

【Special Features】

Japanese Legal Technical Assistance: An Overview and the Case Study of Vietnam

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Abstract

For more than a quarter of a century, the Japanese government has been providing “legal technical assistance,” a form of Official Development Assistance (ODA), to help mainly Asian countries develop their judicial and legal systems. This article presents the basic institutional framework of Japanese legal assistance, its formulation process, an overview of current projects, and refers to the underlying principles of such assistance stated in official documents such as the Development Cooperation Charter. It also presents a case study of Vietnam, which has the longest history of receiving legal assistance from Japan.

In Vietnam, four legal assistance projects have been implemented so far, resulting in numerous achievements in drafting and revising basic laws and improving the legal system. The current project, which started in 2021 and is expected to end in 2025, sets an unprecedented goal of equipping Vietnam with the capacity to compete globally, and aims to update its legal and judicial system to meet international standards. At the same time, the current project exemplifies the recent trend in Japan’s legal assistance and hints at its prospects.

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I. Introduction

This article presents an overview of the legal assistance provided by the Japanese government, including its brief history, implementation scheme, and underlying principles, and then presents a brief case study of legal assistance in Vietnam.¹

Japan's legal assistance dates back to 1994 when the Ministry of Justice (hereinafter referred to as the "MOJ") invited officials from Vietnam's Ministry of Justice for a study trip to Japan in the first attempt of such assistance, and continues to date, expanding the number of recipient countries as well as the areas of support (from drafting and revising basic laws to strengthening the overall capacity of a judicial system).

Vietnam has remained a recipient country ever since the beginning of Japan's legal assistance, and over the course of time, the current project shows uniqueness that the previous projects in the country and projects in other countries have not achieved. The content of the current project in Vietnam may indicate the prospects for Japanese legal assistance.

II. Overview of Japan's Legal Assistance

1. Implementing Institutions and Schemes of Assistance

Legal assistance conducted by the Japanese government is officially called "legal technical assistance" ("*hou-seido-seibi-shien*") and is an area of ODA (Official Development Assistance) which provides legislative assistance or support for improving legal institutions in developing countries.

Japan's legal assistance is mainly implemented by the Japan International Cooperation Agency (hereinafter referred to as the "JICA"), an incorporated administrative agency dealing with ODA², and the International Cooperation Department (hereinafter referred to as the "ICD"), a department of the Research and Training Institute of MOJ and the only governmental body specializing in such

¹ The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of any agency of the Japanese government.

This article intends to provide basic information for non-Japanese readers on the current situation of Japanese legal assistance, centering on the assistance involving ICD the author belongs to. Therefore, the references here are in principle limited to materials and literature available in English.

² Established as an Incorporated Administrative Agency under the Act of the Incorporated Administrative Agency - Japan International Cooperation Agency (Act No. 136, 2002) and in principle under the jurisdiction of the Minister of Foreign Affairs (Article 43 of Act No. 136, 2002).

assistance, in cooperation with public sector actors (the Ministry of Foreign Affairs (hereinafter referred to as the “MOFA”), the Supreme Court, the Japan Patent Office, etc.) as well as private sector actors (the Japan Federation of Bar Associations, the International Civil and Commercial Law Centre (ICCLC)³, universities, academics, practitioners, etc.).

JICA handles most of Japan’s legal assistance⁴ as it specializes in the planning and implementation of Japan’s ODA.⁵ JICA and ICD cooperate in the field of legal assistance within the framework of activities led by JICA such as projects and training courses with ICD providing the human resources of legal practitioners, especially judges and prosecutors. These legal practitioners are sometimes sent to a recipient country as long-term or short-term experts in JICA-led projects, mostly to provide legal expertise to local legal practitioners. Although JICA plans and carries out most of the activities related to legal assistance, some are planned and carried out independently by ICD, such as a joint study with a recipient country and a study trip to Japan, as explained later in this article.

As for the assistance involving ICD, there are three pillars of assistance⁶:

1. Drafting and revising basic laws and regulations
2. Creating systems needed for the implementation of laws⁷
3. Capacity building of legal professionals

according to which ICD currently provides support for 11 countries, as shown in Figure 1.

Legal assistance, typically embodied in the form of a project implemented by JICA, is commenced and conducted based on requests from a recipient country. In the process of formulating legal assistance, first, a request for assistance is made by a country in response to which the Japanese side examines the necessity and feasibility of the request through discussion between the relevant institutions such as MOFA, MOJ, embassies, JICA, external experts, etc. The Japanese side also conducts a detailed survey for plan-making, which usually entails several visits to the recipient country to observe the current situation in the area where assistance is requested, and to assess its actual needs through on-site research and interviews with the relevant local authorities. Upon

³ ICCLC is a foundation established in April 1996 with cooperation from the business world, academia, and the legal community to assist the development of legal systems in the field of civil and commercial law. For further information on ICCLC, see (<https://www.icclc.or.jp/english/>) (accessed January 11, 2023).

⁴ For the overview of legal assistance by JICA, see for example (https://www.jica.go.jp/english/publications/brochures/c8h0vm0000avs7w2-att/rule_of_law.pdf) (accessed January 11, 2023).

⁵ The Act of the Incorporated Administrative Agency - Japan International Cooperation Agency (Act No. 136, 2002).

⁶ https://www.moj.go.jp/EN/housouken/houso_Ita_Ita.html (accessed January 11, 2023)

⁷ For example, ensuring consistency in laws and regulations, strengthening courts’ capability in handling cases, creating manuals for practitioners, etc.

completion of such a survey, a JICA project is formulated and eventually implemented, typically with ICD providing the human resources of experts to be stationed in a recipient country.

Currently, ICD supports JICA projects on judicial and legal reform by sending long-term experts⁸ to four countries: Vietnam, Cambodia, Laos, and Indonesia (note that the project in Myanmar is currently suspended due to political instability). Figure 2 provides an overview of the projects led by long-term experts as well as their numbers and affiliations.

Meanwhile, in addition to the JICA-led projects, ICD is providing various other forms of assistance. Figure 3 is an overview of such assistance, including, just to name just a few examples, a joint study in Timor-Leste on land ownership and registration, and seminars in Nepal on the newly enacted Civil Code involving local judges.⁹ Regarding such assistance conducted uniquely by ICD, a specific request for assistance from a recipient country is required, after which the necessity and feasibility of such a request is examined by ICD and relevant institutions, such as the Research and Training Institute and MOJ.

2. Basic Characteristics of Japan's Legal Assistance from the Viewpoint of ICD

ICD, as a specialized institution for legal assistance, often lists the following as four main characteristics of Japan's legal assistance.

The first is “stand-by style” cooperation (“*yorisoi-gata-shien*”), which means that assistance, as mentioned earlier, is commenced and conducted based on requests from a recipient country. During the implementation of assistance, the initiative is attributed to the recipient country, and solutions are sought through dialogue with counterpart institutions and Japanese experts. Since the early stage of its history of legal assistance, Japan has consistently provided assistance while respecting the ownership of recipient countries.

Second, Japanese experts and relevant organizations value system building and human resource development, both of which take a long time to bear fruit; and long-term capacity building is valued more than short-term results. It is worth noting that a number of legal assistance efforts to various countries have dealt with human resource development in one way or another, such as the training of

⁸ “long-term” means the term of dispatch lasts for at least a year (https://partner.jica.go.jp/resource/1669861352000/jicasJobView/jicas_job/pdf/specialist_treatment.pdf) (accessed January 12, 2023). Long-term experts consist of experienced judges, prosecutors, attorneys-at-law (dispatched from the Japan Federation of Bar Associations), and administrative officials (dispatched from each institution).

⁹ For the details of the past activities by ICD, see “Chronology of Legal Technical Assistance” available on (<https://www.moj.go.jp/content/001369284.pdf>) (accessed January 11, 2023).

professionals.¹⁰

The third characteristic is that, in order to achieve long-term objectives, the Japanese government sends legal practitioners to a recipient country as long-term or short-term experts so that the counterpart institutions in that country can seek advice or opinions on hand. Moreover, resources are available in Japan to provide ongoing support for local activities. For recipient countries such as Vietnam and Cambodia, there is an “advisory group” composed mainly of academics and practitioners with a profound knowledge of the characteristics of the legal and judicial system of the said country and its history of receiving legal assistance from Japan. The members of an advisory group closely monitor the progress of a project and provide timely advice to experts stationed in the recipient country.

The last characteristic is the sharing of Japan’s experience and knowledge. During the Meiji era, Japan stepped into modernization by importing legal systems from the West and adapting them to domestic needs and culture, eventually creating its own legal and judicial system.¹¹ When recipient countries draft basic laws, such as civil codes, they would experience similar circumstances that arise from receiving a set of legal norms foreign to their tradition. Therefore, it would be fair to say that Japan is in a position to advise recipient countries based on its own experience in adapting to foreign laws.

3. Basic Official Documents on Legal Assistance

Let us now turn to three official documents on legal assistance, which present the underlying principles of legal assistance conducted by the Japanese government.¹²

The first document is the Development Cooperation Charter (formerly known as “ODA Charter”), cabinet decision last revised in 2015, which provides basis for the overall ODA of Japan. It lays down three priority issues for ODA:

- A. “Quality growth” and poverty eradication through such growth
- B. Sharing universal values (freedom, democracy, respect for basic human rights, and the rule of law) and realizing a peaceful and secure society.

¹⁰ Ibid.

¹¹ For Japan’s experience in adopting foreign laws and creating its own, see for example Uchida, Takashi, “Legal Technical Assistance and Juridical Science” (in Japanese) ICD NEWS No.93, December 2022, pp88-100.

¹² For the explanation of the other important documents referring to legal assistance, see for example Ito, Hiroyuki, “Current Trend of Japan’s Basic Policies for Legal Technical Assistance,” ICD NEWS (English) February 2017, pp108-114 available on (<https://www.moj.go.jp/content/001321503.pdf>) (accessed January 11, 2023).

C. Building a sustainable and resilient international community through efforts to address global challenges¹³

The Charter alludes to legal assistance in the context of the establishment of universal values such as the rule of law and good governance in recipient countries, stating that “(the establishment of the rule of law, the realization of good governance, the promotion and consolidation of democratization, and respect for basic human rights, including women’s rights) hold the key to realizing an equitable and inclusive society including reducing disparities. Japan will thus provide the necessary assistance in such areas as: development of legal and judicial systems that involves the development of positive law and the training of legal and judicial experts including experts in the correction and rehabilitation of offenders.”¹⁴ The Charter does not make any further statements on legal assistance.

The second document is “Basic Policies on Legal Technical Assistance,”¹⁵ last revised in 2013, formulated upon consultation among various ministries such as MOFA, MOJ, the Cabinet Office, the Ministry of Finance, etc. Unlike the Development Cooperation Charter, this document centers on legal assistance and defines its basic characteristics as follows: “Legal technical assistance, which provides legislative assistance or support for improving legal institutions in developing countries around the world, contributes to their self-help efforts toward good governance and building of integral foundations to attain sustainable growth. Japan has continuously emphasized the importance of the “rule of law” and appealed for the need to see it strengthened. Therefore, legal technical assistance is an effective tool for Japan to maintain its honorable position in the international community, and needs to be developed in a strategic manner.”¹⁶

Upon such cognizance, the document sets five objectives of legal technical assistance:

1. Establishing the rule of law in developing countries through sharing universal values, including freedom, democracy, basic human rights, etc.
2. Improving the environment for sustainable growth and assuring compliance of global rules
3. Sharing Japan’s experience and systems, strengthening economic ties with Japan, and establishing a platform for regional cooperation and integration
4. Improving the trade and investment environment, which is beneficial for Japanese enterprises in expanding their businesses overseas, and assisting in the introduction of environmental

¹³ https://www.mofa.go.jp/policy/oda/page_000138.html (accessed January 11, 2023)

¹⁴ *Ibid.*

¹⁵ <https://www.moj.go.jp/content/000115321.pdf> (accessed January 11, 2023)

¹⁶ *Ibid.*

and safety regulations.

5. Enhancing the effectiveness of Japanese economic cooperation and contributing to developing countries in achieving international development goals through the enhancement of governance.¹⁷

From these five perspectives, Japan is expected to proactively support recipient countries in the development of their legal systems as well as in the implementation of basic laws, economic laws, and related areas.

The “Basic Policies on Legal Technical Assistance” names eight countries, namely Indonesia, Vietnam, Myanmar, Mongolia, Cambodia, Laos, Uzbekistan, and Bangladesh, as “target countries for priority assistance.” It also states that from the perspective of facilitating democratization, stabilizing the rule of law, supporting peace building, improving the investment environment, facilitating public–private partnerships, etc., Japan aims to meet future demand for assistance from other Asian countries, such as Nepal and Timor-Leste, and African countries according to the needs and demands of these countries.

The third document is the country assistance policy¹⁸, which is formulated by MOFA and lays down country-specific aid policies for various areas of assistance, not limited to legal assistance. A unique country assistance policy exists for each recipient country along with a rolling plan, and includes the details and purposes of ongoing projects in that country. While the above “Basic Policies” enlists the priority issues of assistance for the above eight “target countries,” the “country assistance policy” provides updated information and the vision for assistance in these and other countries.

III. Case Study of Vietnam

1. Achievements of the Past Projects

As mentioned above, Vietnam has the longest history of receiving legal assistance from Japan. Legal assistance in the form of a project in Vietnam began in 1996 and continues today, involving various counterpart institutions.¹⁹ Figure 4 outlines the past projects, including the duration of each

¹⁷ Objectives 4 and 5 were newly added in the 2013 revised version.

¹⁸ <https://www.mofa.go.jp/policy/oda/assistance/country2.html> (accessed January 11, 2023)

¹⁹ For a brief history of legal assistance of Japan to Vietnam, see for example ICD website (https://www.moj.go.jp/EN/housouken/houso_houkoku_vietnam.html) (accessed January 11, 2023).

project, the themes, and the counterpart institutions.

Figure 5 illustrates some of the major achievements of the past projects. It is noteworthy that the drafting and revision of basic laws such as the Civil Code, the Code of Civil Procedure, and the Code of Criminal Procedure have been accomplished in the course of the past projects.²⁰ Other achievements, such as the drafting of manuals for practitioners, are also noteworthy.

The country assistance policy of Vietnam, prioritizing the strengthening of good governance, states: “In order to strengthen governance required in the Vietnamese society in general, provide assistance such as human resource developments to streamline and improve efficiency of administrative agencies. It also provides assistance for efforts to improve the capacity of governance, such as strengthening capacities of the judiciary, legislation, and law enforcement.”²¹ It is evident that the past projects mentioned above, which focus on laying the foundation for the rule of law by establishing basic laws and contributing to human resource development, are aligned with the country assistance policy that focuses on building good governance in Vietnam.

2. Current Project in Vietnam

The appellation of the current project, which started in January 2021 and is expected to end in December 2025, is “Enhancing the quality and efficiency of developing and implementing laws in Vietnam.” This project involves six counterpart institutions on the Vietnamese side: the Ministry of Justice (MOJ), the Office of Government (OOG), the Central Internal Affairs Committee (CIAC), the Supreme People’s Court (SPC), the Supreme People’s Procuracy (SPP), and the Vietnam Bar Federation (VBF).

While the current project follows its predecessors in focusing on the strengthening of good governance, one of its distinct characteristics is that it introduces a new method whereby each counterpart institution selects its own top priority issues and conducts research and discussion on them in a working group format.²² Under this new method, problems that may hinder the

²⁰ For the outline of the past projects, see for example ICD website (<https://www.moj.go.jp/content/001369284.pdf>).

For details of the project conducted from 2015 to 2020, see (<https://www.jica.go.jp/project/english/vietnam/032/index.html>) (accessed January 11, 2023), and for the current project, see Yokomaku, Kosuke, “Outline and Current Status of the ‘Enhancing the quality and efficiency of developing and implementing laws in Vietnam’ in Vietnam” scheduled to appear in ICD NEWS (English) March, 2023 (for its Japanese version, see ICD NEWS No.91, June 2022, pp11-19).

²¹ Translated from the Japanese text of the latest version of assistance policy revised in 2017 available on (<https://www.mofa.go.jp/mofaj/gaiko/oda/files/000072247.pdf>). English version for the 2012 version is available on (<https://www.vn.emb-japan.go.jp/document/pdf/vietnam-1%EF%BC%88En%EF%BC%89.pdf>). (both websites accessed January 11, 2023).

²² See for example Yokomaku (2022).

enhancement of the quality and efficiency of the development and implementation of laws are identified and solutions to them are implemented solely by the counterpart institutions, which could be described as an advanced form of the conventional “stand-by style.”

Figure 6 lists the issues for each counterpart; some institutions have set two objectives, whereas others have set one. Currently, a working group has been formed for each theme and is in the process of discussing solutions for each issue.

When we look at the trajectory of past and present projects, we can see a transition in project purposes. The early projects dealt with drafting and revising basic laws, such as the Civil Code and Code of Civil Procedure, to support Vietnam’s transition to a market economy. Then, the projects began to focus on improving the existing legal and judicial system, for example by creating manuals for practitioners to improve their skills and advising judges on how to write better judgments.

The current project sets even higher aims of strengthening Vietnam’s global competitiveness by improving the quality of legal normative documents and their effective enforcement. The content of the current project follows those of the previous projects in some aspects; however, unlike its predecessors, the current project purports to bring the Vietnamese legal and judicial system up to international standards. This project is intended to reflect the resolution of the 13th National Party Congress in 2021, which sets various national objectives, including the development of laws and the improvement of the country’s position in the international community.

IV. Conclusion

To date, Japan has provided legal assistance based on existing priority themes, such as establishing the rule of law, enhancing good governance, and building an investment environment for Japanese companies,²³ but the form and content of the assistance are changing over time. Conventional objectives of legal assistance have focused on the drafting and revision of basic laws, the establishment of systems necessary to implement laws, and the development of human resources. However, recent trends show that recipient countries are requesting assistance in areas beyond basic laws, with a focus on specialized, advanced laws such as intellectual property laws and competition laws, to name a few. Moreover, as we have seen in the case of Vietnam, recipient countries are

²³ MOFA recently announced its plans to revise the Development Cooperation Charter by the first half of 2023. (https://www.mofa.go.jp/press/release/press1e_000323.html) (accessed May 1, 2023)

increasingly aware of the need to improve their judicial systems to meet international standards. For donors such as Japan, formulating and implementing assistance in line with international standards—such as the SDGs and the UN Guiding Principles on Business and Human Rights, for example—is all the more important from the perspective of not only responding to the needs of recipient countries, but also achieving results with international recognition.

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Figure 1

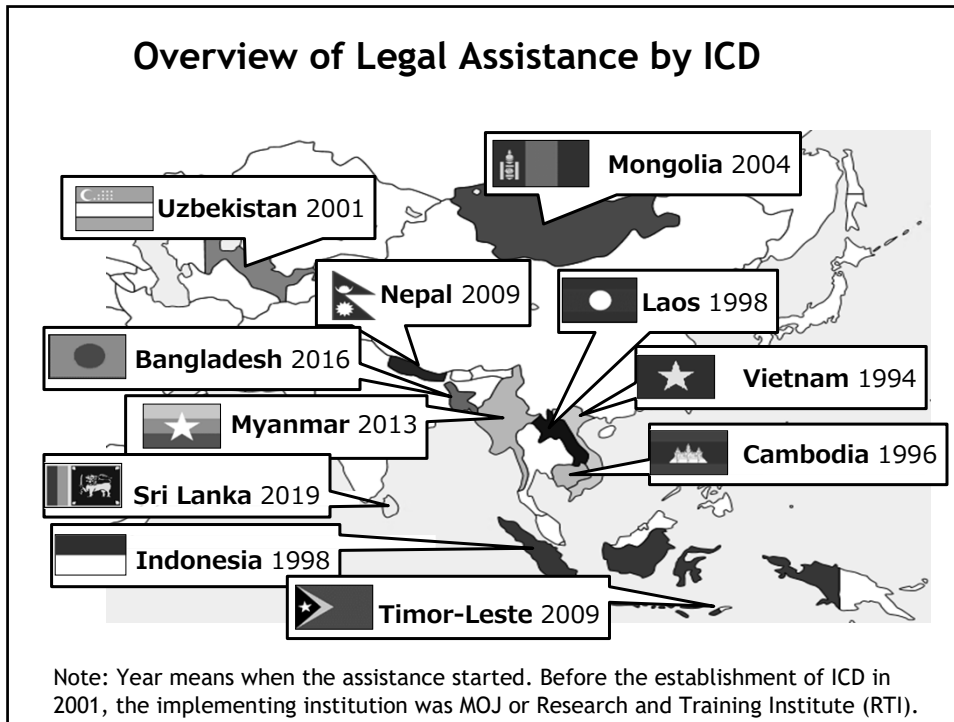


Figure 2

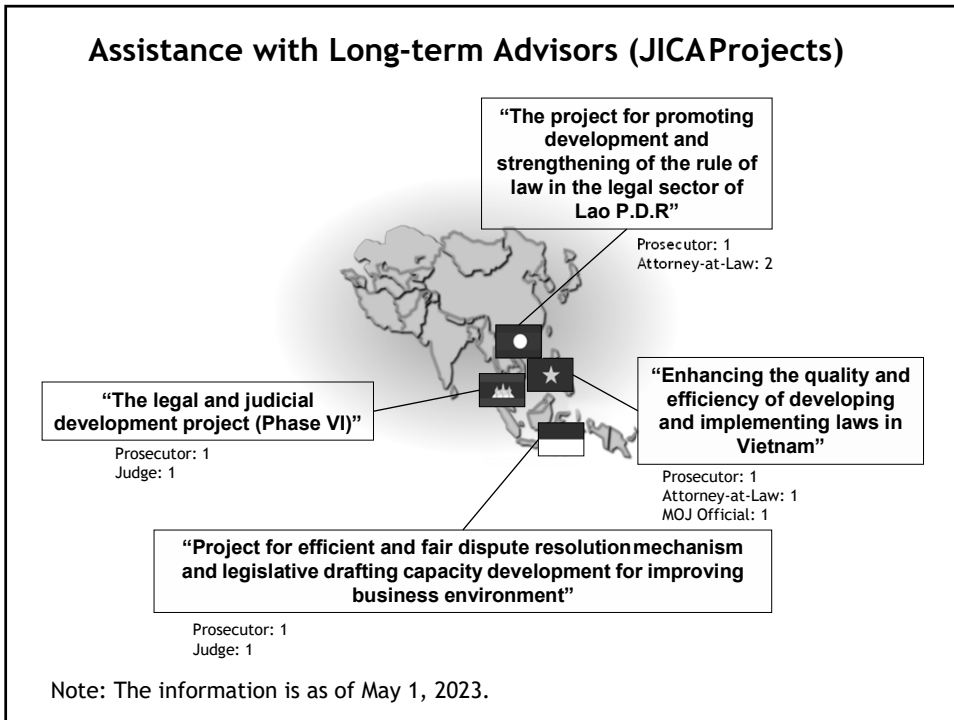


Figure 3

Overview of Other Assistance by ICD







-  **Timor-Leste:** Joint study and field surveys on land ownership and registration
-  **Nepal:** Seminar on newly enacted Civil Code, Criminal Procedure Code etc.
-  **Uzbekistan:** Joint study on newly enacted Administrative Laws/ White Paper on Crime etc.
MOC between MOJ of Japan and MOJ of Uzbekistan
MOC between RTI (Research and Training Institute, MOJ of Japan) and the Academy of the General Prosecutor's Office of Uzbekistan
-  **Mongolia:** Joint study on Commercial Law
MOC between RTI and National Legal Institute of Mongolia
-  **Laos :** MOC between RTI and National Institute of Justice of Laos
-  **Cambodia :** MOC between RTI and Royal Academy for Judicial Professions

Figure 4

History of Legal Assistance Projects in Vietnam

	Period	Project Title	Counterpart(s)
1	Dec.1996~Nov.1999	Cooperation in the Legal and Judicial Field	MOJ
2	Dec.1999~Nov.2002	Cooperation in the Legal and Judicial Field (Phase 2)	MOJ, SPC, SPP
3	Jul.2003~Mar.2007	Cooperation in the Legal and Judicial Field (Phase 3)	MOJ, SPC, SPP, VNU
4	Apr.2007~Mar.2011	Technical Assistance for the Legal and Judicial System Reform	MOJ, SPC, SPP, VBF
5	Apr.2011~Mar.2015	Technical Assistance for the Legal and Judicial System Reform (Phase 2)	MOJ, SPC, SPP, VBF
6	Apr.2015~Dec.2020	The Project for Harmonized, Practical Legislation and Uniform Application of Law Targeting Year 2020	MOJ, OOG, SPC, SPP, VBF
7	Jan.2021~Dec.2025	Enhancing the Quality and Efficiency of Developing and Implementing Laws in Vietnam	MOJ, CIAC, OOG, SPC, SPP, VBF

MOJ: Ministry of Justice, SPC: Supreme People's Court, SPP: Supreme People's Procuracy, VNU: Vietnam National University, VBF: Vietnam Bar Federation, OOG: Office of Government, CIAC: Central Internal Affairs Committee
From Kono (2022)

Figure 5

Major Achievements of the Past Projects	
【Drafting and Revising of Laws】	
➤	Code of Civil Procedure (enacted in 2004, revised in 2011, 2015)
➤	Bankruptcy Law (enacted in 2004, revised in 2014)
➤	Civil Code (enacted in 2005, revised in 2015)
➤	Civil Judgement Implementation Law (enacted in 2008, revised in 2014)
➤	State Compensation Law (enacted in 2009, revised in 2017)
➤	Administrative Litigation Act (revised in 2015)
➤	Code of Criminal Procedure (revised in 2003, 2015)
【Others】	
➤	Drafting of manuals for prosecutors
➤	Assistance for standardization of civil judgements and development of case law
➤	Assistance for improving capacity of judicial institutions (Courts, Procuracies, etc.)
➤	Assistance for examination of laws and regulations

Figure 6

Priority Issues for Each Counterpart	
MOJ	1. Enhancement of quality and skill in legal system, ensuring uniformity, consistency and feasibility 2. Enhancement of efficiency and skill of laws implementation under the state management
CIAC	Making and perfecting laws on the prevention of corruption and negativity
OOG	Enhancement of quality and skill in verification of the draft of legal normative documents
SPC	1. Development of case laws 2. Enhancement of effectiveness and efficiency of the Law on Mediation and Dialogue at Court
SPP	1. Research on People’s Procuracy (PP) in the Socialist Rule of Law State of Vietnam of 2021-2030, with a vision to 2045 2. Improving capacity of PP staff and prosecutors
VBF	1. Strengthening media agency communication 2. Developing profession with digital transformation

