

# Japanese Approach toward Legal Development Assistance (Law and Development)

*Akio Morishima*

Japanese strategy of the official development assistance in the legal sector is fundamentally different from that of the law and development movement of the United States in the 1960s. The goal of the legal assistance project is to provide the countries in the process of transition from socialistic economy to market economy with necessary information and resource training to establish legal institutions appropriate enough to participate in the global market. Its methodology is as follows: to organize Japanese expert groups to draft laws or to advise drafting laws, to dispatch those experts to the partner country and to hold discussion meetings with lawyers of the partner country, and to conduct field studies if necessary. JICA (Japan International Cooperation Agency) sends long term experts to the partner country to coordinate project works. The Japanese experts do not make any final decision on the draft law but always seek for consensus with partner experts. For the purpose of capacity building, judges and government officials are invited to Japan to participate in a four-week seminar.

The philosophy of Japanese Legal Assistance is the partnership or equality between the two parties. Of course, the country of transition does not have the appropriate market legal institutions. The society itself is currently far behind the developed countries. However, the law of the country has to function in the society. Even when a country has an ideal legal system, it is not the law of the country if the system does not work in its society. Japan received European legal system in the 19<sup>th</sup> century and took long time to adjust to our own culture and society. That is the reason why we request our partners to take initiatives in making final decisions. Needless to say the countries of transition inevitably have to shift to market economy. In this sense we have to show our partners what are the merits and demerits of a legal institution and other alternatives of the market law. However, we refrain from imposing our preference on our partners.

Last few years the World Bank has been interested in the coordination of legal assistance projects of international organizations and governments under the name of Rule of Law. The idea could be to improve the governance and democracy of developing countries under judicial control. As an idea it is not bad, but each country has its own tradition of judiciary and the check and balance between the administration and judiciary varies from one country to another. If the assisting country imposing its own idea of judiciary, the transplanted system will not work in the society of assisted country.

Having described the experience of Japanese legal assistance, I would like to make my personal comment on the Law and Development in the United States. I learned it when I stayed at Yale Law School in 1971. When former colonies in Africa achieved independence in the 1960s, they needed assistance to establish their own new governments. I suspected that, taking that opportunity, the US tried to extend its political influence to Africa by exporting US

legal system to the countries of former European colonies and to strengthen the political power against the Soviet Union. However, since the legal institution is a part of the superstructure of the society, a mere transplantation of legal system may not root into the society. Despite the legal institutions the dictatorship has prevailed and the administration has lacked governance in many countries in Africa.

So far Japanese legal assistance project has covered only private laws (transaction laws) and extended to the countries in the process of transition from socialist economy. But some countries such as Indonesia are interested to receive assistance and the assistance to some public law areas such as the jail administration law is requested. We have to reexamine our assistance policy from the broader perspectives and formulate the long term strategy for the legal development assistance.