

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

January 20-29, 2005

Technical Summary of Legal Issues Discussed

Japan

1. The legal framework for not-for-profit organizations (NFPOs) in Japan is extremely complex, with about (depending on how one counts) nine different types of legal entities in the not-for-profit sector. Although there is an interesting legal reform process going on at the present time, it will, for political reasons, only affect one segment of the current framework legislation – the *koeki hojin*, which are formed under the Civil Code. The general legal framework for civil society is now and will remain much too complex to be a good model for Viet Nam.
2. Nonetheless, the current reform process is quite a good one, and indicates how such a process takes place in a sophisticated democracy. We had meetings not only with government officials, who explained the proposed reforms in detail, but also with various segments of the NFPO sector. The meetings with NFPOs included those that will be affected by the current reforms as well as those that were affected by the earlier reforms (which led to the development and passage of the Special Nonprofit Legal Entities (SNC) Act, in 1998). 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.
3. In addition, some of the specific reform proposals within the current *koeki hojin* reform process are quite useful and should be highlighted in the course of developing new legislation for Viet Nam (e.g., the proposed registration and oversight commission for public benefit organizations (PBOs); the proposed new internal governance rules for PBOs; the new requirements of public disclosure or annual reports).
4. The current tax system in Japan for NFPOs and their donors is much too complicated for Viet Nam, particularly the operation of rules with respect to the taxation of different types of business activities conducted by PBOs. The presentation by the Ministry of Finance to the delegation (which thoughtfully had been translated into Vietnamese!) was excellent, but it showed that Viet

Nam will need much simpler rules with regard to tax exemptions for organizations and tax deductions for donors.

5. In addition, 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. Some features of the discussions In Japan are worth noting:
 - a. Japanese NFPOs benefit from receiving tax deductible contributions, and they include such donations in their annual budgets;
 - b. companies in Japan have a fairly high level of corporate giving (¥ 4 billion in 2003); CSR has become important for companies, both large and small (meetings with the Nippon and Sasakawa Peace Foundations were particularly important in this regard);
 - c. individuals may make tax deductible contributions to NFPOs, but the process of claiming the tax deduction is cumbersome for those people who do not file tax returns and many do not take advantage of the deduction available; and
 - d. although some reforms of the current system may make it easier for non-return-filing individuals to claim deductions in Japan, the fact that the system of income tax payment in Viet Nam is like that in Japan makes it useful to discuss other possible alternatives, such as the 1% law (available in Chiba Prefecture as well as in many countries in Central and Eastern Europe).
6. We had significant discussion with many NFPOs (Japan NPO Center, C's, JACO) about lobbying for reforms of the laws affecting the sector. This demonstrated the vibrancy of civil society in Japan, and the willingness of the government of Japan to listen to NFPOs when they come forward with rational alternatives to government proposals.
7. The meeting with the MP, Mr. Kumashiro, while in many ways focused on the developments in Japan around the adoption of the 1998 legislation (which was a member's bill, something not currently available in Viet Nam), demonstrated a possible structural reform that might be helpful in Viet Nam. The existence of a non-partisan committee in the Diet that deals with civil society issues is an interesting development (and one that has also been adopted by parliaments in various Central and East European countries.)
8. Another topic of discussion was the role of NFPO support organizations, such as resource centers. The Japan NPO Centre, which maintains a database of registered SNCs and provides support to its members is a good model for developing such an NFPO resource center in Viet Nam.
9. The role of international NGOs in Japan was discussed in a meeting with the Japan NGO Network. Another issue discussed there was the growth of

independent think tanks – something that may be useful to think about in Viet Nam.

10. 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 legal reforms for the NFP sector in Viet Nam are quite significant.

Korea

1. 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. The first two presentations at Seoul National University, Center for Asian Development pointed out the clear connection between the democratic reforms and the growth of civil society in Korea.
2. The general legal framework for NFPOs in Korea, though seemingly quite complex, is a bit simpler than the framework in Japan (on which it is patterned). It is clear, however, that the law reform effort in Viet Nam needs to focus on something simpler than the current legal framework in Korea. We should probably think about having only two legal forms – associations and foundations – as well as a separate mechanism for deciding which organizations qualify as PBOs (as proposed for *koeki hojin* in Japan).
3. This proposal for addressing the legal form issue in Viet Nam should be taken into account as the reform of the Civil Code proceeds. It will probably be useful to discuss the provisions for not-for-profit legal persons that will be in the new Civil Code as a preparation for writing more detailed ancillary legislation for associations and foundations.
4. Some structural reforms in Korea that give the sector access to and participation in decision-making processes with regard to the policies and programs that affect it are useful and may be worth emulating 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.

Documents received during the visit describing both mechanisms should be translated into Vietnamese and discussed during the technical assistance workshop in March/April 2005.

5. The visits to fund raising organizations (CCK and Beautiful Foundation) were helpful because they showed how adequate fund raising legislation can promote the citizens and business companies of a country to contribute vast sums to support various social causes, such as poverty alleviation. The technical discussions of what aspects of the current Korean fund raising legislation (from 1951) need to be reformed were quite useful
6. The role of corporate philanthropy and CSR in Korea was stressed by visits not only to CCK and Beautiful Foundation, but also to the Asan Foundation (established by the founder of Hyundai). We were impressed by the vast number of health care activities sponsored by Asan Foundation, but we were also concerned about a certain lack of transparency in their operations, which is sanctioned by the current laws.
7. The visit to Volunteer 21 and the discussion of the “Volunteer Protection Law” that is being promoted by the organization was useful in showing some of the additional legal issues that should be addressed as Viet Nam develops a more sophisticated legal framework for NFPOs and citizen participation. The significance of promoting volunteerism for social causes is evident in Korea. However there are legislative models other than the one in Korea that might be looked to for Viet Nam.
8. 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 reforms in the legislation affecting the NFP sector in 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.