

Evaluation Summary

1. Outline of the Project

Country: Socialist Republic of Viet Nam

Project Title: Terminal evaluation of the Japanese Technical Cooperation in the Legal and Judicial Field (Phase 3)

Issue/Sector: Legal and judicial development

Cooperation scheme: Dispatch of Expert Teams

Division in Charge: Social System & Peace Building Team, Group I (Social Development), Social Development Department

Total Cost (at the time of evaluation): 320 million yen

Period of Cooperation

(Phase I): 1 December 1996 - 30 November 1999

(Phase II): 1 December 1999 - 30 June 2003

(Phase III): 1 July 2003 - 30 June 2006

Partner Country's Implementing Organization(s): Ministry of Justice (MOJ); Supreme People's Procuracy; Supreme People's Court; Vietnam National University, Hanoi; National Judicial Academy

Supporting Organization(s) in Japan: Ministry of Foreign Affairs; Ministry of Justice (Research and Training Institute); Supreme Court; Japan Federation of Bar Associations

Related Cooperation: Joint study groups on (i) revising the Civil Code; (ii) the Civil Procedure Code; (iii) judicial training; and (iv) standardizing judgment documents and compiling court precedents

1-1 Background to the Project

The Government of the Socialist Republic of Viet Nam (hereinafter referred to as Viet Nam) has been promoting a transition toward a market economy and an open door policy since it adopted the Doi Moi policy in 1986. This policy placed establishment of a new legal framework which was compatible with a market economy as an acute issue. Viet Nam has addressed this issue with assistance from bilateral and multilateral donors. The effort of Viet Nam resulted in the establishment of a new Constitution in 1992 and the Civil Code in 1995. Yet, Viet Nam still had to address urgent issues in this field: to establish the Commercial Code, the Civil Procedure Code and the related laws/regulations of the Civil Code; and to develop legal experts, who were adept in a market economy.

To cooperate with Viet Nam in addressing the above mentioned issues, the Government of Japan (hereinafter referred to as Japan) launched the Japanese Technical Cooperation in the Legal and Judicial Field in Vietnam in FY1996. This project supported Viet Nam in establishing various laws (especially the civil code and commercial code that were compatible

with a market economy) and developing human resources in this sector through assignment of both short-term and long-term Experts and a Country-focused Training Program.

Phase 2 of the project started in FY1999. It targeted the Supreme People's Procuracy and the Supreme People's Court as well as the Ministry of Justice (MOJ). The Project had three major components: to give advice in the process of establishing various laws; to give advice on the development of the legal system; and to develop human resources. The joint study for revising the Civil Code, in which university professors and other legal experts from Japan participated, significantly contributed to improving the quality of the Draft Civil Code, while the Code successfully secured its consistency with other related laws and regulations.

On the completion of Phase 2, Viet Nam requested the extension of the project term. In this regard, Viet Nam and Japan held consultations on Phase 3 of the Project, which would exceed the outcomes of the preceding phases of the Project by addressing two major issues: to support legislation of the Civil Code and the laws related to civil and commercial affairs; and capacity building of the legal professionals.

1-2 Project Overview

Sub-Project A: Support for the Legislative Revision of the Civil Code and Laws Related Thereto

Sub-Project B: Support for the Strengthening of Human Resources in the Judicial Sector

(1) Overall Goal

Sub-Project A: The foundation of the legal infrastructure consistent with market economy is established.

Sub-Project B: The implementation capacity of the judicial sector is strengthened.

(2) Project Purpose

Sub-Project A

Basic civil laws consistent with market economy are enacted through the increased law drafting capacity of legislative staff.

Sub-Project B

The institutional framework to develop high-caliber human resources in the judicial sector is established.

(3) Outputs

Sub-Project A:

- 1) The final draft of a revised Civil Code consistent with a market economy is prepared.
- 2) Basic knowledge about the legislation of intellectual property is obtained by national legislative staff and drafts of intellectual property regulations consistent with the revised Civil Code are prepared.
- 3) The final drafts of the Civil Procedure Code and the Law on Enterprise Bankruptcy

consistent with market economy are prepared.

4) Drafts of other laws related to the Civil Code are prepared.

Sub-Project B

- 1) Training programs and materials of existing judicial training institutions are improved (keeping in mind that the “National Judicial Academy”, a unified professional training institution, will be established and will start activities in the near future).
- 2) Judgment documents are standardized, and court precedents that are accessible to the legal profession are compiled.
- 3) Students of the Law Faculty of Vietnam National University Hanoi obtain knowledge on Japanese laws, and lecturers specializing in Japanese laws are trained.

(4) Activities

Sub-Project A

- 1)-1 Establishment of a working group for the drafting of the Civil Code both in Japan and in Vietnam (MOJ, etc.).
- 1)-2 Advice and consultation on the draft by short-term experts.
- 1)-3 Written comments.
- 1)-4 Consultation by long-term experts.
- 1)-5 One study tour in Japan.

- 2)-1 Establishment of a working unit for the drafting of regulations on intellectual property both in Japan and in Vietnam (MOJ, MOST, MOCI, etc.).
- 2)-2 Workshops by short-term experts (as agreed through mutual consultation).
- 2)-3 Written comments.
- 2)-4 Consultation by long-term experts.
- 3)-1 Establishment of working groups for the drafting of the Civil Procedure Code and the Law on Enterprise Bankruptcy both in Japan and in Vietnam (SPC, etc.).
- 3)-2 Workshops by short-term experts (twice for each law).
- 3)-3 Written comments.
- 3)-4 Consultation by long-term experts.

- 4)-1 Workshops by short-term experts (as agreed through mutual consultation) and written comments on the Law on Registration of Immovable Properties, the Ordinance on Registration of Secured Transactions, and the State Compensation Law and the Judgment Execution Code in order to secure consistency with the revised Civil Code and the Civil Procedure Code.
- 4)-2 Consultation by long-term experts.

- 4)-3 Written comments and consultation on “the study on the legal framework for economic integration” by long-term experts (as needed)

Sub-Project B:

- 1)-0 Preparatory activities are implemented in order to complete a detailed plan.
 - 1)-0-1 Establishment of a working group both in Japan and in Vietnam (LPTS, SPP(PPTS) and SPC).
 - 1)-0-2 Collecting information and exchanging views on the Vietnamese future plan as well as current teaching methodology and materials for training legal professionals.
 - 1)-0-3 Providing information on the judicial training system in Japan and other foreign countries through long-term experts.
 - 1)-0-4 Formulation of the detailed activities.
 - 1)-1 Advice on the organization and operation of the judicial training institutions by long-term experts.
 - 1)-2 Advice on the preparation of curricula, textbooks and teaching manuals by long-term experts.
 - 1)-3 Training sessions in Japan on curricula, textbooks and teaching methodologies (once per year).
 - 1)-4 Seminars in Vietnam on curricula, textbooks and teaching methodologies (once per year).
 - 1)-5 Written comments on curricula, textbooks and teaching methodologies.
 - 2)-1 Establishment of a working group both in Japan and in Vietnam (SPC and LPTS).
 - 2)-2 Advice on the preparation of a judgment document format and a judgment documentation manual by long-term experts.
 - 2)-3 Advice on the compilation and dissemination system of court precedents by long-term experts.
 - 2)-4 One training session in Japan.
 - 2)-5 Seminars in Vietnam on the judgment document format, judgment documentation manual, and compilation and dissemination system of court precedents by short-term experts (once per year).
- 3)-1 Formulation of a detailed working plan of activities, including preparation of curricula.
- 3)-2 Lectures on Japanese law (in Japanese or English) by Japanese experts. Such lectures may also be given to students of other universities on an ad hoc basis when requested, so far as it is considered to be appropriate and practicable from the viewpoint of the Japanese experts.

- 3)-3 Support for textbooks and reference materials of Japanese law.
- 3)-4 Examinations to evaluate student comprehension and to award academic credits.
- 3)-5 Training of prospective lecturers of Japanese law (joint-research, preparation of lecture summaries, joint-lectures, etc.).

(5) Inputs (until the time of evaluation)

1) Inputs from the Japanese Side

a) Experts

• Long-term assignment

4 experts (as of April 2006) or 7 person-assignments in total

- (i) Chief advisor / expert in legislation of Civil Code, judicial training, strengthening of court precedents
- (ii) Expert in legislative revision of Civil Code and laws related thereto
- (iii) Expert in legislation of Civil Code, judicial training, strengthening of court precedents
- (iv) Project coordinator

• Short-term assignment

29 person-assignments (7.4MM)

FY2003: 10 experts (2.5MM)

FY2004: 5 experts (1.3MM)

FY2005: 12 experts (3.6MM)

• Sub-Project A: Civil Code; regulations on intellectual property; Civil Procedure Code; Enterprise Bankruptcy Law; Law on Registration of Immovable Properties; Ordinance on Secured Transactions; State Compensation Law; Judgment Execution Code

• Sub-Project B: Strengthening judicial training institutions; standardizing judgment documents; compiling and disseminating court precedents; judicial experts of laws in Japan

b) Training

(i) On strengthening judicial training institutions (for 1 month from February 2004; 11 participants)

(ii) On developing curricula for judicial training (for 2 weeks from January 2005; 9 participants)

(iii) On the revised Civil Code (for 2 weeks from February 2005; 12 participants)

(iv) On standardizing judgment documents (for 2 weeks from September 2005; 14 participants)

(v) On strengthening judicial training institutions (2 weeks from February 2006; 10 trainees)

c) Equipment (including computers, printers and other peripherals, copiers, official automation equipment, and supplies)

7.6 million yen in total

d) Local cost

48 million yen

e) Supporting groups in Japan

Joint study groups of front-line academics and practitioners on (i) revising the Civil Code; (ii) the Civil Procedure Code; (iii) judicial training; and (iv) standardizing judgment documents and compiling court precedents.

2) Inputs from the Vietnamese side

a) Counterparts

Project director: Vice Minister, MOJ

Project manager: Director, Department of International Law and Cooperation, MOJ

Project Coordinator: Department of International Law and Cooperation, MOJ

Working groups on (i) the Civil Code, (ii) intellectual property regulations, (iii) the Civil Judgment Execution Code; and (iv) the Enterprise Bankruptcy Law

Contact persons for (i) the Law on Registration of Immovable Properties, (ii) the Ordinance on Registration of Secured Transactions, (iii) State Compensation Law, and (iv) the Judgment Execution Code

b) Offices and facilities

A standing office for project personnel at MOJ (MOJ branch office); a meeting room for seminars and workshops at each of the C/P organizations (MOJ, the National Judicial Academy, the Supreme People's Procuracy, the Supreme People's Court, and Vietnam National University, Hanoi)

c) Administrative and operational costs

(i) Salaries and per diem allowances for Vietnamese personnel

(ii) Utility charges for the standing office

(iii) Tax-exemptions and expenses for customs clearance, storage, domestic transport, and installation of equipment from JICA

(iv) Maintenance costs of equipment

(v) Training costs

(vi) Other costs (including part of translation and administration costs)

d) Other inputs

Costs of preparing manuals and textbooks: a manual for prosecutors by the Supreme People's Procuracy (USD 13,770); a manual on judgment documentation by the Supreme People's Court (USD 1,550); and four common textbooks for judges, prosecutors, and lawyers by the National Judicial Academy (USD 11,600)

2. Evaluation Team

Members of Evaluation Team

(Role/responsibility: Name Position)

Team Leader Toshio KINOSHITA Director, Group I, Social Development Department, JICA

(2) Judicial Training Keiichi AIZAWA Director, International Cooperation Department, Research and Training Institute of the Ministry of Justice

(3) Cooperation Planning Hajime IWAMA Social System & Peace Building Team, Group I, Social Development Department, JICA

(4) Evaluation Analysis Yasuhira MINAMI Sowa Consultants Inc.

(5) Interpreter: Nishiki ONUKI Japan International Cooperation Center

Period of Evaluation: 10 -19 April 2006

Type of Evaluation: Terminal Evaluation

3. Results of Evaluation

3-1 Summary of Evaluation Results

(1) Relevance

The Evaluation Team evaluates this Project as relevant.

Viet Nam still has a high demand for the development of the legal system that is consistent with a market economy. The Project was in line with the long-term strategy on the legal system development and judicial reform, which were referred to in the *Legal Needs Assessment*, a document that Vietnam compiled in March 2002 with JICA and other donor agencies. The Evaluation Team has confirmed that Japan has given policy priority to the Project, which is consistent with Japan's Country Assistance Program for Viet Nam (April 2004) and JICA Country Program for the country (December 2005).

(2) Effectiveness

The Evaluation Team concludes that the Project was quite effective for the following reasons.

In Sub-Project A, it is unlikely that Output 4 will be achieved by the end of the project period. On the other hand, the other three Outputs have largely been achieved. The revised Civil Code and other basic laws that are the backbone of the legal system consistent with a market economy have been established. The capacity of the government officials at the departments involved in the legislation process has been improved.

In Sub-Project B, none of the Outputs has been achieved. It is safe to conclude, however, that the infrastructure for judicial training in Viet Nam has been developed to some extent. First, the National Judicial Academy was established and its curricula and the textbooks are almost completed. Second, a manual on the activities of the prosecutors at a court of the first instance, and a manual on judgment documentation for judges will be completed soon. Third, Vietnam National University, Hanoi has been managing the Japanese law course. Fourth, the counterparts have significantly improved their knowledge and capacity since the launch of the Project.

(3) Efficiency

The Project is considered efficient given the performance of the project activities and inputs and the level of achievement of the outputs. Inputs from Japan and Viet Nam were generally timely and appropriate for achieving the outputs, except for a vacancy in the post of long-term expert in the early part of the Project and a shortfall of short-term experts for organizing seminars in Viet Nam.

(4) Impact

The Project has had a positive impact on the society of Viet Nam as described below:

Project stakeholders at the C/P organizations believe that they have gained valuable knowledge and experience on the legal and judicial systems in Japan and deepened their understanding of legal system development required for a market economy and the legal concept and theory needed for global economic integration. In addition, the Project has resulted in the revision of the Civil Code, a key law, and the establishment of other basic laws in the civil and commercial sectors. This legislation forms an important foundation of the reform, an open-door policy and the legal development strategy of Viet Nam. The Evaluation Team concludes that the Project has had a major impact on the efforts toward the establishment of the rule of law in the country.

(5) Sustainability

The Evaluation Team concludes that despite a substantial level of sustainability of the Project, Viet Nam continues to need external assistance.

At the policy level, the Project is considered substantially sustainable. The Community Party Politburo announced Resolutions No. 48 and 49 in 2005, which laid out the policies of forging ahead with legal system development and judicial reform. Viet Nam will be likely to provide more support for the C/P organizations in the Project, including MOJ, the Supreme People's Court, the Supreme People's Procuracy, National Judicial Academy and Vietnam National University, Hanoi.

These C/P organizations left room for development of human, physical and financial resources and technical skills. It is unlikely that they will be able to exceed the project outputs or apply the project outcomes to nationwide on their own after the completion of the Project.

3-2 Contributing Factors

Major factors that have contributed to the attainment of the Project Purpose are as follows:

- (1) JICA sent the most advanced academics and practitioners to Viet Nam on a short-term or long-term assignment. The Viet Nam appreciated their guidance and advice.
- (2) The office for the Project and the C/P organizations maintained good communication.

(3) Officials at the C/P organizations and members of the working groups participated in the project activities of their own initiative.

(4) Community Party Politburo Resolutions No. 48 and 49 in 2005 further motivated those involved in legal system development, which became an impetus to the judicial reform process.

(5) Donors maintained good, well-coordinated relations.

3-3 Inhibiting Factors

Major factors that inhibited some project activities were as follows:

(1) Prior to the project launch, the Japanese and Viet Nameese did not share their views and concerns. This made both parties unable to reach agreement with the project document draft in the beginning. This was especially true of the Sub-Project B components that involved the National Judicial Academy, the Supreme People's Procuracy and Vietnam National University, Hanoi. As a result, both parties tended to disagree on the project activities and implementation structure.

(2) A vacancy in the post of long-term expert in the early part of the Project hindered some project activities during that period. It also affected the trusting relationship between JICA and the C/P organization concerned.

(3) The legislation process was rescheduled due to a failure to coordinate conflicting interests among stakeholders in the top echelons of Viet Nam (the Government and the National Assembly). As a result, the legislation process is delayed for the laws covered by Output 4 in Sub-Project A.

3-4 Conclusions

The Japanese Technical Cooperation in the Legal and Judicial Field in Vietnam, which was launched in 1996, produced major outputs in Phase 3 after more than ten years of continued cooperation. The Project is achieving its purpose because of a number of factors, including the consistency of the Project Purpose with the policy of Viet Nam, zealous commitment and expertise of the long-term experts, strong trust and cooperation that have developed over the years between the Japanese and Vietnamese sides. The major outputs of the Project are the enactment of the revised Civil Code that accommodates a market economy (a basic law in the civil and commercial sectors), the Intellectual Property Law, the Civil Procedure Code and the Enterprise Bankruptcy Law. Also there was the development of a common curriculum for judges, prosecutors and lawyers that is designed to develop legal professionals. A manual for prosecutors and a manual on judgement documentation were also developed. Furthermore, the Japanese law course at Vietnam National University, Hanoi, is being conducted. Moreover, the counterparts have remarkably improved their knowledge and capacity since the Project was launched. All these successful outputs indicate that the government officials at the departments, which were involved in the legislation processes, have increased their capacity

and that the infrastructure for training highly-skilled legal experts has been developed to some extent in Viet Nam.

On the contrary, the possibility of enacting the four basic laws, which are related to the Civil Code and supposed to be addressed by the Project, is low, due to the delay of the legislation schedule. Some of the textbooks to be used at National Judicial Academy will not be completed by the end of the Project as a result of a vacancy in the post of a long-term expert in the early part of the Project among other factors. All these delays point to the need to extend the Project.

3-5 Recommendations (specific solutions, suggestions and advice for the Project)

The Evaluation Team recommends that the project period be extended to March 31, 2007 to accomplish the initial objectives.

3-6 Lessons Learned by those who will take part in similar projects

(1) Importance of a supportive and understanding local environment (especially for a long-term expert) to implement the Project

Development assistance in legal and judicial development addresses such issues as the drafting of basic codes, which form the backbone of national governance, the strengthening of the judicial system and training of legal experts. In that sense, legal and judicial development is a matter of significant importance of how the recipient country will be managed. First of all, since the C/P organizations in the Project are high-ranking state institutions, it is essential that experts from JICA should have knowledge and experience enough to negotiate with the high-level officials and to win their respect and trust. Secondly, a local environment that supports experts' activities is of crucial importance.

(2) Necessity of supportive local environment at the project launch

Arrangements should be made to ensure that a supportive local environment be put in place by the project launch for a successful project implementation, especially like this project, which involves many C/P organizations in the partner country and many study groups in Japan, and entail a heavy workload associated with liaison and coordination among these organizations/groups.

(3) Flexibility in adjusting the detailed plan during the project period

Officials at some C/P organizations in Viet Nam expressed concerns about the visiting Evaluation Team. They expected the Japanese side to hold substantial prior consultations with them and make changes to the project plan as necessary before a new project activity is introduced. These concerns were included in the M/M. The Evaluation Team found, however, that the Japanese side took full account of such concerns. For this reason, the Evaluation Team regarded them as important considerations in future projects, not as peculiar issues in the Project.