

Report of

Study Tour to Japan and Korea
Delegation from the People's Republic of Viet Nam

January 20-29, 2005

Sponsored by
Vietnam Assistance for the Handicapped (VNAH)
under
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Report prepared by

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Legal Consultants to the Project

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Executive Summary

General Scope

This Study Tour was conducted in connection with the "Promoting the Development of NGOs in Vietnam (NGO Law Project)" component of Grant Agreement Number 492-G-00-98-0046-00, awarded to Vietnam Assistance for the Handicapped (VNAH). This project component is designed to assist the Ministry of Home Affairs (MOHA) of Vietnam in drafting, enacting, and implementing a progressive NGO law. As part of the work on the NGO Law Project, members of the staff of MOHA as well as the Commission on Legislative Affairs (CLA) of the National Assembly of Vietnam (a new VNAH partner) requested that VNAH sponsor a Study Tour to Japan and the Republic of Korea. The aim of the Study Tour was to enable persons responsible for writing new legislation (including tax legislation) for the not-for-profit (NFP) sector in Vietnam to learn from the experiences with respect to legal and fiscal rules for the not-for-profit sector in those two Asian countries.

This Report discusses the Study Tour in terms of its relevance for the drafting efforts of the NGO Law Drafting Committee (LDC). It is prepared by VNAH's technical partner, the International Center for Civil Society Law (ICCSL), which organized the Study Tour with Japanese and Korean counterparts. Officers of ICCSL have worked over many years with the Vietnamese officials, who requested them to prepare an in-depth questionnaire (attached to this report) to be made available to the Japanese and Korean counterparts; they also requested the participation of Dr. Irish and Prof. Simon in the Study Tour.

Visit to Japan

There is an interesting legal reform process going on in Japan at the present time; it will affect one segment of the current framework legislation – the *koeki hojin*, which are formed under the Civil Code. This made the visit to Japan particularly timely. The current legal reform process is quite a good one, and the delegation members were able to learn about how such a process takes place in a sophisticated democracy. They met not only with government officials, who explained the current proposals, but also with various segments of the NFPO sector, including those that will be affected by the current reforms.

The delegation also met with organizations that were affected by earlier reforms (which led to the development and passage of the Special Nonprofit Legal Entities (SNL) Act, in 1998). The 1998 legislation was a water-shed for the NFP sector in Japan, and it was useful for the delegation members to learn about both the current and the previous efforts to create a better legal and regulatory environment for the sector. Many of the Japanese NFPO representatives described their lobbying efforts with the government, which have resulted in the government's willingness to make radical changes in the way the sector is regulated.

The fact that NFPOs are able to make their needs known to government and that government responds to their concerns was emphasized over and over again in the course of the conversations. Whether this knowledge will affect the process of adopting an "NGO" Law in Viet Nam remains to be seen, but the processes in Japan provide concrete examples that may be useful for the members of the delegation to reflect upon.

A further focus of the discussions in Japan was on the fiscal benefits for the NFPO sector. The fact that donations are tax deductible for both individual and corporate donors in Japan provides confirmation that an appropriate tax system in Viet Nam will provide for such tax allowances. The delegation members learned that Japanese NFPOs do benefit from receiving tax deductible contributions, and that they include such donations in their annual budgets.

This visit represented an excellent opportunity for three-way exchange among the governments of Viet Nam, Japan, and the United States on a matter of technical legal reform that has particular significance for the growth of democratic governance in Viet Nam. Given the warm reception we received from government officials - particularly our host, Mr. Masato Mizuno, who works in the Cabinet Office Administrative Reform Group - and including the formidable Ministry of Finance, it seems that the possibilities for future cooperation among the three governments on democratic reforms for Viet Nam are quite significant

Visit to Korea

The democratic reforms that have occurred in Korea in the past decade have had a tremendous impact on the development of civil society and the legal framework within which it operates. Presentations at the Seoul National University Center for Asian Development pointed out the clear connection between the democratic reforms and the growth of civil society. This made a good beginning for the short visit with Korean civil society leaders and government officials involved with civil society regulation.

Two particular structural innovations that give the NFP sector in Korea access to and participation in decision-making processes with regard to the policies

and programs that affect it are useful and may be worth emulation in Viet Nam:

- a. in the Prime Minister's Office there is a committee that includes majority NFPO representation; it advises the government on policies affecting the NFPO sector;
- b. in the Ministry of Home Affairs and Government Administration (MOGAHA), there is a similar committee, with majority NFPO representation, which decides on the disbursement of government grants that are made pursuant to the Private Organization Support Act.

Visits to the government agencies that explained these structures were enhanced by visits to NFPOs that engage in fund-raising and volunteer support. Discussions of tax incentives for giving and the extent to which they encourage a "culture" of giving in Korea provided excellent additional support for the need for such tax incentives in Viet Nam. In addition, there was discussion of volunteer support legislation, currently being considered in Korea, which may well have some applicability in Viet Nam.

This visit represented an excellent opportunity for three-way exchange among the governments of Viet Nam, Korea, and the United States on a matter of technical legal reform that has particular significance for the growth of democratic governance in Viet Nam. Given the warm reception especially by the Vice Minister of Home Affairs (and the MOGAHA staff) and the officials from the Prime Minister's Office, it seems that the possibilities for future cooperation among the three governments on democratic reforms for Viet Nam are quite significant. In addition, the support of civil society organizations and SNU (especially our principal host, Prof. Junki Kim) for the visit was exceptional, and there are future opportunities for cooperation with these institutions as well.

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This Report discusses the Study Tour in terms of its relevance for the drafting efforts of the NGO Law Drafting Committee (LDC). It is prepared by VNAH’s technical partner, the International Center for Civil Society Law (ICCSL), which organized the Study Tour with Japanese and Korean counterparts. Officers of ICCSL have worked over many years with the

¹ A Technical Summary of the Legal Issues Discussed during the Study Tour is attached as Appendix H.

Vietnamese officials, who requested them to prepare an in-depth questionnaire (attached to this report) to be made available to the Japanese and Korean counterparts; they also requested the participation of Dr. Irish and Prof. Simon in the Study Tour.

Visit to Japan

The visit to Japan took place from January 20-26 – a detailed schedule is attached (Appendix B). The principal organizer of the Japanese participation was Mr. Masato Mizuno, Deputy Counselor in the Administrative Reform Promotion Office of the Cabinet. Others who assisted in organizing the meetings included Prof. Masayuchi Deguchi, of the Museum of Ethnology, Mr. Chimaki Kurokawa, previously President of the Toyota Foundation, Mr. Takahiro Nanri, Program Officer of the Sasakawa Peace Foundation, Mr. Akira Matsubara of C's (the Coalition for Legislation to Support Citizens' Organizations), and Mr. Shuichi Ohno, President of the Nippon Foundation. In general the meetings were helpful and informative. They are each described in this section of the report. Written materials were made available by many of the Japanese hosts; they are not attached to this report unless otherwise noted, but they are available on request.

January 20

After arrival the delegation took a short nap and then visited the Vietnamese Embassy for two hours. The first substantive meeting was held in the afternoon.

16:00-18:00 Japan Foundation

Mr. Kazuo Ogoura, President
ARK Mori Building, 20-21F, 1-12-32 Akasaka, Minato-ku,
Tokyo
Tel: +81-3-5562-3480 Fax: +81-3-5562-3492
<http://www.jpf.go.jp/e/index.html>

preceded by introduction to the topic by:

Mr. Chimaki Kurokawa
Mr. Masayuki Deguchi, Professor of National
Museum of Ethnology, President of International
Society for Third-Sector Research

This meeting was intended to provide an overall introduction to the NFPO Sector in Japan. Dr. Deguchi presented a paper giving an overview of the legal and fiscal framework for the NFPO sector in Japan – the delegation had previously been provided extensive background information,² but it was also

² Prof. Simon is co-author, with Robert Pekkanen, of a chapter entitled “The legal framework for voluntary and non-profit activity,” in THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN (Stephen P.

helpful to have an oral presentation on the same subject at the beginning of the very full meeting schedule.

After Dr. Deguchi's presentation, there was a more focused discussion about the Japan Foundation and a meeting with the current Japan Foundation President, Mr. Kazuo Ogoura. The meeting was intended to give the participants in the delegation an overview about how the Japanese government works on certain agendas through a quasi-governmental organization, and that was indeed addressed during the meeting. However, Mr. Ogoura, who was previously the Japanese ambassador to Viet Nam, used the occasion of the meeting to talk with the Vietnamese about the role of civil society organizations in a modern democratic society, such as Japan. In addition, he talked about three requirements for having a strong civil society – 1) a middle class; 2) a good legal framework; and 3) the political will to allow civil society to grow. Members of the delegation asked several questions and generally seemed quite engaged in the discussion. All in all, it was quite a worthwhile meeting and should have had an impact on the delegation members in terms of their understanding of the Japanese views of civil society.

January 21

The delegation's meetings began in the morning, with a visit to the offices of the Administrative Reform Promotion Office of the Cabinet Secretariat. All meetings for the morning and early afternoon were held at this venue.

9:30-11:00 Administrative Reform Promotion Office of the
Cabinet
Mr. Tatsuo Nishi, Head Officer of Public Corp.
Reform
Mr. Masato Mizuno, Councillor
No.10 Mori Building, 4F, 1-18-1 Toranomon,
Minato-ku, Tokyo
Tel: +81-3-3539-8615 Fax: +81-3-3503-0633

<http://www.gyokaku.go.jp/jimukyoku/koueki-bappon/yushiki/index.html>

11:00-12:00 Dr. Yoshihisa Nomi, Professor of Law, Tokyo
University, Vice Chair of the Advisory Council on
Public Interest Corporation Reform
[at Administrative Reform Promotion Office of the
Cabinet]

Osborne, ed.). Routledge Courzon, 2003. This was translated into Vietnamese and made available to the delegation members in advance of the study tour; other materials prepared by ICCSL and its principals were also provided into Vietnamese.

box luncheon at the office

13:00-14:00 Mr. Ken'ichi Koamagata, Ms. Akiko Kubo, Office for Non-profit Organizations (Koeki-hojin Administration Promotion Office), Ministry of Internal Affairs and Communications [at Administrative Reform Promotion Office of the Cabinet]
<http://www.koeki-data.org/>

The intent of this series of meetings was to inform the delegation members about the current reform process for one form of Japanese NFPO, the *koeki hojin* or public benefit corporations (PICs). These organizations are permitted to be formed in accordance with Article 34 of the Civil Code, which was adopted in 1897. The requirements for their establishment include receiving permission from one of several possible line/oversight ministries with jurisdiction over the type (subject matter) of work to be performed by the PIC. In addition, local government bodies are given the authority to grant permission for the establishment of PICs formed to do work locally. Two different types are permitted to be formed – the *shadan hojin* (association) and the *zaidan hojin* (foundation). There are over 300 permission/supervisory bodies nation-wide.

Clearly this is a very complex legal system.³ The complexity is exacerbated by the fact that there are also special laws allowing the establishment of private school, religious, social welfare, and medial institutions, charitable trusts, mutual benefit organizations (*chukan hojin*), and the so-called Special Nonprofit Corporations (SNCs), which can be created pursuant to legislation adopted in 1998. The adoption of legislation allowing individuals to establish organizations using this last legal form is important for a number of reasons, and these were described by the speakers as a prelude to going into specifics about the PIC reform process.

The most important aspect of the legal reform process both for SNCs and for PICs is that fact that it all originates in the Kobe (Hanshin Awaji) Earthquake, which took place ten years ago (almost ten years to the date of the delegation's visit to Japan!). At that time all forms of Japanese NFPOs were hamstrung by bureaucratic restrictions, which resulted in a lack of ability to respond to the needs of the disaster's victims. This caught the attention of the society and led to citizen awareness of the need to change the legal environment for NFPOs. This led, in turn, to the government's decision to begin to look into legal reform – first by adopting new regulations for PICs (1996) and then by working to adopt new legislation creating a legal form that would not require prior permission for establishment. The SNC is the

³ See Pekkanen and Simon, *op.cit.*, note 1.

outcome of the latter, though perhaps the most remarkable thing about the 1998 law is that it began in the Diet as a member's bill.⁴

The SNC legal form, unlike the PIC form, does not require "permission" for establishment. What that has meant as a practical matter is that the number of PICs is slowly decreasing while the number of SNCs is increasing. This was important for the delegation members to hear – it definitively shows that making a legal framework more user-friendly does in fact result in more organizations coming into being to meet citizen needs. On the other hand, although it solved practical problems for some organizations, creating the SNC form in no way addressed the need to amend a century old legal regime for PICs to meet 21st century realities. As a result, the Cabinet reached a decision in March 2002 that there was need for a thorough-going reform of the legal framework for PICs; since then much has happened, and the delegation visited Japan at an opportune time to hear about the developments in the reform process.

Various developments in the reform process were described by the various government and academic speakers during the three sessions at the Cabinet Office meeting room. A synopsis of the various recent⁵ stages of the reform process and the relevant parties (in bold) follows.

1. After the decision to go into the reform process the government appointed **staff members, both within the Ministry of Internal Affairs and Communications (MIC) and within the Cabinet Office** to work on various aspects of the reforms – to do research on the PICs, on approaches to NFPOs in other legal systems, etc.
2. At the same time, the Prime Minister's Office appointed a **non-government Expert Advisory Committee, made up of sector representatives and academics (chaired by Mr. Yoshiharu Fukuhara, Honorary Chair of Shiseido Cosmetics, and thus known as the Fukuhara Commission)** to provide input into the process. (The delegation met with Mr. Fukuhara on Monday, the 24th, and that discussion is summarized below).
3. In addition, the **Japanese Association of Charitable Organizations (JACO), the principal association representing PICs**, began a research and lobbying process to put forth its own proposals for *koeki hojin* reform. (The delegation met with JACO on the afternoon of the 20th, and that discussion is summarized below).

⁴ For the history and politics behind these developments, see Robert Pekkanen, "The politics of regulating the non-profit sector" in *THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN* (Stephen P. Osborne, ed.). Routledge Courzon, 2003

⁵ This process has been a long and painstaking one; it is in a very real sense tied up with the entire administrative reform process in Japan, which was initiated by Prime Minister Koizumi on the theory of creating a government that is more responsive to citizen needs. Discussions of earlier parts of the process can be found in back issues of the *INTERNATIONAL JOURNAL OF CIVIL SOCIETY LAW*, beginning with the October 2003 issue (www.law.cua.edu/students/orgs/ijcsl/).

4. The last meeting of the Fukuhara Commission was held in November 2004, and it made its final report, summarized below (a summary of the commission's findings is attached as Appendix C).
5. The Cabinet met on 24th December, 2004, and submitted a report on progress toward the new legislation; it also established a timeline for the adoption of new legislation – this will require the submission of bills to the Diet in 2006. A summary of the Cabinet findings is attached as Appendix D).

The results of this process thus far have been quite significant. On the other hand, there are numerous issues that still remain to be resolved. The following brief outline describes these developments.

1. The decision has been made to make registration of any NFPO easy and simple, with no permission required. Thus, all organizations can choose to be set up as “general non-profit corporations” (GNPCs) (using typical civil law forms of associations and foundation).
2. Various rules will apply to each form, concerning requirements for internal governance, transparency and accountability. Aspects of these requirements remain to be determined.
3. In order to establish themselves as public interest organizations, GNPCs will need to be certified by a special commission as “public interest non-profit corporations” (PINPCs). Several key issues remain to be decided; e.g., who will appoint the members of the “Public Interest Commission,” how many will be sector representatives, the extent to which local governments are to be involved in the process, etc.
4. The new “Public Interest Commission”⁶ will not only have authority to certify the PINPCs, it will also exercise regulatory oversight authority, thus removing such authority from the line ministries and the MIC – the transition process for moving to this new regime remains to be worked out, as do numerous other details.

This outline indicates the complexity of the situation in Japan, and it is hardly surprising that members of the Vietnamese delegation were slightly overwhelmed by the presentations they heard about the *koeki hojin* reform process. On the other hand, there was good discussion of certain specifics, such as how the process will move forward (how will the public and NFPOs participate as government moves into the legislative drafting phase; how will the administrative transformations be accomplished; how will the commission be staffed, etc.) Two specific areas of concern were the extent to which NFPOs can engage in political activities; and the extent to which former civil servants are involved in NFPOs (this is a huge problem in Japan,

⁶ In the remainder of this paper the proposed commission will be referred to as a PBO Commission, as that is the term in general usage throughout the world.

where discussions about the “parachuting” of former civil servants into NFPOs that are closely attached to ministries have become common).

In terms of the legal reform process in Viet Nam, the general conclusions from the morning discussions are that the Japanese system is much too complex and country-specific to be emulated in Viet Nam. Nonetheless three important issues emerged from these discussions that are relevant to the Vietnamese:

1. The importance of process – that the public and the NFPOs should be able to have a voice as legal reforms go forward;
2. The decision to make the initial establishment of an NFPO easy, quick, and with no government interference; along with this is the concomitant requirement of obtaining public benefit status, which should be much more difficult; PBOs should also be subject to greater regulatory burdens than ordinary NFPOs; and
3. The decision-making body for obtaining and retaining PBO status should be a mixed commission, comprised of NFPO sector representatives in addition to government officials and experts.⁷

The *koeki hojin* reform process was also the subject of the next meeting at JACO.

15:00-17:00 Japan Association of Charitable Organization
Mr. Tatsuo Ohta, President
2-27-15 Hon-Komagome, Bunkyo-ku, Tokyo;
Tel +81-3-3945-1017 Fax: +81-3-3945-1267
<http://www.kohokyo.or.jp/>

The delegation members were met by a team from JACO headed by Mr. Ohta. The presentation of the JACO leadership discussed not only the proposed reforms and the process up to this point but also JACO’s objections to certain substantive aspects of the government proposals. The discussion with the delegation focused on the representative role of JACO and whether its suggestions could be accepted by the government. Delegation members seemed to be a bit skeptical about whether the government should be willing to discuss some of the issues with JACO or openly address its concerns.

After this meeting the delegation and many of the Japanese participants adjourned to a reception at the Vietnamese Embassy, which was hosted by VNAH. There was an opportunity for several formal remarks and expressions of Japanese-Vietnamese friendship to be made. Informal

⁷ One of the things that emerged in the discussions (contributed by the ICCSL representatives) is the extent to which using a “PBO Commission” is becoming more and more widely accepted throughout the world. For example, both New Zealand and Scotland have legislation in the works to establish “charity” commissions.

discussion also occurred, though it is highly unlikely that anything of substance was discussed in this setting. This did, however, give the delegation to engage with Japanese counterparts in a friendly and informal atmosphere, which was much appreciated by the delegation members.

January 22-23

Two substantive meetings were held on the weekend – one was a breakfast meeting between Ca Van Tran and Dr. Irish and Prof. Simon, discussing progress of the study tour and plans for the visit to Seoul. The second meeting involved all members of the delegation and addressed more substantive issues, including explanations of what is really going on in Japan in terms of both process and substance. There was also continued discussion of the plans for the two days in Seoul and whether it would be possible to have a meeting with anyone in the National Assembly while there.

January 24

This day began with a meeting focused not only on the *koeki hojin* reform process but also on issues about corporate social responsibility (CSR).

10:00-11:30

Mr. Yoshiharu Fukuhara, Honorary Chairman of Shiseido Corporation, Chair, the Advisory Council on Public Interest Corporation Reform (Fukuhara Commission)
7-5-5 Ginza, Cyuo-ku, Tokyo
Tel: +81-3-3572-5111 Fax: +81-3-3289-0541

As a person intensely involved with the NFPO sector for many years, Mr. Fukuhara was able to provide the delegation with relevant perspectives on the rationales behind the *koeki hojin* reforms (trying to avoid bigger and bigger government).⁸ As a former top-level business executive, he was also able to provide an interesting perspective on corporate social responsibility. He said that he believes that 3% of a corporation's profits should be spent on social programs; he also emphasized the Keidanren 1% campaign, which seems to be fairly effective (the figure given in the next meeting was annual corporate giving of ¥ 4 billion per year). In response to questions from delegation members, Mr. Fukuhara emphasized not only the importance of involving the public and sector representatives in the PBO Commission, but also involving them in the law-making process. The discussion with Mr. Fukuhara was thus wide-ranging and very informative for the delegation.

After a brief box lunch, the meetings continued with a focus on CSR.

⁸ Mr. Fukuhara also discussed an issue that puzzled the Vietnamese – why do the organizations that are currently set up as SNCs not want to come into the new regime. This report stresses that matter in the sections dealing with the meetings with SNC representatives Yamaoka and Matsubara below.

13:00-14:30 Sasakawa Peace Foundation (SPF) and Nippon
Foundation representatives at Nippon Foundation
building
SPF
Mr. Akira Iriyama, President
Mr. Takahiro Nanri, Program Officer
Nippon Foundation Building 4F, 1-2-2 Akasaka,
Minato-ku, Tokyo
Tel: +81-3-6229-5400 Fax: +81-3-6229-5470
<http://www.spf.org/e/index.html>

Nippon Foundation
Mr. Schuchi Ohno
Mr. Tatsuya Tanami
[http://www.nippon-
foundation.or.jp/eng/index.php3](http://www.nippon-foundation.or.jp/eng/index.php3)

The meeting was led principally by Mr. Akira Iriyama, President of SPF. Both foundations were set up by the Sasakawa family to permit the vast wealth it had accumulated to be used for a variety of social purposes. Thus, the two foundations are themselves examples of corporate involvement in social causes. Furthermore, Mr. Iriyama is quite an outspoken and well-known expert on the NFPO sector and on financing for the NFPO sector.⁹

After more general discussions about the role of the NFPO sector in Japan, Mr. Iriyama gave the delegation a “lecture” (using the white board) on the way in which a tax system can encourage corporate grant-making for social purposes. He described the Japanese system (more on that in the description of the meeting with the Ministry of Finance). He also talked at some length about the need for a strong and independent NFPO sector. He stressed that in Japan there is a consensus that government should not be the sole provider of public and social goods. The delegation asked many questions about his views and engaged in a lively conversation with him.

The next meeting was held with a representative of one of the membership organizations representing the interests of SNCs. The Japan NPO Center was set up after the Kobe Earthquake and is one of the principal lobbying and service-providing entities in the NFPO sector.

15:00-16:30 Japan NPO Center
Mr. Yoshinori Yamaoka, Vice-President

⁹ Leading up to the formation of the Fukuhara Commission in 2003, there was a prior “Advisory Commission on keiki hojin reform, which was headed by Mr. Iriyama. It was apparently disbanded around the time of the announcement of the Cabinet decision in 2002 because of fundamental differences between the government and the sector about how the reforms should proceed.

Furukawa Building 616, 2-6-1 Marunouchi,
Chiyoda-ku, Tokyo
Tel: +81-3-5220-3911 Fax: +81-3-5220-3912
<http://www.jnpoc.ne.jp/English/index.html>

Mr. Yamaoka met with the delegation and described the origins of the NPO¹⁰ Center as well as its current activities in representing the sector. The Center provides a public database of SNCs, which is updated monthly and published on its website. It also conducts research on the sector, holds annual events, engages in training activities, etc. All of these things are typical for NFPO representative bodies and resource centers, but such an organization does not exist in Viet Nam. Therefore, a lot of the discussion between the delegation members and Mr. Yamaoka focused on the role of the Center, its membership, its funding, etc. These issues are important for VNAH in its efforts to build capacity of local NFPOs in Viet Nam. Clearly the NPO Center represents one successful model of an NPO resource center.

The other focus of the discussion was the decision of the SNCs not to participate in the new legal framework that will be introduced under the *koeki hojin* reforms. Mr. Yamaoka insisted that the SNC system is preferable for the organizations the Center represents and that the proposed new system for *koeki hojin* is a “bad” system. The delegation pushed him on this issue, but there was no clear answer why the SNCs perceive the new *koeki hojin* system to be a bad one (it may be that the new PBO Commission will have greater oversight powers than the agency that currently oversees the SNCs, the Economic Planning Agency).

January 25

This day began with a visit to the Ministry of Finance (MOF) to discuss the current tax rules applicable to the NFPO sector in Japan. The Ministry officials who met with the delegation had kindly translated the questions on the tax system in the questionnaire as well as the answers to those questions into Vietnamese, which made the discussion much easier.

10:00-11:30 Corporation Tax Policy Division, Tax Bureau,
Ministry of Finance
Mr. Shinichi Sato, Director; Mr. Naoki Ota, Deputy
Director
3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo

¹⁰ When the SNC legislation was passed, the typical terminology for the organizations permitted to be formed pursuant to it was “NPO;” this usage has now generally been discarded in favor of the term “SNC.” The rationale for using “SNC” is that “NPO” in popular international usage refers to all not-for-profit organizations, not a specific type. However, where the term NPO is used in Japan it is understood to refer only to SNC organizations and not all NFPOs.

The attached charts describe the current system for income tax exemptions and charitable contribution deductions in Japan (Appendix E). The system is extremely complex, and unsuited for adoption in Viet Nam. There are, however, several features that are relevant to consider:

1. The fact that SNCs are not exempt from tax (PICs and other types of PBOs are) makes the SNC regime less attractive. Although this is essentially irrelevant to the Vietnamese in terms of their own choices, it is relevant to their understanding of the general legal/fiscal framework in Japan. What it suggests is that SNCs do not much care about tax exemption because they generally do not have net profits that are subject to tax.
2. Since 2001, tax deductible donations can be made to both *koeki hojin* and SNCs (provided that the SNCs meet some additional special qualifications not relevant here).
3. The deduction regime is fairly generous by international standards (individuals -- a 25% limit for donations over ¥ 10,000 (\$100); corporations -- certain donations are fully deductible, while others are subject to limits with respect to income or capital).
4. There is a problem with this regime for ordinary Japanese taxpayers. In general, such individuals do not file tax returns, and their taxes are paid 100% through wage withholding. That means that in order to claim a deduction an individual must make a separate filing with the tax office, and most people believe that few people do.

The members of the delegation had several technical questions for the MOF representatives, including what is the policy behind the concessionary 22% rate; how is the system administered (this issue came up in particular with reference to the 33 different types of business activities that may be subject to tax); etc. It was clear from the discussion that it will be important to learn more about the Japanese system and why certain choices have been made; ICCSL is currently seeking clarification of some of the issues raised through correspondence with Japanese counterparts.

The second set of meetings was held at the House of Representatives Office near the Diet building. Mr. Matsubara, representative of the C's had asked Mr. Kumashiro, the MP, to meet with the delegation. Mr. Kumashiro not only did that, he also provided lunch in the House of Representatives cafeteria.

12:00-15:00

Meeting with Akihiko Kumashiro, MP, Chair of Nonpartisan NPO
Committee of Diet

lunch in House of Representatives cafeteria

meeting with Coalition for Legislation to Support Citizens'

Organization (C's): Mr. Akira
Matsubara, Executive Director

[Meeting at House of Representatives Building
One]

<http://www.npoweb.jp/>

The delegation had been very specific about its wish to meet with someone in the legislative branch, in large part because the leader of the delegation, Mr. Chien, is a high-ranking member of Viet Nam's National Assembly. Mr. Kumashiro chairs the Nonpartisan NPO Committee of the Diet and thus has had and continues to have a great deal of exposure to the legal and fiscal issues affecting NPOs. His discussion focused in part on past developments (what led up to the SNC reforms in 1998) but also on the future. He described the fact that the government is currently interested in "promoting a donation culture" in Japan, and that further reforms of the tax system affecting NFPOs could be expected.

The members of the delegation questioned Mr. Kumashiro about the role of his committee and the extent to which it will be involved in the changes of the Civil Code that will be required if the *koeki hojin* reforms are enacted. This issue is of special interest to Mr. Chien, because he, as Deputy Chair of the Commission on Legislative Affairs of the Vietnamese National Assembly, is currently involved with the reform of the Civil Code of Viet Nam. There was also discussion of the administrative role of the new PBO Commission that the *koeki hojin* reform envisages.

After lunch the conversation continued with Mr. Matsubara of the C's, who was one of the principal lobbyists for the 1998 SNC law. He particularly emphasized the fact that the legislation resulted from a member's bill (a procedure that is not available in Viet Nam, where all legislation must be proposed by the government). He also made clear that the C's and the organizations it represents have no interest in becoming part of the new legal framework for *koeki hojin*. On the other hand, the C's perceive that there is a need for further loosening the requirements that SNCs must meet in order to qualify for tax deductible status (though he did not say exactly how). In addition, he indicated that he opposes the adoption of a "1% law" in Japan (adopted locally in Chiba Prefecture and in many countries in Central and Eastern Europe).¹¹ Although not specific about how it would work, he indicated that the C's would propose to solve the current problem of the difficulty of individual access to tax deductions for contributions by giving employers responsibility for dealing with employee donations in the tax payment process.

The final meeting of the visit was held to discuss the role of international NFPOs in Japan.

16:00-17:00

CSO Network

¹¹ See www.onepercent.hu.

Ms. Kaori Kuroda and Mr. Takeshi Hayasaka
Campus Innovation Center room 601, Osaka
University Tokyo Center,
3-3-6 Shibaura 1-chome, Minato-ku, Tokyo
Tel: +81-3-3457-1165 Fax: +81-3-5440-9114
<http://www.csonj.org/english/>

In addition to discussing the role and purpose of the CSO Network (which represents foreign NFPOs active in Japan), the meeting focused on the new accounting standards for NFPOs in Japan (Mr. Hayasaka is an accountant representing NFPOs). Although the situation for international NGOs in Japan is irrelevant to Viet Nam at the current time, the delegation learned about the way a democratic country deals with the operations of foreign NGOs on its soil. One other aspect of the discussion that may be relevant for Viet Nam is that the CSO Network is in the process of transforming itself into an independent think tank on NFP sector policy issues, which the other Japanese participants agreed is really important for Japan at the present time. The members of the delegation may have some reservations about having such think tanks at the present time, but this is clearly an issue that will need to be addressed down the road.

Visit to Republic of Korea

The visit to Korea took place from January 26 - 29 – a detailed schedule is attached (Appendix F). The meetings in Korea were organized by Dr. Junki Kim, Vice Director of the Seoul National University (SNU) Asia Development Institute & Professor, Graduate School of Public Administration of Seoul National University. The delegation contacted the Ministry of Foreign Affairs and the Vietnamese Embassy, which organized a meeting -- for the delegation only – with the Chair of the Legislation Committee of the National Assembly, which was held on the afternoon of the 28th. In general the meetings were helpful and informative. They are each described in this section of the report. Written materials were made available by many of the Korean hosts; they are not attached to this report unless specifically noted, but they are available on request.

The delegation arrived in Seoul on the afternoon of January 26th; after resting they visited the Vietnamese Embassy. Formal meetings began on the 27th.

January 27

The visit began with a well-prepared seminar conducted by current and emeritus members of the SNU faculty. The host – the Asia Development Institute – gave the members of the delegation extensive written background materials.¹² In addition, Dr. Kim provided a lengthy power-point presentation, copies of which were made available in English.

9:00-12:00 Workshop at Seoul National University (SNU)

Session 1: General Discussions on the Legal Environment

Presenter: Dr. Junki Kim, Vice Director of SNU
Asia Development Institute &
Professor, Graduate School of
Public Administration of SNU

Tel: +82-2-880-8534 Fax: +82-2-880-9237

B/D 57, Seoul National University, San 56-1, Sillim-Dong,
Gwanak-gu, Seoul, 151-742

<http://gspa.snu.ac.kr>

The Graduate School of Public Administration (GSPA) was established in January 1959, as a professional graduate school to educate scholars, pre-service college graduates and senior government posts in public administration and to provide consultation service in the area of the public administration for the Korean government. The Asia Development Institute (ADI) was established at GSPA of SNU in August 2004. The primary mission of the ADI is to promote international cooperation and to enhance mutual welfare in the Asian Community by sharing the Korean experiences in the economic development and the challenging issues in the transitional economy.

Session 2: Growth of Civil Society in Korea

Presenter: Dr. Kyong-Dong Kim, Emeritus
Professor, Department of Sociology
of SNU

12:00-13:00 Lunch at Seoul National University

The focus of Dr. Junki Kim's presentation was the "Governance, and Organizational Effectiveness of the Non-profit Sector in Korea." This presentation discussed the underlying legal framework for NFPOs in Korea,

¹² Various materials had been sent to Viet Nam to be translated into Vietnamese in advance of the trip. These were included in English in the packet of materials provided by SNU.

where Article 32 of the Civil Code of 1958 permits the establishment of associations and foundations for various public benefit purposes. In addition, Korean legislation includes special laws for the establishment of private schools, social welfare organizations, and medical institutions, as well as a more general law, the *Gongick Jaedan* or Public Interest Corporation Act (PIO Act). The PIO Act was enacted in 1975, with the intention of setting up a clearer regime for the establishment and operations of NFPOs in Korea; but it is only applicable to PBOs. As a practical matter, it became clear from the discussions that advocacy organizations set themselves up as Civil Code entities and are subject to rather limited supervision. PIOs, on the other hand, are subject to scrutiny of line ministries when they are formed as well as to their continuing oversight. Dr. Kim made clear that these different legal regimes create the possibility for regulatory arbitrage, a problem that also bothered members of the delegation.

In addition to these pieces of legislation the Korean legal framework for NFPOs includes the following:

- the Non-profit Private Organizations Support Act of 2000 (administered by MOGAHA and discussed in more detail below),
- tax provisions applicable to tax exemption from the income tax;
- complex tax provisions with regard to deductible contributions (the complexity is largely a result of government attempts to prevent chaebols from using tax exempt organizations as tax dodges and as such as little relevance for Viet Nam);
- fund-raising legislation from 1951 (which places a limit on the administrative expenses of fund-raising organizations; this is due to be amended this year).
- Although not yet enacted, there has been discussion for almost a decade about Volunteer Protection legislation, which may be enacted this year.

In addition to providing an overview of the legal framework for the sector in Korea, Dr. Kim also emphasized the social, economic, and political reasons for the tremendous growth of the sector in recent years. Citing the huge growth of the economy as a factor in creating an educated and involved middle class, Dr. Kim referred to recent government encouragement of the sector (the adoption of the Support Act in 2000 as well as provision of significant subsidies to the sector, which are discussed below).

Although there was inadequate time for discussions at the end of Dr. Kim's talk, the delegation did have a chance to question him about some of the recent developments in IT and how they affect the NFPO sector, which he cited as relevant for the growth of civil society. This may seem largely irrelevant for Viet Nam, where cyber-dissidents are put in prison, but it intrigued the delegation members.

Dr. Kyong-Dong Kim, an eminent sociologist and emeritus professor, presented a paper on the social developments relevant to the sector in Korea. The paper was a bit academic for the tastes of most members of the delegation, but they asked him some pertinent questions. One of them had to do with the relatively highly educated members of most NFPOs in Korea; Dr. Kim agreed that civil society is sometimes regarded as elitist and non-representative. He also discussed the rationale for the government's decision to provide subsidies to the sector, which he seems to regard as a good idea.

In the afternoon the delegation went to the offices of the Ministry of Government Administration and Home Affairs (MOGAHA), where they were met by a team from MOGAHA as well as representatives of the Prime Minister's Office. Subsequent to the substantive meetings, the Vice Minister of MOGAHA served tea to the delegation and discussed with them issues concerning government involvement with civil society in Korea. This was much-appreciated by the delegation, whose deputy head was the Vice Minister of Home Affairs in Viet Nam.

14:00-15:30 Visit to the Ministry of Government Administration and Home Affairs (MOGAHA)

Reception: The Vice Minister of MOGAHA (O-Ryong KWON)

Discussion on NGO Legal and Regulatory Issues in Korea

Presenter: Ms. Hae Soon Kim and Mr. Jinsoo Lee, Civic Cooperation Division, The Bureau of Administrative Innovation

Presenter: Kim, Do-Yon, Director Civil Affairs Prime Minister's Office

Song, Sung-Soo, Director Committee for Development of Civil Society

Tel: +82-2-3703-4882

Central Government Complex, 55 Sejong-no, Jongno-gu, Seoul, 110-760

<http://www.mogaha.go.kr>

The Ministry of Government Administration and Home Affairs is the administrative arm of the central government. It was established on February 28, 1998 through the merger of the former Ministry of Government Administration and the former Ministry of Home Affairs. Its mandate is to build a solid national administrative foundation through the efficient management of government organizations and human resources and to aid local governments in realizing increased local autonomy. MOGAHA is also actively assisting Non Government Organizations in their efforts to promote a sound consciousness for citizens and a campaign to renew their lifestyle.

This meeting was highly informative and very participatory – it gave the delegation a well-described look into the workings of a government that is interested in using participatory mechanisms

- for establishing NFPO policy (Office of the Prime Minister – OPM), and
- for distribution of government subsidies to NFPOs (MOGAHA).

OPM Mechanism for Policy Development. According to the presentation by the OPM, the Secretary of Civil Affairs, within the OPM, is responsible for high-level government outreach to the sector, including hosting meetings with NFPO representatives, hosting seminars on relevant issues, and managing and supporting the Committee on the Development of Civil Society. This Committee – which was established in 2003 -- is composed of 22 members, of whom 12 represent NFPOs. The Committee advises the OPM on various policy developments with regard to civil society, including developing recommendations, some of which are already finding their way into legislative proposals (such as providing IT support for small NFPOs).

MOGAHA Mechanism for Subsidy Distribution. In the past five years, since the Support Act was enacted, the government has provided 15 billion Won per year (down to 10 billion in 2005) for the sector. This money is disbursed for both national level and local level projects of NFPOs (the process is described in the MOGAHA handout – Appendix G). The process is subject to oversight by a Committee to Select Public Interest Projects, which is made up of 15 members, 12 of whom are recommended by NFPOs.

Both of these mechanisms drew a lot of questions from the delegation members. Some of these centered around the mechanism for choosing the NFPO members of the committees; the issue of how to avoid corruption in the subsidy award process; the question of whether there are local level distribution committees (there are 16 nation-wide); and the fact that it might be difficult to encourage volunteers to serve on the committees. It was clear from the discussion both with the staff members and the Vice Minister that this meeting greatly intrigued the members of the delegation.

The third meeting of the day focused on fund raising and the involvement of both individual and corporate contributors in the development of civil society in Korea.

16:00-17:30 Visit to Community Chest of Korea (CCK)

Discussion on Donated-related Policy and Giving Culture in Korea

Presenter: Ms. Soo Kyung Yoon, Secretary General

Tel: +82-2-360-6701 Fax: +82-2-360-5997

Yimkwang Bldg. 3F, Migun-dong 267, Seodaemun-gu, Seoul, Korea 120-705

<http://www.chest.or.kr>

Community Chest of Korea (CCK) was established in November, 1998 as a social welfare organization according to the Community Chest Law, taking over the then government-conducted fundraising drive at the beginning and end of the year. With the 'Fruit of Love' as its symbol, CCK is dedicated to raising awareness about the difficult lives of our neighbors in need and challenging individuals and corporations to donate funds to address the problems, thereby allocating the money to reliable welfare projects across the country.

CCK staff welcomed the delegation with a presentation of the history of the organization and its fund-raising success. Because CCK was spun out of the government and established under the Community Chest Act in 1998. One advantage of that is that CCK is not subject to the 2% restriction on administrative expenses in the 1951 fund-raising legislation. The fund raising success of CCK was very informative for the members of the delegation, who could see the power of being able to attract such large amounts of money for social welfare and public benefit activities.

The first day of the visit to Korea concluded with a marvelous dinner hosted by Seoul National University. This was largely an informal occasion, and it was clear that the delegation members appreciated the kind hospitality and the camaraderie offered by their Korean hosts.

January 28

The final day of the Study Tour involved discussions of corporate social responsibility, volunteering, and fund-raising. The delegation also visited the National Assembly, but that experts were not invited.

9:00-10:30 Visit to Asan Foundation

Discussion on NGO-Corporate Relationship Policy

Presenter: Mr. Jung Won Kim

Tel: +82-2-3010-2585 Fax: +82-2-3010-2600

388-1 pungnap-2dong, songpa-gu, seoul 138-736

<http://www.asanwelfare.or.kr>

It has been a quarter century since the Asan Foundation began welfare operations and put into action the late Chairman Chung Ju-Yung's long-held belief in helping the most needy in our society. Over the past 25 years, the Foundation has focused on bringing hope to those who needed it most. It has provided modern medicine to rural people in pain and sickness due to the lack of hospitals nearby, care for the aged and those on the fringe of society, and scholarships to youth who have been denied access to education for financial reasons.

This meeting was probably the least productive of the Study Tour because it was largely devoted to promoting the highly worthwhile but only marginally relevant activities of the Asan Foundation. Nevertheless, it was undoubtedly informative for the delegation that great wealth (the Hyundai fortune, in this case) can also produce great social value, if it is encouraged to do so by social norms.

11:00-12:00 Visit to Volunteer 21

Discussion on Policy and Legal Implications of Volunteer-related Issues

Presenter: Ms. Hyeran Yang, International Exchange Division

Tel: +82-2-415-6575 Fax: +82-2-415-1603

Hyundai B/D 3F, Seokchon-dong 290, Songpa-gu, Seoul, 138-847

<http://www.volunteer21.org>

Volunteer 21, founded in 1997, is a non-profit organization with a network of around 200 volunteer organizations and 200 local volunteer centers across the nation. Since its foundation, Volunteer21 has been committed to strengthening volunteer infrastructure through various education and training programs.

12:00-13:00 Lunch at Volunteer 21

This meeting was quite interesting for the delegation because it involved a discussion of the immense power of volunteer efforts in a society which prizes true volunteerism. Although Viet Nam may still be too closely tied to its socialist past to be in a position to encourage true volunteerism, the discussion at Volunteer 21 was quite productive. The presentation was principally about the proposed Volunteer Protection Act, which may be enacted this month. Several questions raised by the members of the delegation concerned the rationale for some of the provisions in the draft bill. Although this sort of legislation is not necessary in Viet Nam at present, it is something that the National Assembly should certainly consider enacting. Indeed, VNAH may well wish to promote such legislation because of the need for volunteers to help out at disability NFPOs.

The lunch presented a good opportunity for informal discussions; and the Vietnamese again enjoyed having such interactions with their Korean counterparts. The delegation then visited the Beautiful Foundation, which was established in 2000 to be a grass roots fund raising organization.

14:00-16:00 Visit to Beautiful Foundation

Discussion on Donation related Policy and Legal Issues

Tel: +82-2-766-1004 Fax: +82-2-730-1243

16-3 Gahweo-dong, Jongno-gu, Seoul, 110-260

<http://www.beautifulfund.org/>

The Beautiful Foundation was established in the midst of the growing interest in philanthropy. It was inaugurated in August 2000 to promote a culture of giving and sharing by providing various methods in which ordinary citizens can participate and connect the resources and needs of society.

The presentations of the Beautiful Foundation (BF) focused on the development of a culture of giving in Korea and the ways in which fund raising organizations are tapping into that to benefit important social causes. This was important for the delegation to learn about because of the need to establish a culture of giving in Viet Nam. The BF staff discussed various aspects of their campaigns, including focus on certain issues that appeal to the public, maintenance of transparency, creating good partnerships with the media and celebrities, etc.

The delegation also had some specific questions about BF. One thing that interested them was the structure and administration of BF. Of the 20 million Won raised by the organization in 2003, only 3 million went into administrative support, with 17 million going to socially worthwhile causes. In addition, the salaries paid by BF are similar to the average for other fund-raising organizations. Furthermore, BF is highly transparent. On the question of whether there is competition between BF and CCK, the answer was “no, because CCK is viewed as a quasi-governmental entity” (which may be true, but the delegation members were skeptical about this answer). All in all the discussion was useful in giving the delegation a further perspective on individual and corporate giving in a developing democracy such as Korea.

Final Meeting

After the delegation returned to the Koreana Hotel from the visit to the National Assembly, there was a wrap-up session with VNAH and ICCSL staff. There was also a brief opportunity for the delegation members to meet Edward Reed, the Asia Foundation representative in Korea; this may lead to further exchanges between Viet Nam and Korea on other issues.

The outcomes of the wrap-up session were as follows:

- It will be important for the delegation members to digest what was learned in Japan and Korea and its relevance for the legislative process in Viet Nam – a report will be prepared that focuses on what is and what is not especially relevant for Viet Nam (this will be a more fully fleshed out discussion similar to the Executive Summary of this Report);
- It is necessary to consider the process of moving forward quickly with the legislative drafting process. This has several components

- One is that additional relevant materials need to be provided by ICCSL and translated into Vietnamese. Mr. Lam has already indicated an interest in certain laws from Europe.
- A second is to establish the schedule for technical assistance meetings in Viet Nam with the Drafting Committee. The tentative decision is to hold the next drafting session at the end of March/early April, when Dr. Irish and Prof. Simon will already be in Asia.
- At that meeting a time line will be established for drafting the legislation and presenting it to the National Assembly by the end of the year. The “NGO Law” is on the legislative calendar for 2005, though it is possible that it may slip to 2006 because of the need to focus on the Civil Code in 2005; this should in any case be in place before any new legislation on specific juridical entities is adopted. This may, however, present an opportunity for working on the more general framework for NFPOs; that could mean reworking the current Civil Code provisions for associations and social and socio-cultural funds as a precursor to adopting more technical enabling legislation in 2006. In any event, the timeline needs to be realistic and there needs to be a clear commitment to sticking to it. Members of the delegation have developed a good relationship with Dr. Irish and Prof. Simon, which may make such interaction possible despite general suspicions of outsiders.
- The question of whether additional study tours would be useful also came up; there is interest among delegation members in following up on Mr. Iriyama’s suggestion of a visit to China. It may well be that a high-level visit to the United States would also be in order. Prof. Simon and Dr. Irish will discuss the former idea with high level contacts in China, while Mr. Tran will discuss the latter.
- Encouraging participation in regional meetings (one may be held in Dhaka in September) would be a good idea.

Appendices

- A. Questionnaire for the Study Tour**
- B. Tokyo Schedule**
- C. Fukuhara Commission Report**
- D. Report of Cabinet Decision**
- E. Tax Laws in Japan**
- F. Seoul Schedule**
- G. MOGAHA Report**
- H. Technical Summary of Legal Issues Addressed**