Overview of Japanese Legal & Judicial System
—Implications for Rule of Law Promotion—

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Topics

• Legal System
  Meiji Era
  After World War II
  Background of Legal System

• Judicial System
  Court
  Ministry of Justice & Public Prosecutors Office
  Bar Association

• Criminal Justice System
  Criminal Procedure

• System to Nurture the Legal Profession

• Access to Justice

• JICA’s Legal Cooperation
Japanese Legal System
Meiji Restoration and Constitution of the Empire of Japan

- Meiji Restoration
  Anti-shogunate Activist’s Revolution
  Struggle for Creation of Modernized Legal and Judicial System to Revise Unequal Treaties

- Constitution of the Empire of Japan (1889)
  Absolutism of the Emperor
  Limitation of Human Rights
  No Civilian Control
  Insufficient Independence of Judiciary
  “Enrich the Country & Strength the Military”
Basic Laws in Meiji Era

- Constitution of the Empire of Japan (1889) ⇐ German Constitution

- Civil Code (1898)
  ⇐ French law, German law and other laws
  Over 10 years arguments on a draft based on French law
  [Civil Code Arguments]
  Japanese lawyers made a new draft Civil Code after hard study on foreign laws and legal theories.

- Criminal Code (1882, Revised in 1907)
  ⇐ French law (1882) and German law (1907)
Defeat in WWII & New Constitution

- Constitution of Japan (1947)
  - Sovereignty of the People
  - Respect for Fundamental Human Rights
  - Pacifism
  - Provisions of Governmental Structure

- Revision of Laws Associated with Enactment of the New Constitution
  - Civil Code (incl. Family Law)
  - Criminal Code
  - Criminal Procedure Code
  - Administration Laws, etc.
Characteristics of Legal System (1/2)

• Legal Systems
  Continental Law System
  Anglo-American Law System

• The comprehensive legal reforms were conducted in the post-Meiji Restoration period to modernize the state and society. The modernization of legal system was influenced by Continental Law system.
  [Basic concepts of Continental Law ]

• After WWII the other legal reform was conducted under the indirect rule of the Allies with the aim of democratization and peace building.
  [Influence of the Anglo-American Law]
‘Hybrid’ Legal System

Japanese Legal System is a mixture of kinds of legal system of the world. Well-balanced of Continental Law System and Anglo-American Law System

‘Customizing Process

Japan has experience in customizing foreign legal systems to accommodate the cultural and social elements of the existing Japanese systems in their diverse forms. Japan has developed its own unique legal system and practice.
Current Situations

Ongoing Efforts

Legal system and individual laws are required to be amended, streamlined, abolished and newly created according to social and economical changes.

Legal reforms are permanent and continuous efforts.
Background of the Criminal Procedure Code

- Criminal Procedure Code (1890)
  The CPC was drafted based on French CPC.

- Amendment of CPC (1922)
  The CPC was amended based on German CPC.

- Amendment of CPC (1948)
  After WWII the CPC was amended based on American CPC.
  The basic concept was changed from inquisitorial system to adversarial system.

c.f.
The Criminal Code was not drastically changed after WWII, and it still keep the basic concept of the German law.
Provisions concerning Criminal Justice in Constitution

- Due Process (Art. 31)
- Right of Access to Court (Art. 32)
- Warrant System (Art. 33, 35)
- Right to Retain Defense Council (Art. 34)
- Prohibition of Torture (Art. 36)
- Speedy, Public-opened and Impartial Trial (Art. 37)
- Right to Remain Silent (Art. 38)
- Prohibition of Double Jeopardy (Art. 39)

These fundamental human rights ensuring criminal justice are provided in the Constitution.
Japanese Judicial System
Governing Structure

Diet (Legislative Branch)
- Convocation of extraordinary sessions
- Dissolution

Cabinet (Executive Branch)
- Designation of PM
- Investigation
- Non-Confidence Resolution

People
- Election
- Opinion
- Review by the Voters
- Determination of the constitutionality (legality) of any rules and actions
- Determination of the constitutionality of any law
- Impeachment Proceedings
- Designation of the Chief Justice
- Appointment of Justices and Judges

Court (Judicial Branch)
Diet (Legislative Branch)

• Bicameral Assembly
  House of Representatives (480 members)
  House of Councilors (242 members)

• Powers
  The Sole Law-making Organ
  Approval of Budget
  Ratification of Treaties
  Designation of Prime Minister
  Non-confidence Resolution
  Impeachment Proceedings
Cabinet (Administrative Branch)

- Parliamentary Cabinet System
  The Cabinet is collectively responsible to the Diet.

- The Prime Minister

- Ministers (up to 17 members)

- Ministries
  Cabinet Secretary; Ministry of Internal Affairs; Ministry of Justice; Ministry of Foreign Affairs; Ministry of Finance; Ministry of Education, Culture, Sports, Science and Technology; Ministry of Health, Labor and Welfare; Ministry of Agriculture, Forestry and Fisheries; Ministry of Economy, Trade and Industry; Ministry of Land, Infrastructure, Transport and Tourism; Ministry of Environment; Ministry of Defense; National Commission on Public Safety (National Police Agency)
Court (1/5)

- **Independence of Judiciary**
  The judicial power is vested in Courts. (Art. 76)
  Court Rule Making Power (Art. 77)
  Appointment of Judges in Lower Courts (Art. 80)

- **Independence of Judges**
  All judges shall be independent. (Art. 76)
  Restriction of Disciplinary Action (Art. 78)
  Guarantee of Status (Art. 80)
• Judicial Proceedings
  Civil Proceedings; Civil Executions; Insolvency Proceedings; Criminal Proceedings; Juvenile Proceedings; Domestic Case Relations Proceedings; Administrative Proceedings

• Courts
  The Supreme Court (1)
  High Courts (8 + 6 branches)
  District Courts (50 + 203 branches)
  Family Courts (50 + 203 branches + 77 Sub-branches)
  Summary Courts (438)

• Three-tiered Judicial System
• Judges (JFY 2009)
  Supreme Court Justices (15)
  Chief Judges of High Courts (8)
  Judges (1,717)
  Assistant Judges (1,020)
  Summary Court Judges (806)

• Court Clarks/Staffs
  Court Clark (app. 9,000)
  Court Staff (app. 9,300)
  Family Court Probation Officer (app. 1,500)
  Execution Officer (app. 600)

• Mediators
  Civil Case Mediator (app. 14,000)
  Domestic Case Mediator (app. 12,000)
“Saiban-in” System (Lay Judge System)

- 3 professional judges and 6 Saiban-in (Lay Judges) will deliberate together on guilt and sentence.
- Serious cases in which (i) an intentional act caused a victim’s death; or (ii) statutory penalty of the offence includes the death penalty or life imprisonment.
- Decision by Majority
  To find defendant guilty, the votes of at least one (1) judge AND one (1) Saiban-in are required.
The Supreme Court
Tokyo District Court / Tokyo High Court
Local District Court
Ministry of Justice & Public Prosecutors Office

• Organization of MOJ (Internal Subdivisions)
  Minister’s Secretariat
  Civil Affairs Bureau
  Criminal Affairs Bureau
  Correction Bureau
  Rehabilitation Bureau
  Human Rights Bureau
  Immigration Bureau

• Public Prosecutors’ Office
  Special Organization under MOJ
  Supreme Public Prosecutors Office (1)
  High Public Prosecutors Office (8+6 branches)
  District Public Prosecutors Office (50+203 branches)
  Local Public Prosecutors Office (438)
Ministry of Justice & Public Prosecutors Office

- **Staff Size (JFY 2009)**
  - Public Prosecutor (1,724)
  - Assistant Prosecutor (899)
  - Officials (8,922)

- **Prosecution**
  - Discretionary prosecution - Public Prosecutor has a right to exercise discretion in deciding whether to seek an indictment.
  - In principle, Prosecutor monopolizes prosecutorial power.

- **Investigation**

- **Good Relationship b/w Prosecutors Office and Police**

← Committees for the Inquest of Prosecution
MOJ

MOJ Website

Japan International Cooperation Agency
Japan Federation of Bar Associations

- Japan Federation of Bar Associations
  Local Bar Associations (52); Member Attorneys; Legal Profession Corporations; and others
- Bar Association in Japan
  Attorney Act (1893) – Under the Control of MOJ
  Revised Attorney Act (1949) – Self-regulated Organization
- Member Attorneys
  32,074 members (as of July 1, 2012)
  c.f. 17,126 (2000); 21,185 (2005)
- Qualification
  Bar Examination and Bar Association Membership
- Self Governance
- Training Programs
Local Bar Association

Fukuoka Bar Website
Criminal Procedure

See Materials.
Characteristics of Criminal Justice System (1/2)

- Adversary System
  Judge is an umpire, and Prosecutor and Defense [Defense Council] are players.
  Prosecutor has responsibility to persuade fact-finder, and Defense wins, if it successfully raises reasonable doubt.

- Indictment
  In principle, Prosecutor monopolizes prosecutorial power.
  No private prosecution, No grand jury

- Defense Council
  Suspect/Accused may retain Defense Council at its own cost.
  For the indigent, Court appoints Defense Council from private lawyers, and fees are compensated from state budget.
Characteristics of Criminal Justice System (2/2)

• Preparation for Trial
  Pre-trial Conference Proceeding
  To clarify issues and plan trial proceedings in advance
  Disclosure of evidence, in order for a defendant to prepare
  his/her defense
  Prosecutor and Defense Council have burdens of preparing.

• Efforts for Speedy Trial
  3 months in average
  93% of cases is disposed within 6 months after indictments.
System to Nurture the Legal Profession

- Faculty of Law
  - Law School (2 or 3 years)
  - Bar Exam
    - Field Training of each judicial function (Courts, Prosecutors’ Offices, Law Firms) (8 months)
    - Field Training based on legal trainers’ choices (2 months)
    - Collective Training (2 months)
  - End-of-Course Exam

- Other Faculties
  - Qualification Exam

- Other Faculties
  - Faculty of Law
  - Other Faculties
  - Qualification Exam

- Assistant Judges
- Prosecutors
- Private Lawyers
Access to Justice

- Japan Legal Support Center (*Hou* Terrace) Information Service (Legal Counseling)
  Civil Legal Aid
  Services for Areas with Insufficient Legal Services
  Crime Victim Support
  Services related to Court-appointed Defense Council

- Bar Associations
  Duty Attorney System
  Bar Funded Law Offices
  Legal Counseling Centers
  Financial Support for Elimination of Areas with Attorney Shortages

- Local Government Bodies
  Free Legal Counseling
JICA’s Cooperation for “Rule of Law” Promotion
JICA’s Cooperation for “Good Governance”

- The goal of JICA’s governance assistance is to enable partner countries to become capable of investing, allocating, and managing their resources efficiently and in ways that reflect the needs and the will of the people for their social stability and economic development.

- JICA does not intend to transfer specific systems or policies to partner countries, but support to improve fundamental national institutions and to enhance mechanisms that provide public goods and services to meet the needs of people.
Japan’s ODA Charter
Legal Assistance is a means realizing Good Governance
The support of developing countries’ self-help efforts in this sector is ‘the most important philosophy of Japan’s ODA.’

‘Rule of Law’ Promotion
‘Rule of Law’ is required to realize Good Governance.

Establishing ‘Strong State’ and Preventing the abuse of power
Well-balanced partnership among government, the private sector and civil society

Legitimate rules and regulations
Neutral system incl. dispute resolution
Assurance of access to rules and systems

Capacity Development
Pillars of Capacity Development for “Rule of Law” Promotion

(a) Supporting the development of rules and regulations

Support of drafting of laws and legislative activities

(b) Supporting the improvement of the capacity of public organizations

Support in the development of organizational capacity and the improvement of the professional practice

(c) Supporting legal empowerment of people and society

Supporting the dissemination of laws, people’s access to legal and judicial systems, and the building of legal-aid institutions

(d) Supporting the development of legal professionals

Education and training involving legal professionals, judicial officials, and legal organization members
Training of personnel involved in (a), (b) and (c)
Development of institutional capacity
JICA’s Cooperation for “Rule of Law” Promotion

• Definition
Support of efforts undertaken by partner countries to improve their legal and judicial systems

• Core Elements
(a) Supporting the development of rules and regulations
(b) Supporting the improvement of the capacity of public organizations
(c) Supporting the legal empowerment of people and society
(d) Supporting the development of legal professionals, including legal and judicial affairs officers
Standpoint for JICA’s Cooperation

(a) Supporting the development of rules and regulations

(b) Supporting the improvement of the capacity of public organizations

(c) Supporting legal empowerment of people and society

Supporting the development of legal professionals

The three core elements complement one another, and establishment of “Rule of Law” would not be possible if any of these elements be missing.

Cross-cutting and Comprehensive Viewpoint

The development of human resources to engage in each of the elements (a), (b) or (c) is indispensable.

Focus on Capacity Development
Characteristics of JICA’s Cooperation for “Rule of Law” Promotion
Japan’s Experience of Legal Development

• The comprehensive legal reforms in the post-Meiji Restoration period (late 19th century) to modernize the state and society.
  → Japan borrowed basic concepts from Continental Law, but customized and adapted those laws to the cultural and social factors present within the existing system.

• The other legal reform under the indirect rule of the Allies after the WWII with the aim of democratization and peace building.
  → Influence of Anglo-American legal tradition

★ “Hybrid Legal System”
★ Experience in customizing and adapting foreign laws to its culture and society.
★ Legal experts with comparative law backgrounds (a significant number of legal professionals with seasoned knowledge of other legal systems in addition to Japanese Law.)
Respecting partner countries’ ownership

• Role of JICA is to support the partner countries’ own efforts. The ownership of the people who have deep understanding of their own culture and existing systems are critical to the effective use of external support.

• Rather than imposing any specific system or idea of Japan or other nation, JICA presents various “options” via dialogue with the counterparts in ways that allow each country to select those options best suited to its individual circumstances.
Support for institutional capacity development based on the experience and knowledge of development of legal system in Japan

Japan has experience in customizing foreign legal systems to accommodate the cultural and social elements of the existing Japanese systems in their diverse forms.

Japanese legal professionals learned the lessons, from Japan’s experience, that the ownership and efforts of the people who have deep understanding of their own culture and existing systems are crucial to the effective use of external support.
Focus on capacity development through joint operations

- JICA emphasizes capacity development of counterpart personnel and institutions so that people of the partner countries will be able to lead future legal development on their own.

- JICA encourages the creation of specific working groups in the partner country so that WGs engage in joint operations with Japanese long-term advisors and the advisory committee members in Japan, as opposed to unilaterally disseminating knowledge.
Characteristics of JICA’s Cooperation (4/5)

A diverse group of experts to deliver assistance

- Long-term advisors stationed in the partner countries
  - Government Attorneys, Lawyers, Scholars etc., with extensive experience in Japanese legal practice
  - Providing advice taking into account the partner country’s legal culture
  - Profound knowledge of the society and culture of the partner countries
  - Frequent consultation/close communication with counterpart personnel

- Domestic Advisory Committee
  - Experienced academics and legal practitioners to back-up the long-term advisors and provide advice to the partner countries.
  - Members of the advisory committees continue their support over an extended duration of time, contributing to building mutual trust and to enhancing mutual understanding to each others’ legal system and society.
Characteristics of JICA’s Cooperation (5/5)

Using Japan’s own experience and knowledge

- Experience of importing and customizing legal system of foreign countries, and coordinating between different systems
- Awareness of importance of Capacity Development from its own experience
- Awareness of difficulties of implementation of unfamiliar legal system
Lessons Learned from Japan’s Experience

- Struggle to import and customize legal system in foreign countries
  Experiences in Meiji Era and after WWII
  Coordination between different systems
- Awareness of importance of Capacity Development from its own experience
- Awareness of difficulties of implementation of unfamiliar legal system

Japan can share its experiences of trial and error with other countries through cooperative works and corporative studies.
Thank you.