

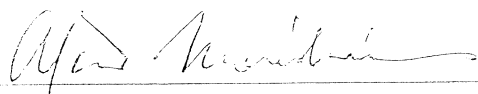
THE RECORD OF DISCUSSIONS
BETWEEN THE JAPANESE IMPLEMENTATION SURVEY TEAM AND
THE MINISTRY OF JUSTICE OF THE KINGDOM OF CAMBODIA
ON JAPANESE TECHNICAL COOPERATION
IN THE LEGAL AND JUDICIAL FIELD

Under the scheme of "Japanese Cooperation to Support the Formulation of Key Government Policies", the Japanese Implementation Survey Team (hereinafter referred to as "the Team") organized by the Japan International Cooperation Agency (hereinafter referred to as "JICA") and headed by Professor Akio Morishima, visited the Kingdom of Cambodia from March 1, 1999 to March 6, 1999 for the purpose of working out the details of technical cooperation in the legal and judicial field (hereinafter referred to as "the Project").

During its stay in the Kingdom of Cambodia, the Team exchanged views and had a series of discussions with the Ministry of Justice in the Kingdom of Cambodia (hereinafter referred to as "MOJ") and authorities concerned regarding measures to be taken by both Governments for the successful implementation of the Project.

As a result of the discussions, in the spirit of mutual cooperation, the Team and MOJ have agreed to propose to their respective Governments the matters referred to in the document attached hereto.

Phnom Penh, March 5, 1999



Prof. Akio Morishima
Leader
Implementation Survey Team
Japan International Cooperation Agency
Japan



Uk Vithun
Minister
Ministry of Justice
The Kingdom of Cambodia

THE ATTACHED DOCUMENT

I. COOPERATION BETWEEN BOTH GOVERNMENTS

1. The Government of the Kingdom of Cambodia will implement the Project in cooperation with the Government of Japan under the scheme of "The Japanese Cooperation to Support the Formulation of Key Government Policies" for the purpose of assisting the Government of the Kingdom of Cambodia in bill-drafting and reforming the legal and judicial system necessary for the reconstruction and development of the Kingdom of Cambodia.

2. The Project will be implemented in accordance with the Master Plan which is described in Annex I.

II. DISPATCH OF JAPANESE EXPERTS

1. In accordance with the laws and regulations in force in Japan, the Government of Japan will take necessary measures, through JICA, to provide at its own expense the services of the Japanese experts as listed in ANNEX II according to the normal procedures under the Technical Cooperation Scheme of the Government of Japan.

2. The Japanese experts referred to in Section 1 above will be granted in the Kingdom of Cambodia exemptions and benefits no less favorable than those granted to the experts of third countries or of international organizations performing similar missions.

III. PROVISION OF MACHINERY AND EQUIPMENT

1. In accordance with the laws and regulations in force in Japan, the Government of Japan will take necessary measures, through JICA, to provide at its own expense such machinery, equipment and other materials necessary for the implementation of the Project as listed in Annex IV, according to the normal procedures under the Technical Cooperation Scheme of the Government of Japan.

2. The articles referred to in Section 1 above will become the property of the Government of the Kingdom of Cambodia upon being delivered to Cambodian authorities at the ports and/or airports of disembarkation, and will be utilized

exclusively for the implementation of the Project in consultation with the Japanese experts referred to in Annex II.

IV. TRAINING OF CAMBODIAN PERSONNEL IN JAPAN

1. In accordance with the laws and regulations in force in Japan, the Government of Japan will take necessary measures, through JICA, to provide at its own expense Cambodian personnel, who are or will be involved in the Project, with appropriate technical training in Japan according to the normal procedures under the Technical Cooperation Scheme of the Government of Japan.
2. The Government of the Kingdom of Cambodia will take necessary measures to ensure that the knowledge and experience acquired by personnel from technical training in Japan will be utilized effectively for the implementation of the Project.

V. LOCAL EXPENSES

The budget to meet the local expenses necessary for the implementation of the Project in the Kingdom of Cambodia will be provided to the Japanese experts by JICA in accordance with the laws and regulations in force in Japan. The budget, which is to be used exclusively for the implementation of the Project, will be managed and audited by a Japanese expert designated by JICA.

VI. DATA OWNERSHIP AND PUBLICATIONS

The data, products and deliverables accumulated through the Project will be jointly owned by the participating organizations (JICA and MOJ). When reports or documentation concerning the Project are issued or compiled, it is to be mentioned that the Project has been implemented by JICA and MOJ as a technical cooperation scheme between the Government of Japan and the Government of the Kingdom of Cambodia.

VII. MEASURES TO BE TAKEN BY THE GOVERNMENT OF THE KINGDOM OF CAMBODIA

1. In accordance with the laws and regulations in force in the Kingdom of Cambodia, the Government of The Kingdom of Cambodia will take necessary measures to provide at its own expense:

(1) Services of the Cambodian counterpart personnel and administrative personnel;

(2) Supply or replacement of machinery, equipment, instruments, vehicles, tools, spare parts and any other materials necessary for the implementation of the Project other than those provided through JICA in Section III above;

(3) Facilities necessary for the maintenance, protection and utilization of the articles listed in ANNEX IV.

2. In accordance with the laws and regulations in force in the Kingdom of Cambodia, the Government of the Kingdom of Cambodia will take necessary measures to meet:

(1) Expenses necessary for the transportation within the Kingdom of Cambodia of the articles referred to in Section III above as well as for the installation, operation and maintenance thereof;

(2) Customs duties, internal taxes and any other charges imposed in the Kingdom of Cambodia on the articles referred to in Section III above;

(3) All local expenses necessary for the implementation of the Project other than those provided through JICA in Section V above.

VIII. ADMINISTRATION OF THE PROJECT

The Minister of MOJ, as the Project Director, will assume overall responsibility for the administration and implementation of the Project in cooperation with the Japanese Team Leader.

The Undersecretaries, as the Project Managers, will be responsible for the management and technical matters of the Project.

The Japanese experts will give necessary technical guidance and advice to the Cambodian counterpart personnel on technical matters pertaining to the Project.

The Resident Representative of JICA in the Kingdom of Cambodia will

undertake the role of an adviser and coordinator for the successful implementation of the Project.

IX. CLAIMS AGAINST JAPANESE EXPERTS

The Government of the Kingdom of Cambodia will undertake to bear claims, if any arise, against the Japanese experts engaged in the Project resulting from, occurring in the course of, or otherwise connected with the discharge of their official functions in the Kingdom of Cambodia except for those arising from the willful misconduct or gross negligence of the Japanese experts.

X. MUTUAL CONSULTATION

There will be mutual consultation between the two Governments on any major issues arising from, or in connection with this attached document.

XI. TERM OF COOPERATION

The duration of the Project prescribed in this attached document will be from March 5, 1999 to March 4, 2002.

- ANNEX I. MASTER PLAN
- ANNEX II. PROJECT TEAM AND IMPLEMENTING ORGANIZATION
- ANNEX III. PRIVILEGES, EXEMPTIONS AND BENEFITS
- ANNEX IV. LIST OF ARTICLES
- ANNEX V. TENTATIVE IMPLEMENTATION SCHEDULE

ANNEX I. MASTER PLAN

I. Background

The Cambodian legal and judicial system has evolved over time through a series of contributions from various legislative sources. The French legislation system was introduced during the period of the French protectorate, which was followed by socialist-influenced civil law traditions, the transitory legislation of the United Nations Transitional Authority of Cambodia (UNTAC), and finally the contemporary legislation of the newly constitutionally elected Kingdom of Cambodia.

At the end of the 1980s, a constitutional amendment marked the beginning of a period of privatization and the progressive passage to a market-oriented economy. This process was subsequently affirmed in a peace agreement signed in Paris in 1991, and ultimately in the Constitution of the Kingdom of Cambodia promulgated in 1993. Thus, the current Cambodian legal and judicial system should be based on the economic and political principles of liberal democracy. The ultimate objective is to consolidate and establish a state respecting the "Rules of Law".

Since its re-establishment in 1980, MOJ has been playing a leading role as a supervising agency in rehabilitating the legal and judicial system in the Kingdom of Cambodia. Since the inauguration of the Government of the Kingdom of Cambodia in 1993, reform of the legal and judicial system has been a major objective and the "Rules of Law" has been a crucial issue in this country. This reform is required especially because the country has started its process toward a market-oriented economy, and the laws and judiciaries must be adjusted to suit the rapidly changing society.

MOJ has been receiving several kinds of assistance from France and Australia during the 1990s. French assistance is focusing mainly on drafting the Criminal Code and Criminal Procedure Code. The Australian government is carrying out criminal justice programs in several provinces and the Phnom Penh municipality. This program includes assistance to judicial police, courts and prisons.

The Japanese government started the Country-focused Training Course on the Legal and Judicial Field in 1996. And at the end of 1997, a first short-term expert was dispatched to MOJ to conduct general surveys on the situation related to the legal and judicial field in the Kingdom of Cambodia.

By request of MOJ, the Government of Japan sent a preliminary survey team to the Kingdom of Cambodia from February 16 to 21, 1998 and held a series of meetings with the authorities concerned in the legal and judicial field to investigate possibilities for assistance. Then, MOJ requested technical cooperation in this field to establish a sound legal and judicial system in the Kingdom of Cambodia.

II. Objectives

1. Overall Goal

The overall goal of the Project is to assist the Government of the Kingdom of Cambodia in improving and strengthening its legal and judicial system.

2. Project Objectives

The Project aims at supporting human resources development in the legal system of the Kingdom of Cambodia by means of providing professional experience to Cambodian counterpart personnel through bill-drafting, improvement of law-enforcement procedures, and enhancement of the knowledge and capacity of Cambodian judges, prosecutors, attorneys and other judicial officials.

III . Framework of the Project

1. Main Activities of the Project

(1) The Project will provide professional experience through JICA experts to Cambodian counterpart personnel of MOJ and relevant organizations involved in bill-drafting and law-enforcement procedures, and will cover the following priorities:

- (a) Assistance in drafting of the Civil Code
- (b) Assistance in drafting of the Civil Procedure Code
- (c) Assistance in drawing up laws and/or regulations relevant to any code specified in (a) and (b) above
- (d) Assistance in improving administrative organization of the court and prosecution
- (e) Assistance in the training of judges, prosecutors, attorneys and other judicial officials (via MOJ)
- (f) Assistance in the improvement of legal education
- (g) Provision of reference information on legal institutions and laws related to the market economy

(2) The Project will also include training programs in the above-mentioned fields organized in the Kingdom of Cambodia by its government agencies and in Japan by JICA to enhance knowledge and capacity of Cambodian judges, prosecutors, attorneys and other judicial officials engaged in the legal and judicial services.

(3) The Project will also support social research into the actual environment of law operations.

2. Methods of Implementation

The Project is to be implemented using the following methods:

- (1) Seminars and workshops in Cambodia by JICA experts, MOJ officials and other legal personnel concerned
- (2) Training programs in Cambodia and in Japan
- (3) Advice on the implementation of social research
- (4) Provision of necessary information, equipment and materials
- (5) Daily coordination by JICA experts and MOJ officials
- (6) Work of bill-drafting in both countries

Note: The contents of the above-mentioned methods will be determined by the mutual consultation between JICA and MOJ.

3. Schedule of activities

Both sides acknowledge and agree that the Project will be carried out in accordance with the tentative schedule of activities which will be finalized annually through mutual consultations between JICA and MOJ.

ANNEX II. PROJECT TEAMS AND IMPLEMENTING ORGANIZATIONS

The Project will be jointly carried out by the Japanese expert team and the Cambodian expert team. Each team will consist of the following members:

1. The Japanese implementation team:
 - (a) Team leader
 - (b) Long-term expert(s) for coordination and management
 - (c) Short-term experts in specific fields of law
 - (d) Steering committee
 - (e) Working groups for assisting in drafting of both the Civil Code and the Civil Procedure Code
 - (f) Resident Representative of JICA in the Kingdom of Cambodia

2. The Cambodian implementation team:
 - (a) Team leader
 - (b) Legal experts and officials for coordination
 - (c) Study group as counterpart personnel for JICA experts
 - (d) Working groups as counterpart personnel for drafting of both the Civil Code and the Civil Procedure Code
 - (e) Steering committee

Note: JICA and MOJ will exchange a list of the members of each implementation team and will notify the other party of any change in the list.

For effective and successful implementation of the Project, both sides will jointly hold an annual consultation meeting to monitor the progress of the Project and to make a schedule of activities for the next year.

ANNEX III. PRIVILEGES, EXEMPTIONS AND BENEFITS

In accordance with the laws and regulations in force in the Kingdom of Cambodia, the Government of the Kingdom of Cambodia will grant to Japanese experts dispatched by JICA:

1. Exemptions from income tax and charges of any kind imposed on or in connection with the living allowance remitted from abroad.
2. Exemptions from customs duties imposed on the importation of personal effects by JICA experts and their families as well as the importation of machinery and equipment relating to their activities.

ANNEX IV. LIST OF ARTICLES

1. Machinery and Equipment

(1) List of Articles:

- (a) Computers and other equipment for accumulating and analyzing existing laws and legal information, and recording all activities of the Project
- (b) Training materials and equipment
- (c) Reference materials on Japanese laws and institutions

Note : The details will be discussed after the commencement of the Project.

- (2) The machinery and equipment will be provided by JICA through budgetary appropriation for each fiscal year.

2. Facilities

(1) List of Facilities:

- 1) Appropriate office rooms in MOJ with necessary facilities for the smooth and efficient implementation of the Project
- 2) Conference rooms for seminars and workshops at MOJ
- 3) Other facilities and equipment mutually agreed upon as necessary

- (2) Facilities mentioned above will be provided by the Cambodian side at its own expense.

ANNEX V. TENTATIVE IMPLEMENTATION SCHEDULE

| CALENDAR YEAR | 1999 | | 2000 | | 2001 | | 2002 |
|---|-------------------|------|------|------|------|------|------|
| JAPANESE FISCAL YEAR | '98 | 1999 | | 2000 | | 2001 | |
| TERM OF COOPERATION | ***** | | | | | | |
| <u>PROJECT ACTIVITIES</u> | ***** | | | | | | |
| 1. Support for law-drafting, etc. | ***** | | | | | | |
| 2. Support for training programs | ***** | | | | | | |
| 3. Seminars and workshops | * | * | * | * | * | * | * |
| 4. Social research | *** | | *** | | | | |
| <u>JAPANESE CONTRIBUTION</u> | ***** | | | | | | |
| 1. Experts assignment scheme | ***** | | | | | | |
| - Legal-expert(s) for coordination | ***** ** ** ** ** | | | | | | |
| - Short-term experts | ***** ** ** ** | | | | | | |
| 2. Provision of equipment & materials | *** ** ** | | | | | | |
| 3. Training of Cambodian counterparts | ** ** ** | | | | | | |
| 4. Consultation and evaluation Team | * * * | | | | | | |
| <u>CAMBODIAN CONTRIBUTION</u> | ***** | | | | | | |
| 1. Provision of facilities | ***** | | | | | | |
| - Office room for the Project | ** ** ** ** | | | | | | |
| - Conference room for Seminars, etc. | ** ** ** ** | | | | | | |
| 2. Staffing | ***** | | | | | | |
| - Legal experts for coordination | ***** | | | | | | |
| - Counterparts of JICA experts | ***** | | | | | | |
| - Assignment of assistants and other supporting staff | ***** | | | | | | |
| - Seminar and Workshop participants | * | * | * | * | * | * | * |
| - Consultation and evaluation Team | * * * | | | | | | |

- Note 1 / Short-term experts will be dispatched additionally as necessary for implementation of the Project.
- 2 / Counterpart personnel will be invited to technical training programs in Japan when necessary arrangements have been made.
- 3 / The Japanese Fiscal Year is from April to March each year.
- 4 / This schedule is subject to change in accordance with the progress of the Project after mutual consultation.

A. M.