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**SOCIAL RIGHTS/ICJ
CONFERENCE**

**Toward Economic, Social and Cultural
Rights of the 21st Century: ICJ
Conference in India**
by Toshiaki Fujimoto
JCLU Member

The Conference of the International Commission of Jurists (ICJ), of which the JCLU is an affiliated organization, was in session for 5 days in Bangalore, India in October 1995. This conference is held once every 3 years and in 1995 the conference had the theme "Economic, Social and Cultural Rights and the Role of Lawyers." I participated in the conference as a member of the Social Covenant study group of the JCLU. The following is a report of the conference.



Session at the 1995 ICJ Conference in Bangalore, India

In Japan, the ICJ is known as an international NGO which issued a report on the women who were sexually abused by the Japanese army during World War II. Their active commitment and strong influence have made them one of the major international human rights NGOs. In view of realizing economic, social and cultural rights, it seems to be epoch-making that such an influential NGO as the ICJ selected this theme for the conference. There were about 100 participants from all over the world at the conference: ICJ members, representatives of its national sections and affiliated organizations. The participants were mostly judges and lawyers. There were relatively few participants from the affiliated organizations.

The conference reviewed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in terms of 1) monitoring, 2) implementation

and justiciability, 3) the role of lawyers, 4) steps towards global endorsement, and 5) the needs of an optional protocol. A report was made for each topic from comprehensive and regional viewpoints. Background of discussing these topics is the adoption of the Limburg Principles by the ICJ and other organizations in 1986. This is not widely known in Japan, but it is a pioneer and basic instrument which deals with the nature and scope of state parties obligations and international cooperation under the ICESCR.

There are two remarkable points to be considered in the discussion based on the Limburg Principles. First is the argument regarding justiciability of economic, social and cultural rights. This is related to the concept of "self-executing" or the direct applicability of these rights under international human rights law. So far such nature of these rights has been interpreted negatively due to comparison with civil and political rights. It was confirmed, however, that not only non-discrimination clause in Paragraph 2, Article 2 of the ICESCR but basic labor rights described in Article 6 and after, and primary education in (a), Paragraph 2, Article 13 are recognized to be justiciable. This point is also apparent in the general comments adopted in the United Nations Committee on Economic, Social and Cultural Rights (CESCR).

Second is the argument regarding the needs of an optional protocol to the ICESCR. In other words, the needs of an individual communication procedure was considered as in the Optional Protocol to the International Covenant on Civil and Political Rights. Concerning this point, Professor Manfred Nowak from Austria reported on a draft optional protocol which was to be studied in the CESCR. It was asserted that developing case-law to define the precise meaning of economic, social and cultural rights is significant.

I had expected that the role of lawyers would be discussed with reference to the concrete cases in each country, but the participants were at the stage of tackling the subject from then, and the argument was not so lively. Also, there was not any reference to the general comments at the CESCR.

At the end of the conference, the Bangalore Declaration was adopted which included an action plan for the realization of economic, social and cultural rights.

From now on, the development in formulating an optional protocol to the ICESCR will be a focal concern. And domestically, we must recognize that Japan is one of the developing countries with regard to the realization on economic, social and cultural rights. Therefore it seems necessary that lawyers, judges, scholars and NGOs should take positive actions.

Finally, I would like to thank the JCLU and the ICJ which gave me the precious opportunity to attend the conference.

[Jinken Shimbun, December 20, 1995, No. 297]

WOMEN

ICJ International Seminar on Sexual Slavery and Slavery-like Practices in War Time: ICJ Secretary-General Mr. Dieng Visits Japan

From July 2 to 4, 1995, an international seminar of the International Commission of Jurists (ICJ) was held for the first time in Japan at the United Nations University in Shibuya, Tokyo.

Speeches were made on "Sexual Slavery and Slavery-like Practices in War Time" by 28 speakers including lawyers, scholars and NGO representatives, who have gathered both from inside and outside of Japan, and discussions followed.

The seminar was organized by the ICJ with support by the United Nations University and the Tokyo Committee of the ICJ Seminar. The JCLU joined the seminar as a member of this committee.

The first date took up issues addressed at the United Nations and other major international fora. Adama Dieng, Secretary-General of the ICJ, delivered a keynote address on the basic stance and activities of the ICJ. Speeches followed by three reporters: Mr. Theo van Boven (member of the ICJ) spoke on the rights of victims to compensation for gross human rights violations, Ms. Ustina Dolgopol (member of the ICJ mission on "Comfort Women") gave the ICJ Report, and Mr. Etsuro Totsuka (attorney-at-law, International Fellowship on Reconciliation) spoke on the problem of impunity of the perpetrators.

On the second date, discussions covered the Japanese traditional characteristics and challenges posed in search for truth in the history and current situation of the "comfort women" problem. Furthermore, the actual situation of the "comfort women" matter in each country was reported with reference to the solutions sought, as well as the relationship with international law. On the same date after the seminar, a testimony meeting was held by nine victims of sexual slavery, who were Koreans, Filipinos and a Korean resident in Japan.

A report was made on the third date concerning colonization of Korea, forced emigration to Japan of

Korean people, and their forced labor in Japan. The seminar had more than three hundred participants each day.

The seminar was closed by the participants adopting their final statement. The statement requested that the recommendations in the ICJ Report be implemented; that support for victims be appealed to attendants of the World Conference on Women in Beijing; that a standing international criminal court be established as a way to press criminal liability of persons who committed war crimes and crimes against humanity.



ICJ representatives and JCLU board members at a welcome party

On the evening of July 4, the JCLU, as an affiliate to the ICJ, held a welcome party for three ICJ representatives at the Hosokaikan. It was the first visit to Japan for the Secretary-General and two other representatives. They enjoyed pleasant discussion on various topics with approximately thirty people involved with the JCLU.

[Jinken Shimbun, July 28, 1995, No. 295]

The Shimodate Case: Murder by Three Thai Women - Facts on Trafficking of Women and Forced Prostitution

In September 1991 in Shimodate, Ibaragi, three Thai women killed their boss, retrieved their passports and ran away. The boss had forced the women to prostitute with customers at her bar.

They were each sentenced to 10 years in prison at the first trial. As of September 1995, the case was appealed to a high court. Counsels for the defendants, Mr. Junichiro Hironaka and Ms. Chinami Kajo, and support group members, Ms. Yuriko Fukushima and Mr. Hiromichi Takahashi reported the case at the JCLU's monthly public lecture.

Summary of the Case

The three women came to Japan because of false promises of work at a restaurant or a factory. Upon arrival to Japan, their passports were taken and they were "sold". A Thai woman (the boss) "bought" them and

they were forced to prostitute with customers at the boss's bar. They were abused, threatened, and forced to perform prostitution in order to pay back the "debts" they incurred against the boss.

They killed the boss, retrieved their passports from the boss's possession and escaped. They were



Supporters and Counsel for Thai Defendants of the Shimodate Case at the JCLU Public Lecture

eventually charged with murder on the occasion of robbery as money was found in the boss's bag which contained their passports.

Support Group Report

At the time of the incident, there had been a number of trafficking cases of Thai women to Japan which constituted a large part of the income of the Yakuza.

Concerned citizens started organizing a support group to study the social problems which create such misery and to understand the conditions surrounding Thai women. A study showed that many Japanese people held prejudiced views against Thai women and that they thought the women "chose" to prostitute themselves for money.

However, the fact is that Thai women often are never told of the prostitution, or of the "debts" which can amount as much as 3.5 million yen per person. The three women were exposed to continuous physical abuse and threats that their families would be killed if they escape. Money from forced prostitution went straight to the boss and they never received any of it.

Women in this kind of situation often are overstaying their visas in Japan which means they will be treated as criminals once they are caught. Therefore,

they are placed in quite a vulnerable position. They have little recourse to report the violence and forced prostitution that they suffer, and they are totally deprived of their human rights.

Points of the Court Case

The case contains various legal points: legality on procedures leading to arrest, problems of interpreters at the time of examination, elements to establish robbery, self-defence, etc. The defense counsel insisted that the fact that the defendants were victims at the time of the incidents must be taken into account. The establishment of robbery in this case, which the prosecutors insisted on and the first trial judges sustained, is unreasonable.

Problems of Interpreters

The biggest problem in the process of examination was the quality of the interpreters. In establishing subtle but critical points, such as at what point they decided to keep the money they coincidentally found in the boss's bag, the inappropriate translation resulted in largely contradicting written statement from defendants' original description.

The audience raised questions on the validity of the judgement. Although the court clearly found the horrifying facts on trafficking of women, the judges merely considered this gross human rights violation as one of circumstantial elements. In addition, in spite of the clear facts of gross human rights violations, responsible perpetrators/traffickers remain unpunished.

[Jinken Shimbun, October 26, 1995, No. 296]



Symposium: Gender Dialogue on Human Rights - Toward the Beijing Conference

A symposium entitled "Gender Dialogue on Human Rights: Toward the Beijing Conference" was held on May 20, 1995, at the Kuramae Kogyo Kaikan Hall as an opening meeting of the JCLU's General Assembly. It was a JCLU's preparatory symposium for the Fourth World Conference on Women to be held in Beijing in August 1995 (hereinafter, the Beijing Conference). JCLU Representative Director Kiyoko Kinjo assumed the role of a coordinator, and the panelists included Ms. Chieko Miyakomaru, Coordinator of Women and Human Rights Team at the Amnesty International Japanese Section; Mr. Yasushi Misawa, chief officer of the Human Rights and Refugee Division of the Foreign Ministry; Mr. Masaru Sato and Ms. Yoko Hayashi, both attorneys-

at-law and JCLU board members.

At the Beijing Conference, a Platform for Action is to be formulated following up the Nairobi Future-Looking Strategies for the Advancement of Women, which was adopted in 1985. The symposium had a number of suggestions, including comments on the Draft Platform for Action; on political, social, and economic discrimination that women face; and propositions to the Japanese government.

Introduction

Ms. Kiyoko Kinjo, JCLU Representative Director

The Beijing Conference will be the fourth World Conference on Women, in which a Platform for Action is about to be adopted. Since the 1994 International Conference on Population and Development held in Cairo, the empowerment of women has come to be a focal point. A Draft Platform for Action also incorporates this theme. At the same time, there are retrogressive arguments which suggest the use of a term "sex" instead of "gender," and "equity" instead of "equality." Women's achievements over the century are now opposed by attempts to overturn our efforts.

Campaign on Women's Issue: Amnesty International

Ms. Chieko Miyakomaru, Amnesty International Japanese Section

Amnesty International works for the release of prisoners of conscience, mainly by sending protest letters to the governments concerned.

Amnesty International began addressing women's human rights around 1989. We came to realize the constant existence of gender-specific violence in prison, such as rape and sexual harassment, signifies structural violence based on gender discrimination. Amnesty's 1995 campaign for women started on March 8, International Women's Day, and will continue until September.

Objectives of our campaign are to: 1) publicize human rights violation against women; 2) reflect universality of human rights and indivisibility among civil-political rights and social-economic rights in the Platform for Action.

Female activists and women surrounded by armed conflict are the major targets of human rights violations. In armed conflict, women are inflicted by human rights violations committed both by national and anti-national forces. In cases of internal displacement, sometimes women are forced to provide sexual service in exchange

for food appropriation.

Although Amnesty does not take direct involvement in private matters, it does support NGOs which address personal problems.

Amnesty holds critical views on the Draft Platform for Action in that it understates the importance of: 1) indivisibility and universality of women's human rights; 2) the necessity to ratify human rights instruments; 3) governments' accountability on violence against women; and 4) female human rights activists.

Significance of the Beijing Conference **Mr. Yasushi Misawa, Ministry of Foreign Affairs**

The Multilateral Cooperation Department of the Foreign Ministry handles the United Nations meetings on economic and social areas. The Beijing Conference is one of the biggest events among the UN meetings on social issues.

The United Nations, since its birth after World War II, has been actively addressing the issues of human rights and advancement of women's status. Its work on women's issues has been strengthening since the first world conference on women of 1975 held in Mexico City. The Beijing Conference will be characterized, among other things, by its focus on women's human rights, especially on violence against women.

Empowerment is another theme of the Conference. While advancement of women's status has been a major theme at the series of world conferences on women, the term empowerment does not merely signify advancement in social status. It urges the creation of circumstances in which women can fully exert their faculties with appropriate qualifications. The Beijing Conference will take a significant step towards developing another dimension in women's human rights.

Seeking for Solidarity among Genders **Mr. Masaru Sato, JCLU Board Member, Attorney-at-Law**

It is my honest view that men have little concern about women's human rights. Even when they seem to have understanding of the issue, they really hope to avoid addressing the issue any further.

The Draft Platform for Action provides in its mission statement that it: "aims at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making." I was, once again, honestly relieved to read this as it envisions the removal of social obstacles, but does not

advocate a sudden change in male mind-set. Trying to build cooperative relations among genders is much more constructive than trying to impeach the other gender.

The Draft reads that inequality in public life is in many cases born out of inequality in the family. This is a bitter realization for men since it points out that the family is the origin of social inequality and that men should abandon their long-time vested rights.

In addressing women's human rights, it will not be an effective approach to focus on a drastic ideology because people's perception cannot be changed overnight. It is important that each individual and system aim to assume gradual gender-free roles. I believe that it will be a process of liberation for women and also for men, from the "masculine mystique."

Voices out to International Society
Ms. Yoko Hayashi, JCLU Board Member,
Attorney-at-Law

The world conference on women started in Mexico City in 1975 and will hold its fourth meeting in Beijing. The first decade from 1976 to 1985 was entitled the United Nations Decade for Women. Its major achievement was the adoption of the Convention on Elimination of All Forms of Discrimination against Women in 1979.

Japan ratified the Convention and started revising its domestic laws. Each party to the Convention has a duty to submit a periodical report to the Committee on the Elimination of Discrimination Against Women (CEDAW). Japan submitted its second report in 1994. The main topics in the report included the following four issues.

1) Unequal Payment: Women's basic salaries accounted for only 52.7% of men's salaries in 1992. It showed that there had been little improvement made in the 10 years after the enactment of the Equal Employment Opportunity Law.

2) Low Representation in Politics: While the world average of the ratio of female national parliamentarians stands at 10.3%, Japan's is only 2.7%. Japan remains the 121st in this statistics.

3) Sexual Violence: In particular, illegal migrant workers from Asian countries have been exposed to gross sexual exploitation. The Japanese government's ability to counter this problem has been questioned.

4) "Comfort Women": As a result of active lobbying by NGOs, the Draft Platform for Action finally included reference to sexual slavery under armed conflict and advocated for punishment of perpetrators and full redress by the state for the victims.

Effective methods to tackle these problems will be, firstly, to increase international publicity of detailed information on Japanese women's efforts. Secondly, since Japan is one of the few Asian countries that ratified the Convention without any reservations, it should play an active role in creating an individual communication system to the Convention.

Discussion: Q & A on the Government's Position

Kinjo: Women's low representation in politics may be one of the reasons why Japan has failed to properly address such problems as Asian migrant women and Japan's military sexual slavery.

Hayashi: I have a question for Mr. Misawa. At the United Nations, the CEDAW and the Commission of the Status of Women have been studying the possibility to establish an individual communication system by attaching an optional protocol to the Convention. Does the Japanese government agree that a woman who has exhausted the domestic remedies should be able to file a petition to the CEDAW? In addition, what is the reason that the Japanese government has not ratified the optional protocol to the International Covenant on Human Rights?

Kinjo: Ms. Hayashi's question relates to the Japanese government's position in an international system which opens an avenue for an individual woman to present a claim when her own government fails to observe the Convention, which is the constitution for women of the world.

Misawa: In regard to the proposition to create a protocol which facilitates individual communication on human rights violations, the Commission on the Status of Women will discuss it at its session to be held in March 1996. It is a new issue and the government has been studying on an appropriate position to take.

One question we have at the moment is how the proposed optional protocol will function when there is already an individual communication system at the United Nations which also deals with human rights violations against women. At any rate, the government will be actively involved in the discussion concerning proper implementation of the Convention.

The reason of non-ratification of the optional protocol of the Covenant is that it is impossible to reach an agreement domestically on how to handle a conclusion given by an international commission. Namely, it is difficult to respond where the commission's conclusion contradicts that of the domestic courts.

In working on the issue of an individual

communication system of the Convention, we will have to pigeonhole legal matters first and draw conclusions on how the legal system can work for the improvement of human rights conditions.

Sato: What is the National Committee established in relation to the Convention?

Misawa: It is a domestic machinery to follow up declarations and other political messages issued at international meetings. It functions in conjunction with government bodies and NGOs. The Prime Minister's Office is mainly responsible for coordinating this Committee. It is a milestone among government's work. So far, this National Committee for the Fourth World Conference on Women is the only machinery that the government has established to follow up international agendas.

[Jinken Shimibun, July 28, 1995, No. 295]

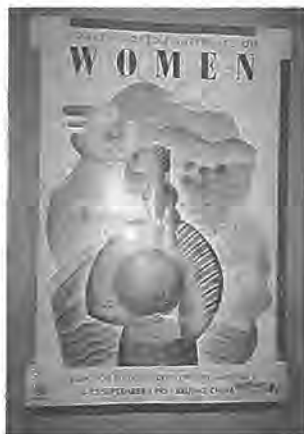
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**The Fourth World Conference on Women:
Report from an NGO Advisor in the
Government Delegation**
by Yoko Hayashi
JCLU Board Member, Attorney-at-Law

**NGO Advisors to the
Government Delegation**

For the past three world conferences on women, the Japanese government has included NGO members in its delegation: one for the Mexico Conference of 1975; one for the Copenhagen Conference of 1980, and; two for the Nairobi Conference of 1985. Apparently, there had been no lobbying by NGOs in selecting these advisors. Meanwhile, NGOs have been gaining strength at the international level. They are said to hold the key to success in the UN human rights conferences. This tendency has been somewhat reflected in Japan as well and NGOs have come to have a voice over the selection of the government delegation to the UN conferences.

The government delegation to the Fourth World Conference on Women included four NGO advisors: Ms. Yoko Nuita, Chairperson, NGO Subcommittee of the



National Committee of Japan for the Fourth World Conference on Women; Ms. Makiko Arima, Representative of Japan to the Commission on the Status of Women; Ms. Michiko Nakamura, Coordinator, International Women's Year Liaison Group, and I. The delegation composed of seventy-six members (numbers in parenthesis show female representatives): four Representatives (one) ; six Alternate Representatives (two) ; four Advisors from NGOs (four) ; thirty-eight Advisors from Ministries (twenty), and; twenty-four Advisors from the Diet (twenty).

Wall of Government Confidentiality

It was only six days before the Conference, August 29, 1995, that the members of the delegation were officially selected at a Cabinet meeting. The first meeting of the delegation was held on August 31 when two of the four NGO advisors had already left for Beijing to attend the NGO Forum. Only two of us, Ms. Nuita and I, participated in the meeting where the government policy for the Conference was first presented. However, the policy was to be kept confidential and it was virtually impossible to discuss it with other NGOs, including the JCLU, which had campaigned for me to receive the position. In Beijing as well, government confidentiality often hampered my work.

In defending its confidentiality, some government representatives made such an argument that it contradicts democracy to allow the policy to be changed by pressure from those who were not elected (namely, NGOs). Apparently, they have no understanding of the role of NGOs. In addition, the Japanese government had refused to open its policy even to those who were "elected," in spite of repeated request. To invite NGOs to participate from the stage of the policy drafting process would be a new accomplishment for the government.

Significant Conference

General schedule in Beijing was: 8 a.m. - briefing to Diet representatives over breakfast; 10 a.m. to 6 p.m. - intergovernmental meetings; evening receptions; 10 p.m. - delegation meeting (except for Diet representatives). Delegation meetings were held in a relaxed atmosphere allowing spontaneous comments from delegates. However, this had lasted only for a week since the intergovernmental night session began at 7 p.m. Incidentally, the longest night session continued until 4:44 in the morning!

From the first day, I chose to attend, instead of the plenary session, the second working group which addressed the human rights section in the Platform for

Action. It was because just one of four seats was designated by the Foreign Ministry for NGO advisors. In addition, Ms. Nakamura advised me that the drafting process in the working groups was more crucial than the plenary session. It was a right choice as I could observe the full arguments on universality of human rights, a high-light theme of the Conference, and on women's human rights under armed conflict. I also participated in meetings between the Japanese delegation and NGOs working on the issue of "comfort women."

Bridging Briefing and Lobbying

Due to the tight schedule of the government delegation and geographic reasons - the site of the NGO Forum was 50 km away from Beijing - there had been little opportunity to talk with Japanese NGOs in the first half of the Conference. Perhaps they might have been somewhat irritated by the absence of NGO advisors at the Forum.

Fortunately, NGO members, including Ms. Yoko Kitazawa and Ms. Kuniko Funabashi, came to visit the delegation office. In particular, Ms. Kitazawa, from the Pacific-Asia Resource Center, was an inspiration to my work. From her experience as an NGO advisor at the UN Summit for Social Development of March 1995, she had a clear view on effective NGO lobbying.

Following Ms. Kitazawa's advice, I attended the Women's Linkage Caucus or NGOs' information meetings scheduled at 8 o'clock every morning. Although it made impossible my attending the delegation meeting, the Caucus provided me with precious information. Later, Ms. Kitazawa and the International Movement Against All Forms of Discrimination and Racism (IMADR) suggested holding dialogues between Japanese NGOs and the government, and in the latter half of the Conference they held meetings at lunch break. The government members included: four NGO advisors; Mr. Kawada, Director at the Foreign Ministry, and; Ms. Natori, Director at the Prime Minister's Office.

It was the first time that as many as 20 Japanese NGO members stayed until the last day of the women's world conferences. It was also the first time that governmental delegates held intensive dialogues with NGO members over the Platform for Action. A definite precedent was set at the Beijing Conference for dialogue between the government and NGOs.

IMADR, which was the most active organization among Japanese NGOs, presented a proposal to include in the Platform for Action the formulation of a new international instrument to eradicate trafficking in persons. Four of us, the NGO advisors, agreed upon the

proposition and presented it as an issue to be prioritized. However, the Ministry of Justice flatly rejected it asserting that it could be covered by existing domestic instruments. A limitation of NGO advisors' influence with the government delegation was keenly felt at this moment. Also, it was a limitation of a closed and self-contented system within the government, where a certain Ministry holds exclusive discretion over each issue. For example, the issue of prostitution is managed by the Ministry of Justice, the Equal Employment Opportunity Law is handled by the Ministry of Labour, and little inter-Ministerial cooperation is attempted. The absence of a Ministry on women's rights, which has become common in other industrialized countries, may be another reason for Japan's insufficient policy on women's issues.

Future Tasks of NGOs

The two weeks in Beijing turned out to be a precious opportunity to look at NGOs from the side of the government. It was particularly inspiring to work with competent young bureaucrats. It was also an opportunity to confirm that even competent bureaucrats have much to learn from NGOs' expertise and insights on women's human rights. "The will can change" was a popular phrase at the Beijing Conference. The NGO's committed will for change must be, in order for its realization, incorporated with political power.

In spite of some individuals who impressed the Conference with their outstanding work, Japanese NGOs in general fell short in exercising leadership at this international forum. Present want of ability of Japan's NGOs somehow reflects Japanese women's underprivileged status in society. This is evident in their underrepresented employment, low wages, and low representation in the political decision making process.

The Beijing Conference was closed leaving many tasks to finish. Work on domestic implementation of the Platform for Action, the 10 year-old Convention on the Elimination of All Forms of Discrimination Against Women, etc. is one of these tasks which the JCLU should undertake.

[Jinken Shimbun, October 26, 1995, No. 296]

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JCLU Statement on the Midterm Report of the Office for Gender Equality

On February 28, 1996, the NGO Subcommittee of the National Committee of Japan for the Fourth World Conference on Women held a hearing on its interim

report for a national plan of action. The audience included representatives from about 150 NGOs. Two members from the JCLU participated in the hearing.

In order to implement the Platform for Action adopted at the Fourth World Conference on Women held in Beijing last September, the Office for Gender Equality at the Prime Minister's Office has been drafting a National Plan of Action. Upon formulating an interim report, the Office for Gender Equality made it open for public opinions.

After the briefing from Yoko Nuita, Chairperson of the Council for Gender Equality, and other staff members, participants made the following propositions: 1) to make a clearer description on the establishment of women's human rights; 2) to establish an individual communication system to the Convention on the Elimination of All Forms of Discrimination against Women; 3) to make the United Nations Decade for Human Rights Education well known to the public servants; 4) to establish an international standard for achievement; 5) to create a Ministry of Women's Affairs as the problems range widely and conventional Ministries seem incapable of handling them. Participants also requested to hold hearings on a continual basis.

At the end of the hearing, Mitsuko Horiuchi, former Minister of Japan to the United Nations, summarized the follow-up work at the UN after the Beijing Conference.

In response to the interim report, the JCLU submitted an opinion to the Office for Gender Equality on February 23, 1996. The opinion included suggestions: 1) to establish equality between genders, including amendment to the existing law; 2) to take support measures for single-parent families; 3) to suppress violence against women; 4) to fully implement international human rights treaties.

[Jinken Shimbun, March 21, 1996, No. 299]



Feminism and Freedom of Expression: Lecture Meeting by Professor MacKinnon

On the visit to Japan of Professor Catherine A. Mackinnon of Michigan University Law School, USA, the JCLU and the Japan Mass Communication Society jointly held a lecture meeting on September 25, 1995. Professor Mackinnon brought a great impact in the 1980's with her arguments about the USA Constitution's First Amendment (containing the right to freedom of expression), and has been publishing stimulative studies and writings concerning the issue of women and freedom

of expression. After the lecture, there was a question and answer session, as well as an opportunity for informal talking with her.

The lecture meeting was held at the Kuramae Kogyo Kaikan in Shimbashi, Tokyo with about 90 participants including JCLU-member lawyers, students and citizens, who listened to her vigorous speaking.



Professor Catherine A. Mackinnon

The lecture started with an atmosphere of great expectation and attention from the audience upon the appearance of a world famous authority on feminism jurisprudence. She focused on the problem of sexual harassment, the campaign against pornography and also the discriminatory statements against certain groups.

The lecture consisted of the following four parts: (1) the traditional legal theory about freedom of expression including restrictions on obscene expressions, (2) the reality of pornography which was uncovered by the feminist movement, (3) the gap between the above two parts and this gaps' effect on the freedom of expression (especially the importance of the equality standpoint), (4) the movements against the porn industry in the USA so far, and the problems to be dealt with in the future.

The Human Rights Consulting Committee and Mass-Media Committee of the JCLU are now working for the verification and study of the discriminatory expressions used in the mass-media. After the lecture, it was strongly felt that further discussion is necessary regarding the balance between freedom of expression and protection of the weak in society.

The meeting was interpreted by a JCLU board member, Prof. Masako Kamiya of Gakushuin University.

[Jinken Shimbun, December 20, 1995, No. 297]



Four Ads Win Human Rights Advertisement Award for Gender Equality by Shun Hashiba JCLU Board Member, Attorney-at-Law

The JCLU announced its first Human Rights Advertisement Award on November 25, 1995. This was a new project of the JCLU undertaken by the Human Rights Consulting Committee. The following is a report by Atty. Shun Hashiba, JCLU board member in

charge of the Committee.

Courageous Projects

The award has two categories, one for gender equality, and one for other areas of human rights. The award was given to four works in the former category but, unfortunately, no ads were found satisfactory for the latter. The award winning works were:

- 1) Mitsui's Female President (Mitsui & Co. Ltd.);



Female President

- 2) "Ah, Moranbon is Hiring": We Bring Together Various Personalities and Make Various Flavors - Senior's Antenna, Junior's Antenna (Moranbon)



Senior's Antenna, Junior's Antenna

- 3) We Aid Fathers in Raising Their Children: Forum Children's School (Benesse Corporation)



Aid Fathers in Raising Their Children

- 4) "I am the Team Ace" - This is Chutaikin (Chutaikin/Small Enterprise Retirement Allowance Mutual Aid Corporation)



"I am the Team Ace."

The first ad can be regarded as an epoch-making advertisement in light of trading companies' entrenched gender role fixation. The ad reads: "You must be kidding. We do not even have female executives yet! ... Granted, it may sound like we are "kidding" at the moment. Men still do most of the work. Protest against current male-centered society still is not strong enough. However, see what might happen in the next generation..." The ad is said to be unpopular within the company itself. Therefore, the authors of this ad deserve much credit for their courage. The Mitsui ad is expected to advance fair treatment for its female workers so that it can match its own company ad.

The second ad features a female senior researcher taking charge in product development with a junior female researcher. It is a new perspective considering usually it would be a male to be featured as a senior or executive in this kind of advertisement.

While ads with a man doing domestic work or child care are almost nonexistent, the third ad presents a rare but warm and happy scene of a father engaging in child care.

The fourth ad deliberately featured a girl with a speed pitch as the ace of the company.

Gender Stereotypes

As this was the first time deciding on this award, the Committee struggled to find a standard of judgement. As views differed among members themselves, it took much time to work out a common standard for the award.

During a half year of review, it was once again recognized that the gender relations in advertisements are overwhelmingly depicted with stereotypes, such as "men at work, women at home," and "male executives and female assistants". Although this was somewhat anticipated, it surpassed everyone's expectations.

A typical example is shown in airline ads. Without exception, they have male passengers who are served by female attendants or have wives waiting at

home. In reality, there are many female passengers and male attendants. Husbands attending domestic work are no longer rare these days. If one thinks about it, the persistence in using fixed gender roles in advertising indicates a lack of imagination in those who make them.

As shown in the four award winning works, however, a sign of change is beginning to be seen. Although small in quantity, these ads have successfully urged perceptual reform for gender equality. We expect that ads which actively contribute to gender equality to increase in the future.

Big Response on Negative Work

The Human Rights Advertisement Awards will also consider and announce negative work in light of human rights standard in the future.

This time, the Committee picked about 10 works which were considered adverse to the abolition of discrimination against women, handicapped, etc. In December 1995, prior to the announcement of the award, the Committee notified companies concerned of their nomination for the negative advertisement award and asked what their intentions were while making them. The response was unexpectedly large in number and in content. Some companies directly replied to the JCLU. But some made complaints to third parties claiming that they could not make a proper explanation on such short notice or that the JCLU intentionally sent the notice around the holiday season.

The response made us rethink the announcing of negative advertisement award. Eventually it was suspended considering that the announcement of negative work might lead to unnecessary misgivings while the intention and significance of the Human Rights Advertisement Award have not been properly understood by the parties concerned. Negative works will be announced at the next Award by revising the process of the announcement.

Award Ceremony with Large Attendance

The award ceremony and following symposium enjoyed an unexpectedly large attendance by companies, and quite lively participation. Award certificates were given to three attending winning companies (the fourth company was not in attendance). This award is meant to encourage companies to be more active in raising human rights awareness in their daily work. We hope this award will be a good incentive.

Following the ceremony, a symposium entitled "Media Expression and Gender Equality" was held by three panelists: Mr. Wakato Wada (Human Rights

Education Office, Dentsu); Yoshiko Hasegawa (Women in Action), and; Atty. Miho Kikuchi (JCLU Human Rights Consulting Committee). I served as a moderator.

Mr. Wada, who works for a major Japanese advertisement agency, said that the advertisement producers are now in line with the JCLU in standing against discrimination. They have come to be involved in the issue of discrimination and human rights after an incident concerning Buraku (Japan's historically outcast people). Ms. Hasegawa told that, out of her experience as a high school teacher, education and media were largely responsible for social inequality despite the fact that equality has been legally guaranteed. Their remarks proved that we share the same perception on this issue.

Media to Make One Step Forward

Mr. Wada reported that the current atmosphere in the advertisement world where he works tends to have a male-centered concept of reality. In objecting to this male-centered way of thinking, both Ms. Hasegawa and Ms. Kikuchi said that advertisement should not merely follow status quo but lead social perception by stepping beyond the conventional perception. Although opinions differed, it was significant that both sides valued each others opinion.

Concerning negative works, Mr. Wada asked for deliberation in their announcement. Many of the audience concurred with his opinion. The Committee acknowledged a lot of work needs to be done on the future management of the award.

[Jinken Shimbun, March 21, 1996, No. 299]



Beyond Law: APWLD Training Seminar in Nepal

by Osanai Tsuneko
JCLU International Liaison Officer

Profile of the Training

Asian-Pacific Forum on Women in Law and Development (APWLD) Training Seminar, with the theme "Beyond Law", was held in Nepal from April 4 to 12, 1996, in which I participated as an observer.

Nepal is one of few Asian countries that were not colonized. It has a unique political system where a monarchy and a Marx-Leninist ruling party have long cohabitated. One negative effect of ongoing "democratization" worldwide, they say, is an increase in violence. Intensifying struggles among political parties have led to more violence in Nepali society as a means of

settling disputes.

The main thrust of the program was to examine and consider various women's human rights in the context of Nepali society. Issues included trafficking of women/girls, sex work, and sexual violence.

Cultural Difference in the Caste System

There was a role-play session with the question "What should you do if an upper-caste woman is raped by an untouchable man?"

Participants said that the woman should not hide her damage, find courage and sue the man. They explained that in Nepal, a woman who is sexually abused by a lower cast man will almost definitely be repudiated, being blamed as a "shame" of the family, and downgraded to the same cast of the perpetrator. However, once a woman files a lawsuit, she will certainly win since a member of the untouchable class is generally disadvantaged at the court level. They did not seem too concerned about the perpetrator's discriminated social status.

A trainer and a resource person, who both Indians, raised an objection to the previous answers. In India, a typical response from the woman's caste will not be a matter of "shame" of one family, but a matter of insult to the whole caste. Men of the woman's caste may uprise and assault the perpetrator's caste village.

The original intention of the question was to raise awareness on the class problem in women's issue. Although it failed to work at the session, it was still interesting to find a difference of opinion within the same religion in its treatment of women: either women are objectified, integrated or easily discarded as a possession of a family (Nepal), or women are objectified as a common possession of one caste and utilized to maintain the caste system (India) which often leads to violence.

The Indian opinion also indicates social implications of violence against women (violence among the castes). Some Nepali participants noted that Nepali society may respond like India in the near future as the caste may be utilized for political campaigns. There is a good possibility that violence against women will become a measure to incite social violence.

"Women's Problems" in Nepali Society

The major issue for which female clients seek assistance from a lawyer was said to be the problem of a second wife (although it is important to remember women's extremely limited legal access in this society).

Nepali men are entitled, by law, to have a second wife when the first wife becomes physically handicapped,

goes blind, becomes psychiatrically ill, or when the couple has no children after 10 years of marriage, etc.

In many cases a "young woman" becomes a second wife and the first wife is simply abandoned, sometimes she is not given proper meals.

Beyond Law

Why "Beyond Law" training for lawyers? The trainer, Ms. Ratna Kapur, who is a lawyer herself, explained: "Every single law is biased."



Roleplay Session at the "Beyond Law" Seminar

Also, women are severely denied easy access to even these insufficient laws. How much can women in rural areas and migrant women, who are hardly entitled to legal protection, expect out of these laws? It is crucial to explore methods which do not necessarily require recourse to the law.

Challenge and Change the Law

Regarding women, present Nepali law incorporates the idea that women's social survival is left only to arbitration by their fathers, husbands, or sons if these women happen to obtain a position in society. It is reminiscent to Japan's pre-war Civil Code. Sincere respect is due for Nepali women who strive for women's human rights under such conditions with limited information.

An emphasis of the training was to adopt an approach of not relying heavily upon legal concepts or measures, but rather, challenging and changing them.

For example, in Nepali law rape can be established only where penetration into vagina takes place. In addition, no husband can be charged with the rape of his wife. Divorced women and single women over a certain age cannot be rape victims.

This legal concept of rape, which does not concern women's physical integrity but merely their reproductive function or marital status, was totally rejected at the training. Instead, the ideas of incorporating sexual violence and then insuring the punishment in accordance with the nature of the assault were suggested. The Centre

for Feminist Legal Research, where the trainer and the resource person were from, has issued Memorandum on Reform of Laws relating to Sexual Offenses, which materialized these ideas.

The present law hardly will solve any problems that women face. However, the law may function as a slight possibility for help. We are likely to lose in the courts. But it is alright as long as we see this as an opportunity to start a change. I appreciate these realistic and inspiring remarks made by lawyers to share with fellow lawyers who strive for a fair legal system for women.

[Jinken Shimbun, May 25, 1996, No. 300]

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Symposium - Building Good Gender Relations: The Tokyo Women's Plaza Opening Event

On October 10, 1995, the Tokyo Women's Plaza opened as a linkage site for the citizens and the administration to work on women's issues. The Tokyo Metropolitan Government invited the public to give opening seminars. One of the 23 groups chosen was the JCLU's Working Group on the Beijing Women's Conference. Three speakers of the symposium entitled "Building Good Gender Relations in the 21st Century" were Mr. Shigeo Saito (journalist), Ms. Yoshiko Nishidate (promoter, the Theater Minato-za), and Ms. Emiko Miki (Lawyer).

Men Should Take Joint Actions with Women
Ms. Emiko Miki, JCLU Member, Attorney-at-Law

Out of her experiences as a lawyer, Ms. Miki said that conciliators or judges hardly can admit the property rights of wives at divorce cases once women are considered to be responsible for it. She also introduced a sexual harassment case which took place three years ago when she was still a legal trainee. All trainees, women and men together, stood up and won an apology for the female victim. Ms. Miki pointed out that this case may signify a beginning of change as men in the legal field were able to sympathize with the plight of women and took joint action.

Self-Creation As Prerequisite for Good Relations

Ms. Yoshiko Nishidate, Theater Komatsu-za

Out of her own experience, Ms. Nishidate talked

about enormous pressures that women receive when they decide to divorce on their own initiatives. She talked about the necessity to increase the number of female politicians and to create substantial day care centers to support working women, and suggested creating a women's network, among other things. She also pointed out that half of the responsibility rests on women, especially mothers, for Japan's male-dominated society where its top-down system discourages the establishment of networks. Ms. Nishidate maintained that no positive relations between women and men can be established unless individuals are aware of and obtain their own human rights.

Reconsider the Social Structure
Mr. Shigeo Saito, Journalist

Mr. Saito pointed out that children's problems, including growing cases of school bullying (ijime) and fear of making eye-contact, are reflections of adult society. Concerning the structural causes of these problems, he raised three aspects: company-centered society, family, and education. Japan's economy-oriented society in the postwar era is characterized by disrespect for postwar human rights, as they were substantially introduced only after the war. Problems range from toxic industrial pollution to division of gender roles at home which urges men to concentrate only on work and less on the family. Education has been by large merit-oriented in which a handful of elite students are prioritized. He pointed out that questioning the social structure is indispensable if good relations between individual women and men are to be created.

The speeches were followed by a question & answer session. One participant suggested, considering the extreme disadvantages for women who are job hunting, that more women obtain work as public servants where the principle of gender equality is upheld. Another commented that men should change their views of women as weak, while women should make more efforts to break the stereotypes.

Since it is difficult to chart a certain direction from the symposium which was limited by time, it is left to individual participants to organize the various views shared at the symposium and use them to take action. Some said that individual views and collective views should be differentiated. However, a problem seems to be that organizations cannot cope with individuals acting upon their own views. In international treaties, women are no longer viewed as mere protectorates. Instead, the focus has shifted to substantial equality between women

and men. At the symposium, the necessity to create special measures until true equality is obtained was recognized, although it may take a while for Japanese society to create a bill of rights for women and men.

[Jinken Shimbun, December 20, 1995, No. 297]

RIGHT TO KNOW

Litigation for the Disclosure of Exam Results

On June 13, 1995, litigation demanding disclosure of individual results of the National Center Test for University Admissions was filed with the Yokohama District Court. This is the first case demanding disclosure of university entrance examination scores. Supporting this claim, the JCLU submitted a statement to the Minister of Education and director of the National Center for University Entrance Examination requesting the individual disclosure of the results of the Center Test and a short essay. The JCLU also requested revision of the educational information section in the Personal Data Protection Law.

The plaintiff, Ms. Yukiko Miki, a student of Yokohama City University, passed its entrance examination in March 1992. Since it was an examination of the municipal university of the city of Yokohama, the main question of the case centers on the Disclosure of Public Documents Ordinance of the City of Yokohama. The case, however, also includes the national government as a defendant because of its intrinsic association with the matter.

Points at issue in this case are: the existence of notice from the national government to ban the disclosure of the test results, and rationality to classify test results in light of right to know and right to privacy. It is an epoch-making lawsuit filed against the system of the Center Test whose results have never been disclosed. The JCLU board meeting of June 3, 1995, agreed to officially support this case. Following the board meeting, Ms. Miki, the plaintiff and Ms. Mizuho Onishi, JCLU member and counsel for this case, reported on the lawsuit at the monthly public lecture.

Report by the Plaintiff: Why classified?

Pursuant to the Disclosure of Public Documents Ordinance of Yokohama City, I had requested the disclosure of my exam results, both my individual results of the Center Test and my essays for the Yokohama City University test. I decided to file a lawsuit after my

request had been rejected and my subsequent objection was also dismissed. It is a lawsuit based on the simple question on whether it is necessary or not, in the course of conducting university exams, to exclude the examinees from access to their own results.

For those who hope to go to public or some of private college, results of the Center Test are crucial in deciding which college's exam to sit for. They need exact results to the greatest degree. However, the current practice relies only on the self scoring based on answers publicized the next day of the examination. The scoring cannot be accurate, as scores to each question are not necessarily indicated. As students are unaware of how they performed, some students are unexpectedly disqualified from taking the examination for the particular university because their scores did not meet the standard of a college they chose.



Ms. Yukiko Miki (center) and Attorney Mizuho Onishi (left) at the JCLU public lecture

The Personal Data Protection Law is not applicable to the request for disclosure by the Center as it excludes educational information from the items to be disclosed. In this regard, it is urgent that this Law be revised. The only legal resources available at the moment are the ordinances of local governments on the disclosure of information or on protection of individual information, which are to be employed when a public college is concerned. This process has limited application since test takers can file a request only after they passed the examination when they need the information before they decide which college's exam to take.

In the U.S., every examinee is notified of their results on the SAT. In Britain, test results are to be disclosed to examinees based on the data protection law.

On the other hand in Japan, while students' assessment written by their teachers for the high school examination has come to be disclosed, there is no move for disclosure of college examination information. It is a fundamental right of an examinee to know one's own

results, so that they can then make an informed decision on what steps to take next. While this right is being denied, there seems no reason for non-disclosure other than that they merely want to avoid another troublesome procedure.

Report by Counsel: Suit against the Government

The Mayor of Yokohama explained the reason of non-disclosure as follows:

1) Through notices from the government, the test results are certified as classified items. Should the city of Yokohama disclose this information, it will affect trust and cooperation between the central government and the city;

2) Disclosure will hinder fair and smooth administration of the exam in the future and thus cause extreme obstacles.

This lawsuit includes damages against the government along with claims for withdrawal of the Mayor's decision of non-disclosure. The central government became a part of the suit as per the first reason explained by the Mayor, classification by the central government's notice, which is expected to constitute the most critical argument. Should the notice be recognized as the biggest reason for non-disclosure, it is the central government that is most responsible for the case.

There are several legal basis in claiming the government as a defendant in this case. The plaintiff's counsel has been studying new perspectives in working on the case based on the Constitution, International Covenants on Human Rights, and the Convention on the Rights of the Child.

[Jinken Shimibun, July 28, 1995, No. 295]

JCLU Model Guidelines for the Freedom of Information

Summary of Guidelines are:

- 1) Maximum guarantee of the right to know;
- 2) All administrative information to be open in principle, unless with justifiable reasons which could be attached at the necessary minimum;
- 3) Maximum protection of privacy. However, no excessive classification of individual identifying information in the name of the protection of privacy;
- 4) Guarantee of immediate remedy by an independent third party where a request for disclosure was

declined;

5) Guarantee to participate in the administrative body in the operation of the system of freedom of information.

On December 13, 1995, the JCLU submitted to the government's administrative reform committee the JCLU Model Guidelines for the Freedom of Administrative Information Law. The Guidelines passed a JCLU board meeting held on November 16, 1995. It was based on the Model Draft Ordinance of the JCLU Freedom of Information Committee, and surveys on actual applications of municipal ordinances. The Guidelines are expected to be a big influence on the move to enact the freedom of information law in Japan.

The administrative reform committee was established by the government in October 1994. The committee is to organize opinions on the enactment of the freedom of information law within two years, and then submit legal guidelines to the Prime Minister. In order to do this, the committee set up a sub-committee on freedom of administrative information in March 1995, which is to issue a mid-term report by March 1996.

As the framework of Japan's freedom of information law will be set by March 1996, the JCLU drafted the Model Guidelines based on its Guidelines on Freedom of Information Law of September 1979 and Model Draft of Freedom of Information Law of November 1988, along with actual applications of ordinances. It is expected that the Model Guidelines will have influence on the drafting process of the mid-term report of the sub-committee.

Specifying the right to know, the Model Guidelines provide for its maximum guarantee, a principle of open administrative information which could be declined at the necessary minimum with justifiable reasons.

Information on individual persons is listed among the limited non-disclosure items, in consideration of the protection of privacy.

The Model Guidelines suggest establishing a reviewing committee on freedom of administrative information as an independent third-party to provide an immediate remedy for a rejected request for disclosure. Furthermore, the Model Guidelines provide for a legal remedy by proposing that the court issue an order to administrative bodies to produce indices of the items of and the reasons for non-disclosure. This proposal opens an avenue for legal investigation on the specific classified information. This measure was conceived in reference to the Vaughn Index, recognized in the U.S. court cases about the U.S. Freedom of Information Act.

The Model Guidelines are composed of a preamble and seventeen articles.

The text in Japanese language is available at the JCLU secretariat.

[Jinken Shimbun, December 20, 1995, No. 297]

Freedom of Information Seminar for Municipal Workers

On January 29, 1996, the JCLU held a seminar for municipal workers on freedom of information, inviting Mr. Hiroshi Miyake, attorney-at-law, and Mr. Shigeki Okutsu of Action for Public Access as the lecturers.

The seminar was composed of three sessions. The first session featured a lecture by Mr. Miyake on the process at the Administrative Reform Committee for the freedom of information law and its impact on freedom of information ordinances of municipal governments. Mr. Miyake updated on the studies at the section on information disclosure of the Committee with reference to critical points that local governments should be mindful after the national legislation on freedom of information.

The second session with Mr. Okutsu focused on the actual cases of (non-)disclosures and complaints based on freedom of information ordinances. Mr. Okutsu reported on past examples of employment of ordinances, remarkable cases which won disclosure, differences among municipal governments in their standards of (non-)disclosure, and opinions of review boards on complaints.

At the third session, Mr. Miyake lectured on lawsuits for information disclosure and measures to be taken by municipal governments. Along with elaboration on related litigation, Mr. Miyake gave suggestions for revision to ordinances which would inevitably follow the enactment of the Freedom of Information Law.

The participants were quite attentive to the lectures which lasted more than six hours. Many of them were municipal workers who directly handle citizens' claims for information disclosure. They gave a positive evaluation on the seminar, with special praise for update on drafting process at a national level, report on actual jurisprudence and cases, viewpoints of experts, appropriate commentaries to current problems, and pertinent and qualified seminar materials.

They also requested another seminar with additional themes such as relations between

administrative procedures and personal information, cases in countries with advanced disclosure laws, and more elaboration on each subject.

[Jinken Shimbun, March 21, 1996, No. 299]

The Freedom of Information Law in Korea: Lecture by a Drafter



Professor Sung Nak-In

On September 29, 1995, a lecture meeting entitled "The Freedom of Information Law in South Korea" was jointly held by the JCLU and Action for Public Access at the Seikyo-Kaikan Hall in Sendagaya, Tokyo. The lecturer was Professor Sung Nak-In of the Yeungnam

University in South Korea.

In October, a bill for the freedom of information law was submitted to the South Korean government in an ordinary session of the parliament. Professor Sung was one of the drafters. Regrettably, the bill was not passed at the session.

In Japan as well, the administrative reform committee of the government has been working on for the enactment of the freedom of information law. The audience at the lecture meeting actively participated in discussing this important issue.

[Jinken Shimbun, December 20, 1995, No. 297]

On Prior Notice of the Date of Supreme Court Ruling

The JCLU April monthly public lecture "Regarding prior notice of the Supreme Courts designating the date of ruling" was held on April 13, 1996. There was a special lecture by board member Ms. Masako Kamiya (Professor at Gakushuin University) on the topic of "Oral Proceedings in British and U.S. courts."

Ms. Kamiya, speaking on the British and U.S. courts, said there are big differences between the two countries in the way oral proceedings ought to be and its function. In Britain, oral proceedings have come to introduce examination of the issues solely by submitting documents. She indicated that if this trend continues it will become more similar to Japan's system.

In the U.S., especially in the Federal Supreme Court, oral argument is highly regarded as it: 1) promotes the parties identifying the issues (contentious issues can be narrowed down in the course of questions and answers), 2) gives parties the chance to persuade the judges in person (and their assertions can be earnestly heard before the Supreme Court), while the written documents tends to be comprehensive, 3) serves as a time when the judges can communicate with each other. The idea that oral proceedings can be used to these ends was fresh for Japanese lawyers who cannot hope for persuasion through oral arguments.

Next, JCLU member Mr. Hisashi Muto, an advocate for the designation in advance of the date on which the Supreme Court's decisions are handed down, told of his personal experience. Mr. Muto has been the plaintiff several times in litigation on the revision of fixed number of Diet members. A Petty Bench, unlike the Grand Bench, does not have oral proceedings. Therefore, the plaintiff is not notified of the date of decision during Petty Bench trials. Thinking this was unfair, he requested that the Petty Bench inform him of the decision date. But in June 1995, surprisingly, without notifying Mr. Muto in advance of when the decision would be handed down, the court announced their decision.

What is interesting is that immediately after the sentencing, when Mr. Muto confirmed the decision with the clerk, he was told that not giving prior notice is not regulated by law but it is only custom. After that, thinking that such treatment is unjust, he submitted an article to the Asahi Shimbun's editorial section. He also asked the JCLU to examine this issue and has been on the JCLU Supreme Court Study Committee since.

Finally, Mr. Mitsuru Takahata, esq., from the Supreme Court Study Committee of the JCLU, reported on the subject of the duty of notification of the day of sentencing where appeal is rejected without oral proceedings. After an examination of two court cases, one in 1966 and the other in 1969, he said that the question remains today whether the opportunity to attend the date of sentencing should be given or not. Their simple argument that "it is all right not to give the party a chance to appear as they are to be orally notified of the judgement later" sounds unjustifiable. Mr. Takahata closed by saying the distrust of the law is deep in present practice.

After that, there were questions from the audience, and they expressed the opinion that if the Code of Civil Procedure was revised to limit appeals, only crucial cases will be tried, and the court may change the current

practice and notify the parties of the date the decision will be announced in advance.

The Supreme Court Study Committee will continue to examine this matter.

[Jinken Shimbun May 25, 1996, No. 300]

* Editor's note: Prior notice of the judgement day was finally introduced in December 1996 by a revision to the Code of Civil Procedure.

ASIA

The Second UNCREC Legal Training Program for Cambodia: Cooperation between NGOs and GOs

On January 29, 1996, three Cambodian public defenders, Mr. So Inn, Vice President, Cambodia Defenders Association; Mr. Kong Sam Onn, Public Defender, the Cambodian Defenders Project; and Mr. Mon Keo Sivin, Defender, Legal Aid of Cambodia, arrived in Japan. They were invited as legal trainees for a program for Cambodia sponsored by the United Nations Centre for Regional Development (UNCREC), conducted from January 29, 1996, to the end of March, 1996. This was the second program, preceded by the one held in 1994 in which two Cambodian public defenders participated. Like the last time, the program was conducted in cooperation with the JCLU, JJ League (Japan Jurists League for Cambodia), and the Japan Federation of Bar Associations (JFBA). In addition, the Supreme Court, the Ministry of Justice (MOJ) and the National Police Agency participated in the program. Although it is a UN-sponsored program, joint cooperation between GOs and NGOs has been unprecedented in a legal field in Japan.



(from right to left) Mr. Kong Sam Onn, Mr. So Inn, Mr. Mon Keo Sivin, and JCLU Representative Director Takao Yamada.

This experience deserves high credit.

In fact, the programs have set a good precedent. Inspired by these, the Japan International Cooperation Agency (JICA) also started a legal training program for Cambodia. Six Cambodian lawyers were invited in February 1996 for training at the Supreme Court, MOJ, and JFBA. The JICA will continue the program at least another five years.

After training in Nagoya and Osaka, the three trainees moved to Tokyo on February 12, where the JCLU organized fourteen lectures for them. It also facilitated lectures at the Supreme Court, MOJ, and the National Police Agency, and a tour of a prison. From February 29, they participated in internships at law offices.

The JCLU also held a meeting for the trainees and JCLU members on March 1 where the trainees discussed the human rights situation in Cambodia. A fundamental cause of human rights violations in Cambodia, they pointed out, is the lack of human rights education for police officers and other public servants. The trainees reported cases of arbitrary detention and physical abuse by the police that they had handled directly.

With regard to a system for lawyers, Cambodia enacted a new law in June 1995 on the status of lawyers, which qualifies only those who have obtained an LL. B. degree. However, many public defenders in Cambodia do not hold LL. B. degrees, but were entitled to practice through institutions run by NGOs or other sectors. According to the new law, they will be disqualified as of the end of December 1997. While it takes time for duly qualified lawyers to graduate from the University of Phnom Penh, the work of protecting the rights of the accused will have to be handled by no more than one-hundred defenders.

A particular noteworthy project is being led by the law school of the University of San Francisco. It opened a branch school in Cambodia where public defenders will be trained to meet the standard stipulated in the new law. Japanese lawyers as well could assist this program by sending lecturers to Cambodia. In order for this, we need wider range of cooperation. On the other hand, the Cambodian government may need to respond more flexibly in qualifying the lawyers.

The program in Tokyo, including its reception and lectures at the JCLU office, had been covered by an NHK education program, which was aired on March 1. As the above-mentioned meeting at the JCLU was just in session, the participants enjoyed the show together.

On the final day of the program, March 29, the trainees reviewed a video of a mock trial, which was

produced by the JJ League in Cambodian-language. Afterwards, they were awarded with a certificate at a ceremony organized by the JCLU.

[Jinken Shimbun, Nos. 299-300, March 21 and May 25, 1996]

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**Roles of NGOs In APEC: Human Rights,
Environment and Development**

by Yasuhiro Kanaitzuka

Attorney-at-Law

Secretary General, JCLU Osaka-Hyogo Branch

A seminar entitled "Roles of NGOs in APEC", co-sponsored by the Kansai organizing committee of the NGO Forum on APEC and the JCLU was held at Osaka YMCA from 1:00 p.m. on October 28, 1995. This seminar was also one of the Kansai Joint Regular Meetings of the JCLU. Eighty participants, including JCLU members, had heated discussion.

The seminar started with a report by Mr. Satoshi Hirata, representative of the organizing committee, on a meeting with an official of the Foreign Ministry. The committee had contacted an official of the Foreign Ministry in charge of APEC so that Foreign Ministry officials would have been able to attend the seminar. The committee tried until the last minute to arrange it. Unfortunately, the meeting was not successful.

Next, was an introductory speech by Mr. Munetoshi Maejima of the Japan Committee for Negros Campaign. He presented his experiences in a movement he has been involved with since 1985, that supports children in the Negros Island. He discussed interesting topics: world's "Negros-ization;" missing viewpoints in European concept of "fair trade"; the correct way to purchase bananas considering environmental burdens; and the export of pig excrement.

Additionally, members of the committee introduced the declarations and proposals to be adopted at the international NGOs conference on APEC scheduled on November 13 and 14, 1995 at Kansai Seminar House in Kyoto. This was followed by a discussion of these declarations and proposals.

The proposals consist of three components: 1) economy, 2) human rights, and 3) environment. These proposals contain suggestions as to how the NGOs should address each of the three components. The proposals were from NGOs' critical viewpoint on the APEC's purpose of economic liberalization.

Next, various reports were made. The human

rights report was given by Mr. Akihisa Matsuno of the Osaka East Timor Association and Ms. Natsumi Takeuchi of the Campus Group of Osaka University of Amnesty International. The environment report was given by Mr. Yoshio Nishioka. Also, the environment and economy report was given by Mr. Hiroshi Kanda of Institute for Alternative Community Development.

In the discussion that followed, Ms. Yoko Hayashi of the JCLU proposed that the achievements of ILO treaties as to women's rights should be incorporated. Participants intensely exchanged their opinions about the legalization of prostitution and the death penalty.

The JCLU has been debating the International Covenant on Economic, Social and Cultural Rights, but it has not yet had extensive dialogues on economic and environmental matters. On the other hand, this is only the first time human rights, environment, development and other NGOs have held a joint meeting in a substantial manner. Future discussion on human rights should be expanding its scope to include the economic elements.

[Jinken Shimbun, December 20, 1995, No. 297]

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**East Asian Consultation for Asian Charter
on Human Rights: Toward Asian
Realization of Human Rights**
by Yasushi Higashizawa
JCLU Member, Attorney-at-Law

The Asian Charter on Human Rights

The movement to enact the Asian Charter on Human Rights has been pushed forward under the leadership of a Hong Kong-based NGO, Asian Human Rights Commission (AHRC). This enlightening declaration on human rights is a creative attempt by Asian NGOs to appeal to the sympathy of ordinary people as it takes Asian social and cultural particularities into account. AHRC has held Consultations in South Asia (India and Nepal) and Southeast Asia since this movement began in 1994. AHRC hopes to adopt the Charter in the summer of 1996, following discussions at the East Asian Consultation. At the JCLU, the Asian Human Rights Committee has studied the draft Charter in cooperation with the International Human Rights NGOs Network.

The East Asian Consultation

The East Asian Consultation was held in Hong Kong in early February, 1996. The total number of participants was thirty. Consultation organizers from AHRC included Mr. Basil Fernand, Executive Director, who is a former acting representative of the Cambodia

Office of the United Nations Human Rights Centre. Others were from NGOs in China, South Korea, Taiwan, and also an East Timorese activist staying in Macao. The content of the Asian Charter on Human Rights was discussed over four days with reports on the conditions of human rights in each country. I attended the Consultation on behalf of the JCLU. Other Japanese participants were Ms. Emiko Furuya, former staff member of the JCLU, and Mr. Akio Kawamura, staff member of the Asia-Pacific Human Rights Information Center. AHRC funded the participants' transportation and lodging.

Human Rights Conditions in East Asian Countries

I reported the general situation in Japan and requested that the Charter include a cross-border system to realize human rights. Mr. Kawamura gave an analysis of the background of human rights problems in Japan. In response to his report, participants from South Korea and Taiwan severely questioned how the Japanese government and people cope with the "comfort women" issue. Also a participant from Hong Kong expressed deep concern over the problems of migrant workers and statelessness.

On the one hand, each country's report was unique to its own domestic situation. On the other hand, many human rights problems which concern East Asian countries (except China) have become common. These problems, including the rights of migrant workers and refugees, and the adverse effect of economic development on vulnerable people (such as the elderly and children), have led to an increase of court struggles to realize human rights. Realization of human rights of migrant workers is dealt with seriously in South Korea, Taiwan, and Hong Kong. It was agreed upon at the Consultation to include the rights of migrant workers in the Charter.

The Goal of the Charter

The Asian Charter on Human Rights has been drafted to serve as an instructive text for NGOs; not to advocate new treaties or governmental organizations. This is based on a recognition that Asian governmental treaties or organizations on human rights will not achieve the international standards at this time, as noted by Professor Yash Ghai of the University of Hong Kong in the opening lecture. It is recognized that the human rights text on maintaining and developing international human rights standard must match Asian specific characteristics, because existing Western human rights texts and safeguard systems have not functioned well in Asia.

Asian Characteristics of Human Rights

What are the Asian characteristics which require separate text on human rights? How will the text read?

With huge populations, poverty, and oppressive governments, human rights abuses in Asia are widespread and serious. Also, community-oriented societies in Asia, of a caste system, of Confucian thought, etc., do not readily accept individualistic and lawsuit-oriented concepts of human rights. Therefore, the concepts of human rights need to be presented in terms more relevant to the social context. In order for this, we should:

- 1) Stress the realization of economic, social and cultural aspects of human rights;
- 2) Instead of using abstract and general legal norms, plainly define human rights in response to each social group such as farmers, fishermen, the elderly and housekeepers, etc.;
- 3) Give much thought to the social background in interpreting or introducing certain rights in Asian society;
- 4) Stress the importance of nonjudicial remedies in Asian society where the status of judicial power is relatively low. Concisely defined human rights should be widely protected without requiring a judicial remedy.

In order to avoid a misunderstanding, it should be pointed out that the Charter is not an attempt to deny or make relative the universal nature of human rights, as some governments in Asia advocate, but rather to root universal human rights in Asia and make them relevant to Asian realities.

These propositions are highly suggestive. This movement for the Charter cast natural doubts: whether or not it is really effective in introducing and catching up with existing Western human rights movements; how neighbors in Asia can come to a common understanding on human rights problems; whether this Charter sufficiently answers these questions and whether or not the Japanese can complete the tasks enumerated in the Charter.

Dialogue on Asian Variety as the Starting Point

Asia is wide and varied in its peoples and types of human rights issues. Not all participants shared common views on Asian specific characteristics. While the Charter seemed to focus on the human rights situation in South Asia, participants in the East Asian Consultation suggested the inclusion of new human rights issues caused by economic development. Whether to accept this proposition was left to future consultations. Many opinions were exchanged on how the international organization or judicial system should be to realize human rights.

Asian Charter on Human Rights and the East Asian Consultation gave all in attendance, regardless of nationality, the opportunity to think over such propositions as how to realize human rights in Asia and to reassess the purpose of the movement in which we are involved.

I would like to thank Ms. Emiko Furuya, who participated in the meeting and helped me write this report.

[Jinken Shimbun, March 21, 1996, No. 299]

Mr. Fernando Introduces Asian Human Rights Charter

The JCLU and Amnesty International Japan jointly sponsored a lecture on "Asian Human Rights - Its Locality and Universality" at Yamate YMCA in Takadanobaba on July 31, 1995. The main speaker was Mr. Basil Fernando, Executive Director of the Asian Human Rights Commission (AHRC) based in Hong Kong. He is a Sri Lankan lawyer who had also held the position of acting chief of the United Nations



Mr. Basil Fernando

Human Rights Centre Cambodia Office until 1994.

In his speech, Mr. Fernando referred to the significance of formulating a human rights charter for the Asian region, and introduced a draft of the Asian Human Rights Charter made by the AHRC. The draft reflects various field experiences so as to serve effective promotion of human rights in the region. On the other hand, he also stressed the universal aspect of human rights and criticized the theory of "Asian uniqueness" as being used to justify the poor human rights record in Asian countries.

[Jinken Shimbun, October 25, 1995, No. 296]

Human Rights Lawyer Assassinated: JCLU sent a letter to Philippine President

JCLU sent a letter to Philippine President Fidel Ramos on March 7, 1996 asking for a thorough investigation on the assassination of Philippine human rights lawyer Fernand Reyez.

The late lawyer Reyez held the post of the chairman of the human rights commission established during the era of President Aquino and was also a member of Free Legal Assistance Group (FLAG), a Philippine human rights lawyers group. Representatives of the JCLU met with him when they visited Manila in 1993.

According to reports, the late Mr. Reyez was shot at his office on February 12, 1996 and later died at the hospital. Mr. Reyez proclaimed the rights of political prisoners and severely criticized the government's policy.

On the day before the assassination, he talked about the Anti Terrorist Bill and the problem of raising the value-added tax for over two hours on a radio program. A report said that he had been scheduled to make a speech on these problems at a nonpartisan gathering on February 16. He had been threatened with letters and phone calls prior to the shooting.

The JCLU sent the letter in response to the call for protest actions by International Bar Association (IBA).

The JCLU demanded a prompt and thorough investigation and disclosure of the results. The letter included Articles 16 and 17 of the Basic Principles on the Role of Lawyers, which provide for the measures to be taken and protection to be given by the government for the accomplishment of lawyers' missions.

[Jinken Shimibun, March 21, 1996, No. 299]

OKINAWA/US MILITARY BASE

Extreme Human Rights Violations by the Military: On the Gang-Rape Incident of an Okinawan Schoolgirl

by Seigen Nagayoshi
Attorney-at-Law

Secretary General, Okinawa Civil Liberties Union

The president of Okinawa Civil Liberties Union visited the JCLU recently to ask for cooperation and deliver its opinion on the Status of Forces Agreement and the Japan-U.S. Security Treaty. The opinion was co-authored by the Okinawa Civil Liberties Union and an Okinawan group for the promotion of the ideal of the Constitution. This opinion demands the abolition of the Japan-U.S. Security Treaty and the observation of the Japanese Constitution. It argues that the Treaty which allows the station of foreign military contradicts the Japanese domestic laws, and that it restricts the fundamental human rights of the residents around the bases.

Back in 1961, the JCLU sent a fact-finding mission to investigate human rights conditions in then U.S.-occupied Okinawa, and produced an investigative report on Okinawa. The JCLU board meeting of November 16, 1995 discussed measures to be taken on the issue of Okinawa.

The following is a special article from Mr. Nagayoshi, Secretary General of the Okinawa Civil Liberties Union

Source of Every Evil - The Military Base

Not to mention Okinawan people, the whole nation was taken by tremendous shock at the gang rape of

a schoolgirl by three American soldiers in Okinawa, which took place on September 4, 1995. The incident is by no means a mere accident. It was a natural consequence of the presence of a military base. In Okinawa, groups and citizens of all sectors have stood up in protest. The movement has been greatly developed into an almost unanimous claim that "there is no way but to disrupt the military base."

Before Okinawa was re-integrated to Japan, crimes committed by U.S. soldiers against Okinawan people had been secretly dealt with by the U.S. martial court, over which Japan held no authority. A junior high school student who was walking during a green light was killed by a car driven by a U.S. soldier. A woman walking down the street was also killed by a car driven by a U.S. soldier. A woman was gang raped by American soldiers. All of these American soldiers escaped to the base, were found not guilty, and returned home.

On May 15, 1972, Okinawa finally returned to Japan after the 27 years of American rule. However, it was not a liberation from the military base as the local people had longed for. Okinawa was to be continuously placed under the U.S. base due to the Japan-U.S. Security Treaty. By the Status of Forces Agreement, concluded subsequent to the Japan-U.S. Security Treaty, the Japanese government has offered the U.S. a continual use of its military base in Okinawa. The U.S. military base has occupied vast areas of Okinawa until today.

The ultimate purpose of the military base is to pursue warfare. The military base threatens the very existence of the people. Definitely, it is the source of every evil.

From Occupation of Okinawa to Status of Forces Agreement

The U.S. military occupied and ruled Okinawa as a consequence of World War II. The first thing the U.S. military did in Okinawa was the construction of bases in vast areas. They were able to do whatever they wanted in Okinawa.

On April 28, 1952, the so-called Peace Treaty with Japan was effectuated, by which the U.S. occupation and rule of Okinawa were ended. However, Article 3 of the Treaty separated Okinawa from Japan's mainland and placed it under the rule of the U.S.A. For 27 years thereafter until the reintegration, Okinawa had been directly governed by the U.S.A.

Concomitant to the Peace Treaty, Japan and the U.S.A. concluded the Security Treaty and the Status of Forces Agreement.

Right to Existence in Peace

The Status of Forces Agreement is problematic because the Japanese government granted excessive prerogatives to the U.S. military. Upon Okinawa's

handover, the local Okinawans called for the total removal of American bases. However, the Japan and the U.S. governments agreed on the continual use of the base by Article 3 of the agreement on the reversion of Okinawa to Japanese rule.

Okinawan people's indignant voices against the both governments were simply ignored or suppressed. Ever since, the major serious problems in Okinawa have been associated with American bases. The recent gang rape case is a very example of it.

Neither the Japanese or U. S. governments stands up for the protection of constitutional rights of people in Okinawa. They have consistently maximized and respected the interest of the U.S. military in order for security of Japan and the far east.

All we want is to remove the bases from Okinawa. Whatever the revision of the Status Agreement Treaty is, as long as the military exists and stations in our land, there is no guarantee of our right to peaceful existence in Okinawa.

[Jinken Shimibun, December 20, 1995, No. 297]

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Looking into the Current Situation and Problems of the U.S. Okinawan Military Bases

Recently, the Naha branch of the Fukuoka High Court handed down their decision on what is called "proxy signature litigation," which was filed on the issue of land lease for the U.S. army in Okinawa. The case urged Japanese society deep reflection on dispute between the Japan-U.S. Security Treaty and human rights on the 50th year after the war. In the decision, the claims of the national government were recognized.

The plaintiff, Okinawa prefecture, pointed out two main problems. The first issue is that the Security Treaty and the state of "the safety of Japan" is founded on the violation of human rights in Okinawa. The second issue is recognizing that regional autonomy is being destroyed by the central government assigning various related responsibilities to the local government. Governor Ohta of Okinawa refuses to accept this situation where human rights and regional autonomy are being trampled on.

At the monthly public lecture on March 27, 1996, JCLU member Kunio Miyasato, counsel for defendant Okinawa in the "proxy signature litigation," reported on the contents and current problems of the litigation regarding the U.S. military bases in Okinawa. Before Miyasato gave his report, Representative Director Takehiro Uchida introduced this issue including his experiences in Okinawa 20 years ago when he was sent by the Japan Federation of Bar Associations to examine

the human rights violations surrounding the U.S. military bases. "If you go back to the roots of the JCLU, you can not avoid the issue of U.S. military bases," he said.

Mr. Miyasato began by speaking of the situation in around 1960. He said it was the JCLU that first raised human rights issues surrounding the requisition by the U.S. bases. When JCLU members, including Mr. Kinju Morikawa, were planning the on-sight human rights investigation, the U.S. government denied them the issuance of visa to Okinawa.

In the report he explained, Okinawa which is less than 0.6% of the surface area of Japan, has 75% of the land that Japan dedicates to U.S. bases. Moreover, while most of the land of U.S. bases in the rest of Japan is publicly owned, in Okinawa they occupy 30% of private land. Before the return of Okinawa to Japan, the land was occupied by the U.S. military forcibly requisitioned by ordinance and declaration. After the return of Okinawa, a special law, applicable only to the U.S. bases and whose validity has been in question, was passed in order to justify the existence of U.S. bases.

As a result of the U.S. bases in Okinawa prefecture, the occurrence of accidents has increased, the environment has been damaged, there have been crimes related to the soldiers and their families, and existence of U.S. bases in populated area hindered local development. These have all obstructed the development of Okinawa and deeply affected the lives of the people.

What Governor Ohta and the people are extremely anxious about is that the governments of both the U.S. and Japan are planning the redefinition of the Japan - U.S. Security Treaty under the title of "peace and security of the Asian Pacific area." In this redefinition there is the danger that the U.S. military bases would become permanent and even more established. Mr. Miyasato emphasized on this political climate as a very difficult and critical issue facing Okinawa.

It was a good opportunity to learn a clear example of the tension between the political situation and concerns related to human rights. It was also a good opportunity for young JCLU members to learn the history of the JCLU in the 1960s.

[Jinken Shimibun, May 25, 1996, No. 300]

RACISM/XENOPHOBIA

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The Seventh Kubota Memorial Symposium: On the Convention on the Elimination of Racial Discrimination

The JCLU held the Seventh Kubota Memorial Symposium under the theme, "The Significance and Future Tasks of Japan's Ratification of the Convention

on the Elimination of Racial Discrimination", on December 2, 1995, at the Kuramae-Kogyo Kaikan in Shimbashi, Tokyo.

The Convention on the Elimination of Racial Discrimination was adopted at the 20th session of the United Nations General Assembly in 1965 and was effectuated in 1969. After 30 years, Japan finally ratified the Convention as the 146th party. The Convention was approved at the Lower House on November 21, 1995, at the Upper House on December 1, and effectuated on January 14, 1996.

After opening remarks by Takao Yamada, JCLU Representative Director, a message from Ms. Fiona Blyth-Kubota, wife of the late Mr. Yo Kubota was read out by Secretary General Yoichi Kitamura. The keynote speech, "The Significance of the Convention" was given by Mr. Takashi Ebashi, Professor at Hosei University, followed by speeches from three panelists and a panel discussion.



The panelists examined racism in light of freedom of expression and discrimination based on nationality.

Significance of the Treaty

Mr. Takashi Ebashi, Professor, Hosei University

A main reason for the delay in ratification for 30 years involves regulations on freedom of expression provided in Article 4 of the Convention. Following the lead of the U.S.A., Japan finally joined the treaty by announcing the reservation of Article 4. I am both happy and unhappy over the ratification which was concluded in this way.

Article 4(a) provides that dissemination of racially discriminatory ideas, incitement to racist acts and violence are crimes. It also criminalizes financial and other forms of assistance for racially discriminatory acts. Article 4(b) does not allow the very existence of groups which promote and advocate racial discrimination.

While strongly affecting the freedoms of assembly, association, and expression, Article 4 regulates other aspects as well. Therefore, the reservation of Article 4 does not necessarily mean to suspend application of the whole concept of this Article. In Japan, this reservation derives from the provision of the freedom of expression provided in Article 21 of the

Constitution.

Article 2 of the Convention imposes duty on the national and local governments to abolish discrimination. Duties provided in this Article range quite extensively. It also urges efforts to abolish racial discrimination in various sectors, not only on the national level but also on municipal level.

Article 3 prohibits apartheid. Article 6 sets out duties to ensure just and effective protection from and remedies for damage caused by racial discrimination. Article 7 imposes duties to suppress discrimination.

By ratification, Japan shoulders duties to fight against racial discrimination nationally and internationally, and to take every effective measure to abolish racial discrimination.

Article 1 (2) and (3) declare that discrimination based on people's nationality is out of the category covered by the Convention. Literally interpreted, discrimination against foreigners is irrelevant to the Convention.

However in reality, the distinction between discrimination of race and of nationality is quite difficult to make. Discrimination takes on a multiple nature. In modern society, it is unrealistic to assume that one single element would make a definite cause for discrimination. Severe discrimination results when there are various causes and they compound the damage. If nationality is included as one of the causes of discrimination, it cannot be simply dismissed as being irrelevant to the Convention. This is a seriously flawed view of the reality of discrimination.

Also, the rapid increase of multinational families in this society makes the distinction more difficult. It is a strange outcome if the protection under the Convention could be applied to resident Koreans with Japanese nationality but not to those without Japanese nationality. The nationality clause in the Convention should be reconsidered as we have so many international families today. The limitations of the 1960s must be overcome in the 1990s.

In this regard, I propose a declaration of reverse-interpretation. An interpretation announced by the government or a resolution at the national or local legislatures would make the Convention actively cover nationality-based discrimination. It is quite important to facilitate the Convention to tackle the problems of discrimination based on nationality or discrimination against foreigners.

The ratification of the Convention should be positively evaluated as it provides local governments with legal basis of their duties to develop measures to abolish racial discrimination. It is a big step toward establishing a racial policy in this country. The local governments are expected to work, in the context of the human rights policy, for the abolishment of racial

discrimination.

As suggested by Ms. Kubota in her message, we, as an NGO should take this opportunity to further promote our fight against nationality-based, and racial discrimination.

**The Government's Work on the Convention
Mr. Tsukasa Kawada, Director, Human Rights
Division, Ministry of Foreign Affairs**

There was a rise of the Neo-Nazis in Europe during 1959 and 1960. It was in this setting that the problem of racial discrimination was considered most serious and this spurred the formulation of the Convention. The Convention condemns racial discrimination and aims at the abolition of all its forms. The ideas of the Convention follow the same ideals as the Japanese Constitution which respects fundamental human rights and equality before the law. Japan's ratification of the treaty is significant in terms of further strengthening work on human rights and promoting international cooperation for the respect of human rights.

The Japanese government does not think it is right to discriminate against foreigners. There is explicit prohibition against ethnic and racial discrimination in Japan. We oppose some, but not all, treatment based on nationality. Rational differentiations based on nationality exist in every country, for example, those concerning participation in decision making at the national level, such as suffrage, and the exercise of public authority. However, nationality-based discrimination, say in housing or employment, is not rational and therefore we consider it discrimination by ethnicity or race.

Article 4 of the Convention is problematic in view of the freedom of expression guaranteed by the Constitution. The government had studied on the application of this Article over the past 30 years, and reached a conclusion that its domestic application was impossible.

It seems to be a one-sided view to hold that Japan merely imitated the actions of the U.S.A. and reserved Article 4. Prior to the U.S.A., Switzerland had also made the same reservation. A number of other countries had made declarations of reservations or of differing interpretation regarding the freedom of expression.

Every country has its own issues with freedom of expression. Some countries, where the Constitutional system gives utmost respect for the freedom of expression, attach reservations that they will implement the Convention only within the extent allowed by the guarantees of freedom of expression under their own Constitutions. Japan had observed other countries' positions and reached a conclusion that it would not be problematic to hold a similar position. This is how Japan ratified the Convention, with the reservation of Article 4. The reservation, however, does not mean total

rejection of the provisions of Article 4. Japan will fulfill provisions in the Convention, while employing the existing domestic law, within the framework of the constitutionally-guaranteed freedom of expression.

**Local Governments' Work on the Convention
Mr. Takao Yamada, Board of Education, City
of Kawasaki**

Based on his experiences over 20 years, Mr. Yamada introduced local governments' work on education, employment and housing issues for foreigners, especially recent migrants (new comers) and over-stay foreigners. He also reported the establishment of the foreigners representatives conference of the city of Kawasaki.

The local governments face two basic problems in handling human rights violations. One is under-legislation for local officials to take appropriate measures. The other one is excessive guidance from the government which eventually hinders local officials from taking any measures at all.

Regarding the latter, excessive guidance by the national government, is seen where the Ministry of Health and Welfare does not allow foreigners to apply for public welfare or national health insurance, etc. These instructions are not stipulated in a basic law, but come verbally or through notice. They create a feeling that local governments are not allowed to interpret and implement law on their own but have to follow the government's interpretation. However, interpretation by the government does not necessarily seem appropriate to the local government workers who are in closer contact with foreign residents. Therefore, I propose a drastic idea that the local governments declare an observation of the Convention under which their own policy is to be established. A direct use of the Convention by local governments may seem extraordinary but it is not totally impossible under the general interpretation of the law. I expect that the ratification of the Convention would provide an opportunity for local governments to create ordinances based on international instruments.

**Jersild v. Denmark and the Freedom of
Expression**

Ms. Mari Katayanagi, JCLU Member

The facts of *Jersild v. Denmark* are as follows. Mr. Jersild, a journalist at Denmark Radio, has produced and aired a program on a group of youth called the Greenjackets, who explicitly antagonize immigrants. The program included interviews with three members of the group. A lawsuit was filed over their racially discriminatory remarks. The domestic courts, from the city court to the Supreme Court, found three of them guilty. Mr. Jersild who appeared in the program as an interviewer, and Mr. Jensen, senior of Mr. Jersild who approved to cover and broadcast the program, were also

sentenced without suspension under domestic law for assistance and solicitation.

After the supreme court decision, Mr. Jersild appealed the case to the European Court of Human Rights (ECHR). The issue in the ECHR was whether the restriction of the freedom of expression, in this case the punishment of those who broadcasted a person who made racially discriminatory speech, was "necessary in a democratic society."

The ECHR judged that the aim of the given report was not to propagate racial discrimination but to introduce, analyze and explain a specific group. The media carries a role to offer materials to discuss issues concerning interests of the public. Therefore, the restriction of the freedom of expression in this case cannot be recognized to have been necessary.

The judgement admitted the argument of the journalist, while opinions of the judges were divided 12 to 7, showing a difficulty in keeping a balance between two sometimes contradicting rights. There is a fear that a straight broadcast of opinion, in this case racially discriminatory remarks, might assist the speakers' intention. At the same time, there is also a concern that restriction on the freedom of expression would go unlimited once allowed. In Europe, majority of public opinion favors self-regulation of the media to restrictions by the public authority.

[Jinken Shimibun, January 30, 1996, No. 298]

HIV/AIDS

Toward A Bias-Free Society: Report of Osaka HIV Patients Case by Goh Matsumoto JCLU Member, Attorney-at-Law

Osaka HIV patients lawsuits, which have been supported by JCLU have now reached the final stage. The following is an update on the recent developments.

In May 1989, the first HIV patients case was filed in Japan with the Osaka District Court. The plaintiffs sued pharmaceutical companies and the government for medical mishaps in which hemophiliacs were infected with HIV from imported blood products that were used for treatment. Similar lawsuits have been filed with the Tokyo District Court. Sessions had continued for six years until a partial conclusion was made in 1995.

In Osaka, plaintiffs came from across the nation and number 211. In addition, a patient of the so-called "fourth route", who was infected by a means other than hemophilia treatment, filed a lawsuit in 1995.

The 18th filing, consisting of some 10 plaintiffs, is due by March 1996. When the lawsuit was certified as a JCLU support case, the total plaintiffs counted only 60.

Today, about 400 people have filed suits with the Osaka and Tokyo District Courts. The increase of plaintiffs reflects widening understanding on AIDS/HIV in society. However, the total number of infected people is estimated to be more than 2,000. The plaintiffs account for only 20% of the estimated number of victims. Sadly, many have died while having been silenced by entrenched discrimination against HIV patients.

Following the partial closing, both the Osaka and the Tokyo District Court issued the first draft for settlement in October 1995. It was attached with an opinion which explicitly stated that the defendants, the government and companies, are responsible. As negotiations continue, Mr. Kan, Minister of Health and Welfare, made an apology and a subsequent change in the government policy followed. The second draft for settlement was issued on March 7, 1996. The deadline is set for March 29, 1996. Our negotiations with legislative and administrative bodies are in the final stage where we are demanding supplements to the insufficient legal settlements.

As the media attention tends to be focused on the court struggle in Tokyo, I appreciate this opportunity to report on the development in Osaka. Our struggle continues even if the court cases were completed. We would like to ask for further cooperation from JCLU members to create a bias-free society in which HIV patients can live as equal people with their fellow citizens.

[Jinken Shimibun, March 21, 1996, No. 299]

MENTALLY ILL

Human Rights Conditions of Psychiatric Patients in Japan: ICJ Report Translated

A translation of the third report of the International Commission of Jurists (ICJ) on human rights conditions of psychiatric patients in Japan was published in June 1995. The initial report was issued in 1985, when the issue of psychiatric medical treatment in Japan was addressed in the United Nations. The second report of 1988 covered the amendment of the Mental Health Law. In 1992, the ICJ sent the third mission to Japan, including its former Secretary-General *Mr. N. MacDermot, to study the implementation of the Mental Health Law in previous four years.

The JCLU's public monthly meeting on January 20, 1996, invited as reporters chief counterparts of the third mission: Mr. Isoo Hirota, a psychiatrist, Mr. Kantaro Nagano esq., and Ms. Nobuko Kobayashi, of the Tokyo Center for Mental Health and Human Rights. The meeting examined the third report and the following is Ms. Kobayashi's report of the meeting.

The 1992 final report of the third ICJ mission is still extremely significant for Japan in 1996. The amended Mental Health Law has been additionally revised twice and is now officially called the Law Concerning Mental Health and Welfare for the Mentally Disabled. However, patients' human rights have continued to be completely disregarded. As can be seen from the current conditions of medical treatment, the establishment does not seem to be very concerned about the law.

Mr. Nagano elaborated on a proposal by the ICJ for the reform of the Psychiatric Review Board (PRB) in association with the current human rights situation of psychiatric patients in Japan. The problem of PRB is extensively covered in the report.

Petitions to the PRB are decreasing and grants of discharge have been given to merely a few cases each year. Underfunction of the PRB can be ascribed to, among other reasons, its composition and number. Doctors constitute the majority of the sectional meetings (three doctors, one lawyer and one psychiatric expert). Then, it is difficult to make a neutral and a comprehensive review because the decision tends to be affected by physicians' viewpoints. Local governments with large populations face severe difficulties in completing thorough investigations because the law assigns only fifteen members, divided by three sections, regardless of the number of patients in the region. Based on these facts, the report proposed an even composition of the sectional meeting (one representative each from doctors, lawyers, and experts), and its proportional establishment (one section for three thousand patients).

Secondly, Dr. Hirota made a comment that the report is based on the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted at the 1991 U.N. General Assembly. The principles repeatedly emphasize the importance of notification and informed consent. However, this principle seems to be far little appreciated by the field medical workers both in practice and understanding. He also referred to the Syracuse conference, which was a driving force for the formulation of the principles. As early as in 1980, the conference had already acknowledged notification and informed consent as crucial elements. Nevertheless, field practices in Japan are still dominated by traditional measures and patients are simply left underinformed.

Ms. Kobayashi, from her experience in the Tokyo Center for Mental Health and Human Rights, provided an example where a doctor used threats and distorted information to a confused patient to force "optional hospitalization."

The report also called for the introduction of a new post called "patient counselor" who recognizes patients' rights and helps realize their demands. It advised that social workers in public mental health care centers should

fill this post.

The translation of the report is available at the JCLU Secretariat for 1,000 yen per copy.

*Mr. Niall MacDermot died in Geneva at the age of 79 on February 22, 1996. He was Financial Secretary in the Department of Housing and Local Government in the British Labor Party Government, and also held the post of the ICJ Secretary-General for more than twenty years until 1990. He was deeply devoted to the protection of psychiatric patients' rights in Japan. The JCLU held a reception in his honor on his visit to Japan with the third ICJ mission.

[Jinken Shimbun, No. 299, March 21, 1996]

NGO TAX SYSTEM

Volunteer Activities Support Law: JCLU Statement on Preferential Tax System

The effectiveness of volunteer activities has drawn big attention after the Great Hanshin Earthquake. The government has set to work on the enactment of a volunteer activities support law. The Shinshinto has already submitted a bill which grants legal personality to civil organizations working for public interest. The coalition government has also concluded its draft on a law to promote civil activities.

The major objective of these drafts is to grant legal personality to civil organizations. Secondly it applies a preferential tax system to organizations with legal personality. The JCLU has already been entitled to legal personality.

Many of the civil organizations, including the JCLU, have faced severe financial difficulties. One of the reasons is the absence of a preferential tax system. In March 1995, the JCLU presented this problem in its proposal for the reform of the tax system on donations to public interest organizations. On February 5, 1996, the JCLU issued its second statement of this kind to administrative bodies and policy review boards of major political parties. In its second statement, the JCLU suggested setting up an objective and clear standard, implemented by a third party, for qualifying organizations to be granted a preferential tax system.

[Jinken Shimbun, May 25, 1996, No. 300]

VISITORS

Welcoming Professor Alston

On July 18, 1995, Professor Philip Alston,

Chairperson of the UN Committee on Economic, Social, and Cultural Rights (CESCR), gave a lecture on the International Covenant on Economic, Social, and Cultural Rights and its future. In the lecture, Professor Alston stated that social rights were more easily forgotten than freedom-related rights, and often are sacrificed for the sake of economic development. This is because of the misunderstanding of quite a few governments that economic development by itself could solve social problems. He also introduced recent achievements of the CESCR and its members' behind-the-scene struggles to gain these achievements.

[Jinken Shimbun, October 25, 1995, No. 296]

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Professor Olsen's Lecture on Legal Feminist Theory

Professor Francis Olsen of UCLA, an active legal feminist from the U.S.A., gave a lecture at the JCLU office on August 28, 1995. She made a brief stay in Tokyo on her way to Beijing for the Fourth World Conference on Women.

In her speech entitled "The Sex of Law", Professor Olsen presented issues, from the feminist perspective, on interpreting and creating law free from authoritarianism and gender discrimination. After the speech, she answered questions from the audience, which ranged from the effect of East-West cultural differences on feminism to the feminist implication on educational systems.

[Jinken Shimbun, October 25, 1995, No. 296]

MEMBERS

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In Memory of Mr. Yasuhiko Saito
by Yoshihiko Fuketa
JCLU Board Member, Attorney-at-Law

Mr. Yasuhiko Saito, former Board Member of the JCLU, passed away at the age of 62 on October 10, 1995. He had been under medical treatment for 18 months.

Mr. Saito had retired from the Tokyo Foreign Studies University. The JCLU had expected further work with Mr. Saito. His passing is greatly regretted and he will be missed.

When we first met, it was during the Cold War and Japan's enduring one-party rule. In spite of its bipartisan position, the JCLU might have been somewhat affected by such political circumstances and thus lacked sensitivity over international human rights violations, especially those in Socialist countries. Regrettably, while the JCLU had received newsletters

from the Baltic states and Czechoslovakia seeking cooperation, we did not take any specific measures.

At that time, Mr. Saito was a representative of Japan to the UNHCR. He commented that the principles of the JCLU seemed blurred due to its inaction over international human rights violations.

The JCLU held a series of lectures by Mr. Saito on the international human rights system, including the one in 1981 on the Commission of the Elimination of Racism at the UN European Headquarters where he had just finished a stint as Secretary General. It was the first time that the JCLU learned about the 1503 procedure.

When the JCLU launched a campaign for the ratification of the International Covenants on Human Rights (ICHR), Mr. Saito supported us by writing an article for *Jinken Shimbun* on the drafting process of the ICHR and the problems of specific provisions. That was more than 20 years ago.

When Japan finally ratified the ICHR, Mr. Saito translated the UN Human Rights Commission's study on Japan's periodical report. Giving the JCLU a part of the translation, he insisted on the significance of producing a counter report by a civil group like the JCLU.

Following his suggestion, the JCLU issued a serial publication entitled "the Citizens' Human Rights Report". Mr. Saito also gave us detailed information on to whom and how the Reports should be sent.

Mr. Saito interacted with the JCLU socially as well as academically. He participated in the JCLU's seminars several times, and, in return, invited the JCLU Secretary Generals to his new years party. He was thus active in facilitating interaction among human rights activists.

Mr. Saito focused more on humanitarian rescue than on humanitarian intervention, which tends to present an authoritarian attitude. "Daring rather than deliberate work by a civil organization such as Medicine Sans Frontier", he wrote, "will bring a gradual change to international law in its principle of state sovereignty." (1992 *Annual Report*, International Human Rights Association.)

The JCLU received a great many valuable suggestions from Mr. Saito, a pioneer of international human rights work in Japanese society. Many of us were impressed by his gentle character and hard work for the rights of minorities. We extend heartfelt appreciation for his support and hope that we can carry on in his footsteps. May he rest in peace.

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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. The JCLU's work is conducted in accordance with internationally recognized human rights principles, namely the Universal Declaration 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 founding the JCLU. The JCLU is affiliated with the International Commission of Jurists (ICJ) and the International League for 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. The 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. The JCLU is financed by membership dues and unconditional donations from its members and outside supporters. The Board of Directors is comprised of 46 members. Currently, the JCLU is comprised of 18 committees, and has a chapter in Osaka.

The 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 freedom of information. The JCLU organizes seminars, meetings and symposiums, conducts research, and publishes reports, books and newsletters.

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

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, Legal Consultation Committee, Legal Trainees Committee, Students Committee, Jinken Shimbun Committee (Japanese-language newsletter), Universal Principle Committee (English-language newsletter).

Universal Principle (UP News) is a compilation of articles and excerpts from JCLU's Japanese-language newsletters issued over the previous one year. UP News is edited by the Universal Principle Committee and published by the JCLU at 306 Atagoyama Bengoshi Bldg., 1-6-7 Atago, Minato-ku, Tokyo 105 Japan. Telephone: (+813) 3437-6989 or 5466. Facsimile: (+813) 3578-6687.



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Editing and Translation Staff:

Mie Fujimoto, Toshiaki Fujimoto, Angela R. Hardy, Mari Katayanagi, Kenzo S. Kawanabe, Shingo Miyake, Ryo Onoyama, Osanai Tsuneko, David C. Peters, Peter F. Stine, Teddy Tokita, Masaru Tohyama, Mamiko Yoshikawa.