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# JICA and Regional Soft Power: Japan's Legal and Judicial Development Project in Vietnam, Cambodia and Laos since 1996

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# *JICA and Regional Soft Power: Japan's Legal and Judicial Development Project in Vietnam, Cambodia and Laos since 1996*

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*Nobumichi Teramura*

## **Abstract:**

Due to geopolitical tensions, such as those brought about by COVID-19 and the US-China trade war, many multinationals have been closing factories in China and relocating to countries along the Mekong such as Vietnam, Cambodia and Laos. As a result, these countries will inevitably experience more international commerce in the future and attention will focus on their legislative and judicial systems. While much has been written about these countries' laws, scant attention has been paid to a common feature in their development, the pervasive influence of Japanese private law. Since 1996, the Japan International Cooperation Agency (JICA) has played a major role in the modernization of law in the region. Through its Legal and Judicial Development Project, JICA has provided technical assistance for the reform of codes and the training of lawyers in the use of those codes. This paper critically examines JICA's contribution to the rule of law in the region. It considers whether Japanese soft power (as manifested by JICA) complements or is at cross-purposes with projects of other organisations and initiatives (such as, Asian Development Bank and World Bank). It then evaluates the extent to which JICA's work is currently attuned to or has the potential to be made more responsive to the social and economic aspirations of the relevant countries.

**Keywords:** JICA; Cambodia; Laos; Vietnam; Soft Power; Legal and Judicial Development Project

# *JICA and Regional Soft Power: Japan's Legal and Judicial Development Project in Vietnam, Cambodia and Laos since 1996*

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*Nobumichi Teramura*

## **Introduction\***

The COVID-19 pandemic and the US-China trade war have created challenges and opportunities for the Socialist Republic of Vietnam (Vietnam), the Kingdom of Cambodia (Cambodia) and the Lao People's Democratic Republic (Laos). The challenges are the economic downturns triggered by the pandemic. Until 2019, the gross domestic product (GDP) of the three countries had increased strongly with an average annual growth rate of around seven percent, but the subsequent global COVID-19 recession in 2020 reduced the GDP growth to 2.9 percent in Vietnam (The World Bank, 2021c), minus 3.1 percent in Cambodia (The World Bank, 2021a) and 0.4 percent in Laos (The World Bank, 2021b). The opportunities are the ongoing supply chain restructurings that have the potential to boost the economy of the three countries. Reflecting the increasing production costs and risks in China that the trade war has exacerbated, many multinationals have been relocating their factories from China to the countries in the Mekong Subregion (Boudreau & Uyen, 2020; Master, Sriring, & Roantree, 2018). For foreign investors, Vietnam, Cambodia and Laos are attractive in terms of cost reduction and risk aversion because of their competitive labour costs, liberal economic policies, trade openness, social stability and growth potential (Swiss Re Institute, 2020; KPMG, 2020; OECD, 2017; Reed, 2020). Many international businesses have mixed feelings of anxiety and anticipation when investing in the three countries, perceiving them as the next hubs of global value chains.

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Deep knowledge of the legal frameworks of the host countries may be helpful for such foreign investors to explore new business opportunities. Thus, much has been written about the legal and judicial systems of Vietnam, Cambodia and Laos.<sup>1</sup> However, less is known about how their development has been influenced by legal ideas derived from Japanese law through the Legal and Judicial Development Project of the Japan International Cooperation Agency (JICA).<sup>2</sup> In the 1990s, facing pressing needs of updating their laws amid transitions to market-oriented economies, the governments of the three countries individually requested Japan to provide them with legal technical assistance for reforming their law codes and the training of lawyers in the use of those codes (MOJ, n.d., a; n.d.,b; n.d.,c). JICA launched the Project for responding to those requests, with the support from various Japanese governmental agencies such as the International Cooperation Department (ICD) of the Ministry of Justice (MOJ) (MOJ, n.d.-d). JICA carefully ensured that their Project would not result in legal interventions in the local legal systems by Japanese law experts. It went to great lengths to try and maintain local customs where possible rather than the wholesale importation of Japanese legal models (Kaneko, 2008: 50; V. L. Taylor, 2012: 240). Therefore, JICA gave due weight to having dialogues with local legal officers, adopting consensus-based decision-making processes (ICD, 2019: 3). Nevertheless, the reformed codes and rules culminating from the Project were inevitably affected by Japanese legal ideas as the law reform processes were supervised by Japanese law experts and local lawyers trained in Japan (Kaneko, 2019; V. L. Taylor, 2005; Teramura, 2021b: 26-27). Nonetheless, there is a paucity of English literature discussing the Japanese law's influence in the legal norms of the recipient countries.<sup>3</sup> This is probably because many essential documentations such as commentaries and textbooks are available in local and Japanese languages only (Teramura, 2021a: 202). As a consequence, some commentators tend not to perceive Japan as the source of legal ideas that are useful beyond Japan.<sup>4</sup> Further enhancing dialogues among local, international, comparative and Japanese law experts and thereby raising the saliency of current research on legal systems in

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<sup>1</sup> See generally the Vietnam, Cambodia and Laos sections in the MLS Academic Research Service (2021).

<sup>2</sup> Commentators pay little attention to the pervasive influence of Japanese private law in those countries. See, for example, (Forsait, 2016: 73; Harrington, 2016: 161; Melwani, 2016: 415).

<sup>3</sup> When writing about the Project, commentators tend to focus on specific issues and narrow topics: (Teramura, 2021b: 20).

<sup>4</sup> For example, see Kischel's (2019: 55, 689, 699, 728-735) views on Japan as a vehicle for the dissemination of a modern German-style legal system to its neighbouring countries in Asia.

Vietnam, Cambodia and Laos could address this gap (V. Taylor, 2001; V. L. Taylor, 2009; Teramura, 2021b).

Against this backdrop, this paper intends to explore the effect of the Legal and Judicial Development Project on the legal development of the three countries along the Mekong River, with reference to documents written in both English and Japanese. The paper proceeds as follows. First, it critically examines JICA's contribution to the rule of law in those countries, focusing on the Project but excluding from its scope specific legal principles introduced to the host countries by the Project (Section 2). Second, it considers whether Japanese soft power as manifested by JICA, and other Japanese government agencies complements or is at cross-purposes with legal aid projects of other donors (Section 3). Third, it evaluates the extent to which the JICA's Project is currently attuned to and/or made potentially more responsive to the social and economic aspirations of the relevant countries (Section 4). Finally, it concludes the discussion, making recommendations for future research (Section 5). By way of qualification, it is important to note that this paper addresses JICA's initiatives for developing private law, a branch of the law dealing with relations between individuals or institutions. It does not examine public law, which covers matters that arise between the state and the general public.

### **Legal and Judicial Development Project of JICA**

The aim of the Legal and Judicial Development Project is to offer the recipient countries: '(1) Assistance in the drafting of basic laws; (2) [a]ssistance in the establishment of judicial institutions for the operation of enacted laws; and (3) [a]ssistance in the capacity-building of legal professionals' (ICD, 2019: 3). To achieve the goal, JICA has been operating various law and development cooperation activities for Vietnam, Cambodia and Laos for over 20 years. This section overviews the nature and scope of such activities, critically examining Japanese law experts' commitment to legal development in the host states.

#### ***Vietnam***

As part of the Legal and Judicial Development Project, JICA has delivered three initiatives in Vietnam. These are 'Legal Technical Assistance Project' from 1996 to 2007 ("the First Project"),

‘Legal and Judicial System Reform Project’ from 2007 to 2015 (“the Second Project”) and ‘the Project for Harmonized, Practical Legislation and Uniform Application of Law Targeting Year 2020’ from 2015 to 2020 (“the Third Project”) (JICA, n.d.-a).

On achievements of the First Project, JICA’s official English version website states that ‘[the First Project] achieved certain results, for example, revised Civil Code (June 2005), revised Civil Procedure Code (November 2004) and manuals for legal practitioners that were jointly made by Japanese experts and partner organisations’ (JICA, n.d., a). However, the extent of Japanese experts’ contribution to the preparation of those products was rather modest because it was the first time Japan provided legal technical assistance to a foreign country, and, naturally, the Vietnamese government took the lead on the law reform processes. For instance, the government commenced efforts to revise the Civil Procedure Code in 1993, and JICA started sending Japanese law experts to the country in 1997 to hold seminars and training programs for Vietnamese legal experts working at the Ministry of Justice and, from around 2000, Supreme People’s Court and Supreme People’s Procuracy (Maruyama, 2004: 4). The capacity-building opportunities arguably helped to facilitate discussion on the reform of civil procedure in the country, albeit indirectly (Maruyama, 2004: 4). More direct involvements of Japanese legal experts in the law reform debate began in 2002, when the Vietnamese government issued a resolution ordering the Drafting Committee of the Civil Procedure Code to enact the revised Code promptly.<sup>5</sup> Then, the government requested JICA, among other donors,<sup>6</sup> to comment on the “seventh” draft of the new Civil Procedure Code that was prepared by the Drafting Committee based on the past Civil Procedure Codes of the People’s Republic of China and the Soviet Union (Yoshimura, 2005: 11). JICA took the request quite seriously and appointed top Japanese legal experts as advisors to the First Project (and the Drafting Committee) (Maruyama, 2005: 5). The experts formed a research group with leading Japanese law scholars and practitioners to review the draft and submit various recommendations to the Vietnamese government (Maruyama, 2005: 5). Nevertheless, not all their proposals were reflected in the final Civil Procedure Code because the Drafting Committee had the ultimate power to decide whether and to what extent the proposals were to be adopted (Iseki, 2005: 59).

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<sup>5</sup> The Communist Party of Vietnam Central Committee Politburo Resolution (08-NQ/TV): (Kawashima, 2019: 104) (noting that the Drafting Committee was formed in 1993).

<sup>6</sup> For example, experts sent by the United Nations Development Programme (UNDP) commented on the fourth draft of the Code, and the Star Project of the United States held workshops in Vietnam from time to time. See (Maruyama, 2005: 7; Yoshimura, 2005: 11).

Accordingly, the National Assembly rejected some proposals at a later stage (Yoshimura & Iseki, 2005). Moreover, the Drafting Committee expected the Japanese experts to express their views on specific topics and issues extracted from the draft Code (Maruyama, 2005: 8). In other words, the Committee structured the framework of discussion for the Japanese law experts in advance. Nevertheless, the Japanese commentators often identified various problems in the draft not covered in the request from the Vietnamese counterpart, and they proposed solutions for the problems (Iseki, 2005: 59; Yoshimura & Iseki, 2005: 44). According to a legal instructor working for the project, JICA carefully avoided drafting their version of the Civil Procedure Code as it believed that doing so would undermine Vietnamese lawyers' motivation towards the reform project and would bring about negative consequences to the capacity building of the lawyers (Maruyama, 2005: 8). JICA opted for a similar approach when joining the reform process of the 1995 Civil Code launched officially by the National Assembly of Vietnam in 2000. Professor Morishima of Nagoya University formed a joint research group for the law reform, inviting leading Japanese legal experts and top Vietnamese law officers. The group made various recommendations, and the Drafting Committee accepted the group's suggestions in relation to the fundamental principles of private transactions, such as equality between the parties, party autonomy and respect for private rights (Lien, 2006: 12-13). Accordingly, the Japanese legal experts indeed contributed to the establishment of the 2005 Civil Code. However, the reform was made not to reform the 1995 Civil Code entirely but to modify some aspects of the Code, and the original 1995 Code was based on the Civil Code of the Russian Federation (Morishima, 2006: 17). Therefore, the assistance of JICA in drafting the 2005 Civil Code and the 2004 Civil Procedure Code was specific and targeted but non-comprehensive.<sup>7</sup>

Building upon its experience of the First Project, JICA commenced the Second Project in 2007, investing more resources into the capacity building of legal officers with different backgrounds. The methodology of capacity development JICA employed was unique in that it adopted a bottom-up approach aiming to improve the quality of legal practice in the country from local level authorities and institutions (Kikegawa, 2008; Morinaga, 2008: 15-18). Specifically, the Vietnamese government and JICA chose Bắc Ninh Province as pilot zone, and JICA offered

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<sup>7</sup> Apart from the two major Codes, Bankruptcy Law was also reformed in 2004 with the support of JICA. See Section 3 below for details.



training programs to judicial officers, legal officers and legal practitioners working for the People's Court and the People's Procuracy of the Province and agencies of the Ministry of Justice in the Province (Morinaga, 2008: 15-18). The idea was for JICA to identify problems and challenges those institutions were facing and to explore plausible solutions for such issues (Morinaga, 2008: 18-19). Whether those solutions worked or not, JICA shared the outcome with the central level authorities,<sup>8</sup> for the latter to take advantage of the information of JICA's experience in reforming the local institutions of other provinces in the future (Morinaga, 2008: 18-19). Despite the major shift to legal training, JICA still continued helping Vietnam update its legislation. For example, the Civil Judgment Enforcement Act was established in 2008. By that time, JICA had organised several workshops where the members of the Drafting Committee of the Enforcement Act and Vietnamese court execution officers could discuss with Japanese legal experts about the early drafts of the Act (Public Policy Department at JICA, 2010: 12). The Vietnamese experts responded favourably to the recommendations of the Japanese experts to enhance the independence of law enforcement agencies, increase the transparency and efficiency of judgment enforcement proceedings, and improve procedures for the attachment, evaluation and auction of property.<sup>9</sup> As such, they reflected those comments in the final draft of the Act (Public Policy Department at JICA, 2010: 140). In contrast, JICA's continuous efforts in drafting the Real Property Registration Act, which was highly valued by the Drafting Committee of the Act (Public Policy Department at JICA, 2010: 127, 136-137), was ultimately not rewarded due to the National Assembly's unexpected cancellation of the legislation project in 2008 (Public Policy Department at JICA, 2015: 27). Despite this unpalatable experience, JICA organised a series of workshops for the knowledge development of Vietnamese experts who were in charge of drafting the Decree on the Registration of Secured Transactions, introducing them the relevant legal system and practice of Japan (Public Policy Department at JICA, 2015: 9). The workshop contributed to preparing the final draft of the Decree, albeit indirectly. Further, the amendments of the 2004 Civil Procedure Code and the 2005 Civil Code were adopted by the National Assembly in 2011 and 2015, respectively (Tatara, 2012: 48; Tsukahara, 2018: 41). Then JICA worked closely with the Drafting Committees by organising various workshops to discuss and comment on the amendment

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<sup>8</sup> The central authorities were the Ministry of Justice ("MOJ"), the Supreme People's Court ("SPC"), the Supreme People's Procuracy ("SPP") and the Vietnam Bar Federation ("VBF"): (JICA, 2021).

<sup>9</sup> Comments from Mr. Le Tuan Son of the Law Enforcement Department at the Ministry of Justice, who was a member of the Drafting Committee: (P. P. D. a. JICA, 2010: 140).

proposals that were elaborated carefully by the Vietnamese law experts (Public Policy Department at JICA, 2015; Kawashima, 2019: 120; Joint Research Group on the Civil Code of Vietnam, 2015).

In 2015, the Third Project was launched, with more emphasis on increasing the capacity and skills of legal and judicial institutions to ensure the consistent and efficient application of legal norms (Industry Development and Public Policy Department at JICA, 2018: 59ff). JICA still kept offering support for drafting legislation, but it appeared to avoid setting rigid short-term objectives for the Project. For example, several workshops were held to build the foundation of the codification of private international law that would hopefully take place at some point (Industry Development and Public Policy Department at JICA, 2018: iv-v).<sup>10</sup> Therefore, the core aim of the Third Project was to help the Vietnamese government obtain human resources who were able to establish a coherent system to craft consistent legal and legislative documents in the foreseeable future (Kawanishi, 2015: 9-14; Matsumoto, 2015).

### ***Cambodia***

For the development of private law in Cambodia, JICA has been implementing the ‘Legal and Judicial Development Project’ since 1999. The Project can be largely classified into three periods. Between 1999 and 2012 (the First Period) is the Phases 1 – 3 of the Project that intended to collaborate with the Cambodian Ministry of Justice (MOJ) to establish the Civil Code, Civil Procedure Code and relevant rules almost anew (JICA, 2012a: 3ff). Between 2012 to 2017 (the Second Period) is Phase 4 aimed to equip top Cambodian legal experts with the knowledge and skills that enable them to lead the future reforms of those Codes and rules without support from foreign donors (JICA, 2012b). From 2017 to 2022 (the Third Period) is Phase 5, whose primary objective was to build the sound foundation of legal practice that complied with those Codes and rules (JICA, 2017).

During the First Period, Japanese legal experts committed heavily to drafting the main bodies of Cambodian private law. The cause of the outstanding involvement was the lack of human

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<sup>10</sup> In 2021, JICA began undertaking the new Project for Improving the Quality and Efficiency of Law Enforcement and Legal Development in Vietnam, whose major focus is in dealing with inconsistencies in various legal instruments and thereby reducing inefficiencies in the enforcement of those legal instruments in the country: (ICD, 2020).

resources in the legal sector of Cambodia, which was triggered by the nationwide atrocity and destruction by the Khmer Rouge in the 1970s (Teramura, 2021a: 202). The regime turned the country into a (near-)complete legal vacuum by burning law books, demolishing libraries and exterminating trained lawyers (Phallack, 2012: 8; Vickery, 1986: 120). Hence, the Japanese legal experts determined to take initiatives in some aspects of the project, depending on the needs of the Cambodian counterparts and respecting the local ownership of the law reform. For instance, to draft the Civil Code and Civil Procedure Code, JICA established the respective working groups of Japanese experts in civil law and civil procedure law and made them prepare early drafts of those Codes in the Japanese language (JICA, 2001: 6-7). Correspondingly, the MOJ of Cambodia established a study group consisting of experienced Cambodian judges, MOJ officials and other legal experts, to define legal terminologies and finalise the draft Codes in their language – Khmer (JICA, 2001: 6-7). According to Morishima, the representative of the working group on the Civil Code, the drafting of the Code proceeded roughly as follows (Morishima, 2003: 7).<sup>11</sup> First, each member of the group was assigned to work on a specific part of the Civil Code, adopting the structure of the Japanese Civil Code. Second, the members prepared the detailed proposals of the assigned sections of the Japanese Code for their internal and informal discussion, taking into account relevant rules in the old Cambodian Civil Code and the civil laws of Japan, Germany and France. Third, the members travelled to Cambodia in rotation to explain the draft proposals to the study group in the MOJ and obtain feedback. From time to time, those Cambodian legal experts were invited to Japan to share their views on Cambodian civil law with the working group. Fourth, the working group drafted the Civil Code in Japanese, reflecting inputs from the Japanese and Cambodian experts. Fifth, the study group translated the draft Civil Code into Khmer, with the support of JICA staff who were fluent in both Khmer and Japanese and stationed in the MOJ for a long-term basis (Sakano, 2003). Another working group took a quite similar approach for drafting the Civil Procedure Code (Takeshita, 2003). The cooperation of Cambodian and Japanese lawyers resulted in the promulgation of the Civil Procedure Code in 2006 and the Civil Code in 2007. In the First Period, JICA also guided the Cambodian legal professionals for the drafting and finalisation of the Law on Non-Contentious Case Procedures, the Law on Personal Status

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<sup>11</sup> Morishima (2003) notes that the working group was formed by the twelve law professors of civil law from top Japanese universities.

Litigation, the Law on Implementation of the Civil Code, the official commentaries and textbooks of the Civil Code and the Civil Procedure Code, among others (JICA, 2012a: 5-12).<sup>12</sup>

During the Second and Third Periods, JICA devoted more time to the capacity building of Khmer legal practitioners. For instance, Phase 4 of the Project was designed to enhance the understanding of those Codes and Laws among top legal experts at the MOJ, Royal Academy for Judicial Profession (RAJP), the Bar Association of Kingdom of Cambodia (BACK), and the Royal University of Law and Economics (RULE), for them to improve the rule of law in Cambodia by implementing those legal norms independently and adequately throughout the country (JICA, 2012b). Special training courses were organised by experienced instructors – most of them were Japanese law experts, and each institution was tasked to nominate its elite members who would participate in the training courses. Side by side with the capacity building programs, support for legislative drafting was continued to be offered, and the Inter-Ministerial Prakas (Regulation) Concerning Real Rights Registration Procedure Pertaining to the Civil Code was promulgated in 2013.<sup>13</sup>

Then Phase 5 of the Project started in 2017, aiming to establish the proper foundation of legal practice in line with the Civil Code and Civil Procedure Code. Phase 5 led to the preparation of document templates that can be used during legal proceedings, and the Phase also launched new initiatives to publish court decisions to improve legal certainty and transparency (Chheng, 2021; JICA, 2017). It also intended to update laws and regulations related to those Codes (with the initiatives of Cambodian elite lawyers), but which rules would be updated is not yet finalised, probably because Phase 5 is still a work in progress (JICA, 2017).

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<sup>12</sup> In particular, the value of the commentaries and textbooks may not be underestimated in Cambodia, where the courts do not strictly follow the doctrine of precedence, and therefore those authoritative sources tend to function as the quasi sources of law (Teramura, 2021a: 203).

<sup>13</sup> See the following:

[http://huskyandpartners.com/images///Law%20Library/Real%20Property%20and%20Construction/20190604-Joint%20Prakas%20on%20Concerning%20Real%20Rights%20Registration%20Procedure%20Pertaining%20to%20the%20Civil%20Code\\_2013\\_En.pdf.pdf](http://huskyandpartners.com/images///Law%20Library/Real%20Property%20and%20Construction/20190604-Joint%20Prakas%20on%20Concerning%20Real%20Rights%20Registration%20Procedure%20Pertaining%20to%20the%20Civil%20Code_2013_En.pdf.pdf)

## *Laos*

JICA has implemented three projects to reinforce the rule of law in Laos. These projects are the Legal and Judicial Development Project between 2003 and 2009 (JICA, 2020), the Project for Human Resource Development in the Legal Sector between 2010 and 2018 and the Project for Promoting Development and Strengthening of the Rule of Law in the Legal Sector of Lao P.D.R. between 2018 and 2023 (JICA, n.d., b, n.d., c, n.d., d). The achievements of these projects fall largely into two categories as follows.

The first category is the capacity development of local legal practitioners to help them obtain skills for handling civil cases effectively and consistently. The Japanese experts of JICA intended to achieve the goal through collaboration with local practitioners in preparing and publishing core legal resources such as commentaries and textbooks primarily due to the limited availability of such materials in the country in the early 2000s (Tabe, 2007: 14-16). The JICA experts considered the approach would help Lao lawyers deepen their understanding of private law (Matsuo, 2007: 41; Nakahigashi, Matsura, & Imai, 2007). The published resources include a handbook for judicial writing, a glossary for legal terminology, a legal database, textbooks on civil law and commercial law and civil litigation handbooks (JICA, 2009: 2-4; Nakamura, 2014: 5-6). Seminars and workshops targeting broad and narrow audiences were also held to familiarise selected legal experts with these new materials and to disseminate these products among Lao lawyers and government officers (JICA, 2009: 43-117). It is important to note, however, that JICA and its local partners produced such materials to improve Lao legal practice by addressing ambiguities in existing laws and harmonising the interpretation of provisions in these laws as much as possible. Therefore, the influence of Japanese private law in these resources and initiatives tends to be limited.

The second category is the provision of support for drafting the first Lao Civil Code. The backdrop of the support is as follows. As early as the 2000s, the government of Laos ordered its Ministry of Justice to form a working group to undertake the groundwork for the reform of its civil law, which was expected to take place in due course (A. Ito, 2017: 60). Thus, the group researched on the civil law of Laos, working closely with Japanese law experts while participating in various

capacity building activities organised by JICA (A. Ito, 2017: 60). At that time, Laos did not have a law code exhaustively covered the civil law of the country, and what lawyers called “civil law” was a collection of separate eighteen plus statutes that purported to govern different aspects of civil cases (A. Ito, 2017: 60). These independent statutes had been updated from time to time, but the working group concluded that repeating partial reforms and amendments would no longer be adequate to rectify duplications and contradictions in the statutes and would not make the statutes compatible with the rapidly progressing society of Laos (A. Ito, 2017: 60). Accordingly, the group recommended that the Lao government reform major legal provisions thoroughly and comprehensively, combining those separate statutes into a single body of law – the Civil Code (A. Ito, 2017: 60). The government approved the recommendation in 2012 (A. Ito, 2017: 60). Then, the Ministry of Justice of Laos officially requested JICA to assist the Ministry in drafting the new Civil Code as it knew the cooperation agency had been accumulating the knowledge and information of Lao private law through its long-term experience in the capacity building of Lao lawyers (A. Ito, 2017: 60; Savankham, 2016).

JICA did not anticipate such a request, but it agreed to work with the Ministry on the law reform (H. Ito, 2020). Then, the two institutions established the Civil Code Drafting Committee (Irie, 2020: 65). The members of the Committee were top officers recruited from the Ministry of Justice, the People’s Supreme Court, the Supreme People’s Procuratorate, the National University of Laos, the National Assembly, the Ministry of Foreign Affairs and the Ministry of Commerce and Industry (Irie, 2020: 65). Correspondingly, the Civil Law Advisory Group for Laos was established in Japan, consisted of professors from top Japanese law schools and lawyers working for JICA (Irie, 2019b: 29). The Advisory Group, with the JICA expert team being resident in Laos, offered to the Committee instruction and consultancy needed to complete drafting the new Code within the proposed deadline in 2015 (Irie, 2019b: 30). The Advisory Group paid great attention to avoid dominating the drafting process, as the Group’s motivation for offering the support was to see the creation of new ‘Lao Civil Code by the [Lao] People, of the [Lao] People, for the [Lao] People’.<sup>14</sup> Accordingly, the Group respected the leadership of the Drafting Committee and limited its role to a facilitative general advisor who, for instance, responded to enquiries from the Committee and provided lectures to the Committee about various subjects, including but not

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<sup>14</sup> Comment by Professor Hiroshi Matsuo, the Chairman of the Advisory Committee: (Irie, 2019: 31).

limited to basic legal concepts and foreign legal systems (Irie, 2019b: 31).<sup>15</sup> Impressively, the Drafting Committee managed to prepare the first draft by 2015, but it took until 2018 for the National Assembly to promulgate the Civil Code. The three-years gap was spent for polishing the draft further, based on public comments from diverse legal and business sectors in the country (Irie, 2019b: 31-32). Finally, the Code came into effect in 2020 (MOJ, 2020).

### **Legal Development Projects of other Donors**

Notwithstanding those efforts discussed in Section 2, JICA is not the only institution offering legal development aid projects to the governments of Vietnam, Cambodia and Laos. Various other international organisations such as the United Nations (UN) and Asian Development Bank (ADB), as well as foreign governments' cooperation agencies like US Agency for International Development (USAID) and Agence Française de Développement (AFD), have also operated in those countries, to modernise their legal systems. The rule of law initiatives of those donors have sometimes overlapped with JICA's Legal and Judicial Development Project, generating tensions and contradictions between the initiatives and JICA's Project. The following section details how legal cooperation projects by non-Japanese development aid agencies operating in Vietnam, Cambodia and Laos have interacted and competed with the JICA's Project with reference to specific examples. It also discusses JICA's relative standing in the development of private law in the respective countries.

#### ***Vietnam***

The institutions that are and have been providing Vietnam with legal technical assistance (apart from JICA) since around 1996 are USAID, Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ), AusAID, Canadian International Development Agency (CIDA), Danish International Development Agency (DANIDA), The Swedish International Development Cooperation Agency (SIDA), Maison du droit by France, the European Union (EU), the World Bank, the ADB and United Nations Development Programme (UNDP), among others (Edagawa,

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<sup>15</sup> Top government officials of Laos highly evaluated the approach taken by JICA. For example, see (Umemoto, 2017).

2020).<sup>16</sup> These organisations have worked on various legal development aid projects for many years, and quite a few of these projects are comprehensive in their reach. For example, since the conclusion of the US-Vietnam Bilateral Trade Agreement (BTA) in 2001, the USAID have delivered Support for Trade Acceleration (STAR) Project from 2001 to 2013 and the Governance for Inclusive Growth (GIG) Program from 2014 to 2018. The primary purpose of these initiatives was to help Vietnam meet the commitments under the US-Vietnam BTA and enter the World Trade Organisation (WTO). For example, in relation to commercial law reforms, the USAID had supported Vietnam until 2006 for: rewriting and developing 93 laws and regulations to make the country comply with the BTA; promoting the law reforms in the country through organising 290 seminars and workshops for approximately 20,400 state officials and local business leaders; and publishing and distributing reference materials to local political, legal and business stakeholders (Coon, 2014). This demonstrates only a part of the large-scale project offered by the US. Inevitably, some aspects of the project are at potential cross-purposes with the JICA's Project because the USAID intended to reform laws and regulations on commerce and trade that the JICA's Project also covered. The Japanese initiative updated the Civil and Civil Procedure Codes – the bodies of law governing relationships between private parties generally – and other laws closely related to these Codes. In such circumstances, it is not unreasonable to assume that the development projects of other donors may also intersect with the JICA Project. The coverage of the Civil Code and Civil Procedure Code is broad in that it provides foundational rules dealing with differences among diverse private individuals operating in Vietnam, and the number of aid donors is outstanding.

Nevertheless, Vietnam appeared to balance the competing donors skilfully, at least in the area of private law. For example, in reforming the Civil and Civil Procedure Codes and relevant laws, the Vietnamese government bestowed control of the drafting processes on the committees and working groups consisting of government officials and lawyers. From time to time, the committee and group members sought foreign legal experts for advice on their draft legislation during workshops and consultations. However, they avoided fully depending on recommendations from a particular donor. This attitude is conceivable from JICA's experience in preparing the 2004

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<sup>16</sup> According to Edagawa, the organisations still offering such legal development support to Vietnam as of September 2020, other than JICA, are Korea International Cooperation Agency (“KOICA”), EU, Germany's Federal Ministry of Justice and Consumer Protection, UNDP, UNICEF, United Nations Office on Drugs and Crime (“UNODC”) and the World Bank.



Vietnamese Bankruptcy Law. According to JICA's record, Vietnam first worked with ADB on the reform of its bankruptcy law, but ADB terminated its support before completing the final draft of the law (Morinaga, 2008: 10). Then, the Supreme People's Court of Vietnam, which was responsible for the bankruptcy law reform, requested JICA to take over the task from ADB (Kono, 2021: 25; Morinaga, 2008: 10). JICA agreed and started working on the reform project in 2000 (Kaneko, 2006: 13). Leading authorities of Japanese bankruptcy law were invited by JICA to the project.<sup>17</sup> However, their role remained to be advisory. They only commented on the second, third and seventh drafts of the Bankruptcy Law, being refrained from forcing Vietnam to adopt their law model (Kaneko, 2006: 13-14). According to Kaneko, the Japanese experts put forward a legislative model designing the Bankruptcy Law as a system for ensuring creditors fair and equitable debt collection from an insolvent company (Kaneko, 2006: 15). Put differently, the idea of the legislative model was to establish a set of rigorous rules for insolvent companies to complete liquidation and leave the market orderly (Kaneko, 2006: 15). The third draft of the Bankruptcy Law adopted this proposal. However, the seventh draft focused rather more on the rescue and restructuring of businesses facing financial stress, prioritising business continuity over strict debt collection. As a consequence, similar to Chapter 11 of the US Bankruptcy Code, the new draft emphasised the significance of corporate rescue, allowing to sacrifice the rights of the creditors of insolvent companies to that end (Kaneko, 2006: 15; 2021). Kaneko suggests that this policy shift in the seventh draft was inspired by the active promotion by the World Bank and ADB of their legislative models.<sup>18</sup> At the end of the day, the National Assembly adopted the seventh draft without any significant revisions, rejecting JICA's proposal. In the end, the seventh draft became the 2004 Bankruptcy Law.

What is conceivable from Vietnam's various law reform projects with USAID, the World Bank and JICA, is that the country did not treat JICA differently from other cooperation institutions. Having many donors who were available, the country had the luxury to compare various opinions and proposals from different donors based on the assessment of potential

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<sup>17</sup> For example, Professor Yasuhei Taniguchi, the Professor Emeritus in Civil Procedure Law of Kyoto University, who was formerly a member of the Appellate Body of the WTO Dispute Settlement Body.

<sup>18</sup> See, respectively, the World Bank's 2001 Principles and Guidelines for Effective Insolvency and Creditor Rights Systems and the ADB's 2000 Good Practice Standards for Insolvency Law (Kaneko, 2006: 15). See also (Kaneko, 2021: 66), noting that the driving force behind the promotion of the US-style legislative models by the World Bank was large US law firms in New York, to whom the World Bank outsourced various legal aid projects.

economic and financial incentives that likely followed. If it found recommendations from other donors more appealing, the Vietnamese government did not hesitate to decline suggestions from JICA, as in the case of the 2004 Bankruptcy Law. It is fair to say JICA did play a significant role in improving the private law of Vietnam, but it is a contribution no more substantial than certain other donors. The position of JICA (or Japanese law experts) in the development of Vietnamese private law has to be measured relative to other aid institutions. Vietnam treated JICA's proposals as 'comparable' to those from other donors.

### *Cambodia*

No discernible record shows the precise number of cooperation agencies that have engaged in legal development projects in Cambodia. However, the number is unlikely to be small, considering the history that the Communist Party of Kampuchea (CPK) almost entirely abolished the legal and judicial systems of the Kingdom. In the 1990s, the new Cambodian government faced the pressing need to fill the legal vacuum, to receive financial aid supports from international institutions and developed countries. At that time, such supports were crucial for Cambodia due to its high poverty rate, destroyed infrastructure and underdeveloped economy after the civil war. Accordingly, the government was open to any aid supports offered by foreign institutions. However, unlike in the case of Vietnam, some government ministries of Cambodia were reluctant to take initiatives in their law reform projects, which sometimes caused tensions among donor institutions unintentionally. The following two cases are examples of such tensions JICA experienced during its Legal and Judicial Development Project.

The first case was on the Civil Code. From 1999, JICA had worked with MOJ of Cambodia in drafting the Code until the promulgation of the Code in 2007.<sup>19</sup> The purpose of the Code is to define the basic rights of citizens – private rights – such as personal rights and property rights. Thus, the early draft of the Code contained various rules on immovable property. On the other hand, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) had been undertaking the Land Management and Administration Project (Industry Development and Public Policy Department at JICA, 2012: 40), with the support from the ADB, the World Bank and

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<sup>19</sup> See Section 2.2 above.

GIZ.<sup>20</sup> As part of this Project, the East-West Management Institute (EWMI), a US not-for-profit organisation for the promotion of rule of law, had been working on the reform of the 1992 Land Law, based on its consultancy contract with the ADB (Industry Development and Public Policy Department at JICA, 2012: 39-41). When the revised Land Law was promulgated in 2001, it became clear that some provisions of the 2001 Land Law were in conflict with the draft Civil Code prepared by JICA and the MOJ (Industry Development and Public Policy Department at JICA, 2012: 39-41). A main point of controversy was whether to introduce the Torrens title system – a land registration and transfer system operating on the principle of “title by registration” rather than “registration of title” – derived from the common law of South Australia (Kaneko, 2006: 18).<sup>21</sup> For instance, Article 69 of the Land Law read that ‘the transfer of ownership of [land or a real property] shall be considered as valid upon the registration of the contract of sale with the Cadastral Registry Unit’.<sup>22</sup> In contrast, the draft Civil Code required registration as perfection of rights against a third party, stating that the transfer of land ownership took place upon the meeting of the minds between parties (e.g., a seller and a buyer) (Industry Development and Public Policy Department at JICA, 2012: 39-41). According to JICA, the draft rule on ownership transfer in the Civil Code was built upon its discussion and agreement with the MOJ and the General Department of Cadastre and Geography (Industry Development and Public Policy Department at JICA, 2012: 39-41). Nevertheless, in late 2002, the ADB and the EWMI started strongly opposing the adoption of the Civil Code, insisting that the Code would be an obstacle for the 2001 Land Law coming into force (Industry Development and Public Policy Department at JICA, 2012: 39-41). The opposition led to an inter-ministerial controversy between the MOJ and the MLMUPC and then an inter-donor debate among the World Bank, the ADB and JICA (Industry Development and Public Policy Department at JICA, 2012: 39-41). Suggesting the subject was highly technical, the Council of Ministers of Cambodia requested the donors to settle the difference by themselves (Industry Development and Public Policy Department at JICA, 2012: 39-41). In 2004, the three donors held a two-day conference at the headquarters of the World Bank in Washington DC, and JICA agreed

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<sup>20</sup> For the detail of the Land Management and Administration Project, see (The World Bank, 2022).

<sup>21</sup> For the detail of the Torrens system, see (State Government of Victoria, n.d.), noting that countries using the system include (only) Australia, New Zealand, England and Wales, Ireland, Malaysia, Singapore, Iran, Canada and Madagascar.

<sup>22</sup> An English translation of the 2001 Land Law is available at:

<https://data.opendevelopmentcambodia.net/dataset/e9c2070b-6667-4914-99c3-f2192188005e/resource/8280fa2e-89a4-4fd3-8b53-367adb323f3b/download/a3227e47-64e2-49ab-8f7c-ff75d8ebd17f.pdf>

to partially modifying the draft Civil Code to make it compatible with the 2001 Land Law, because the latter was already promulgated (Industry Development and Public Policy Department at JICA, 2012: 39-41).<sup>23</sup> After the revisions were made, no opposition to the Civil Code was expressed by the MLMUPC, the ADB or the EMWI (Industry Development and Public Policy Department at JICA, 2012: 39-41).

The second case concerned the Civil Procedure Code (CPC). In 2003, the Ministry of Commerce (MOC) of Cambodia published the draft Commercial Court Law that it prepared with CIDA (Industry Development and Public Policy Department at JICA, 2012: 51). The idea was to establish a special first instance court in Phnom Penh that was capable of dealing with commercial cases fairly and efficiently under “fast track” rules diverged from the CPC, for Cambodia to improve its business environment to attract more foreign investors (Industry Development and Public Policy Department at JICA, 2012: 51). Unfortunately, the preliminary draft was not acceptable for the MOJ and JICA, who had been preparing the CPC since 1999, largely because: (1) the procedure for the appointment of judges under the draft Law was likely to violate the Constitution of Cambodia; and (2) the jurisdiction of the proposed Commercial Court was so broad that could water down the CPC and other procedural rules (Takeshita, 2004). On (1), the draft Law provided that each tribunal in the Commercial Court consisted of two professional judges and one advisory judge (or one associate judge) (Takeshita, 2004: 25). The appointment of the advisory judge was planned to be made by an inter-ministerial commission comprising of the representatives of the MOJ, MOC, Ministry of Economy and Finance, National Bank of Cambodia and Cambodia Chamber of Commerce (Industry Development and Public Policy Department at JICA, 2012: 51; Takeshita, 2004: 25). However, the Constitution stated that the appointment of judges in Cambodian courts was to be made by the King as per recommendations by the Supreme Council of the Magistracy – a judicial organ to maintain the independence of the judiciary.<sup>24</sup> Thus, having such an advisory judge in the Commercial Court would violate the judicial independence guaranteed by the Constitution. On (2), the draft Law intended to confer the Commercial Court broad exclusive jurisdiction to hear matters related to commercial transactions, mixed contracts (i.e., contracts between merchants and non-merchants), negotiable instruments such as stocks and

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<sup>23</sup> As the result, Articles 135 and 336(2) were newly established in the draft Civil Code.

<sup>24</sup> See Article 21 of the Constitution of the Kingdom of Cambodia: <https://www.refworld.org/docid/3ae6b5a40.html>.

bonds, commercial enterprises, insolvencies, banking and financial institutions, foreign exchange, product and service liability, maritime matters, competition, among others (Takeshita, 2004: 25-26). The implication of such broad authority of the Commercial Court was that the Court would be able to bypass the CPC (and even the Criminal Procedure Code prepared by France) on many occasions, paying little respect to parties' intentions. The MOJ and JICA hence issued comments criticising the draft Law, and the MOC ultimately decided to revise the draft to reduce the exclusive jurisdiction of the Court and agreed to mandate the Court to apply the CPC where applicable (Industry Development and Public Policy Department at JICA, 2012: 52). Later, the ADB and UNDP joined CIDA to offer technical assistance to the MOC updating the draft Law (Industry Development and Public Policy Department at JICA, 2012: 51). However, as of 19 February 2022, no discernible material suggest that the Commercial Court Law has been promulgated, and the government is still likely in the process of "planning" to establish the Court (Kunmakara, 2021; Vanyuth, 2021).<sup>25</sup>

### ***Laos***

There are fewer reported cases on overlap between JICA's and other donor's projects in Laos. This is probably because JICA has delivered initiatives that supplement the works of other donors. For example, JICA prepared materials for local practitioners to help them learn about laws and rules established by Lao experts and foreign donors (Irie, 2019b: 33). It also drafted with Laos lawyers and government officers the Civil Code built upon several individual laws (with updates made), which Laos lawyers established with other foreign donors (Irie, 2019b: 33). The only discernible event reported by JICA as an overlapping case is the one occurred in relation to a matter brought about by the International Finance Corporation (IFC) of the World Bank Group. In late 2017, when the drafting committee of the Civil Code was in the final stage of its mission, the IFC abruptly sent a note to the committee, requesting it to rewrite the rules on secured transactions in the Code (Irie, 2019b: 32). The IFC demanded the committee to make the Code more convenient for those using the Registry Office for Security Interests in Movable Property – a centralised computer registry that arguably allowed registered individuals and institutions to record their financial interest in

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<sup>25</sup> Presumably, the rejuvenated move was inspired by the recent (proposed) establishment of international commercial courts around the world: see, e.g., (Teramura, Ali, & Reyes, 2021).

moveable and personal property.<sup>26</sup> The IFC developed the system with the Ministry of Finance of Laos (Irie, 2019b: 32), to record (if possible) all secured transactions for property on the arguably unified and transparent online system for the promotion of secured transactions in Laos (Irie, 2019a: 42). To this end, the IFC insisted on making various changes in the Code, including but not limited to the prohibitions of “pledge on movable property” and “setting up pledge with documents” (Irie, 2019b: 32), despite these being widely used among Laos people (Irie, 2019a: 47). The IFC then urged the committee that in compliance with the advice would result in Laos going down in the World Bank’s annual ‘Ease of Doing Business’ Rankings (Irie, 2019a: 41-42). However, the drafting committee decided to follow the recommendation only minimally because it found the unified registration system was not useful for ordinal transactions among private parties (Irie, 2019a: 46-50). The committee emphasised that the major aim of the Civil Code was to regulate such ordinal private transactions and not business ones, so it rejected most of the IFC’s recommendations (Irie, 2019b: 32).

## **Conclusion**

### *Is JICA’s work attuned to the social and economic aspirations of Vietnam, Cambodia and Laos?*

As this paper has shown, we can rank the level of JICA’s overall commitment to civil law reforms in the three countries as follows: (1) Cambodia, (2) Laos and (3) Vietnam. In Cambodia, JICA has played a leading role in drafting various major codes and laws from almost scratch, filling the lack of human resources in the Cambodian legal sector. The leadership was crucial for the promulgation of the Civil Code and Civil Procedure Code, which form the foundation of the Cambodian legal system.<sup>27</sup> Indeed, the drafting process of these codes has experienced tensions between JICA and other donors such as the ADB, World Bank, GIZ and CAID. However, Cambodian legal elites have refrained from making decisions that might unnecessarily diminish JICA’s long-term efforts and they have respected JICA’s proposals in as practicable a way as possible. Even where elite lawyers observed occasional conflicts between different legal models, as in the case of the Land Law reform in 2001, they requested JICA to consult directly with other donors. As such, they did

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<sup>26</sup> See, [https://www.mof.gov.la/str/en\\_index.html](https://www.mof.gov.la/str/en_index.html)

However, the registration to the system is not open to the public as of February 2022.

<sup>27</sup> Section 2.2 above.

not unilaterally discard the plan of JICA, and JICA only partially revised its legislative model. Consequently, we can consider JICA's achievements in the Kingdom as comprehensive and significant. In Laos, JICA offered Civil-Code-focused supervisory support that to an extent built upon past projects of other donors. In other words, the focus of the JICA's initiatives in Laos was to improve the country's legal environment by supplementing previous donor projects. As a result, its accomplishments in the development of Laos civil law while important are less significant than in Cambodia. In Vietnam, JICA has remained one of many donors who provide advice and support to the country's lawyers upon request. Inevitably, this has limited JICA's role to that of providing drafting assistance on a more or less ad hoc basis. Furthermore, several key proposals by JICA have not been adopted by Vietnamese legal experts, as in the case of the Insolvency Law reform in the 2000s. In short, JICA has made a significant contribution to legal development in Cambodia but to a lesser extent in Laos, and a much lesser extent in Vietnam.

Evaluating the extent to which JICA's legal development project is appropriately attuned to the social and economic aspirations of these three countries is largely beyond the scope of this paper. Nevertheless, Cambodia and Laos have primarily maintained the legislative models JICA developed with local legal experts, despite occasional interference from other influential donors. This at least implies a basic level of support for the JICA project amongst Cambodian and Lao lawyers. In contrast, it is rather unclear as to the extent Vietnamese legal elites view the Project positively. These elites have always limited the JICA to the role of advisor and assiduously restricted the agency in playing a more significant role in the development of Vietnamese private law. On balance, it is probably fair to say that the JICA Project has been more in accord with Cambodia's and Laos' social and economic ambitions than with Vietnam's. Accordingly, the time has come for JICA to reflect critically on its commitment to the Vietnamese legal system and decide whether and how to continue its Legal and Judicial Development Project in the country. This may involve JICA being open to various options rather than simply maintaining a status quo where Vietnamese legal experts express only limited support (albeit indirectly and implicitly) to JICA's approach to Vietnamese law reform.

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