

UNIVERSAL PRINCIPLE

—Human Rights Report from JCLU—



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Human Rights Committee/ ICCPR

Human Rights Committee To Examine Japan's Periodic Report

Committee Expected to Review Report

The third periodic report of the Japanese government, submitted in accordance with the International Covenant on Civil and Political Rights (ICCPR), will be examined by the Human Rights Committee in October 1993 at the United Nations in Geneva. The JCLU has already submitted a "counter-report" to the Committee in May, 1993, and is planning to send a group of delegates to attend the examination and to carry out lobbying activities mainly on postwar compensation.

A government which has ratified the ICCPR has an obligation to submit periodic reports on its implementation to the Human Rights Committee, a monitoring body of the ICCPR. The Committee then examines the report in public. Through constructive discussion among the Committee members and government representatives, the examination process aims to improve the situation of human rights. This process offers a rare opportunity in which the condition of human rights in Japan is discussed at an international level. JCLU, which has long dealt with domestic human rights issues, has also participated actively in this examination process by submitting counter-reports, in the hope of solving such issues through the international channel.

Submission of JCLU Counter-Report

The second periodic report of the Japanese government, examined in 1988, elicited a worldwide response when members of the Committee raised questions such as the *Daiyo Kangoku* ("Substitute Prison"), treatment of the mentally ill, discrimination against women, and issues on minorities. JCLU submitted its first counter-report to the 1988 session and was highly appreciated by the Committee members. Many human rights NGOs and activists of other countries also expressed their interest in JCLU's activities related to the ICCPR.

Following two years of preparation, JCLU sent its second counter-report to the Human Rights Committee in May, 1993. This counter-report was published in both Japanese and English.

Joint Meeting of NGOs

On May 22, 1993, JCLU organized a meeting for NGOs which submitted counter-reports to exchange opinions. This meeting was attended by approximately sixty participants. After the lecture given by Professor Koshi

Yamazaki of Kagawa University, entitled "The Reporting System of the ICCPR and the Role of NGOs," nine groups including JCLU introduced their counter-reports and engaged in discussion.

In his lecture, Prof. Yamazaki emphasized the significance of the role played by NGOs in providing information to Committee members in the examination of government reports. He also pointed out the necessity of cooperation between NGOs and the government.

The other eight groups which reported at the meeting were as follows: Buraku Liberation Research Institute, Association for Human Rights of Koreans in Japan, Korean Residents Union in Japan, Forum for Asian Migrant Workers, The Women's Network Against Discrimination Against the National Railway Workers' Union Members and Against Women, Liaison Committee for Suspension of the Death Penalty, The Liaison Association for Retrial Cases, and the Japan Federation of Bar Associations.

(*Jinken Shimbun*, November 1, 1993, No. 287)

Human Rights Committee Expresses Concern on Issue of Postwar Compensation

Japanese Government Urged to Deal With Postwar Compensation



Human Rights Committee reviews Japan's Periodic Report at Palais des Nations.

On October 27 and 28, 1993, the Human Rights Committee examined the report of the Japanese government concerning the implementation of the ICCPR. The Committee discussed a wide range of issues and, on November 4, issued the "Comments of the Human Rights Committee." (See "Basic Texts" of this newsletter.) The following six points comprise the central issues that were repeatedly brought up by many Committee members and that were reflected in the "Comments": (1) Post-war compensation, (2) Ratification of the Optional Protocols to the ICCPR, (3) Resident Koreans, (4) Discrimination

against Children Born Out of Wedlock, (5) Criminal Procedure, including "Daiyo Kangoku" (substitute prisons), and (6) the Death Penalty. The Committee expressed deep concern over these issues to the Japanese government and recommended reform of the Japanese legal system and improvement of its operation.

Numerous NGO representatives from Japan visited Geneva. JCLU focused on the postwar compensation issue and sent a delegation of five members: Mr. Shun Hashiba, Board Member; Ms. Amy Furuya, International Liaison Officer, and three from Taiwan including two former Taiwanese soldiers who fought as Japanese soldiers. As a result of active lobbying, the issue of Japan's postwar compensation was taken up by the Committee for the first time.

We gratefully note that a group of attorneys who previously represented Taiwanese former Japanese soldiers in a lawsuit for compensation has made a contribution for sending JCLU's delegation to Geneva.

Review by the Committee

The fall session of the Human Rights Committee was held in Geneva for three weeks starting on October 18. The States parties whose reports were examined in this session were Japan, Norway, Iceland, Libya, Romania and Malta. On the first day of the session, the "List of Issues," which consisted of questions from the Committee to these States, had already been adopted.

The list of questions to the Japanese government contained three chapters. The first chapter focused mainly on the rights of minorities and gender equality. The second chapter covered the death penalty and the rights of detainees, and the third chapter discussed freedom of expression and assembly. However, the issue of postwar compensation was not included in the list.

The government's periodic report was examined in the following manner. First, the government representatives answered questions on the list. Second, the Committee members asked additional questions by chapter. Third, the government representatives answered these additional questions. Finally, each Committee member made his or her concluding remarks.

A delegation of eight people from the Japanese government participated in the examination. They included Mr. Toshio Kunikata, Director of the Human Rights and Refugee Division of the Ministry of Foreign Affairs; Mr. Jun Watanabe, Director of the International Criminal Affairs Division of the Ministry of Justice; and other officials from the National Police Agency and the Management and Coordination Agency. Since only two people, one from the Ministry of Foreign Affairs and the

other from the Japanese Permanent Mission to the United Nations in Geneva had participated in the previous session in 1988, the Committee welcomed the positive attitude of the Japanese government. Moreover, the Japanese government provided Japanese-English simultaneous interpretation services at these sessions.

Many counter-reports against the government report were submitted by domestic organizations, including the JCLU. According to a survey conducted by the JCLU, 22 organizations submitted counter-reports; 11 of them sent representatives, amounting to a total of 80 NGO representatives in Geneva. International human rights NGOs, such as the International Movement Against All Forms of Racism (IMADR) and Amnesty International; the International Labor Organization; and the German government, as well as the North Korean government, were present at the session as observers. The number and diversity of the participants contributed to the unprecedented enthusiasm that characterized the examination process.

"Nationality Clause is Discrimination": Compensation Issue Raised

On the first day of the examination, three Committee members Mr. B. Wennergren (Sweden), Mr. B. Ndiaye (Senegal) and Mr. F. J. Aguilar Urbina (Costa Rica) raised the issue of discrimination based on nationality with regard to postwar compensation.



The JCLU delegation with Human Rights Committee member Mr. B. Ndiaye of Senegal.

The Japanese government's response was unchanged. The government remarked that it was doubtful whether it was appropriate at all to comment to the Committee on issues which occurred before the ratification of the ICCPR, and proceeded to assert that the nationality clause regarding the payment of pensions was reasonable and could not be abolished.

On the second day, the three Committee members referred once more to the issue of compensation in their

concluding remarks. In particular, Mr. Wennergren devoted all of his time to this issue. Referring to the 1992 judgment of the Supreme Court of Japan which rejected the claims for compensation to Taiwanese former-Japanese soldiers, he demanded that the government provide compensation.

Thus, the issue of postwar compensation was identified as a violation of the ICCPR for the first time by the Committee. The "Comments of the Human Rights Committee," mentioned the discrimination in terms of pension against Taiwanese and Koreans who fought as Japanese soldiers in the war as one of the Committee's "Principal Subjects of Concern."

Effective Lobbying

Although JCLU submitted a comprehensive counter-report consisting of twenty-three subjects last May, its lobbying activities before and during the examination process focused solely on the issue of postwar compensation. Mr. Kazunari Fujii, a JCLU member living in Europe, lobbied during the period of the Working Group entrusted with the task of drafting the list of questions ("List of Issues") to the States concerned prior to the session.

During the actual examination process Mr. Hashiba and Ms. Furuya engaged in lobbying. Mr. Ang Khun-chun who had lost his leg, and Mr. Ang Hoe-chao who had lost his arm, both from Taiwan and injured in the war, also participated in the lobbying; accompanied by Mr. J. K. Lin, a young Taiwanese attorney who acted as their interpreter. The JCLU representatives actively communicated with the Committee members, and made a substantial effort such as holding a press conference in Geneva.

Anticipating the Next Report

After the JCLU representatives returned to Japan, JCLU sponsored an emergency meeting at the Daini Tokyo Bar Association Building on November 12, at which Mr. Hashiba and Ms. Furuya reported on the Committee's examination process.

The challenge facing JCLU now is to develop ways to reflect the results of the examination in its domestic activities in order to change the present situation. JCLU has already begun to tackle this task through its International Human Rights Law Committee by evaluating the "Comments of the Human Rights Committee," setting goals for domestic activities, and preparing for the next report.

(Jinken Shimibun, February 21, 1994, No. 288)

Japanese Government Urged to Improve Human Rights Situation: A Report from Observing the Human Rights Committee

by Shun HASHIBA, Board Member, and Amy FURUYA, International Liaison Officer



Board Member Mr. Shun Hashiba and International Liaison Officer Ms. Amy Furuya

Committee Makes Recommendations to the Japanese Government

Two days of discussions by the Human Rights Committee on the Periodic Report submitted by the Japanese government covered a variety of issues.

While the Committee concluded that "...there is generally a good regard for human rights in the country," the assessment went on to state a need for strong action against discrimination in Japan. Discrimination against children born out of wedlock was pointed out as a practice clearly contrary to the ICCPR. With regard to a variety of discriminatory policies and the death penalty, the Committee said "it is surprising that the Japanese government is more readily swayed by the vagaries of public opinion than that of the requirements called for by the ICCPR," even going so far as to refer to the substitute prisons as "notorious."

These issues were included in the "Comments of the Human Rights Committee" and the following demands were made to the Japanese government in a section entitled "Suggestions and Recommendations". These were concrete proposals presented by the Committee whose aim is to bring about some changes in state practice. The Japanese government is expected to take solid measures to implement these suggestions by the time of the next periodic report due in October, 1996. These include: (1) the ratification of the two Optional Protocols to the ICCPR, (2) the ratification of the Convention against Torture, (3) the amendment of Japanese legislation concerning children born out of wedlock, (4) the abolition

of all discriminatory laws and practices still existing in Japan, (5) the measures towards abolition of the death penalty, and (6) the improvement of criminal procedure and the substitute prison system.

As the Japanese government released the report before its submission and held meetings with NGOs, there were encouraging signs of the progressive attitude on the part of the government. It is to be hoped that in the future the government will continue to hold meetings with NGOs to exchange opinions and to collect information during the process of drafting the report. Furthermore, it is hoped that the government will act to strengthen the government delegation sent to the Committee (e.g. participation of officials in a higher level), and to make the reports more accessible to the public.

Government Should Participate in Dialogue Rather Than Defense

Nevertheless, the defensive attitude of the government was striking. When the Committee members pointed out matters of commission or omission by the government that conflicted with the ICCPR, the government responded repeatedly that these issues were not violations of human rights according to the government interpretation, an attitude that was not well received by the members of the Committee.

If the government assumes that it is strictly observing the treaty by only providing examples of rights which are already guaranteed by the Japanese Constitution, then why ratify the treaty at all? If there are situations which do not reach the standard required by the treaty, then is it not the duty of government to endeavor to improve the situation to a standard of conformity with the treaty? Instead of justifying the situation which is not up to the standard, it seems more plausible for the government to try to explain what kinds of difficulties they are facing in implementing the rights recognized by the ICCPR, or what domestic factors prevent immediate improvement. These kinds of explanations will at least help the Committee members and the general public understand what needs to be done. Such dialogue will leave the possibility for the government and NGOs, and the people in general, to cooperate in searching for solutions. The Committee members repeatedly reminded the government that this was not a court of law and that dialogue, not defensive posturing, was needed. It remains necessary for the government to adjust to an atmosphere of a constructive dialogue.

Former-Taiwanese Soldiers Take An Active Part

As the Committee members opened discussion on the case, "according to information from NGOs", it was evident that the counter report had contributed considerably to the review. In Geneva, the JCLU delegation appealed for an understanding that postwar compensation, including that for former Taiwanese soldiers in the Japanese military, is not an issue of the past, but an issue of discrimination that is still relevant today. In approaching the Committee members, a similar case, Gueye vs France (Communication No. 196/1985), was quoted. The Committee had adopted a view on this case in 1989 which said that discrimination based on nationality in pension for the soldiers of former colonies was contrary to Article 26 of the ICCPR, which prescribes equality before the law. The reactions of the Committee members varied. Some became cooperative after the issue was explained, while others asked for information even before the JCLU made the approach, saying that they had heard about the JCLU's work on postwar compensation and that they would like to take up the subject for discussion.

Needless to say, the presence of Taiwanese former Japanese soldiers, Messrs. Ang Khun Chun and Ang Hoe Chao, who appealed that "people are not tools for the nation," which was effectively conveyed in the words translated by Mr. J.K. Lin, seemed to have made stronger impression to the Committee members more than any kind of legal argument or constructions of logic.



From left, Mr. Hashiba, Mr. Ang Khun-chun, Mr. Ang Hoe-chao, and Mr. J. K. Lin.

Task for NGOs

After the review, one Committee member spoke to participants from NGOs, saying "This is all that we can do. From now on it depends on how you use this in your own country." It is the responsibility of the NGOs to widely publicize the Committee's Comments and issues which were discussed over the two days of review. By cooperating among the NGOs working on particular themes, it is hoped that human rights movements in Japan will be strengthened.

Through the action programs to promote the ratification of the Optional Protocol, NGOs should lay the roots of the ICCPR in the country and to monitor the enforcement of the treaty. In addition, the possibility of consistent consultations with the government not only for the counter-report but also for follow-up should be considered. Preparing for the next review, it is necessary to coordinate the counter reports among NGOs on a thematic basis so that Committee members do not have to read a number of reports on the same issues. NGOs should also study more about treaties other than the ICCPR, for some cases might be better dealt with under thematic treaties.

Toward "A Human Rights Paradise"

While the internal and external attention was given to human rights problems in Japan throughout the Committee session, and even though the Japanese government declared it would exert efforts to make improvements, immediately after the adoption of the Comments of the Human Rights Committee, the Ministry of Justice delivered an official statement which said that the discrimination against children born out of wedlock was not contrary to the ICCPR. What is worse, it was extremely shocking that four prisoners were executed three weeks later. This defiance of the Committee by the Japanese government will not escape pursuit at the next session.

In spite of government calls for "becoming a permanent member of the UN Security Council," "international contributions," and "responsibility as a superpower," why can't the government respect the opinions of the Committee? Why does the government hesitate to become a "human rights superpower?" If Japan wishes to "have an honorable position in the international society," (the Preamble of the Japanese Constitution) it is hoped that the country would be able to set an example of human rights, as pointed out by the Human Rights Committee. For a start, the government should sincerely endeavor to accept the Comments, even though it is not legally binding in itself, and should begin to take concrete steps to make change. In particular, the postwar compensation issue needs to be settled without a moments delay.

At the end of consideration of the periodic report of Norway, right before the review of the Japanese government report began, the chairperson of the Committee concluded the session by saying, "there is no human rights paradise in the world ... but Norway is nearly paradise." How long will it be before Japan can be proud to be praised in a similar manner?

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Social Rights / ICESCR

Fifth Kubota Memorial Symposium: Social Rights Beyond Borders

On December 4, 1993, the Fifth Kubota Memorial Symposium was held at Kanda Pensee Hall. Approximately 60 people took part in an intense three-hour discussion on the theme "Social Rights Beyond Borders."

The symposium focused on the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has received much less attention than the International Covenant on Civil and Political Rights (ICCPR). The issues discussed included the following:

- Arguments that the ICESCR, like the ICCPR, contains self-executing provisions.
- Increased utilization of the ICESCR to promote the rights of foreigners in Japan and to improve Official Development Assistance policies.

Thus, the discussions indicated the significance of the symposium for the future activities of JCLU. Also, a message of support was sent from Ms. Fiona Kubota, the wife of the late Mr. Yo Kubota, currently working for the UN Centre for Human Rights in Geneva.

Editor's NOTE: The Kubota Memorial Symposium is held yearly in memory of the late Mr. Kubota, who died in an accident during a mission to Namibia as a staff of the UN Centre for Human Rights in 1989.

New Perspective on the ICESCR

By Mr. Kohki Abe,
JCLU member,

Assistant Professor at Kanagawa University:

The ICESCR which came into effect in 1976 was overlooked of its significance in the earlier days. The Sessional Working Group formed by the United Nations Economic and Social Council under Article 16 of the ICESCR were not active, either.

The following factors contributed to the revival of the Covenant:

1. The introduction of a structural approach by the developing countries, leading to the recognition of the unity and indivisibility of human rights.
2. The successful reorganization, led by the Western countries, of the malfunctioning Sessional Working Group.
3. The efforts exerted by Professor Philip Alston in raising awareness of the importance of social rights.

As a result of these factors, a newly born Committee on Economic, Social and Cultural Rights started its activity in 1987. The Committee consists of eighteen members elected from five regions of the world, and holds a three-week session once a year in December in Geneva.



Mr. Kohki Abe.

The main activity of the Committee is to examine reports submitted by States parties under Article 16 of the Covenant. The reports are to contain (1) general remarks including the status of the Covenant in domestic law, and (2) an itemized discussion on the implementation of each article of the Covenant.

The result of the Committee's deliberation is summarized in the "concluding observations". Such observations reflect the Committee's firm and independent opinion on each issue. For example, the concluding observations on the forced expulsion of 15,000 inhabitants which occurred in the Dominican Republic between 1988 and 1990 pointed out that the expulsion violated the ICESCR. The observations also stated that the Committee was prepared to send one of its members to the Republic in order to offer advice to the government.

Other activities of the Committee include: (1) clarifying the content of social rights by providing interpretation guidelines for specific articles of the Covenant, on such issues as the nature of States parties' obligations, and specifically on the "minimum core obligations"; (2) collecting information from NGOs and organizing such information under each country file in order to examine each country's situation.

Japan can make important contributions to the realization of the ICESCR by (1) reviewing the issue of medical care for foreigners in terms of social rights, and (2) restructuring Japan's policy on overseas development assistance from the viewpoint of the ICESCR.

The report submitted by the Japanese government is scheduled for examination in the near future. I strongly hope that Japanese NGOs participate in this process of deliberation because:

1. It is an opportunity to gain access to information withheld by the government.
2. It provides NGOs an opportunity to present information to the Committee. It will be especially effective to report some typical cases in which the Japanese court denied immediate applicability of certain social rights. The

Committee has officially commented that certain articles of the ICESCR were self-executing and are directly applicable by court. Therefore, if such cases in Japan are reported, the Committee may urge more appropriate judicial protection of social rights in its observations on the Japanese government's report.

3. It is a good chance for the NGOs working on human rights, environmental protection and development assistance to form a cooperative relationship.

4. Participation of the NGOs will attract the attention of the media and will create an opportunity for them to reveal to the public Japan's human rights policy or the human rights situation in the aid-recipient countries.

Foreigners' Rights and the ICESCR

By Mr. Akira Hatade,
CALL Network:

The Japanese government alleges that it does have a policy concerning foreign workers in Japan, but the truth is that the government's lack of policy has resulted in the current situation.

In October, 1990, the Ministry of Health and Welfare orally instructed local governments across Japan not to provide poverty assistance to overstaying foreigners. In April, 1992, followed the strict limitation of qualifications for foreigners to receive National Health Insurance. This resulted in a drastic drop from 44 % to 27.6 % in the percentage of foreigners who received any kind of public medical service, according to a survey conducted by the "Network for Securing Medical Care for All Foreigners," of which we, CALL Network, are a member.



Mr. Akira Hatade

The survey also revealed that 56.4% of the cases in which foreigners did receive medical service was through emergency aid. From this we can see that foreigners are forced to avoid going to the hospital until they are in a severe situation.

We presented these problems regarding medical care for foreigners to the Human Rights Committee under the ICCPR held in October, 1993, in a counter-report to the report by the Japanese government. We did lobbying as well. However, contrary to our expectations, we did not receive a vivid response from the Committee. Surprisingly, the members of the Committee seemed

doubtful about the necessity to guarantee medical care for overstaying foreigners. We felt it was difficult to tackle the problem of foreigners' medical care as an issue within the scope of the ICCPR.

On the other hand, the discussion on social rights is now showing an active dimension. The core of what the ICESCR guarantees is that rights concerning basic human needs are self-executive; in other words, States parties are under obligation to enforce these rights even though no particular legislative action is taken.

Social rights were not recognized as legitimate rights with full enforceability, i.e. they were considered as "programmatic provisions." But now we are at a stage to reconsider the status of both social rights and civil and political rights. It may be worthwhile indeed to consider acknowledging priority to basic social rights as a prerequisite to civil and political rights.

▼
Official Development Assistance by Japan and Human Rights

By Ms. Chie Aoi,
ODA Investigation and Research Association:

The final objective of the ODA Investigation and Research Association, of which I am a member, is to free us all from the unequal relationship between the donor and the recipient.

Official Development Assistance (ODA) is generally conducted in order to achieve modernization and industrialization, following the example of developed countries. This intention is clearly demonstrated in the main objective of the Development Assistance Committee of OECD, which is "to contribute to the economic development and improvement of welfare of developing countries." The goal here is economic development, i.e., modernization through mass production and mass consumption, leading to the expansion of a market economy.

It is often pointed out that it is necessary to promote self-help and independence of recipient countries. However, the people of developing countries once did have an independent society, culture, and economy of their own. Colonization or the present economic system destroyed such independence.

In 1992, I lived in a community of Muslims and a

minority race on Mindanao Island of the Philippines for one year. For four centuries, these people have struggled against colonization and opposed the notion that their society "has not joined market economy and is therefore underdeveloped," a notion which denies the values of their society.

One of the principles which underlies ODA is that joining market economy means democratization, but I feel the truth lies elsewhere. The indigenous people of the Mindanao Island are aware of the Island's abundant natural resources. They perceive land not as a property to be owned by an individual, but as an asset to be shared by the community. They believe that mountains, trees, and mankind alike were created by God, and that the destruction of nature will inevitably bring about the destruction of mankind. The tropical rain forests in this region are well preserved, food is distributed in a democratic manner, and there is no substantial inequality of wealth.

On the other hand, regions which were developed in order to achieve a market economy have become treeless, and are covered with large plantations yielding products for developed countries. Such land produces nothing but starvation, poverty and the infringement of human rights.

I suspect that other regions in Southeast Asia, which are rich in natural resources, have also been wrongfully labeled as underdeveloped and needy countries as is the case with Mindanao Island.

Article 1 of the ICESCR guarantees the rights of the people to freely dispose of their natural wealth and resources. However, this is a very difficult issue to decide where to stand, reality being far from the ideal. The present ODA, mainly constituted by loans in yen, benefits Japan alone, and therefore cannot be called "assistance" in its true sense. In order to improve the present situation, it is essential to disclose information to the residents and to guarantee their participation from the planning stage.

We must be aware that assistance or even human rights, if forced upon others on the basis of self-righteous good will and values, may cause great harm to people who hold different values.

Unless we listen with modesty to the voices of the people saying that they do not need ODA nor want economic development, I doubt if we can ever bring social rights to realization and create a society where the dignity of all individuals is respected.



Ms. Chie Aoi.

▼
The Policy on Official Development Assistance of the Government of Netherlands and Human Rights

By Mr. Johannes Huber,
Counsellor at the Royal Netherlands Embassy in Japan:

First of all, the ODA budget of the Netherlands government is approximately 350 billion yen. This is roughly one-fourth of that of Japan, but amounts to 0.8% of our GNP.



Mr. Johannes Huber.

Secondly, I would like to talk about the relationship between economic development and the fight against poverty. The government of the Netherlands gives top priority in its attempt to eliminate poverty, mainly by providing aid to the poorest groups instead of building bridges and roads.

When considering this issue, there is a serious conflict of ideas. Otto Bismarck said, "first food, then morality," but we do not agree to the Soviet development model that freedom must be postponed until after economic development has been achieved. Nowadays, countries adopting this Soviet model hardly gain approval at all.

It is common to focus on the negative link between human rights and development cooperation. The American Government withholding its economic aid to China because of the countries' human rights condition, is a typical example of the negative link.

Alleviation of poverty, in other words providing aid to the poorest people inevitably involves respect for human rights.

Furthermore, we have learned from our experience that it is difficult for official aid to reach our target groups directly. Because of this, it was recognized that cooperation by non-governmental organizations (NGOs) is essential. The Netherlands government has conducted a co-financing program with NGOs for the past thirty years. NGOs which take part in this program not only carry out the aid but also participate in planning. This does not require any permits from the Netherlands government.

These NGOs are not only active in the Netherlands but also act through the NGOs active in recipient countries. Their scope of activity is very broad. They do have economic purposes as well, but also hold public interest. For example, in order to provide aid to the poor and to

women through NGOs, participation of the actual recipients is necessary.

The Minister for Development Cooperation of the Netherlands stated that "No freedom without food, but freedom comes first." With the end of the cold war, conflicts arising from ideological differences have decreased, but new problems are starting to show. Many countries cannot be recipients because of civil wars. Many other problems are arising including mass murder and rape. However, we are willing to continue to pay efforts in order to free the poorest groups from poverty.

(Jinken Shimbun, February 21, 1994, No. 288)

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Women

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CEDAW Examines the National Reports by the Japanese Government

On January 27 and 28, 1994, at the Headquarters of the United Nations in New York, the Committee on the Elimination of Discrimination against Women (CEDAW) examined the national reports submitted by the Japanese government. CEDAW comprehensively reviewed gender discrimination in Japan, including issues such as equality of employment for men and women and military comfort women, and urged the Japanese government to intensify efforts to end discrimination against women. For this review, some domestic NGOs had prepared their counter-reports beforehand, and in addition, sent their members to New York to monitor the meeting.

CEDAW is a committee established under the Convention on All forms of Discrimination against Women. Their members are experts in the women's rights field, elected from all parts of the world. This Committee examines the periodic reports submitted by the states that ratified the Convention, and through such work, have played a significant role in improving the status of women.

Since the ratification of the Convention in 1985, Japanese government has submitted three reports to CEDAW. This time the Committee's examination dealt with the second and third reports.

In Japan, the Japanese Association of International Women's Rights and other human rights and women's rights NGOs made thorough-going preparations for and participated in various ways, such as drawing up counter-reports and sending their monitoring members. Three JCLU members, including Ms. Yoko Hayashi (Board

member of JCLU), attended the meeting.

Despite strenuous efforts made by NGOs over a long period, Japanese society has made a very slow progress toward the elimination of discrimination against women. The government is urged to take further steps toward the elimination of gender discrimination as a part of Japan's international obligations. JCLU, which has not been active enough on women's rights compared to other issues, is equally required to assume a still greater role in this field.

The following report on the details of the January meeting is by Ms. Yoko Hayashi.

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Equality in Employment, Violence against Women and Consultations with NGOs

By Yoko Hayashi
JCLU Board Member, attorney

I attended and monitored the meeting as a member of research team on the Convention under the Japanese Association of International Women's Rights (led by Professor Yasuko Yamashita). Other JCLU members present were Ms. Yuko Yamamoto, an attorney who is studying at New York University Law School, and Ms. Kaoru Okuizumi, also a NYU law student who worked with JCLU as an intern in the summer of 1993.

The Japanese government delegation (headed by Ms. Nobuko Matsubara, Director of the Labor Ministry's Women's and Young Workers' Bureau) prefaced their speech with self-praise, citing a growing number of women in prominent positions: three female Cabinet ministers in the Hosokawa government, the first female Speaker of the House of Representatives and the first female Supreme Court Justice. "What post is next? It might be the first woman President of Tokyo University," Professor Hiroko Hayashi (Fukuoka University), who was also present at the meeting said sarcastically. The official delegates dwelt upon how enthusiastically the Japanese government was tackling the elimination of discrimination against women, but as they were simply repeating what was stated in the government reports, this was a waste of time.

Prior to this meeting, a working group under CEDAW had put some questions in written form to the Japanese government. The meeting began with the Japanese government's response to those questions, then turned to questions by Committee members from the floor, followed by the replies by the Japanese government.

As the members of CEDAW are all experts in the field of women's rights, their questions were truly pertinent. The discussions focused on the following three topics.

First, why have wage differentials between men and women not been abolished, even though the Equal Employment Opportunity Law has come into force?

Second, although various domestic NGOs submitted their counter-reports on military comfort women and other cases of violence against women, why did the government reports not touch on these issues?

Third, why did the government not consult with domestic NGOs beforehand regarding the content of the government reports?

To our great disappointment, the Japanese delegates generally gave insincere answers to these questions and showed their unwillingness to exchange constructive views with the CEDAW members. In particular, when the Committee suggested that the introduction of affirmative action or the ombudsman system be considered and that the recommendation by CEDAW of 'equal pay for work of equal value', or 'comparable worth' be implemented, the government delegates refused to consider these suggestions, citing Japan's distinctive practice of the seniority based wage system, saying that such measures would not fit Japanese culture.

Fortunately, however, the CEDAW members spoke highly of the strength displayed by Japanese NGOs in the discussion. We were greatly impressed and encouraged by a German CEDAW member saying, "You NGOs already have an answer to what should be done. Now, you need the political power to implement it."

(Jinken Shimbun, April 25, 1994, No.289)

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ICJ Addresses the Issue of the Comfort Women

On May 24, 1993, the International Commission of Jurists (ICJ) submitted a report on the Comfort Women to the Working Group on Contemporary Forms of Slavery of the U.N. Commission on Human Rights. The report is a preliminary report of the fact-finding mission of two experts sent by the ICJ in April 1993 which had conducted an extensive hearing and researches in Japan and other Asian countries. It clearly showed that the victims had become sexual slaves by force and deception, and in conclusion, it recommended that the Japanese government should pay monetary compensation to the individual victims immediately, and that Japan should make a full and complete disclosure of all information it has in its

possession pertaining to this issue.

The ICJ had also made an oral intervention at the U.N. Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in August 1993, which called on the Japanese government to take adequate steps to compensate and provide full restitution to the women.

At the last stage of the LDP ruling, the Japanese government had, for the first time in its history, admitted the involvement and responsibility of the then Japanese government in the problems of comfort women, and issued a statement of apology. The Hosokawa Coalition government is expected to make a further apology and provide immediate compensation from both inside and outside of Japan.

(*Jinken Shimibun*, November 1, 1993, No. 287)

Rights of the Child

Tokyo High Court Declares Discrimination in Inheritance Unconstitutional (Decision on June 23, 1993)

Article 900, Item 4 of the Civil Code of Japan provides, in relevant part, that "where there exist two or more children, or lineal ascendants, or brothers and sisters, their respective shares in the succession shall be equal. However, the share in the succession of a child who is not legitimate shall be one half of that of a legitimate child."

In the case before the Tokyo High Court, a plaintiff, who was born out of wedlock, asked for the same share in the succession as the defendant, who is a child born in wedlock. The Family Court denied the plaintiff's request and held that the share of the plaintiff should be one half of the defendant's share in accordance with the relevant law as cited above.

However, the plaintiff filed an appeal to the Tokyo High Court alleging that said provision of the Civil Code was in violation of Article 14 of the Constitution of Japan, which provides that all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, belief, sex, social status or family origin.

The High Court noted that the social status as provided for in Article 14 of the Constitution means the social standing or status to be fixed by birth. It further held that whether a child is legitimate or illegitimate constitutes,

from the viewpoint of the child, the social standing or status to be fixed by birth. Since Article 900, Item 4 of the Civil Code treats a legitimate child differently from an illegitimate child in respect of their shares in succession, its provision constitutes discrimination in economic or social relations because of social status.

The court held that in order to hold said provision constitutional, it should be established that the purpose of said provision is important and there exists a factual and substantial relationship between its purposes and the regulatory measures.

The court found that the purpose of said provision was to foster lawful marriage and admitted that said purpose was important. On the other hand, the court noted that the integrity of the illegitimate child should be equally protected and that all measures should be taken to avoid such legislation which protects legitimate children at the expense of illegitimate children.

The court went on to say that the recent trend of legislation in foreign countries reveals a strong attitude towards equalization of rights for illegitimate children. It further stated that in light of the spirit of Article 24, Clause 1 of the International Covenant of Civil and Political Rights, and Article 2, Clause 2 of the Convention on the Rights of the Child, the idea of protection of family relationships based on lawful marriage and the idea of integrity of the illegitimate child should be both maintained.

As to the relationship between its purpose and the regulatory measures, the court noted that the provision discriminating against illegitimate children with respect to the shares in succession would not be expected to play a major role in decreasing the number of illegitimate children. The court stressed the point that illegitimate children were compelled to suffer unfavorable treatment by a cause which was beyond their intent and control.

Taking into consideration all the facts, the court stated that there was serious doubts as to whether a factual and substantial connection exists for the purpose of protecting family relationships based on lawful marriage. Hence, the Tokyo High Court concluded that since the discriminatory treatment based on Article 900, Item 4 of the Civil Code could not be deemed to be based on reasonable grounds, said provision ran afoul of Article 14 of the Constitution.

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**Good-bye to Backward Laws:
A Step Forward for the Rights of
Children Born Out of Wedlock**

by Mizuho Fukushima
JCLU member, attorney

The decision rendered by the Tokyo High Court on June 23, 1993, is a historic decision not only because the courts seldom find unconstitutionality, but from the viewpoint of international human rights, because the court stressed the violation of international human rights treaties.



Ms. Mizuho Fukushima

The court stated that "while it scarcely needs be said that protection of the family relationship based on lawful marriage is an ideal that shall be respected, the dignity of illegitimate children as individuals must be equally protected, and any legislation aimed at protecting the former at the sacrifice of the latter should be strictly avoided...Even

though not intended, the fact that this provision of the law plays a role in both bringing about and fostering a sense of discrimination against illegitimate children cannot be viewed lightly."

The General Comment to the International Covenant on Civil and Political Rights states that Article 24(1) prohibits discrimination against children born out of wedlock in every field, including inheritance.

I first learned of this decision from materials offered by the JCLU. This decision clearly shows that the hard labors of the JCLU in promoting the use of international human rights law are beginning to bear fruit, and that those persistent efforts have forcefully pushed their way into Japan's courts.

At times, the Diet debate on the Convention on the Rights of the Child (not yet ratified)* approached the nonsensical. One speaker even stated that, since inheritance normally occurs long after the successors to property are born, differentiation in inheritance shares does not constitute discrimination upon birth, which the Convention prohibits.

In such an environment, the Tokyo High Court decision provided much-needed support for concerned lawyers by confirming that arguments based on treaties can be used effectively to develop the case for human rights.

The study of achievements in international human rights

law and their introduction into Japan will continuously become a more effective means to improve human rights conditions in Japan. Through these efforts, I hope that backward laws like this discriminatory inheritance rule declared unconstitutional by the Tokyo High Court will be eliminated as soon as possible.

I have great expectations for future contributions to this cause by the JCLU.

Editor's NOTE: Japan ratified the Convention on the Rights of the Child on April 22, 1994, three and a half years after the signing on September 21, 1990. The Convention entered into force for Japan on May 22, 1994.

(Jinken Shimbun, November 1, 1993, No.287)

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**Establishment of DCI Section:
Working for Children's Rights**

by Masako Ito,
JCLU Member

DCI (Defense for Children International) is an NGO in consultative status with the United Nations established in 1979 during the International Year of the Child with the sole purpose of promoting and protecting children's rights. DCI has played an important role in the drafting process of the UN Convention on the Rights of the Child, which entered into force in 1990. Furthermore, the preparation of the UN Standard Minimum Rules for the Administration of Juvenile Justice will fall to DCI. Its headquarters are in Geneva, and there are sections in over 45 countries.

There has been strong support in Japan to establish a section of DCI. On February 20, 1994, an inaugural general meeting was held, and a DCI Japanese Section was officially established with Professor Masaaki Fukuda as representative.

DCI is composed of three parties—researchers, practitioners (lawyers, social workers, teachers, public health nurses, family court investigators, doctors, etc.), and citizens. It has direct connections with the UN Committee on the Rights of the Child and with organizations working for children's rights in each country, so it can assimilate the activities at the vanguard in the world. Accordingly, not only will DCI Japan Section work to further the improvement of children's rights in Japan, but it is expected to be dynamic in its activity, transmitting the fruits of its endeavors in Japan to other countries to contribute to the improvement of children's rights around the world.

In November 1994, two important members of the UN

Committee on the Rights of the Child, Ms. Marta Pais and Mr. Thomas Hammarberg, will be invited to Japan to give lectures. I would like to invite the cooperation of each member of the JCLU in DCI's activities.

(*Jinken Shimibun*, February 21, 1994, No. 288)

Refugees/ Immigrants

PARINAC Briefing Session In Tokyo

by Kohki Abe
JCLU member,
Assistant Professor of Kanagawa University

The PARINAC Briefing Session in Tokyo was held in the Japan Red Cross Building on February 2, 1994. "PARINAC" is the abbreviation of "Partnership in Action", which is the "consultation process" through which the Office of the United Nations High Commissioner for Refugees (UNHCR) aims to strengthen the cooperative relationship with NGOs.

With the end of the Cold War, UNHCR is facing a new challenge. As the world order undergoes considerable change, a significant number of refugees and internally displaced persons are being generated in various parts of the world. At the same time, many people who have sought refuge abroad are returning to their home countries where civil war has ended. To deal with these intensifying problems, it is crucial for UNHCR to cooperate with NGOs working at the forefront of refugee assistance. Consequently, UNHCR, together with the International Council of Voluntary Agencies (ICVA) presented the PARINAC plan.

At the center of the PARINAC plan is the organization of six regional conferences and a global conference to sum up the discussions held in the regional conferences. The first regional conference was held in Caracas in June 1993, and was followed by conferences in Kathmandu, Tunis, Bangkok, and Addis Ababa. Another conference is scheduled to take place in Budapest at the end of April. The global conference will be held in early June in Oslo, where the "Oslo Declaration and Plan of Action" are to be adopted. The PARINAC Briefing Session in Tokyo was held to stimulate interest in PARINAC among the Japanese NGOs.

The four main themes of the six regional conferences and the global conference in Oslo are: "protection", "internally displaced persons", "emergency response" and "continuum from relief to rehabilitation to development".

In the Briefing Session in Tokyo, UNHCR reported on each of these themes and the results of the regional conferences, and the Japanese NGOs were asked to raise questions and make proposals.

The number of participants in the Briefing Session in Tokyo was approximately forty to fifty. Representatives of most of the major NGOs providing assistance to refugees were present. As Ms. Yukie Sato, Senior Public Information Officer of the UNHCR Branch Office in Japan explained, Japanese NGOs supporting refugees were established when Indo-Chinese refugees received much attention, and their activities were initially limited to assisting the refugees to settle down in Japan. Eventually, NGOs involved in assistance activities overseas gained strength. However, as one participant pointed out, the overall power of Japanese NGOs is still insufficient, especially in terms of participation in the decision-making process for refugee assistance policies. Moreover, despite the large number of NGOs providing support to refugees, those engaged in the legal protection of refugees hardly exist. This is apparent from the range of participants in the Briefing Session in Tokyo. To revive the concept of "protection" which is in crisis in various parts of the world, and to further develop refugee laws, much is expected from the JCLU, which has significant knowledge in this field. PARINAC could be a good opportunity to strengthen the relationship between UNHCR and JCLU.

(*Jinken Shimibun*, April 25, 1994, No. 289)

Thoughts on the Lives of Foreigners in Japan

by Tetsuro Irohira,
JCLU Member,
Doctor, Kyoto University Hospital

Structural Violence in International Finance

Out of 180 countries in the world, the financial policies of about 120 countries are controlled by the World Bank and the International Monetary Fund. To pay this accumulated debt, the southern countries have been encouraged, as if it were in their own interests, to devalue their own currency relative to others', increase their export competitiveness, and export primary products.

Many of the export products of the southern developing countries are the same: bananas, rice, shrimp, lumber, and mineral resources. If they all try to devalue their currencies and export, prices will collapse. This is what happened in the eighties, which saw the lowering of world prices for primary products. Furthermore, for the developing countries, the prices for technology, machinery, and medical products proved expensive, and created obstacles to technological transfer and the

development of domestic industries.

When the World Bank gives financing to developing countries, they attach more conditions. They tell each country to cut its expenditure. It is the weak areas which get cut. Wages, especially those of provincial public teachers and nurses, get hacked to smithereens. In the Philippines, which has been continuing this policy for over thirty years, the standard of living for the people living in the provinces is consistently declining.

Compensatory and non-compensatory governmental developmental aid, and the activities of multi-national corporations from developed countries have had a great effect on Asian and African rural communities. The flow of money and goods has given birth to the flow of humans. Valuable young workers have flocked into the cities, or have set off for the northern countries. Two-thirds of the medical school graduates in the Philippines go abroad immediately after graduation. One hears that it is much better to be a nurse in the United States than to be a rural doctor in the Philippines. In this way, promising young people leave for Middle Eastern oil countries, or the United States, or Japan. For the provinces, this brain drain is the worst kind of exploitation.

The Increase in Modern-day Compulsory Labor

I have been working principally in Komoro City in Shinshu, offering advice on every aspect of daily life to foreign workers and women. Sometimes I am confronted with truly painful scenes. There was one Thai woman who until one month ago was an elementary school teacher in Isan, in the Northeast. She was astonished to learn that she owed three and a half million yen when she came to Japan. When she arrived, she was aghast: although she tried night and day to pay back the money, she was strictly supervised. Her opportunities to be with normal Japanese, not customers or gangsters, were almost non-existent. The bar madams, even though they were compatriots, only conspired to increase the pressure.

We were asked to deliver her and her friends from their situation. The youngest girl was fifteen years old. Even in Japan, child prostitution is on the increase.

Last summer, we invited two old women from South Korea, both of whom were the so-called comfort women, to a place in Matsushiro, Shinshu, where the underground Imperial headquarters was constructed by the forced labor. We contacted them in Seoul to confirm their decision because we did not want Korean women to be exposed to public as a mere curiosity. They replied that they themselves hoped to have an opportunity to talk to the Japanese people before they pass away. That made it possible for them to come to Japan.

We finally know now the truth about the forced labor and forced prostitution of the past. Can we use the excuse that the people were not told fifty years ago? Let's say that we can use this evasion. If so, what about the situation today? For example, do you think thirty years from now we will invite from Thailand a woman who has reached middle age to testify about events thirty years past? We already know about it now. Modern "voluntary" forced labors and forced comfort women are being created in great numbers by the international financial system, in what can be called a kind of structural violence/ coercion.

Working with the Movement to Aid Foreign Workers

This spring, organizations working to aid foreign workers gathered in Shinshu Matsushiro from all over the country. 400 people came from both within and outside the prefecture. Fearing the racialism and anti-foreign feeling gaining power in Europe is threatening to flood Japan as well, a resolution was adopted.

Although our meeting is obviously a small one, it is the one opportunity a year for volunteers who are participating in the aid movement to meet in person. It is not a party. Since we cope with sudden international problems with long-distance phone calls, it is absolutely necessary to have this opportunity to meet face to face.

One more thing. We do not think of our activities as a movement to protect human rights. We think of ourselves as curious volunteers who began because, once we understood the reality, we were roused by a feeling we could not shake off.

Editor's Note: Dr. Irohira now practices internal medicine at Misato Kenwa Hospital.

(*Jinken Shimibun*, November 1, 1993, No. 287)

Death Penalty

Is the Minister of Justice Under Obligation to Enforce Capital Punishment? — Death Penalty Should Be Suspended Lecture by Professor Masaaki Fukuda

Prof. Masaaki Fukuda, Professor at Hitotsubashi University, gave a lecture at JCLU's annual General Assembly on May 21, 1994. The lecture was entitled "Is the Minister of Justice Under Obligation to Enforce Capital Punishment? — Death Penalty should be Suspended." This lecture was delivered in response to the executions conducted in 1993 after an interval of three years. Prof. Fukuda commented on the nature and objective of the law requiring authorization by the Minister of Justice before execution can be carried out. Prof. Fukuda's point was to emphasize that even under the present system of criminal justice, which provides for the death penalty, the Minister can choose not to order execution, and is even under political and legal obligation to suspend the death penalty.



Prof. Masaaki Fukuda

Prof. Fukuda began his lecture by referring to comments on the death penalty made by Mr. Gotoda, the former Minister of Justice. Prof. Fukuda noted that Mr. Gotoda had stated that in order to maintain order in the law, where a court has entered a final and conclusive decision to impose the death penalty, the Minister of Justice should honor his duty to implement the court's decision. Prof. Fukuda also referred to comments made three months ago by the then Minister of Justice Mr. Mikazuki, who had stated that where a defendant has exhausted his right of appeal in the court system, failure of the Minister of Justice to issue the death penalty order would be inconsistent with the spirit of the Code of Criminal Procedure. Then, Prof. Fukuda went on to explain the nature of and the rationale behind the law requiring the order of the Minister of Justice before execution can be carried out.

First, a death sentence is different in its effect from that of other penalties, as the final decision by the court and directions of a public prosecutor alone are not sufficient to authorize the execution. In other words, if the sentence pronounced by a court does not involve the death penalty, the final decision of the judicial branch alone allows an immediate enforcement of the penalty by the prosecution. However, administration of capital punishment requires

the order of the Minister of Justice. Thus, the effect of a court's sentencing a defendant to death is different from the effect of lesser penalties.

Second, Prof. Fukuda listed the rationales commonly set forth for requiring the Minister's order to be issued within six months from the day the death sentence becomes irrevocable before the execution may be carried out:

1. To ensure that the procedure taken is deliberate and prudent, since the death penalty involves the most severe punishment, the taking of life.
2. To investigate the availability of amnesty.
3. To prevent an arousal of fear in the prisoner, caused by an unduly long detention.
4. To pay due respect to the final and conclusive decision of the court.
5. To make preparation for the execution.

Prof. Fukuda concluded that the only justifiable rationale for the law is the first, as the other goals could be accomplished by government officials other than the Minister of Justice (for instance, the investigation of whether amnesty is available can be pursued by a public prosecutor.)

Then why was such a deliberate procedure necessitating the order of the Minister of Justice introduced only for the death penalty? The prevalent view holds that the law seeks to allow an examination of the correctness of the supposedly final and conclusive decision of the court. Prof. Fukuda, however, maintained that it is inconceivable that the law gave such function and responsibility to the Minister of Justice who is not a legal expert. Granting such a review power to the Minister of Justice would be an usurpation of the power of the judicial branch. Moreover, if the objective is to review the procedural aspect of the court's decision, a prosecutor is better suited to the work.

Prof. Fukuda concluded that the true objective of the law granting the Minister of Justice the power to issue a death penalty order is to allow him/her to make a political and humanitarian judgment rather than a mere legal and formalistic one. For example, Article 428 of the Code of Criminal Procedure allows a public prosecutor to stay such criminal penalties as imprisonment provided certain conditions are met. Yet, no comparable provision exists for cases involving the death penalty. Additionally, the requirement of the order of the Minister of Justice is not mentioned in Article 502 of the Code which allows a defendant to file an objection with the court when it is considered that the measure taken by a public prosecutor regarding the enforcement is improper. Thus, not to allow the Minister of Justice to exercise the power to make a political and humanitarian judgment would have the

untenable result that the death penalty is treated more lightly than lesser punishments.

Prof. Fukuda also said that in light of the present international and domestic climate, the Minister of Justice has been given not only political and humanitarian discretion, but also a political and legal obligation to suspend death penalty sentences.

The rise of the international movement advocating abolition of the death penalty, exemplified by the existence of the Convention on the Abolition of the Death Penalty (not ratified by Japan) and the increase in the number of countries in which the death penalty is banned, it is justifiable, according to Prof. Fukuda, to consider the Convention to have already been functioning as customary international law. Prof. Fukuda also argued that under Article 6 of the International Covenant on Civil and Political Rights which was ratified by Japan, the Minister of Justice has an international obligation to suspend death penalty sentences.

Prof. Fukuda, citing polls he conducted of college students and another public polls taken by the Tokyo Bar Association, strongly emphasized that present public opinion supports the suspension of death penalty sentences and also demands a re-examination of the penal system. Therefore, it is an incorrect interpretation of the law that the Minister of Justice has a mere ceremonial obligation to issue the order to administer the death penalty. But rather, as the top person with responsibility for pursuing the protection of human rights, the Minister of Justice has the obligation to follow the sovereign voice of the people by immediately starting an investigation looking toward the abolition of the death penalty.

Prof. Fukuda closed his lecture by saying that he firmly believes that during the next ten years, the opinion for the abolition of death penalty, rather than for the mere suspension of execution of such penalty, will gain a majority among the Japanese public.

(*Jinken Shimbum*, July 7, 1994, No. 290)

Freedom of the Press

Summons to the Diet of Press Official

The observation by Mr. Tsubaki, ex-director of the Press Division of TV Asahi, and his summons to the Diet as witness raised serious issues concerning fundamental rights such as the freedom of the press, the freedom of speech and the mass media, and the regulation of the

broadcast media by the public authority.

Recognizing that in this emergent situation, an urgent appeal to the Diet and the government is required to protect human rights, the JCLU adopted a resolution on October 30 at the Board meeting, and immediately sent it as a public statement to Prime Minister Hosokawa, Ms. Doi, Speaker of the House, Mr. Ishi, Chair of the Special Committee Dealing with Political Reform, and Mr. Kanzaki, Minister of Postal Services.

Although there was vehement opposition from various groups including the Committee Concerning Broadcast Programs of the National Association of Commercial Broadcasters and the labor union of commercial broadcasters, the summons to the Diet took place on October 25 through the cooperative acts of the ruling and opposition parties, which left a large stain on the history of freedom of expression in Japan.

We urge readers to reaffirm our stance that however improper the speech might have been, the best method of response would be to give a rebuttal and ask for a correct statement of facts.

JCLU Statement on Summons of Press Official

October 30, 1993
Japan Civil Liberties Union

The Japan Civil Liberties Union (JCLU) hereby strongly condemns a series of invocation of powers including the summons to the Diet of an ex-Director of the Press Division of TV Asahi.

There is no need to dwell at length on the importance of freedom of speech and of the press.

The statement made before the ex-Director of the Press Division of TV Asahi at the Committee Concerning Broadcast Programs of the National Association of Commercial Broadcasters in Japan might be considered hasty and improper as he himself readily admitted.

However, this is a problem which needed only to be resolved with a simple independent verification of the facts. Instead, the Diet exercised its powers to summon the ex-Director of the Press Division to the Diet as a witness, using his statement as a pretext, even though there was no evidence at all of actual improper or unjust broadcasting.

Furthermore, it is patently clear that the Diet and the

executive used their power excessively when they talked about cancellation of the TV license and when the Ministry of Postal Services demanded submission of the transcript and the tapes of the regular meeting of the Committee Concerning Broadcast Programs, which was established as an autonomous organ of the National Association of Commercial Broadcasters. We are compelled to conclude that these phenomena are aimed at the persecution of the press by a government dissatisfied with the broadcasting of TV Asahi.

If harsh persecution such as the use of governmental investigative power to and the attachment of new conditions at the time of license renewal can be easily inflicted, we feel strong anxiety about the chilling effect caused thereby, which might lead to a change in the critical attitude on the part of the press towards the government. It is no exaggeration to say the freedom of the press and our democracy are facing a serious danger.

As stated above, JCLU strongly opposes the series of acts including the summons to the Diet as a witness. We further ask for sincere reflection by the Diet and the government upon the excessive use of power and the disregard of the freedom of speech.

(Jinken Shimbun, November 1, 1993, No. 287)

Right to Know/ Mass Media

Supreme Court Again Dismisses Appeal in Request to Inspect Kanamaru Case Records

The Supreme Court rendered another disappointing judgment which denied disclosure of court records in an important criminal case involving an influential politician.

When the Tokyo District Court decided in 1992 to impose only a petty fine of 200,000 yen on former Deputy Prime Minister Shin Kanamaru for receiving a 500 million yen contribution in violation of the Regulations of Political Funds Law, JCLU's Mass Media Committee filed a request to inspect the records of the case.

The Committee had been studying the procedure governing inspection of criminal case records, Article 21 of the Constitution which guarantees the right to know, and Article 82 of the Constitution which requires publicity of trials and judgments. The Kanamaru Case was conducted through summary proceedings, and therefore was exempt from public scrutiny. The Mass Media Committee decided that, in order to learn the true facts of

the case, it was vital to inspect its records including court proceedings and evidence. Article 53 of the Code of Criminal Procedure provides grounds for such an inspection.

Mr. Yasuji Nakamura, a member of the Committee, represented by three JCLU attorneys, Junichiro Hironaka, Masayoshi Iida, and Makoto Sakai, first requested the Tokyo District Public Prosecutor's Office to disclose the records of the Kanamaru Case. The Prosecutor's Office rejected this request alleging that it would influence an ongoing investigation of related cases. Mr. Nakamura immediately appealed to the Tokyo District Court, and when that appeal was dismissed, filed a special appeal to the Supreme Court, contending that his request was denied in violation of Articles 21 and 82 of the Constitution.

However, the Supreme Court dismissed the special appeal on December 7, 1992, reasoning that Article 82 does not guarantee the right to inspect court records.

In June, 1993, the Tokyo District Public Prosecutor's Office announced that it had concluded the investigation of related cases. Mr. Nakamura again filed a request for disclosure of the Kanamaru Case records, since the reason given for the first denial was no longer valid. The Prosecutor's Office turned down Mr. Nakamura's second request, giving the following reasons: (1) it would hinder the affairs of the Public Prosecutor's Office; (2) there is a possibility of injuring the honor of the persons concerned.

Mr. Nakamura challenged the Prosecutor's Office's denial by an appeal to the Supreme Court. He argued that the Prosecutor's Office's conclusion contradicted the decision rendered by the Supreme Court in the Metropolitan Police Department Case (December 10, 1992). In that case, the Court held that the denial to disclose official documents was illegal because it failed to mention the reasons for the denial. Mr. Nakamura believes that the dismissal of his request also lacked specific reasons and was therefore illegal.

The Supreme Court, however, rejected this argument and dismissed Mr. Nakamura's second appeal on February 24, 1994. The Court held that:

(1) In the Metropolitan Police Case, the provision of the ordinance which provides for acceptable reasons to deny disclosure is abstract and exhaustive; thus it was not sufficient merely to state that such provision was applicable. On the other hand, the provision concerning the conditions for denying inspection of court records does prescribe specific reasons, although the terms used are general. Consequently, the Metropolitan Police Case can be distinguished from the present case, and its rulings do

not provide an appropriate basis for appeal.

(2) The Appellant contends that the provision prescribing the conditions for denial and the Public Prosecutor's denial under this provision both violate Article 21 of the Constitution. Such argument, however, was not submitted to the lower court, and therefore does not qualify as a cause for appeal.

Mr. Nakamura comments as follows: "I expected a judgment respecting the right to know and the publicity of trials and judgments, but the decision rendered was most disappointing. The reasons for denial presented by the Prosecutor's Office lacked any specific grounds and were not at all convincing. We are willing to file a request for the third time, whenever it is appropriate, and to challenge the government's argument."

(*Jinken Shimbun*, April 25, 1994, No. 289)

Mentally III

Osaka-Hyogo JCLU Branch Discusses Rights of the Mentally III

by Masayuki Takeshita
Member, JCLU Osaka-Hyogo Branch

JCLU's joint Osaka-Hyogo Branch met on October 30, 1993, for a symposium on "The Realities and Issues of Mental Health Care." The discussion, with three panelists, was chaired by attorney Kazuo Otsuki.

The symposium focused on an incident in February 1993 in which an inpatient received bodily injury resulting in death at Yamatogawa Hospital in Osaka Prefecture. It explored the question "how could such an incident occur and how can we prevent such violations of human rights."

The panelists consisted of Mr. Tetsuro Maruyama, an attorney, Mr. Hiroshi Tamegane, a nurse at a mental hospital, and Ms. Miyuki Yamamoto, a former patient at a mental hospital who is now a human rights activist. All three are involved in the activities of the "Center for Human Rights in Mental Health Care in Osaka." By reflecting on their own experience, they focused in their presentations on current conditions in mental health care and possible improvements in the future.

Mr. Maruyama emphasized that despite the Yamatogawa case and two other similar cases, the situation in mental health care can still be described as oriented toward admitting as many patients as possible and

simply "locking them up and throwing away the key." He also reported how the judicial system tackles those cases.

Mr. Tamegane used detailed data to illustrate the existence of serious problems resulting from the position of mental health care within medical policies as a whole. One such problem is the prevailing tendency to keep patients in hospitals at any rate, and leaving the care up to private hospitals, he said.

Ms. Yamamoto, by describing her own experiences and those of her colleagues, told how mental hospitals are insensitive to the "feelings" of patients and that there exists deep-rooted prejudice against them.

From attending this meeting, I came to realize the frightening and harsh realities of mental health care and how human rights have been abused daily. In order to eliminate those violations, we urgently need to set domestic standard for mental health care in accordance with international standard adopted by the United Nations. Moreover, I strongly call on the public, who often fall into a "it's none of my business" type of apathy, to recognize the cruel realities.

(*Jinken Shimbun*, February 21, 1994, No. 288)

Right to Work

Reporter with Skin Disease Reaches a Favorable Settlement in Court

A settlement was reached on November 1, 1993, at Tokyo District Court in favor of Mr. Yuji Onomura, a reporter of Jiji News, who took Jiji News and its former director to court for violation of human rights at a collective bargaining meeting. At this meeting the company had ordered him to transfer to the morgue because of his skin disease. In his libel suit, Onomura had been appealing to the court for a withdrawal of a discriminatory comment made against him. The contents of the settlement was more than what would have been expected if he had won the trial. This trial was supported fully by the JCLU, and an agreement was finally reached after two and a half years in court after the filing of the complaint. Reporter Onomura himself reported on the results at the meeting of the Board of Directors of the JCLU held at the end of 1993.

The contents of the settlement included an apology from Yoshio Yasue, ex-director and present advisor to Jiji News, for making discriminatory comments that violated human rights such as "his skin disease makes a bad

impression, therefore he should work in the morgue and concentrate on curing his disease." The settlement also included payment of 350,000 yen as a settlement fee and an expression of regret from Jiji News.

The following is an article based on an interview with Mr. Onomura.

▼

Interview with the Plaintiff
—The Case of Yuji Onomura—

Congratulations on the favorable settlement.



Mr. Yuji Onomura.

—Thank you very much. I mean to say this not just from sheer sense of duty. The JCLU's decision to support me was of great help in my trial, substantively as well as in other ways. It has made me confident that this trial was not just a private issue, but a trial to protect the rights of the many businesspersons who work while suffering from a disease.

Please describe the nature of your disease, and how you have dealt with it in the past?

—The disease that I have is called common psoriasis, which is a non-transmittable skin disease. No treatment available in current medical research has been found to be effective in curing it completely. It is a challenging disease in that one must accept the fact that one will never be cured of it, and make an effort to live as full a life as healthy people. It is a common disease in the Western countries, and there are thirty million patients in the United States alone.

The first symptoms of my disease appeared about twenty years ago. Since then I have undergone treatment in hospitals as well as trying many other kinds of treatment which might be effective. I even tried the starvation therapy. Nothing worked, and I was repeatedly told that it is an incurable disease.

What was the nature of the comment made at the collective bargaining meeting?

—It was the comment made to me at the collective bargaining meeting, which made me decide to take my case to court. The meeting was held to decide new job placements for four reporters who belong to the labor union, including myself. At this meeting, a representative of the company, the director in charge of labor affairs, gave the reason for my transfer to the morgue. When they

explained the reason for my transfer they slandered me repeatedly.

They said, "It is not in the company's interest for a reporter with a disease to use the company's business card and to cover news representing the company." They even asserted, "It is not discrimination because your salary would stay the same." After making such a problematic statement, however, the company suspended my job transfer to the morgue.

I suppose most people in a similar situation would let the matter drop and bear the unfairness of it silently. What supported you in your decision to fight for your rights?

—The reason that I did not let the matter drop is that I carried with me the belief that I must not give in to my disease, and that I must claim an equal right to live, just as any healthy person, and to carry that out in every day life. This belief was cultivated in the long process of my treatment. The fact that I have been blessed with good doctors had a great impact in my decision.

Also, my family and parents, and friends who belong to the same labor union, all showed understanding and great support in my fight in court. I was fortunate to find good lawyers and I was well supported psychologically.

What did you want to appeal most through this trial?

—My disease is apparent at first sight. But it does not affect my work or other affairs. I have actually been effective as a reporter for 20 years. I wanted to prove that it is not permissible to lock such a reporter up in the morgue because "he is unrepresentable because of his skin disease." And that Japan is not such an uncivilized country to allow such a thing to happen. I wanted to make clear that in Japan, such a comment is a violation of human rights and is considered to be against the law.

How did the circle of your support expanded?

—The support I received was more than I ever expected. There were many supportive messages from European journalists' labor unions in Europe. Also, a distinguished figure in American medical circles, a dermatologist who is a professor at Harvard University, heard about my trial and came all the way to Japan to examine me. He wrote a diagnostic report and submitted it to court. "In order to provide maximum support as a doctor, I will have you as my patient," he said. I was very much moved to find out that this was the way some world famous experts actually help society in upholding human rights awareness.

(Jinken Shimbun, February 21, 1994, No.288)

World Conference on Human Rights

Report on the Follow-Up Meeting - Asia Pacific NGO Network Established -

by Masaru Sato and Amy Furuya

A Follow-up Meeting to the World Conference on Human Rights (WCHR) was held on February 2 - 3, 1994, in Bangkok by NGOs from the Asia-Pacific region. Approximately 70 persons from 56 NGOs were present. Ten representatives of five NGOs from Japan took part in the conference, including the Japan Federation of Bar Associations and IMADR. From the JCLU, Mr. Masaru Sato, the Secretary General, and Ms. Amy Furuya, the International Liaison Officer, participated.

NGOs: Beyond Vienna

At the Asian regional meeting in Bangkok (March 1993), and the WCHR in Vienna (June 1993), Asia Pacific NGOs demonstrated its ability to work most effectively out of all the regions. The experience of drafting the NGO Bangkok Declaration of Human Rights and coordinated lobbying activities generated a new sense of solidarity among the NGOs in the region. There was a strong feeling among NGOs to try to continue and expand their network beyond Vienna.

The Follow-Up Meeting was initiated by organizations such as ACFOD, who co-hosted the Asia Pacific NGO Conference in March 1993.

At the Meeting, NGOs reviewed the Action Programme which was adopted at the Bangkok NGO Conference in 1993, and the Vienna Declaration and Programmes of Action. They also drew up proposals on behalf of Asia Pacific NGOs for the Conference for Women in Beijing (1995), and for the Summit for Social Development, and made a proposal for the "Beyond Vienna" Meeting by the NLC (New Liaison Committee)—a world wide NGO network established in Vienna—, which was scheduled to meet at the end of February 1994. The main purpose of the Follow-Up Meeting, however, was to establish an NGO network in the Asia Pacific region; therefore, these two days NGOs rather concentrated on the practical discussion regarding the contents and procedures of specific mechanisms which are necessary for effective follow up work.



Approximately 70 members from 56 NGOs gathered to establish an Asian-Pacific NGO Network.

"Facilitating Team" for Follow-Up

In practical terms, a "Facilitating Team" to promote follow up was set up. The team consists of at least nine or ten persons, who are elected on the basis of sub-regions or on the basis of sectors. Its purpose is to exchange information among Asia Pacific NGOs, and to continue and expand their cooperation. The "Team" is not authorized to make decisions, a point which was especially emphasized at the conference, and it is not a "representative" of Asia Pacific NGOs. It is basically a networking team for hosting the next Asia Pacific NGO Conference, exchanging information among NGOs who have similar interests, and promoting coordinated action, such as improving the effectiveness of urgent appeals.

The team has 11 members, who consist of five representatives from five sub-regions, that is the Pacific, Northeast Asia, Southeast Asia, South Asia, and West Asia; four representatives from several sectors, that is women, children, indigenous peoples, and workers; and two representatives of regional NGOs.

The team will meet at least once a year, and all Asia Pacific NGOs will have a congress at least once every two years. The team has as its term until the next congress, and the NGO network is open to NGOs who did not take part in this meeting.

Information will flow from the team to sub-regional representative NGOs, to each country's contact NGOs, and finally to domestic NGOs.

In the case of Northeast Asia "KONUUCH," the South Korean NGO Coalition who already played similar role at the WCHR, became the sub-regional representative NGO. In Japan, JCLU will probably be the contact NGO, since it was notified of this meeting. The information JCLU receives will be passed on to domestic NGOs through the Japan NGO Network for the WCHR*.

New Steps for NGO Solidarity

Solidarity among NGOs is relatively weaker than that among governments in Asia Pacific regions, where many countries have human rights violation problems. In order to improve the situation, it becomes even more important for NGOs in each country to cooperate in expressing their collective opinions under the name of Asia Pacific NGOs. Networking mainly through the Facilitating Team could promote not only related activities, but also human rights activities based on grass-root movements, nations, and regions. Japanese NGOs, including JCLU, should actively contribute to coordinated activities, such as joint campaigns and lobbying, through the network established at this follow-up meeting.

***Editor's NOTE:** The present International Human Rights NGO Network in Tokyo.

(Jinken Shimbun, April 25, 1994, No. 289)

Visitors

Visit by the President of ADHOC

Mr. Thun Saray, president of the Human Rights Association in Cambodia (ADHOC), visited the JCLU office on September 14, 1993, with Mr. Michio Kumaoka, deputy representative of the Japan Volunteer Center, and met with JCLU Secretary General Masaru Satoh, Board member Yoichi Kitamura, and JCLU member Shigeki Matsui.



Mr. Thun Saray, President of the Human Rights Association in Cambodia (ADHOC) with JCLU members.

ADHOC was founded in January 1992 as the first national human rights organization in Cambodia, and its membership is already over 30,000. Its activities include human rights education and human rights monitoring across the nation. It is also active in the area of development assistance.

Mr. Kitamura had previously met Mr. Saray at the

UNTAC Human Rights Symposium in November 1992. After that, JCLU members met him in the Asian Regional Meeting held in Bangkok for the World Conference on Human Rights and at the Conference itself, but because of the limited time then, it was good to have a longer discussion to exchange opinions during his visit.

(Jinken Shimbun, November 1, 1993, No. 287)

Visit by Lawyers for a Democratic Society

Eight Korean lawyers belonging to the Lawyers for a Democratic Society (Minbyun) visited the JCLU office on March 29, 1994 and met with Board members Kazuo Itoh and Yaeko Takeoka, Secretary General Satoh, Secretariat member Matsui, and International Liaison Officer Furuya.

The group, including Mr. Hong Sung Woo, Minbyun chairperson, visited on their way home from a meeting of Japanese and Korean lawyers in Kobe and Osaka on March 27-28.



Eight Korean Lawyers from Minbyun visited the JCLU.

Minbyun consists of 150 progressive lawyers who stress human rights in South Korea. Its activities include criminal defense of prisoners of conscience, issuing proposals on social problems, publications, investigations, and research. Minbyun also contributes to democratization by dispatching their officers to the Bar Association of the Republic of Korea.

Minbyun is actively involved in international human rights as well. It submitted a counter-report to the Human Rights Committee when the South Korean government's Periodic Report was examined, and submitted a counter-report titled "Human Rights and Japanese War Responsibility" for the deliberation of the Japanese Government's Report last fall. At the World Conference on Human Rights, Mr. Chun Jung-bae, the director of foreign cooperation of the Minbyun, contributed much to the conference as a representative of the Asia-Pacific NGOs.

(Jinken Shimbun, April 25, 1994, No. 289)

ILHR Vice President Visits JCLU

Professor Roger S. Clark, vice president of the International League for Human Rights (ILHR), met with Representative Director Uchida, Board Member Hashiba and Secretary General Satoh at the JCLU office on April 14. Professor Clark is a professor of law at Rutgers University Law School and was teaching at Temple University during his half year stay in Japan.

The JCLU is a member organization of the ILHR. Professor Clark reported on recent activities and organizational and financial issues. In particular, he reported on ILHR's work on the human rights of women, especially concerning violence against women.

IHLR has provided information to the CEDAW (Committee on the Elimination of Discrimination Against Women) and has sent a fact-finding mission to the former Yugoslavia. In cooperation with the Center for Constitutional Rights, the ILHR has also filed a suit in the United States concerning the case of a Bosnian woman who was the victim of sexual violence. The discussion was filled with many useful insights, including the report that American judges have participated in human rights seminars sponsored by NGOs.

Although there have been relatively few contacts with the ILHR over the past several years, Professor Clark's visit confirmed that cooperative relations will be intensified in the future.

(Jinken Shimbun, July 7, 1994, No. 290)

SOUTH AFRICA - Birth of Multiracial Democracy

Speech delivered by Mr. Jerry Matsila,
ANC Chief Representative to Japan & East Asia,
(5. 1988 ~ 5. 1994),
at the Annual Meeting of the JCLU in May, 1994.

On May 10, 1994, the curtain fell in South Africa. Apartheid drama came to an end, buried. A new day rose into a blue sky. No clouds. Sunny Nelson Mandela stepped into a heavily guarded podium and solemnly declared in front of more than 4,000 guests from over 140 countries and 150,000 jubilant local crowd, "In the presence of those assembled here and in full realisation of the high calling I assume an executive President in the service of the Republic of South Africa. I, Nelson Rolihlahla Mandela do hereby swear to be faithful to the Republic of South Africa, and to solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the Republic, to obey,

observe and maintain the constitution and all other laws of the Republic, to discharge my duties with all my strength and talents to the best of my knowledge and ability...so Help me God."

The ascension of Nelson Mandela to the first black presidency of South Africa signaled the birth of a new South Africa. New South Africa was born;

- 342 years after Jan Van Riebeeck landed at the Cape and introduced racism.
- 82 years after African National Congress was launched.
- 18 years after the children of Soweto rejected the apartheid education.
- 4 years after Nelson Mandela was released from 27 years of unjust imprisonment and four years after his visit to Japan.

The release of Nelson Mandela four years ago opened a new stage in the South African politics - multiracial negotiation. The four years of protracted multiparty negotiation culminated with the holding of the first ever all-race elections in South Africa, April 26 - 29, 1994. Many international organisations and governments sent observers and monitors to these historic elections. Japanese government sent about 30 monitors, some Japanese, about 10, joined UN observer teams. Rengo sent 4 monitors, indicating the close cooperation Rengo had with ANC and COSATSU. ANC won the election with a landslide, taking 252 of the 400 parliamentary seats and seven of the nine premiership posts.

As agreed during the multiparty negotiations, a coalition Government of National Unity (GNU) was formed - with Mandela as its Executive President, ANC Thabo Mbeki as its first Vice-President and F.W. De Klerk (NP) as its second Vice-President. ANC also got 18 of the 27 Cabinet posts, NP 6 and IFP 3, and 8 of the 12 Deputy Ministerial posts, NP 3 and IFP 1.

The main task of the GNU can be summarised as follows in order of priority:

- *Reconciliation between black and white after three centuries of fighting
- *Addressing the socio-economic situation of black people, especially creation of jobs, building of houses, schools, provision of clean water and medical aid to children and pregnant women.
- *Solving land question to help land hungry black majority
- *Writing the final democratic constitution

Many nations and millions of people across the world made significant contribution to realize this new dawn, a hopeful future for all South Africans. I will like to pay tribute to many Japanese everywhere who joined in various

activities to end apartheid. The Labour Unions, anti-apartheid groups, political parties, religious groups, student and house-wife groups gave us most needed help and support. My thanks goes to JCLU for their friendship, support and publicity of the anti-apartheid information. I will always remember you all for many years to come. AMANDLA!

JCLU's New Officers

Human Rights from Women's Perspective An Inaugural Message from Ms. Kiyoko Kinjo, the New Representative Director



Ms. Kiyoko Kinjo.

Japan is a major country in terms of economic development. Unfortunately it is a minor country in terms of human rights. The two are closely related. The fact that Japan has been a minor country in human rights was the basis for the unusual economic growth.

To a great extent, the phrase "human rights problems in Japan" means the problems of discrimination against women and against Burakumin, foreign people and other minorities in Japan. The following statistic illustrates the problem. According to a study conducted by the Inter-Parliamentarian Union, the average ratio of women members of the lower house around the world is 11%. The figure for Japan, however, is only 2%. (In Japan, the equivalent body is the House of Representatives.) Contrary to the general rule that women's political participation increases with the economic development of a country, this ratio ranks Japan 112th in the world, at the level of countries such as Turkey and Iran.

The human rights of women is a mirror that reflects the entire picture of a country. Now it is time for women to participate in all fields of activity and to re-examine conditions from the perspective of persons discriminated against. I am aware of the great accomplishments of the JCLU to date. Together with many women members, I wish to breathe new life into the JCLU, and to contribute, even in a small way, to improving the human rights situation in Japan.

Recently there has been a strong emphasis on the need for Japan's NGOs to become involved in human rights activities in developing countries just as the of NGOs of other developed countries. While we must not close our eyes to the human rights problems within Japan, in the present circumstances, it is also necessary to tackle human

rights problems in Japan with an international perspective.

Every year, many women from Asian countries are sent here to work in Japan's sex industry. In order to protect women from exploitation of prostitution and acts of slavery, in 1988 the Sub-Commission on Human Rights adopted a resolution calling upon receiving countries to take protective measures. Protection for women who work abroad requires the cooperation of both receiving and sending countries.

Why has Japan not taken the initiative to advance international cooperation for protection of the human rights of women? This seems like a far more meaningful contribution than such matters as cooperation in international peace-keeping operations.

(Jinken Shimbum, July 7, 1994, No.290)

Yoichi Kitamura Appointed as New Secretary-General

On May 21, 1994, JCLU's Board of Directors appointed attorney Yoichi Kitamura as JCLU's new Secretary-General, replacing Mr. Masaru Satoh, who had successfully completed his two-year term. Mr. Kitamura, a partner at Koga & Partners, is an expert litigator in numerous human rights cases. He is deeply concerned with issues such as the promotion of freedom of expression and the right to know; he has represented Mr. Lawrence Repeta, together with other JCLU attorneys, in a fruitful suit concerning the right of spectators to take handwritten notes during public court proceedings. Mr. Kitamura is also active in promoting the rights of the mentally ill and in the improvement of criminal justice, and has been defending Mr. Kazuyoshi Miura in a serious criminal case receiving much public attention in Japan.



Mr. Yoichi Kitamura.

Mr. Kitamura graduated from the University of Tokyo Faculty of Law in 1975 and was admitted to the bar in Japan in 1977. He has received a M.C.L. degree from the University of Michigan Law School in 1981, and was admitted to the bar in New York in 1983. He is also known for research activities, the fruits of which are published in numerous journals and books.

With his broad field of activities and international background, the new Secretary-General is expected to make great contributions in enhancing the activities of JCLU's various committees and in promoting JCLU's involvement with international human rights.

Publications

Criminal Cases and the Right to Know

Written by Yasuji Nakamura, Jun'ichiro Hironaka, Masayoshi Iida, Makoto Sakai, and Kenta Yamada

This book is the culmination of the activities of JCLU's Mass Media Committee over the past three years. As part of JCLU's study on the disclosure of government information, which is one of the Union's major concerns, the book focuses on the issue of opening judicial information to the public. The Committee started its study when it learned that a journalist was denied right to inspect court records of a criminal case whose decision has become final, a right provided under Article 53 of the Code of Criminal Procedure. During the course of their research, the Committee members filed a law suit concerning the disclosure of records of the Kanamaru Case, requesting constitutional protection for the right to inspect court records.

The book discusses the rationale, including constitutional justification, which provides grounds for the right to know in relation with criminal cases. The book also reveals how the Finalized Criminal Suit Document Law imposes restrictions on the right to inspect court records, thus hindering access to information on social, political and even historical cases. The book then proceeds to offer legislative and administrative proposals which deal not only with court records of cases whose decisions have become final, but also with records on detention, investigation, and trial.

This work is highly recommendable, especially to those who are researchers of criminal law, journalists or law practitioners. Published in Japanese only.

Editor's NOTE: See article "Supreme Court Again Dismisses Appeal in Request to Inspect Kanamaru Case Records" in this issue for further information.

(*Jinken Shimbun*, April 25, 1994, No. 289)

Japanese Translation of Orientation Manual

The JCLU published a Japanese translation of *The Orientation Manual: The U.N. Commission on Human Rights, Its Sub-Commission, and Related Procedures* produced originally in French and English by the Minnesota Advocates for Human Rights and the

International Service for Human Rights in 1993. The translation was done mainly by young scholars who are JCLU members.

The Manual is made in a compact size and is designed as a Must Book for those who visit the U.N. in Geneva. It includes sections on "A Description of the Primary Human Rights Organizations at the United Nations" and "The Roles of NGOs, Governments, and Press Representatives in the Human Rights Proceedings at the U.N. in Geneva." In an appendix, it contains addresses of some of the permanent missions in Geneva and a guide to Geneva. It is a manual of "everything you wanted to know about the U.N. Commission and the Sub-Commission."

(*Jinken Shimbun*, February 21, 1994, No.288)

Basic Texts

"Use of Nuclear Weapons Violates ICCPR":

Statement Submitted by JCLU

The JCLU issued on June 9, 1994 a statement concerning the use of nuclear weapons, when the Japanese government was about to submit its position paper to the International Court of Justice on the question of the use of nuclear weapons by a state.

Although the government paper did not have any particular reference to the question of "whether the use of nuclear weapons by a state in war or in any other armed conflict is a violation of duty of the states under international law," the government still holds the interpretation that the use of nuclear weapons does not violate international law. However, General Comment 14/23 adopted by the Human Rights Committee on November 2, 1984 clearly stated that "[t]he production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity." Since Japan is the only country whose people suffered the damages caused by atomic bomb, the position paper of the Japanese government should have been prepared based on their tragic experience.

Furthermore, the General Assembly of the United Nations adopted Resolution 1653 as early as 1961, which stated that the use of nuclear weapons directly violated the Charter of the United Nations. In this regard, it is to be noted that Japan favored said resolution along with other 59 countries while 16 countries including the U.S. and the U.K. opposed to the same.

The statement of JCLU is in accord with the Resolution.

*Prime Minister of Japan,
Mr. Tsutomu Hata
Minister of Foreign Affairs,
Mr. Koji Kakizawa*

*Statement of Request**

The Japan Civil Liberties Union (JCLU) is a non-profit organization established for the sole purpose of the protection of fundamental human rights. As the government of Japan is about to submit its position paper to the International Court of Justice (ICJ) on the question of whether the use of nuclear weapons by a state in wars or in any other armed conflicts is a violation of duty of the states under international law, the JCLU requests the following.

According to what has been reported in the news, presently, the Japanese Government is intending to submit a position paper which has no particular reference as to whether the use of nuclear weapons contravenes international law or not. Initially, the draft text of the government stated that, "From a purely legal point of view, it cannot be said that the use of nuclear weapons violates today's positive international law." However, following the criticism raised inside and outside the Diet, it is said that the government has deleted the phrase cited above and has thereby altered the text which now has no particular reference to the relationship between the two, while the government interpretation that the use of nuclear weapons does not violate international law remains unchanged.

However, the JCLU regards the use of nuclear weapons as violating the present international law, and believes that the government should make this point clear in its position paper. The reason for this is that the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the U.N. General Assembly in 1969, entered into force in 1976, came into effect as to Japan in 1979, and which is presently ratified by 125 state parties (as of December 31, 1993), stipulates in Article 6 (1) as follows, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Furthermore, the Human Rights Committee, which is the sole authoritative body in the U.N. that interprets the ICCPR, has adopted the General Comment 14/23 on November 2, 1984, and stated as a comment to the abovementioned article 6, "... use of nuclear weapons should be prohibited and recognized as crimes against humanity."

As was shown, today, as an interpretation of Article 6 of the ICCPR, which is legally binding upon the great majority of the countries in the world, it is said that the use of nuclear weapons should be prohibited as crimes against humanity, and that the JCLU understands the use of nuclear weapons violates the current international law.

As mentioned above, the ICCPR has come into effect with regard to Japan, and that the interpretation of the use of nuclear weapons as being contrary to the ICCPR is in accordance with the position of the government which has stated that it will make an effort towards the ultimate abolition of nuclear weapons.

Therefore, the JCLU requests the Japanese Government to state explicitly in its position paper to be submitted to the International Court of Justice that the use of nuclear weapons is in violation of international law.

June 9, 1994

*Japan Civil Liberties Union
Representative Directors:
Takao Yamada
Takehiro Uchida
Kiyoko Kinjo*

**This statement was issued in response to the draft statement of the Japanese Government which was to be submitted to the International Court of Justice (ICJ) on 10 June, 1994. The General Assembly of the World Health Organization (WHO) adopted a resolution in May 1993 which sought an advisory opinion from the ICJ on the issue of whether in view of health and environmental effects, it is in violation of a state's obligations under international law for a state to use nuclear weapons in wars or other armed conflicts.*

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS
SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

JAPAN

1. The Human Rights Committee considered the third periodic report of Japan (CCPR/C/70/Add.1 and Corr.1 and 2) at its 1277th to 1280th meetings held on 27 and 28 October 1993, and adopted the following comments.

A. Introduction

2. The Committee commends the Government of Japan on its excellent report, which has been prepared in accordance with the Committee's guidelines for the presentation of State party reports and submitted on schedule. The Committee appreciates, in particular, the participation in its consideration of the report of a competent delegation from the Japanese Government, which consisted of experts in various fields relating to the protection of human rights. The Committee is of the view that the detailed information provided by the delegation in its introduction of the report, as well as the comprehensive replies furnished to the questions raised by the Committee members, contributed greatly to making the dialogue fruitful.

3. The Committee notes with appreciation that the Japanese Government gave wide publicity to its report, thus enabling a great number of non-governmental organizations to become aware of the contents of the report and to make known their particular concerns. In addition, some of them were present during the Committee's consideration of the report.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes that the Japanese Government sometimes experiences difficulties in taking measures to implement the Covenant due to various social factors, such as the traditional concept of the different roles of the sexes, the unique relationship between individuals and the group they belong to, and particularities associated with the homogeneity of the population.

C. Positive aspects

5. The Committee takes note with satisfaction of the serious approach the Japanese Government has taken in dealing with issues relating to civil and political rights, and

of its commitment to fulfill its obligations under the Covenant.

6. The Committee is of the view that the human rights situation in Japan has improved since the consideration of the second periodic report of that State party in 1988, and that there is generally a good regard for human rights in the country.

7. Furthermore, the Committee notes with appreciation that Japan actively assists in the promotion of human rights at the international level. It also notes that there is awareness in the Japanese society of the provisions of the Covenant; this awareness is confirmed by the interest expressed by many Japanese non-governmental organizations in the Committee's consideration of the third periodic report of Japan.

D. Principal subjects of concern

8. The Committee believes that it is not clear that the Covenant would prevail in the case of conflict with domestic legislation and that its terms are not fully subsumed in the Constitution. Furthermore, it is also not clear whether the "public welfare" limitation of articles 12 and 13 of the Constitution would be applied in a particular situation in conformity with the Covenant.

9. The Committee expresses concern at the continued existence in Japan of certain discriminatory practice against social groups, such as Korean permanent residents, members of the Buraku communities, and persons belonging to the Ainu minority. The requirement that under the penal law alien permanent residents must carry documentation at all times, while this does not apply to Japanese nationals, is not consistent with the Covenant. Moreover, persons of Korean and Taiwanese origin, who served in the Japanese Army and who no longer possess Japanese nationality, are discriminated against in respect of their pensions.

10. In addition, the Committee expresses concern at other discriminatory practices that appear to persist in Japan against women, with regard to remuneration in employment, and notes that de facto problems of discrimination more generally continue to exist. The Committee acknowledges the fact that legal measures have been taken by the Japanese authorities to forbid those practices and that there are comprehensive programmes to promote equal opportunity. However, it appears that a certain gap exists in Japan between the adoption of legislation and the actual behaviour of certain sectors of society. The Committee notes that recourse for settlement of claims of discrimination against trade-union activists is very protracted.

11. The Committee is particularly concerned at the discriminatory legal provisions concerning children born out of wedlock. In particular, provisions and practices regarding the birth registration forms and the family register are contrary to articles 17 and 24 of the Covenant. The discrimination in their right to inherit is not consistent with article 26 of the Covenant.

12. The Committee is disturbed by the number and nature of crimes punishable by the death penalty under the Japanese Penal Code. The Committee recalls that the terms of the Covenant tend towards the abolition of the death penalty, and that those States which have not already abolished the death penalty are bound to apply it only for the most serious crimes. In addition, there are matters of concern relating to conditions of detainees. In particular, the Committee finds that the undue restrictions on visits and correspondence, and the failure of notification of executions to the family are incompatible with the Covenant.

13. The Committee is concerned that the guarantees contained in articles 9, 10, and 14 are not fully complied with, in that pre-trial detention takes place not only in cases where the conduct of the investigation requires it; the detention is not promptly and effectively brought under judicial control and is left under the control of the police; most of the time interrogation does not take place in the presence of the detainee's counsel, nor do rules exist to regulate the length of interrogation; and the substitute prison system (Daiyo Kangoku) is not under the control of an authority separate from the police. In addition, the legal representatives of the defendant do not have access to all relevant material in the police record, in order to enable them to prepare the defence.

14. The Committee regrets that there appears to be a restrictive approach in certain laws and decisions as to the respect of the right to freedom of expression.

15. The Committee notes with concern the exclusion of Koreans from the Government's concept of minorities. This is not justified by the Covenant, which does not limit the concept of minority to those who are nationals of the State concerned.

E. Suggestions and recommendations

16. The Committee recommends that Japan becomes a party to both Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. The Committee also recommends that the Japanese legislation concerning children born out of wedlock be amended and that discriminatory provisions contained therein be removed, to bring it into line with the provisions of articles 2, 24 and 26 of the Covenant. All discriminatory laws and practices still existing in Japan should be abolished in conformity with articles 2, 3 and 26 of the Covenant. The Japanese Government should make efforts to influence public opinion in this respect.

18. The Committee further recommends that Japan take measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes; that the conditions of death row detainees be reconsidered; and that preventive measures of control against any kind of ill-treatment of detainees should be further improved.

19. With a view to guaranteeing the full application of articles 9, 10 and 14 of the Covenant, the Committee recommends that pre-trial procedures and the operation of the substitute prison system (Daiyo Kangoku) should be made to be compatible with all requirements of the Covenant and, in particular, that all the guarantees relating to the facilities for the preparation of the defence should be observed.

ABOUT JCLU

The Japan Civil Liberties Union (JCLU) is an independent non-profit organization which aims to protect and promote human rights for all persons regardless of beliefs, religion or political opinion. JCLU's work is conducted in accordance with internationally recognized human rights principles, namely the Universal Declarations of Human Rights. The JCLU was founded in 1947, the year the new Constitution of Japan was promulgated. The American Civil Liberties Union (ACLU) played an important role in the JCLU's foundation. The JCLU is affiliated with the International Commission of Jurists (ICJ) and the International League of Human Rights (ILHR).

Membership is open to anyone who agrees with the JCLU's purposes and is willing to work for the improvement of human rights situations. JCLU currently has about 800 members, 60% of whom are lawyers engaged in private practice, and others include citizens of various professions such as scholars, journalists, and students. JCLU is financed by membership dues and unconditional donations from its members and outside supporters. Day-to-day matters are left to the Secretary-General and the Board of Directors, which is comprised of 45 members. Three Representative Directors attend to external matters. Currently, the JCLU is comprised of 20 committees.

JCLU frequently issues advice, memoranda, and opinions on specific human rights cases relating to activities of the national and local government, the Diet, and the courts of Japan. In addition, it has acted as a leader in movements for new domestic legislation and ratification of the international human rights treaties by the Japanese Government. Member attorneys are active in a broad range of human rights litigations involving the freedom of religion, freedom of information, postwar compensation, environmental pollution, refugees, and serious criminal cases. Recent activities include work on foreigner's rights, sending of a fact-finding mission to Cambodia, and participation in the World Conference on Human Rights. JCLU organizes seminars, meetings and symposiums, conducts research, and publishes reports, books and newsletters. JCLU has a chapter in Osaka.

JCLU Officers: Representative Directors: Takao Yamada, Takehiro Uchida, Kiyoko Kinjo;
Secretary-General, Yoichi Kitamura.

Committees: Freedom of Information Committee, International Human Rights Law Committee, Mental Patients' Rights Committee, Asian Human Rights Committee, Supreme Court Study Committee, Criminal Procedure Committee, Taxpayers' Rights Committee, Elimination of Racial Discrimination Committee, Membership Promotion Committee, Mass Media Committee, AIDs and Human Rights Committee, Human Rights Consulting Committee, Foreigners Rights Committee, Abolition of Death Penalty Study Committee, Postwar Compensation Committee, Legal Consultation Committee, Legal Trainees Committee, Students Committee, Jinken Shimbun Committee (Japanese-language newsletter), Universal Principle Committee (English-language newsletter).

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