

UNIVERSAL PRINCIPLE

—Human Rights Report from JCLU—



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SUPREME COURT REJECTED CLAIM BY TAIWANESE

The Supreme Court rejected on April 28, 1992 the claim for damages in the amount of 5 million yen for each Taiwanese plaintiff, conscripted as a Japanese soldier or military civilian during World War II who was killed or wounded. Although the Japanese counterparts have been awarded compensation for such death or injury, Taiwanese have never been given such compensation. The Japanese government attributed this difference to the fact that when Japan abandoned sovereign power over Taiwan, Taiwanese lost Japanese nationality.

The Japan Civil Liberties Union decided in August, 1976 to support the movement for compensation of aggrieved and established a group of lawyers, many of whom were Union members, to conduct research and study the problem. The plaintiffs filed suit against the Japanese government in August, 1977, and the suit lasted nearly 15 years.

Both the Tokyo District Court and the Tokyo High Court rejected the claim by Taiwanese plaintiffs. However, the Tokyo High Court noted that the plaintiffs suffered conspicuous disadvantage as opposed to the Japanese in the similar situation and further requested that this disadvantage be promptly dissolved. It is to be noted that such dicta, which is not required for the sake of disposition of the case, is quite uncommon in the Japanese judiciary. Partly due to this decision, the Diet passed a bill in 1987 under which the surviving family members and those seriously injured during the war would be awarded 2 million yen per dead or seriously injured person. This figure, however, is much lower than the amount of pension etc. awarded to the Japanese in the same situation and it is far from satisfactory.

The Supreme Court said that the sacrifices or damages

caused by war are to be borne by the nation and the compensation therefore is beyond the reach of the Constitution. It also rejected the claim by the plaintiffs that the situation violates the principle of equality under the law.

The Union resolved at the General Meeting on May 9, 1992 that the Supreme Court decision was discriminatory, and against the international movement to dissolve discrimination based on race or nationality and therefore could not be approved of. The Union further resolved that it would continue to be engaged in the problem of "post-war compensation." The Union sent the resolution to the Supreme Court, the Prime Minister and other related government agencies.

(JCLU Newsletter, No. 281, June 20, 1992)

RESOLUTION

The Supreme Court rejected on April 28, 1992 the appeal of plaintiffs in the case asking for damages for death and injury suffered by Taiwanese ex-Japanese soldiers.

The Union was asked to support the Taiwanese who were sent to the battle during World War II as Japanese soldiers or military civilians and killed or injured. The Union determined to support this movement in August, 1976 and determined to ask for equal compensation as the Japanese nationals have had received for 15 years.

Although the claim itself was rejected both by the Tokyo District Court and the Tokyo High Court, the Tokyo High Court pointed out in its reasoning that the plaintiffs suffered conspicuous disadvantage as opposed to the Japanese in the similar situation and further noted that this disadvantage should be promptly dissolved. Partly due to that decision, the bill proposed by Diet members and passed in 1987 awarded 2 million yen per Taiwanese who were killed or seriously injured to the injured and surviving family members. We may say that this result was achieved through our movement. On the other hand, however, the amount of compensation, i. e., 2 million yen per victim is extremely lower than the amount of pension etc. awarded to the Japanese in the same situation and far from satisfactory from the viewpoint of "equality under the law."

The Supreme Court did not deem this situation as illegal discrimination and entrusted the solution of this problem to the legislature. We have to point out that the Supreme Court decision makes light of the principle of "equality under the law," which ranks highly in the present international society and is clearly contrary to the movement and opinion at the international level aiming at the abolition of discrimination based on race or nationality. We simply cannot approve of this decision.

It is further to be noted that the issue of "post-war settlement" including the issue of military comfort women, which has been highly publicized in recent days, has the similar problem as the case of Taiwanese ex-Japanese soldiers. We urge the legislature and the Executive to take

prompt action to solve these problems in accordance with the human rights principle of "equality under the law." This is imperative to achieve understanding and respect of the peoples of all nations that the Japanese government and people honor the human rights.

We, the Japan Civil Liberties Union, hereby request the judiciary, the legislature, and the Executive that these problems be dealt with strictly in accordance with the principle of "equality under the law." We also proclaim that our Union would continue to be engaged in the problem of post-war compensation including the case of Taiwanese ex-Japanese soldiers from the viewpoint of protection of human rights.

May 9, 1992

JAPAN CIVIL LIBERTIES UNION

LITIGATION FILED TO STOP THE STATE FUNDING OF RELIGIOUS CEREMONIES

An Action to Seek an Injunction against the Use of Public Funds for the Enthronement Ceremony (Sokui-no-rei) and the Emperor's Great Food Offering Ceremony (Daijosai).

Reasons For Bringing The Action

I decided to start drafting a complaint against the use of governmental financial aid for the Enthronement Ceremony (Sokui-no-rei) and the Emperor's Great Food Offering Ceremony (Daijosai) alleging it to be unconstitutional at the beginning of 1990 when a description of these rituals and the government budget for them were announced. I finished writing the draft complaint seeking an injunction against the use of public funds and a declaratory judgment that such use of funds is unconstitutional, and introduced it to a national assembly of plaintiffs, lawyers, and supporters of the litigation claiming separation of religion and state on July 29th in Matsuyama City. The draft complaint was extensively discussed and examined by the participants at the assembly.

The next morning, some of the local and national newspapers reported the litigation. Within a month and a half, 987 people nationwide joined the class action. Finally on September 21, 1990, 145 plaintiffs filed a suit with the Osaka District Court against the government allocation of public funds for the Enthronement Ceremony and the Emperor's Great Food Offering Ceremony.

On October 30 at 11 a.m., the first hearing was held at the grand courtroom of the Osaka District Court. It was filled with numerous plaintiffs and their supporters. The second hearing was scheduled for December 18. On the same day, 526 plaintiffs who could not file on September 21 filed a second suit. On November 21, the day before the

Emperor's Great Food Offering Ceremony, 147 plaintiffs filed a third suit. The first hearing of the latter two suits was scheduled on December 18, and the two cases were expected to be consolidated into the first one.

Those ceremonies are all religious rites of state Shinto. Both the Enthronement Ceremony on November 12 and the Great Food Offering Ceremony on November 22 and 23 should not be seen as separate from other Shinto Rites. They cannot be essentially effectuated without a chain of more than twenty inseparable Imperial Shinto Rites (called "Tairei Kankei Shogishiki To" by the Imperial Household Agency.) which start on January 23, 1990 and last until early December.

All these rites are held according to the former Special Order (Toukyoku-rei) prescribing the schedule and full particulars of the enthronement of the "God in Human Form" (Arahitogami) Emperor, in 1909 (Meiji 42).

The Government's True Intention

Why does the government authorize the use of public funds for the Enthronement Ceremony and Great Food Offering Ceremony which are being done in exactly the same form as when Shinto was the state religion?

To understand this, it is necessary to recognize, and it goes without saying, that all religious rites are symbolic expressions of religious thought or doctrine.

Religious doctrine is manifested through the execution of both the Enthronement Ceremony and the Great Food Offering Ceremony, in that the Emperor enshrines his imperial ancestors as gods, and at the same time he becomes the "God in Human Form" (arahitogami) as a descendant of Amaterasu-Omikami in his divine country.

By financing these ceremonies which are based upon religious rituals as events which have a nationalistic or public character, the government intends to broaden the idea, by appealing subconsciously to the emotions of the public at large, that Shinto rituals performed by the Imperial family (in other words, national Shinto rituals) have been placed in a position of national festivals.

It seems that this is nothing more than an attempt to revive the same manipulative process used when Shinto was the state religion.

The Significance of the Case

The object of the clause for the separation of religion and state, Article 89 of the Constitution of Japan, or the Constitution of Japan as a whole, is to prevent the reestablishment of Shinto as the state religion. There is no reason for the court to reject the eligibility of the people, especially taxpayers, to sue the government for clear violations of the Constitution.

The significance of the case is to point out that the use of

government funds for the Enthronement Ceremony and the Great Food Offering Ceremony represents the restoration of state assistance to Shinto rites, and establishes the principle of civil procedure that citizens in the capacity of taxpayers can file suit against unconstitutional government action when a Constitutional principle such as the separation of religion and state is seriously violated.

I hope that many readers will closely watch the development of this case, and share their views with us.

(JCLU Newsletter No 274, December 22, 1990)

THOUGHTS ABOUT THE LAWSUIT SEEKING COMPENSATION FROM THE JAPANESE GOVERNMENT FOR DESCENDANTS OF KOREAN SOLDIERS OF THE JAPANESE IMPERIAL ARMY

On October 29, 1990, 22 members of the Korean Association of Bereaved Family Members of the Pacific War filed a suit in the Tokyo District Court against the Japanese government demanding an apology and compensation. It was ironic that the suit was filed right in the middle of the month-long period during which the Japanese Diet was deliberating the U.N. Peace Keeping Operations (PKO) bill.

Making Up for the Past

21 plaintiffs, who were sent forcibly to Sakhalin during the war, filed a suit against the Japanese government for 10 million yen compensation per person on August 29, 1990. Also in November 1987, approximately 23,000 Korean victims of the atomic bomb requested a total of 2.3 billion dollars in compensation against the Japanese government. These two suits were filed by representatives of the plaintiffs.

It is believed that the Basic Relations Treaty between Japan and the Republic of Korea of 1965 settled the issue of the occupation of Korea and all other related issues. Why do all of these problems keep coming up one after another? Weren't the issues effectively resolved? Shouldn't we resolve these issues regardless of the former treaty?

Examples of Other Countries

In the U.S. and Canada, there has been the issue of resettlement of people of Japanese origin during the war. Japan waived its claim for "damages brought about from war, or brought about from the action due to the existence of the state of war" in the Peace Treaty. Nevertheless, the U.S. and Canadian governments apologized and made restitution in 1988. This was not done as the result of external pressure but rather by their own desire for the sake of justice and for the good of future relations.

Another example is the detention of Japanese POWs in Siberia. The government of the former Soviet Union formally admitted the detention of Japanese POW's in Siberia for the first time in the context of the Perestroika policy of reexamining history. Former President Gorbachev handed over documents including a comprehensive registry of the names of the detainees to the Japanese Government when he visited Japan in April 1991.

Both Japan and the Soviet Union have waived reciprocally their "claims for damages brought about from war" in the Joint Japan-Soviet Declaration in 1956. It seems that the Russian Government was motivated more by the desire to remove another obstacle to Soviet-Japanese reconciliation and peace than it was by a desire to resolve Japan's right to make a claim regarding the POW issue.

In Taiwan

Representatives of the Korean Bereaved Family Members Association visited Japan to file a suit on October 27. Earlier on October 17, a group of Taiwanese Association members visited Japan. The Alliance of Associations of Families and Relatives of Soldiers Conscripted by the Imperial Japanese Army demanded that the Japanese government pay for military post office savings deposits and salaries in arrears. One of the members claimed, "Our souls cannot rest in peace unless the Japanese government shows its good faith in the settlement of damages due to the war."

In 1988, the Japanese government enacted a special law providing 2,000,000 yen (\$16,000) in compensation for each Taiwanese conscripted in the Japanese Imperial Army who was killed or seriously physically handicapped, a law that effected nearly 30,000 former soldiers. The momentum for the enactment of this legislation was a lawsuit (supported by the JCLU) brought by former Taiwanese soldiers and their relatives seeking monetary compensation for the same purpose. Issues of the lawsuit, other than that of monetary compensation, have still not been resolved.

Chinese Descendants

I started for Peking with some of my friends on November 7 to visit members of the Association of the Descendants of the Survivors of the Hanaoka Incident which was concerned with Chinese who were forcibly sent to Japan as laborers during the war, and to hold hearings and make preliminary arrangements for compensation negotiations with Kajima Co. Although Kajima Co. expressed their "sincere remorse and apologized with the deepest regret," no compensation has been given.

I could tell that the 100 people I met at the Peking gathering still suffered from the very personal and real emotional wounds that they have carried over the years.

International Contributions

As you may know, I mentioned three days: October 17, October 27, and November 7, all which include the number 7 and are concerned with what Imperial Japan did to Taiwan, Korea, and China during the war. An extraordinary session of the Diet for deliberations on the draft United Nations Peace Cooperation Law was held for a month starting from October 12th. Therefore the three days fell exactly within the Diet session term.

Naturally the primary concern of the bill is the dispatching overseas of Self Defense Forces. The three incidents are still unsettled, and survivors are still suffering damages. I wonder how all these survivors and bereaved family members in Korea, Taiwan, and China feel when they hear the Japanese government loudly proclaiming their commitment to "International Contributions."

(JCLU Newsletter No. 274, December 22, 1990)

THE SECOND KUBOTA MEMORIAL SYMPOSIUM 'ODA AND HUMAN RIGHTS'

ODA Reexamined

On December 8, 1990 the Second Kubota Memorial Symposium entitled 'ODA and Human Rights - the Role of NGO and Grass Roots Assistance' was held at the Citizen's Life Center in Shinagawa, under the sponsorship of the JCLU with the support of the Asahi Shimbun. The symposium provided a fresh viewpoint by discussing ODA, Official Development Assistance, from a human rights perspective. Approximately 100 people attended the symposium.



The Symposium "ODA and Human Right" was held in Shinagawa.

The late Mr. Yo Kubota has advocated that people concerned with human rights, both governments and citizens, be able to frankly discuss the issue with one another.

The symposium began with a video tape produced by the Dutch government, a leader of ODA. The tape suggested that such assistance be used only to assist poor people in

economically underdeveloped nations. The tape also suggested that human rights should be taken into consideration at the time a donor nation gives assistance, and that development education is important.

After a message from Ms. Fiona Kubota, the widow of Mr. Kubota and of the the United Nations Human Rights Center, opinions were presented from the panelists of the symposium.

The panelists consisted of Mr. Alf Carlson (Consul of the Swedish Embassy in Japan), Ms. Yayori Matsui (Editor of the Asahi Shimbun), Mr. Azusa Hayashi (Chief of Policy Section, Economical Cooperation Bureau of the Foreign Affairs Ministry), and Mr. Akinori Hashimura (Member of Japan Civil Liberties Union), with Mr. Junichiro Hironaka, former Executive Director of the Union, serving as the moderator.

The Publication of the Model Plan for ODA Standard Law

The JCLU has been involved in drafting the Model Plan for ODA Standard Law, aiming at changing the policy of ODA. The JCLU has recently published a booklet entitled 'ODA and Human Rights' (700 yen), which includes the primary plan and a detailed explanation of it. On November 22, Mr. Hashiba, the former Executive Director, and Mr. Noriaki Hashimura, a member of the ODA research group, visited the three ministries and one agency concerning ODA: the Foreign Affairs Ministry, the Finance Ministry, the Ministry of International Trade and Industry, and the Economic Planning Agency, in order to distribute the booklet and to request the ministries to reexamine ODA from the viewpoint of human rights.

(JCLU Newsletter No. 274, December 22, 1990)

CORPORATIONS AND HUMAN RIGHT ACTIVITIES

It is essential, now more than ever, for Japanese corporations to make a public contribution to the overseas communities where they have made economic investments. The Japan Federation of Economic Association (Keidanren) has established a "One Percent Club" which consists of corporations and individuals aiming to contribute one percent of their incomes to public contribution programs. It has proposed to establish the idea that corporations should progress together with the various communities surrounding them. Its slogan is "New Economic Democracy".

We may regard the phenomena as the appearance of a social reform age of corporate activities, different from the time when socialism was used as a method to overcome the negative aspects of capitalism.

In the field of environmental protection, activities are organized in response to the requirements of the current situ-

ation. For example, "Credibility for Environmental Recognition by Economic Society" (CERES), based in Boston, was organized as the result of the oil spill of March, 1989 by an Exxon tanker named "the Valdez". The organization has established ten principles which corporations should observe to protect the earth's ecological balance.

These principles are:

- (1) protection of life;
- (2) sustainable consumption of natural resources;
- (3) deposit and minimization of waste;
- (4) intelligent use of energy;
- (5) reductions of security risk;
- (6) provision of safe goods and services;
- (7) compensation for environmental damage;
- (8) disclosure of environmental information;
- (9) establishment of a director and a manager in charge of environmental issues; and
- (10) establishment of environmental assessment and environmental audit.

These principles will be used for the materials for consumption activities and investment in securities by members of CERES.

Here in Japan, "CERES Workshop" was established at the end of last year, aimed to do research and make proposals towards operating with a minimum of environmental destruction.

The idea of global awareness has influenced human rights activities as well as environmental ones.

"Nikoh", a big direct-mail purchase order retailer, for example, contributed to the increase of membership through putting an introduction message of Amnesty International on its advertisement magazines named "Seasoning". Also, Nikoh has implemented the plan to sell various Amnesty publications and donated a portion of its sales to Amnesty.

This plan was made by a strong desire of corporate people to make a social contribution, which is different from the pursuit of profits.

These activities should not dwindle. JCLU must make efforts to draw such donation funds like "One Percent Club" and effectuate an extensive drive for the promotion of human rights.

(JCLU Newsletter No. 275, March 15, 1991)

JCLU SUGGESTS REFORMS IN JAPANESE CRIMINAL PROCEDURE

On February 14, 1991, JCLU made public its suggestions regarding foreigners' human rights in connection with the criminal procedure of Japan, urging the Supreme Court, the Ministry of Justice, the Supreme Public Prosecutors Office and other government agencies to reform practices in criminal procedure in accordance with international standards for human rights.

JCLU has concluded that Japanese criminal procedure discriminates in a number of ways against foreigners staying in Japan: compared with the Japanese, foreigners are often arrested and prosecuted for a trifling offense and sentenced to disproportionately severe penalties; foreigners who do not possess adequate knowledge of the Japanese language cannot generally exercise their rights as a suspect or an indigee in the process of examination through trial; and judicial procedure often operates in close connection with immigration procedure, and this interferes with trials involving foreigners.

JCLU, through its Foreigners' Rights Committee, studied for about a year problems in criminal procedure where foreigners whose Japanese is inadequate are confronted by authorities. The study results were deliberated in view of international standards for human rights. Consequently, a total of thirty-one suggestions were made and compiled into the 50-page report entitled "Criminal Procedure And The Human Rights Of Foreigners In Japan: Problems And Suggestions."

The suggestions include reforms in (1) the system of interpreter's assistance, including the establishment of systems of qualifying an interpreter, checking the accuracy of translations and preparing a translated indictment, (2) practices in prosecution for petty offenses committed by foreigners, (3) the treatment of foreign suspects or indigees and (4) practices in criminal procedure in connection with immigration control.

The suggestions were announced at a press conference held on February 14 at the press club of the Tokyo District Court. The attendants from JCLU were Takehiro Uchida, representative director, Shun Hashiba, former Executive Director, and Yaeko Takeoka and Kensuke Onuki, members of the Foreigners' Rights Committee.

The Japan Times and The Mainichi Daily, both English-language papers published in Japan, reported the news, which showed their great interests in JCLU's suggestions as to human rights of foreigners staying in Japan.

No reports, however, were published in Japanese-language papers. This is probably because the articles were published during the Gulf War which was the greatest concern in the press at that time.

Perhaps motivated by an interview by a foreign writer of an English-language paper, the Criminal Affairs Bureaus of both the Supreme Court and Ministry of Justice bought ten additional copies of the report each to study the suggestions thoroughly.

The English edition of the report is available at JCLU for ¥1,000 per copy.

(JCLU Newsletter No. 275, March 15, 1991)

NEW ORGANIZATION FOUNDED TO HELP FOREIGN LABORERS STAYING IN JAPAN

In November 1990, a group of lawyers including members of JCLU, founded an organization called LAFLR (Lawyers For Foreign Laborers' Rights) to protect the rights of foreign laborers staying in Japan.

As disclosed in many ways, the rights of foreign laborers have been disregarded in Japanese society. Human rights violations suffered by foreign laborers in their places of work are so serious that they can be no longer overlooked. Under these circumstances, a variety of grass-roots organizations and groups of volunteers have extended a helping hand to foreign laborers in trouble. The bar association of Japan has also tried to protect them by giving legal counsel and urging the authorities to take necessary measures against the infringements of the rights of foreign laborers.

However, legal aid alone is not enough to give effective relief to foreign laborers whose rights have been infringed. In close cooperation with citizens' groups and labor unions, lawyers should give comprehensive support that covers not only legal problems but problems in the everyday life of foreign laborers. Moreover, in previous legal aid, lawyers are generally responsible only for cases that they have undertaken, and the exchange of information, including professional know-how, has not become shared knowledge.

With this in view, LAFLR was founded as a resource to make legal support more effective with the help of other interested organizations, medical people and foreign embassies in Japan, and to establish the nationwide network of lawyers with experiences in cases involving foreign laborers.

LAFLR is engaged in the following four activities. First, free legal counsel to foreign laborers in trouble. If necessary, an enrolled lawyer is assigned to deal with a case. The assistance of medical and other groups is asked for if the occasion arises.

Second, LAFLR publishes handbooks of the legal and social systems in Japan to provide foreign laborers with general information about life in Japan. Publications of this kind are necessary for foreign laborers because various infringements on their rights are attributable in large part to their inadequate knowledge about Japanese legal and social systems.

Third, LAFLR studies Japanese legal and social systems from the viewpoint of foreigners' rights, for the systems in themselves are thought to cause infringements on the rights of foreign laborers. It elucidates, through its legal or defense counsel, problems inherent in the system and

brings the findings to the attention of the government as well as the people. At the same time, it presses Ministries of Labor and Justice in particular to reform its practices in legal and social systems and amend the relevant laws and regulations.

Fourth, LAFLR coordinates all groups and individuals concerned, including academics, to facilitate the exchange of accurate information among them and to make large-scale studies available to foreign laborers in Japan.

It has not been very long since LAFLR came into operation. However, its limited experiences reinforce how foreign laborers have suffered in Japanese society. There are many problems in need of solutions. LAFLR concentrates on its basic task, i.e., legal aid to individual cases of infringed rights of foreign laborers. This it believes helps the well-being of foreign laborers in Japan. In the long run, the conception of human rights will further penetrate into Japanese society and raise human rights in the country to an international level.

(JCLU Newsletter No. 276, March 15, 1991)

STUDIES BEGIN UNVEIL THE TRUTH OF WORLD WAR II JAPANESE MILITARY'S COMFORT WOMEN

Women were mobilized in Korea and other Southeast Asian countries to give comfort to Japanese soldiers at the front during World War II. The so-called "comfort women" is a subject that relates to discrimination against women, such as sexual violence and prostitution, as well as the issues including Japan's responsibilities for the war and postwar compensation to other Asian countries.

In the session of the Diet in June 1990, the Japanese Government explained that "Private agents voluntarily arranged comfort women for soldiers at the front," in response to the question whether the Japanese government was involved in the organized prostitution during the war. The answer seems implausible. Could private agents act freely in those days when the military exercised overwhelming power over the nation? Actually, a few surviving documents and a book written by a Japanese man who used to be a recruiter of Korean comfort women tells the military's involvement in the matter.

The government's evasive answer in the Diet aroused the necessity of studies of the military comfort women. The studies must be expedited, for as those who used to be a military comfort woman are aging, the truth of the problem might be lost in history. A study group was formed at the suggestion of writers, journalists and lawyers.

In addition to the main subject, the study group plans to research what is war and what is compensation for war. It also plans to study the problem of the military comfort women in connection with the problems today, such as Japanese men's "sex" trips to Asia and violent acts upon Asian women staying in Japan as migrant workers.

The study group began to hold a regular meeting to work on the problem of military comfort women. At its request, certain members of the Diet took up the problem in the Diet session, and they will continue to bring it up in the Diet.

On January 19 1991, the first symposium was held to discuss openly the problem of the military comfort women at the Y.M.C.A. Japan in Tokyo. More than 100 men and women participated in the symposium. Panelists included Fumiko Kawada, a writer who compiled into a book the stories of experiences that some former Korean comfort women had told her personally; Kenichi Takagi, an attorney; and Yone Yamashita, a Korean resident in Japan studying at university in Korea. Yamashita reported that, "Previously, in Korea the problem of the military comfort women was a matter of personal pity for a victim whose chastity had been defiled under the imperialism of Japan. People, however, have begun to view the problem from a more political perspective."

About half the participants in the symposium joined the study group. The study group plans to gather information from those who have remembered the existence of the military comfort women, request for discussion in the Diet as to a formal apology and compensation to the former military comfort women, and organize a joint symposium with the concerned groups in Korea.

In peace movements in Japan, people are apt to think of war and peace mainly from the standpoint of the victim of atomic bombs. However, it is also necessary to view war and peace at the angle of Japan's crime. New facts must be revealed if World War II is examined at the angle of discrimination against women or Japanese men's sexual abuses against Asian women.

(JCLU Newsletter No. 275 March 15, 1991)

LECTURE BY PROF. JEROME A. COHEN, A MEMBER OF ASIA WATCH

A lecture by Prof. Cohen and an informal discussion with him was held on February 21, 1992 at the JCLU office. Prof. Cohen is well known internationally as an authoritative scholar regarding Chinese law.

Prof. Cohen, formerly a professor at Harvard, is now active as an attorney as well as a professor at New York

University. Currently he is visiting Japan as a director of Asia Watch.

Because his lecture was decided only a week beforehand, JCLU was able to give notice to limited people. However, besides JCLU members, a variety of people from Amnesty International, Lawyers for Chinese Students, and U.S. attorneys in Japan gathered to hear his lecture.

Mr. Cohen's lecture was titled "Japan's Foreign Economic Assistance Programs and Human Rights" focusing on the sudden appearance of Japan as the world biggest donor. His subject stressed the pros and cons of economic sanctions against China, the summary of which will be introduced at the next issue of this newsletter.

Following Prof. Cohen's lecture, informal discussion with Michael Jendrzeczyk, the Washington D.C. director of Asia Watch, was conducted. By that discussion, we are able to know the activities of Asia Watch. During the discussion, Ms. Yoko Hayashi, a director of JCLU, served as an interpreter.

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JAPAN'S FOREIGN ECONOMIC ASSISTANCE PROGRAMS AND HUMAN RIGHTS BY JEROME A. COHEN

A lecture prepared for the Japan Civil Liberties Union Tokyo, February 21, 1991

Mr. Cohen first praised JCLU for conducting distinguished work on behalf of human rights in Japan. Especially, he pointed out the efforts of JCLU to obtain recognition of the rights of Chinese who have come to Japan and have sought to avoid compulsory repatriation since the 1989 tragedy and subsequent wave of repression in China. He also praised JCLU's very recent report documenting the extent to which the administration of criminal justice in Japan discriminates against foreigners.

Then, he discussed the implications of current renewal of economic assistance to China from Japan, the United States and other countries, via both bilateral and multilateral means.

Until recently, the United States, Japan and other major industrial nations were struggling with the problem of whether and how to maintain economic sanctions against China in order to register disapproval of the repression. Now, however, they have permitted the gradual resumption of loans to China from the World Bank, the Asian Development Bank and other multilateral financial institu-

tions as well as bilateral assistance programs.

The question of economic sanctions presents the West with a genuine dilemma because such sanctions constitute a form of coercion, an especially unattractive instrument when used against a highly nationalistic country that perceives itself to have been the victim of imperialist exploitation for the past 150 years. Moreover, as the examples of South Korea, Taiwan and some other nations suggest, economic development tends to spur recognition of human rights. Economic sanctions only delay the day when China too may enjoy a more solid basis for human rights than currently exists.

This dilemma is new and painful to Japan. Human rights has only recently become an important factor in the foreign policy of any nation, including that of the U. S. In view of Japan's record from 1931-45, post-war Japan has been understandably reluctant to emphasize human rights in its international relations and economic assistance. Procedurally, Japan has sought to forge and observe a consensus among the group of seven major industrial nations. Substantively, Japan has sought to renew economic assistance on the assumption that, in the long run, such cooperation would keep China open to the world and support the liberal forces in Chinese society.

Japan has recently become "the single largest aid donor to some twenty-five countries, including all of the significant aid recipients in Asia save for Pakistan...." In view of this sudden prominence of Japan's foreign aid role and the importance that Western nations attach to explicit concern for human rights in their foreign policies, the question arises whether Japan should not give more explicit attention to human rights in its official development assistance (ODA) and other economic cooperation.

There is increasing recognition of this challenge among Japanese Government agencies. MITI's recent report on "International Trade and Industrial Policy in the 1990s" which is subtitled "Toward Creating Human Values in the Global Age" states that Japan must adopt human-oriented international trade and industrial policies. More directly on point is the statement made last November by Ambassador Sezaki, Japan's Deputy Permanent Representative to the United Nations, who stated, in summary that more and more Japanese people now feel there is a clear connection between government policy on ODA and the situation of recipient countries with respect to human rights, and that Japan is joining in international support for democratization worldwide. To that end Japan will take into due consideration the progress being made in this area in each recipient country in the context of its aid policies. The 1990 Foreign Ministry White Paper on ODA voices a similar position.

The problem is how to translate this attractive abstract principle into meaningful policy. The U. S. Government also has struggled for years in an effort to agree upon and implement appropriate legislative and administrative standards for determining when to grant and when to withhold various forms of bilateral and multilateral economic assistance to foreign governments that have troublesome human rights records. The resulting inconsistent policy can give positive and negative examples for Japan to study as it considers formulating its own policy for the first time. The suspension of economic aid is a blunt instrument. Incentives as well as sanctions are necessary.

This is not the first time that donor countries have confronted the challenge of taking into account factors other than those that are strictly "economic" in the narrow sense. Today, for example, Japan's Overseas Economic Cooperation Fund (OECF), following the multilateral, Paris-based OECD, publishes a very detailed pamphlet entitled "OECF Environmental Guidelines." It is provided to prospective borrower nations so that they may prepare project requests that will ensure that environmental factors are given effective consideration.

To formulate analogous human rights guidelines for the administration of foreign aid projects will be a more difficult and sensitive task than the articulation of environmental guidelines.

What matters should be included in such human rights guidelines? This project requires the best collaborative efforts of government officials, scholars, business people, representatives of non-governmental organizations, journalists, lawyers and others in Japan and the U.S.

Mr. Cohen suggested a few ideas for consideration. First, each economic aid project should itself be evaluated in human rights terms.

Second, aid projects should be accompanied by an associated agreement on the part of the recipient country to provide greater openness regarding human rights matters.

Third, provisions should be made for a regular exchange of views between governments and NGOs of the donor and recipient countries on human rights questions.

Fourth, each cooperation program should have an human rights institution-building component. By way of illustration, funds should be set aside for training Chinese lawyers, judges and legal officials in principals of contract law, dispute resolution and criminal justice. Funds for longer term education programs could also be allocated.

Finally, a code of conduct for business personnel for the donor and recipient countries should accompany assistance

projects. Such a code, for example, could seek to protect the human rights of Chinese employed by foreign-related ventures in China. A bill along these lines has been introduced in the U.S. Congress. Mr. Cohen concluded that these ideas are rather meager but they can be refined, and they may also stimulate people to think of other ideas. If we are imaginative, flexible and energetic, we may make progress toward the goal spelled out at the 1990 Houston Summit of the G-7, where the major industrial powers reaffirmed their commitment to development based on human rights.

(JCLU Newsletter, No. 276, June 20, 1991)

REGULAR SEPTEMBER MEETING "LEARNING FROM AIDS"

The topic of the regular meeting of AIDS and Infected People's Rights Committee of JCLU on September 14th was the newly published book "Learning From AIDS - Counter Proposal Toward the STD Policy" (Nihonhyoron-sya). This group has been conducting study sessions with concerned doctors on AIDS and other contagious disease countermeasure policies for nearly two years.

The book contains subjects such as recent trends of the AIDS problem, problems in the medical scene, problems of conventional policy towards Hansen disease and other STD's which is in the background of AIDS policies.

Mr. Takao Yamada, Representative Director of JCLU; Mr. Shoichiro Niwayama, JCLU Director; and Mr. Akira Morita, members of the study group who were involved in publishing the book, made reports on the contents of the book. Those present, about ten people including Ms. Yayori Matsui of The Asahi Newspaper, had an active discussion covering many points of view.

Some of the practical issues discussed were: If a doctor refuses to handle an AIDS patient asserting that "doctors should have the right to protect themselves", what kind of argument can we make? What about for nurses and other medical staff?

If a person comes to the hospital, takes the HIV Antibody Test, but never comes back to get the results, and the results were positive, should the doctor take the initiative to notify the person of the result?

In the case of a married HIV carrier who refuses to tell the spouse of the fact of his/her own HIV positive status, should the doctor notify the spouse directly?

Since the change of the HIV infection through sexual intercourse is estimated about 0.1 %, is it really dangerous not to notify the spouse of the fact? Protection of privacy is not a simple issue.

The contagious Public Health Law Policy has a tendency to violate human rights. The book explains how badly lepers were treated under quarantine and discriminatory policy under the Leprosy Prevention Law. Venereal Disease Prevention Laws are discriminatory toward women as it aims "to protect men from disease". The AIDS Prevention Law falls within the tradition of these former law and policies. In considering the amendment to the AIDS Prevention Law, we should review the Infectious Disease Control Law as a whole. However, it is not an easy task.

HIV infection victims through hetero-sexual contact is increasing in Japan. We will soon see quite a number of hemophiliacs, mostly children, infected with HIV through use of contaminated blood products who will develop AIDS. Japanese society is entering a new era with respect to HIV infection.

How to protect the human rights of HIV-infected and AIDS patients is a very serious problem. The AIDS and Infected People's Rights Committee will continue to study about AIDS and would like to make a proposal on the amendment to the AIDS Prevention Law. We welcome the active participation of new members, especially women since we feel that the woman's point of view has not been adequately expressed.

(JCLU Newsletter, No. 278, November 1, 1991)

REPORT OF THE PERIODIC MEETING FOR ASSISTING HEMOPHILIAC-HIV INFECT VICTIMS

The first regular meeting of the year was held on February 1, at the JCLU office. The topic of the meeting was the Hemophiliac-HIV lawsuit report.

Our organization has been strongly involved in Japanese medical lawsuits such as the Thalidomide litigation and the SMON litigation. At the same time, we have been very interested in the AIDS issue from a human rights point of view. The AIDS and Infected People's Rights Committee has continually followed the issue by research and study. The HIV lawsuit issue is a very important matter from both points. Following the proposal made by Mr. Toshihiro Suzuki, a member of JCLU, one of the leaders of the HIV lawsuit action group at the Tokyo District Court, we took up the HIV lawsuit issue at the regular meeting.

About twenty members, including Mr. Ito and Mr. Yamada, representing the board of directors, attended the meeting. Reports and enthusiastic discussion lasted for over three hours.

At the beginning of the meeting, Mr. Toshihiro Suzuki and Mr. Atsushi Suzuki, members of the plaintiffs' counsel,

explained that the lawsuit was a fight against discriminations toward hemophiliacs, HIV carriers and AIDS patients. They explained the major arguments of the suit.

According to them, concerning the primary issue of law, the plaintiffs sue the defendants for mainly two failures. First, the fault of the Japanese Government, which did not permit manufacturing of blood products processed with heating (which would prevent the spread of the virus) until two years and four months later than Western countries' governments. Until then, unheated blood products continued to be imported and used for the treatment for hemophiliacs. ('80 misfeasance)

Second, the fault of the Japanese Government, which permitted blood products processed without heating, ignoring the danger of the intermixture of any kinds of viruses. ('70 misfeasance)

Mr. Shinichi Tokunaga, a member of the plaintiffs' counsel of the suit at the Osaka District Court, reported on Hemophiliac-HIV lawsuits in the United States.

According to Mr. Tokunaga, the ratio of the hemophiliac-HIV victims among total HIV carriers in the United States is only 1-2%.

In the United States, as stated in previous judgements of the courts, product liability is inapplicable to blood transfusions, and without product liability, proving negligence requires proving causation which is very difficult. Thus, the relief of the hemophiliac-HIV victims by winning the case at court is unlikely.

In both the Tokyo and Osaka cases, the responsibility of the Japanese government for medical administration itself is a strongly disputed issue. Most of the disputed issues are similar to those of the SMON case.

Problems of these suits were discussed as follows:

The plaintiffs need to make a motion for the acceleration of the trial because the immunity level of each accuser gets lower day by day.

Many hemophiliac-HIV infected patients are afraid of being plaintiffs in the HIV lawsuit because it might break their relationships with their own doctors. Another reason for the patients' fears is the extremely strong discrimination against HIV carriers and AIDS patients.

Another key issue of this suit is the strong need to protect the plaintiffs' privacy. To protect their privacy at the district courts, all plaintiffs except one or two in Osaka are anonymously called by number. Any document which might identify the individuals are kept separately with strong protection. This privacy policy is said to have been whole heartedly endorsed by the defendants as well as the district courts.

All the participants at the meeting realized that the Hemophiliac-HIV lawsuit is significant for both the human

rights issue and the justice system itself.
(JCLU Newsletter No. 280, February 25, 1992)

JCLU BACKS UP THE CASE OF LIN GUIZHEN

The Board of Directors of JCLU decided at its meeting on September 17, 1991 to support the case of Lin Guizhen, a Chinese female dissident, who was deported from Japan to China on August 14, 1991.

JCLU sent a letter to the Chinese Ambassador to Japan and to the Prime Minister of Japan to protest the deportation of Lin Guizhen and to request the humane treatment of Lin Guizhen in China.

In September 1989, Lin Guizhen came to Japan with people aboard a refugee ship that had reached the coast of Okinawa, the southernmost prefecture of Japan. In China, she participated in the pro-democracy movement in the spring of 1989. She fled China to escape persecution that the Chinese Government launched against pro-democracy dissidents after the Tiananmen Incident of June 1989. She thus sought political asylum in Japan.

She was, however, deported from Japan while lawsuits for suspension of her order of deportation and for cancellation for the decision not to recognize her status as a refugee were pending in the courts.

Deportation of a person during legal procedure means deprivation of their right to appeal to the court. Moreover, it is against the recommendation of the U.N. High Commissioner for Refugees, which prohibits deportation during legal procedure. The Japanese Government must be severely criticized by the international community for its enforcement of deportation of Lin Guizhen.

On March 26, 1992, the Fukuoka District Court dismissed Lin's request for suspension of the order of deportation. In its judgement, the court states contradictorily that "The order of her deportation is in violation of Article 47 (4) of the Immigration-Control and Refugee-Recognition Act of Japan." However, her request for suspension of the order was dismissed on the ground that there are no such gross violation as justifies suspension of the deportation order.

On April 14, 1992, the Tokyo District Court dismissed her request for cancellation of the decision to deny her refugee status on the ground that she gains nothing by pursuing an action unless she is in Japan.

Lin's defense counsel group appealed to the Fukuoka High Court and Tokyo High Court for reversal of the aforementioned judgements of both district courts. The cases are still pending in the appellate courts.

(JCLU Newsletter No. 278, November 1, 1991)

REPORT ON THE CASE OF LIN GUIZHEN

Circumstances of the Case

A large number of Chinese boat people flooded into Japan after the Tiananmen Incident in China in June 1989. After bidding farewell to her parents, brothers and sisters, Lin Guizhen, a 23-year-old Chinese woman, went aboard a tiny wooden ship from Fujian Province in China on September 4, 1989. She landed in Okinawa on September 27, 1989.

Among the boat people were those seeking political asylum in Japan. The former Chief Cabinet Secretary of Japan expressed at a press conference the government's intention of accepting them in Japanese society. However, soon after the government completely changed its attitude towards the refugees.

Lin Guizhen was taken to Omura Detention Center, a home for refugees, in Fukuoka in southern Japan. On October 18, 1989 when a reporter of Fukuoka Broadcasting Co. visited the center, she told the reporter that "In sympathy with the pro-democracy movement of China, she participated in the dissident students movement in Fujian Province in China. She contributed in fund raising for the leaders of the movement. She is seeking political asylum in Japan because she will be exposed to harm if she returns to China." Her story, reported in a nationwide TV news program on November 5, 1989, came to public notice.

The bar associations of Fukuoka and Nagasaki jointly began to take action to protect the human rights of Lin Guizhen. In addition to their own action, they requested the Committee for Protection of Human Rights of Japan Federation of Bar Associations to take on her case.

She filed an application for recognition of refugee status on December 20, 1989. Her application and subsequent appeal for objection were rejected. On December 5, 1990, she filed a suit with the Tokyo District Court for cancellation of the decision not to recognize her status as a refugee. She also filed a suit with the Fukuoka District Court for suspension of the order of deportation. (Both suits were dismissed in the Tokyo District Court and Fukuoka District Court, respectively. The appellate proceedings are still

pending in both courts.)

Deportation to China

On August 14, 1991, the Japanese Government deported Lin Guizhen to China by a plane chartered by the Chinese Government. The legal basis for her deportation was that suspension of her deportation was dismissed in the court. Obviously, the Japanese Government dared to deny her refugee status and deported her from Japan to China because recognition of her refugee status would trigger masses of applications for recognition of refugee status. The government must have feared the paralysis of immigration control.

In addition, the Japanese Government recklessly disregarded the two pending proceedings for her request for suspension of her deportation and for cancellation of the decision to deny her refugee status.

Repeated Unlawful Actions

Japanese Government took the following unlawful actions against Lin Guizhen during the period from placing her in Omura Detention Center to deporting her to China.

- 1) The chief of Omura Detention Center did not permit her to communicate with a lawyer for about a month contrary to the regulations for the treatment of those housed in the center. (He was instructed to do so by a public prosecutor of the Regional Immigration Bureau.)
- 2) The necessary procedure for her deportation was completed during that period. She was then allowed to communicate with a lawyer.
- 3) As soon as she applied for recognition of refugee status, the order for deportation was issued, upsetting and frightening her unnecessarily.
- 4) Immediately after the judgement of suspension of her deportation in the district court, the decision not to recognize her status as a refugee was made based on the findings of simple research.
- 5) As things became unfavorable, in utter disregard of her two pending suits, deportation was enforced and she was sent back to China where she will be exposed to persecution. That was an intentional act against the principle of "rule of law."

Heartless Understanding of Refugees

Refugees are people who have come to the most difficult decision to move to another country at the sacrifice of their life in their homeland. Without this basic understanding, refugee problems cannot be handled properly.

However, in its fear of the paralysis of immigration control, the Japanese Government did not think of such an understanding of refugees and disposed of the case of Lin Guizhen expediently. It was a last-minute job by an exclusionist or seclusionist government.

Above all things, it is inexcusable that the Japanese Government deported Lin Guizhen to China and exposed her life and freedom to menace. The government was ignorant of the international tendency of a positive attitude toward human rights problems. The government denied the dignity of Lin Guizhen.

For sake of its own interest, the government shamelessly violated Article 53 (3) of the Immigration-Control and Refugee-Recognition Act, which clearly stated the Principle of Non-refoulement, an international rule that states that "It is prohibited to banish or send back a person to the border of an area in which his or her life or freedom is exposed to menace because he or she is a member of certain race, religion, nationality, or special social group or because of his or her political opinion."

Furthermore, the government's reckless action forced Japanese immigration control to regress to the time of the notorious case of Lin Wenguing, a participant in Taiwan Independent Movement, who was deported to Taiwan in 1968. Clearly, the Japanese Government cannot escape severe criticism at home and abroad.

(JCLU Newsletter No. 278, November 1, 1991)

AMNESTY INTERNATIONAL LAWYERS MEETING HELD IN JAPAN

Amnesty International (A.I.) Lawyers Meeting was held on September 8, 1991 at Pacifico Conference Center in Yokohama, Japan. JCLU co-sponsored the meeting at which Japanese lawyers and foreign lawyers discussed lawyers' roles in international human rights work.

JCLU and A.I. assembled the lawyers who came to Japan to attend the A.I. World Conference to discuss international human rights. This was the first co-sponsored event by A.I. and JCLU.

Fifteen guests from abroad and sixty Japanese lawyers and legal scholars attended A.I. Lawyers Meeting. In the opening session, Takao Yamada, professor at Yokohama National University of Japan and a Representative Director of JCLU, addressed the opening of the meeting and Helena Cook, the legal officer of A.I. made a keynote speech on A.I. and international human rights, and the relation between jurists and the U.N.



Amnesty International Lawyers Meeting was held on Yokohama.

Following the four workshops under the topics of human rights of refugees, human rights of detainees, UN lobbying and abolition of the death penalty, the participants gathered in the closing session for an informal discussion. They concluded that human rights should be promoted on an international level and emphasized the continuing importance of international communication among the human rights lawyers. A.I. and JCLU appreciated the success of the meeting and hope to hold a meeting of this kind regularly.

(JCLU Newsletter No. 278, November 1, 1991)

JCLU GAINS MEMBERSHIP IN ICJ

JCLU applied to the International Commission of Jurists (ICJ) for affiliate status in the organization in September 1991. The application was accepted, and JCLU's membership was formally approved at the executive committee of ICJ held in Geneva in October 1991.

ICJ held its triannual meeting in Geneva for three days from January 21 to 23, 1992. As a new member of ICJ, JCLU sent Mr. Yasuhiko Saito, director of JCLU and professor at Tokyo University of Foreign Studies, and Ms. Shin Hae Bong, member of JCLU and a doctorate student of law at University of Tokyo, to participate in the meeting.

In commemoration of its membership in ICJ, JCLU conducted an extensive campaign to promote human rights work at home and abroad. In the campaign, a wide membership of JCLU was sought among individual people, groups and companies as well as the 15,000 lawyers in Japan. The JCLU simultaneously used the campaign for fundraising purposes.

ICJ Secretary-General Adama Dieng sent to JCLU a message to the effect that he appreciated the activities of JCLU and expected close cooperation from JCLU. JCLU also received an inspiring message from Professor Christian

Tomuschat, a member of the Executive Committee of ICJ and a professor of law at Bonn University.

Another memorable event was a party that JCLU held on April 8, 1992 in honor of former ICJ Secretary-General Mr. Niall MacDermot who was visiting Japan on the third ICJ mission to Japan.

(JCLU Newsletter No. 279, December 20, 1991)



Mr. Niall MacDermot was honored at a party at the JCLU.

ABOUT JCLU

Japan Civil Liberties Union (JCLU) was founded in 1947, the year when the new Constitution of Japan was promulgated, to protect and promote human rights of all persons regardless of belief, religion or political opinion. The American Civil Liberties Union played an important role in the foundation of JCLU. The JCLU has since its founding made numerous efforts to achieve its aim.

Membership in JCLU is open to anyone who agrees to its principle of human rights. JCLU currently has more than 700 members, 60% of whom are lawyers engaged in private practice. JCLU is financed by membership dues and unconditional donations from its members and outside supporters. JCLU's work plan for the year is determined at the general assembly of all the members. Day-to-day matters are left to the Board of Directors, which is comprised of 43 members. The two representative directors attend to external matters. Currently, in JCLU there are 19 committees that support the whole activities of the organization.

JCLU has issued numerous opinions, memoranda and advice on specific cases relating to the activities of the national and local governments, the Diet and the courts of Japan. In addition, it has acted as a leader in movements for new legislation. Member attorneys are active in a broad range of civil rights litigation involving the abuse of the police power, environmental pollution, serious criminal cases and others.

JCLU Officers: Takao Yamada, Representative Director; Takehiro Uchida, Representative Director; Masaru Satoh, Executive Director.

Committees: Freedom of Information Committee; International Human Rights Treaties Committee; Mental Patients' Rights Committee; Asian Human Rights Committee; Supreme Court Study Committee; Criminal Procedure Committee; Taxpayers' Rights Committee; Mass Media Committee; Membership Promotion Committee; AIDS and Infected People's Rights Committee; Human Rights Consulting Committee; Anti-Apartheid Committee; ODA Committee; Convention on the Elimination of Racial Discrimination Committee; Foreigners' Rights Committee; Abolition of Death Penalty Study Committee; Postwar Compensation Committee; Jinken Shinbun Committee (Human Rights Newspaper; JCLU Membership Newsletter); Universal Principle Committee (English-language Human Rights Report).

Universal Principle is an English-language human rights report edited by Universal Principle Committee and published by JCLU at 306 Atagoyama Bengoshi Bldg., 1-6-7 Atago, Minato-ku, Tokyo, 105 Japan. Telephone (03) 3437-6989 or 5466.



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