associations, Steering Committee, Working Groups

Related Cooperation:

Small-scale partnership Program "Human Resources Cultivation of Attorneys and Counselors at Law in the Kingdom of Cambodia"

JICA Partnership Program "Legal and Judicial Cooperation for the Bar Association of the Kingdom of Cambodia"

1-1 Background of the Project

Cambodia had been experienced the administration of General Lon Nol and the Pol Pot faction and its subsequent political turmoil and conflict over the 20 years since 1970. During this long period of conflicts, Cambodia lost its administration system for formulation, implementation, monitoring and evaluation of policies, as well as basic industrial and social infrastructures such as roads, bridges and irrigation systems. Many lives were lost as well through the purge, forced labor and bombing. As a result of the general election under the observation of U.N. Transitional Authority in Cambodia (UNTAC) in 1993, Constitutional Assembly was established. However, due to above-mentioned historical background, Cambodia faced a severe shortage of human resources in drafting laws and codes, and lacked basic law foundation, such as a civil code and criminal code.

Against this background, the government of Japan launched a JICA country-focused training program for Cambodia in 1996 and dispatched short-term experts to gain further understanding of the current state of justice and legislation in Cambodia in 1997. Thereafter, the government of Cambodia requested technical cooperation from Japan for the preparation of a legal and judicial system.

1-2 Project Overview

The project aims at drafting a Civil Code and a Code of Civil Procedure jointly with concerned parties in Cambodia and fostering human resources in the field of justice and legislation.

(1) Overall Goal

- 1) Enactment of the Civil Code and the Code of Civil Procedure are enacted.
- 2) Fostering legal Human resources in the field legal and judicial field of specialized to civil affairs are developed.

(2) Project Purpose

Drafting the A Civil Code and the a Code of Civil Procedure are drafted at by the Department of Justice based on the status quo in which reflect the social and legal context of Cambodia.

(3) Outputs Main Activities of the project

- 1) Providing Provide support for making out a drafting of the a Civil Code.
- 2) Providing Provide support for drafting for making out a draft of the Code of Civil Procedure.
- 3) Providing Provide support for drafting for making out a draft of a bill associated with the above law and codes.
- 4) Providing Provide support for organizational improvement of reforming the organization of courts.
- 5) Providing support for Training legal personnel such as the judges, public prosecutors, lawyers and other judicial personnel.
- 6) Providing support for reforming the legal education through the Department of Justice (DOJ)'s effort to reform the legal education.
- 7) Providing Provide information about law and law legal system relating with market economy through the DOJ.

(4) Concrete ways for above activities

- 1) Providing Conduct seminars and workshops in Cambodia by the experts from JICA experts and persons working for DOJ counterparts.
- 2) Implementing Undertake training program in Cambodia and Japan.
- 3) Providing Provide advice in implementing the social research.
- 4) Providing Provide necessary information and equipments.
- 5) Experts from JICA and persons working for DOJ manage operations and business.
- 6) Making out a draft of bill Codes both in Cambodia and in Japan

(5) Inputs

Japanese side:

Long-term Experts	3
Short-term Experts	97
Trainees received	51

Cambodian Side:

Counterparts	14
Land and Facilities	office for Experts

Local Cost

2. Evaluation Team

Members of Evaluation Team

Team Leader: Kazuhide NAGASAWA, Senior Assistant to the Managing Director, Planning and Evaluation Department, JICA
Legislation Support: Kimitoshi YABUKI, Attorney at Law, Vice Chair, Committee on International Relations, Japan Federation of Bar Associations
Fostering Legal Human Resources: Yuhiko SAITOH, Prosecuting attorney and Deputy Director, General Affairs and Planning department, Research and Training Institute of the Ministry of Justice
Observer: Keiichi YAMAKAWA, Prosecuting attorney and Professor, Second Research Department, Research and Training Institute of the Ministry of Justice
Observer: Hironori NAKAGAWA, Staff, International Cooperation Department, Research and Training Institute, the Ministry of Justice
Cooperation Planning: Masatoshi TERAMOTO, Deputy Director, Indochina Division, Regional Department I, JICA
Project Analysis: Yuriko MINAMOTO, Independent Consultant, International Development
Interpreter: Lao Kim Leang, Japan International Cooperation Center

Period of Evaluation	23 February 2002 - 9 March 2002	Type of Evaluation: Terminal Evaluation
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3. Results of Evaluation

The project was peculiar both in its focus on the development of a legal/judicial system for a post-conflict country and in its incremental approach, which in the initial plan included only a broader framework while detailed operation and concrete methods were decided after the implementation process. These peculiarities are due to its scale and to uncertainty in addressing issues in the legal/judicial field as these were quite new to JICA.

Given the above, in evaluating the first legal/judicial project for JICA, the evaluation team decided to focus on the "implementation process" and "organizational framework of implementation", partly because the project involved several points which could not be evaluated by simply applying DAC 5 evaluation criteria. The team also aimed at compiling recommendations for the improvement of the Project in the following phases:

3-1 Results

The Project purpose, to draft a Civil Code and a Code of Civil Procedure, has not yet been accomplished as of the date of this evaluation; however, based upon information on its progress, JICA had already decided in November 2001 to extend the cooperation period one year, ahead of this evaluation. At the point of evaluation, the translation of the draft into Khmer was almost completed for the eight fields of the Civil Code which was a high priority of the Project, and those drafts will be finalized five months after the initial cooperation period. The chapter on trial procedures for the Code of Civil Procedure has been drafted in its entirety already, but the chapter on "compulsory execution" and "Preservative relief" are still in the drafting process. As for the non-prioritized fields of the Civil Code other than the above-mentioned eight fields, the draft on clauses will finished soon, and will then be translated into Khmer. Therefore, although the Project purpose has not been accomplished, this Project has made meaningful a contribution to establishing the drafting bodies and training legal personnel.

3-2 Summary of Evaluation Results.

(1) Evaluation of implementation process

The Project aimed at drafting both Codes in collaboration with Cambodian drafting members; thus, establishing a drafting body on the Cambodian side was crucial. However, the implementing institution, the Department of Justice, suffered from a serious shortage of human resources, and some drafting members were selected from political consideration. Due to this, the drafting group was not made up of those with the appropriate qualifications during the first two years of the three-year cooperation period. However, the situation changed after the Japanese side had continuously called for the understanding of the Cambodian side, and after personnel changes within the Department of Justice. Since the third year, the drafting group has been functioning well because of its highly-capable members.

Since this was the first experience to support another country to draft its Civil Code and Code of Civil Procedure, the members of the Project on the Japanese side faced many problems which could not have been predicted at the planning stage. Therefore, the project made progress with adjustments and revisions, which is also indicated in the gap between what was implemented and what was initially planned and agreed upon. For example, since the Cambodian capacity to manage the project and drafting body was more fragile than expected, support to enhance management was added to project components. In addition, translation into Khmer and a decision on terminology needed more time than was initially expected, as well as the workload to set up a smooth translation system, given the many legal terms involved in concepts new to Khmer. Moreover, negotiation with related ministries and other donors was not accurately predicted, along with the time for narrowing the gap in the legal concepts and thinking arising from the social, historical and cultural differences.

The drafting process was also modified during the project. The first two years, outlines of Codes were drafted by the working group in Japan and then discussed at the workshop in Cambodia with both sides participating, which heavily burdened workshop management on the Cambodian side.

The process was altered after a Cambodian proposal from the third year to finalize drafted articles in Japan taking the result of the explanatory workshop on their outlines held in Cambodia into consideration, and then to examine those articles for terminology selection in meetings in Cambodia held three times a week. This process was effective in deepening the drafting members' understanding of each clause through discussion with Japanese experts as the Cambodian management cycle was stabilized from the third year, and allowed members to become actively involved in the meetings. As for the translation, the process was initially managed by the Japanese project coordinator; however, due to the excessive burden, a professional translator and supervisor were secured under long-term contracts.

Looking at the aspect of fostering human resources, the ability of legal personnel in Cambodia was enhanced through

theregularly held "Country-specific training for drafting" focusing on the Civil Code and the Code of Civil Procedure. Moreover, holding seminars by Japanese lawyers in Cambodia gave Cambodian people the opportunity to learn the philosophy, basic principles, and legal interpretations through specific examples, which contributed to fostering a wide range of legal human resources.

(2) Evaluation of Organizational Framework of Implementation

It is highly appreciated that many members of the Steering Committee, the Project's de facto decision-making body on the Japanese side, and subordinated Working Group which played the central role in the drafting, made a serious commitment to the Project with only a limited amount of compensation for three years while carrying out their regular professional duties as university professors and lawyers. However, some comments suggest concerns on the sustainability of the project, which is heavily dependent on the personal commitment of those who are involved and who have other responsibilities. Hence, the system of organizational framework should be considered so that Project consignment supports the reform of the legal and judicial system.

The Project was unique in that some of the activities were based in Japan (drafting by Working Groups) and allowing the Steering Committee to play the role of the project leader. Due to geographical distance, information sharing and communication between the parties in Japan and long-term experts in Cambodia were not sufficiently smooth. This problem was gradually improved during the Project by adjusting the secretariat system in Japan.

(3) Impact of the Project

The Project has developed capable legal human resources in Cambodia. Those personnel should play the major roles in the process of enactment and enforcement of the Civil Code and Code of Civil Procedure. The government of Cambodia highly appreciated the role of the DOJ through the coordination process with the related agencies in the course of drafting codes.

(4) Sustainability of the Project (prospects)

To achieve the overall goal of the Project, the continuous support from Japan is still needed in terms of the capacity of the DOJ, which is still insufficient in the law-making process and dissemination of the Codes for Cambodia to perform on its own. Especially, for enactment of the Civil Code and the Code of Civil Procedure, it is necessary to provide support for the promotion of the legislation process, such as explaining the drafts at the Office of the Council of Ministries.

3-3 Recommendations

(1) Necessary methods such as the following should be introduced to reinforce communications among project members located in the two countries: more attendance at Steering Committee meetings in Japan of the long-term experts dispatched to Cambodia, immediate reporting, ensuring experts' access to the progress and results of discussions held in the Working Group in Japan by way of tape recordings or international conference calls.

(2) English briefing material to the related agencies and other donor organizations of the project should be prepared.

(3) The Cambodian side should secure a recording secretary for the terminology selection meeting.

(4) Full-time coordinators that do not have mandates in other specialized fields should be given the burden of coordination.

(5) The contents of following cooperation should be finalized after settling the long-term plan for the Japanese cooperation to support the reform of the legal and judicial system in Cambodia.

3-4 Lessons Learned

(1) Effective and efficient combinations of project components of legal and judicial development should be identified through formulating strategies to support the legal and judicial reform of different countries.

(2) To secure resources for supporting legal and judicial projects, the following measures should be taken by JICA; to utilize the registration system, to provide training courses to foster specialists, and to maintain contact with legal and judicial agencies.

(3) Although the Steering Committee and the subordinated Working Group of the Project functioned not only as a decision-making body but as drafting body as well, most members received only a limited amount of compensation relative to the burden and responsibilities given to them. For this type of project, making consigning contracts should be taken into account with universities, enterprises and individual lawyers suitable for the project so as to build a better relationship among those concerned.

- (4) Detailed organizational analysis of the counterpart agencies is necessary so that appropriate personnel are selected as project counterparts.
- (5) Since interpretation and translation in the field of law require an extremely high ability in terms of studying the concepts of law and its terminology, it is necessary to adjust the implementation system at the planning stage.
- (6) Collaboration with other supporting agencies in providing cooperation in the field of law is effective.
- (7) A study is necessary to establish the evaluation system and methods including indicators for legal and judicial project