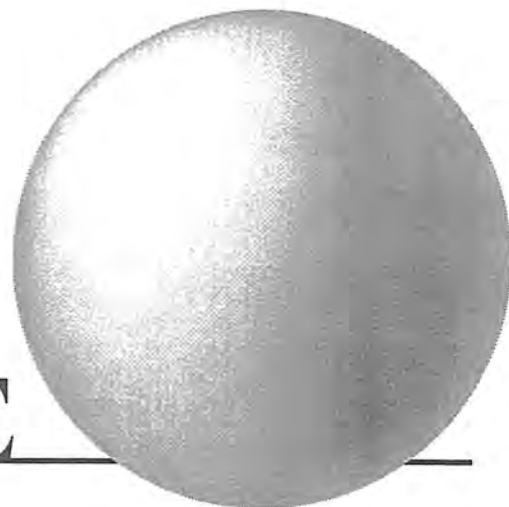


UNIVERSAL PRINCIPLE



*—Human Rights Newsletter from
Japan Civil Liberties Union—*

*featuring
National Human Rights Commission for Japan &
Freedom of Expression Facing Legal Restrictions*

No.10 Winter 2002

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NATIONAL HUMAN RIGHTS COMMISSION *for* JAPAN

The Background

Japanese human rights advocates have for many years sought the establishment of an independent human rights commission, with the hope that it would serve to monitor human rights infringements by government officials and provide counsel and support to victims. The United Nations has also recommended establishment of such an independent commission.

On March 25, 2002, Japan's Ministry of Justice submitted a human rights protection bill to the Diet which proposed establishment of a national Human Rights Commission. Unfortunately, the Commission proposed by this bill would not meet the minimum requirements of an independent human rights commission as envisioned by the JCLU. Therefore, the JCLU has demanded significant revisions to the bill and its re-submission to the Diet. Major JCLU criticisms of the government proposal include the direct control of the proposed Commission by the Ministry of Justice and the Commission's proposed authority to regulate the news media. Details are

set forth in the translated articles that follow. (As this article goes to print in December 2002, the Diet has yet to formally act on the government's human rights protection bill.)

Despite its shortcomings, the government has spent several years developing its human rights protection bill. In 1997, the government appointed a Council for Human Rights Promotion (the "Council"), to develop new policies for human rights education and relief for victims of human rights infringements, including the possible creation of a human rights commission. In 2000, the Council released its final report. This report provided the foundation for the government bill presented to the Diet in March 2002.

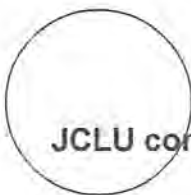
To date, Japan has operated an administrative system to handle complaints of human rights infringements which employs approximately 14,000 civil liberties commissioners around the country. Under the Ministry of Justice, these commissioners are appointed on a volunteer basis at the prefectural level. Most commissioners are former school headmasters and other respected members of the community. The commissioners are not independent, but are an integral part of the local

government. Moreover, their decisions are not legally binding and they have no enforcement powers. Therefore, their role can be properly described as that of a government mediator. For obvious reasons, this system of civil liberties commissioners is inadequate to provide full protection and adequate remedies to victims of human rights violations.

In light of the shortcomings of the civil liberties commissioner system and the fact that the court system does not provide sufficient protection to victims of human rights abuses, there is a serious need for another means to provide adequate remedies. The JCLU considers the current debate over a national human rights commission as an important opportunity to address this need.

The need for an independent human rights commission was also recognized by the UN Human Rights Committee in 1998 and the UN Committee on Social and Cultural Rights in 2001. Each Committee urged the early establishment of such a commission.

JCLU published the three articles translated below at different stages of the deliberation process. The most recent item, from March 2002, reports JCLU concerns about the Bill submitted to the Diet on March 25, 2002. The two earlier items detail JCLU criticisms and comments on the interim and the final reports of the Council for Human Rights Promotion. The Council reports laid the basis for the Bill submitted on March 25, 2002.



JCLU comment on the Bill

[Jinken Shimbun, March 30 2002, No.335]

Based on the Final Report of the Council for Human Right Promotion the Ministry of Justice has prepared a draft bill for protection of human rights (the "Bill"). The Bill was submitted to the Diet on March 8, 2002. A summary of the JCLU's comments to the Bill, as submitted to the Prime Minister on March 25, are provided below.

Although the JCLU appreciates the government's pro-activeness in drafting the Bill and promoting the protection of Human Rights in Japan, there are four areas of concern that the JCLU wishes to raise:

1. Human Rights Commission under Control of Ministry of Justice

The Bill places the Human Rights Commission (the "Commission") under the direct control of the Ministry of Justice as an external organ of that Ministry. It is not unthinkable that the Ministry of Justice could be the subject of a complaint made to the Commission and as such be a respondent in front of the Commission. This creates a clear potential for a conflict of interest. Therefore the JCLU insists that the Commission be put under the control of the Prime Minister as an external organ of the Cabinet Office.

2. Regional Secretariats

In addition to the central secretariat in Tokyo, the Bill mandates that the Commission must establish regional secretariats. Under the proposed Bill such regional secretariat positions may be filled by officials from the District Legal Affairs Offices of the Ministry of Justice in each region. In order to insure the Commission's independence, the JCLU takes the position that the regional secretariat positions should not be open to other governmental organs or their officials, including the Ministry of Justice.

3. Application to the News-Media

The following activities are potentially subject to the affirmative remedies imposed by the Commission under the Bill: invasions of individual privacy by the news media; defamation of individuals by the news-media; and excessive coverage, i.e. coverage invasive of the ordinary peaceful life of citizens. The JCLU, however, takes the position that mass-media-coverage should not be made subject to the Commission's non-judicial remedial system. To the extent such coverage is brought within the ambit of the Commission's remedial system it should be explicitly excluded from any of the affirmative remedies that can be imposed by the Commission.

The remedy system provided under the Bill al-

lows direct restriction of both the coverage and content of news reports. This system is in direct conflict with Japan's Constitution, namely with article 21 of the Constitution which enshrines the principle of freedom of expression and freedom of the press. The JCLU recognizes that privacy infringements by the news media do occur with some frequency and are the subject of public controversy in Japan today. However, this behavior by the news media should not be dealt with in the same way as the human rights infringements, discrimination and abuse, covered under the Bill. In light of the constitutional guarantee and the importance of the freedom of expression and freedom of press in a democratic society, governmental interference in these activities should be as limited as possible. Remedies against such media behavior should be found primarily in the self-regulatory systems set up by the media and, where government intervention is required, in the courts.

4. Hate Speech


Similarly to the news media activities discussed above, hate speech may be subject to affirmative remedies imposed by the Commission under the Bill. Again, the JCLU recognizes the problem and the need to limit hate speech and speech that causes discriminatory acts. However, as outlined above, the constitutionally protected freedom of expression demands that such speech not be made subject to the affirmative remedies of the Commission. Instead protection against such speech should be left in the hands of the judicial system.

In conclusion, the JCLU demands that drastic amendments be made to the Bill, in accordance with the issues raised and outlined above, followed by the re-submission of the Bill to the Diet.

Translated by Laura Becking & Ueno Satoshi

*1 The comment no 9 of 'CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: Concluding observations of the Human Rights Committee Japan' (UN Doc no: CCPR/C/79/Add.102.) released by UN Human Rights Committee in 19 November 1998 states:

"9. The Committee is concerned about the lack of institutional mechanisms available for investigating violations of human rights and for providing redress to the complainants. Effective institutional mechanisms are required to ensure that the authorities do not abuse their power and that they respect the rights of individuals in practice. The Committee is of the view that the Civil Liberties Commission is not such a mechanism, since it is supervised by the Ministry of Justice and its powers are strictly limited to issuing recommendations. The Committee strongly recommends to the State party to set up an independent mechanism for investigating complaints of violations of human rights."



JCLU Comments on the Interim Report of the Council

[Jinken Shimbun, March 27, 2001, No. 329]

1. Implementation of International Human Rights Standards

Japan has ratified many international Human Rights conventions. The JCLU, however, believes the Human Rights standards and requirements set out in those conventions have not been adequately implemented in Japan. This concern is shown by the U.N. Human Rights Committee.^{*1} Therefore the JCLU recommends that the planned National Human Rights Commission (the Commission) be charged with the task of reviewing national implementation of Human Rights conventions. In particular the Commission's mandate should include:

- a. Review of and Advocacy for Implementation. Review of and subsequent advocacy for the implementation on a national level of the Human Rights standards set out in the conventions to which Japan is a state party. In particular this should include advocacy and reports directed towards the national government.
- b. Consultation on Reports. Consult and advise on all governmental reports that Japan is obliged to make under the different international conventions such as the ICCPR.

c. Advise on Implementation. Advise and consult government with respect to national action plans drawn up to implement Japan's international Human Rights obligations. At this point in time, the Japanese government does not generally have such action plans in place nor does it draw up such action plans when it enters into new Human Rights treaties. However, the government should routinely establish such action plans and the Commission should have an advisory role in this process.

2. Role of the Commission

In the Interim Report, the role of the Commission is limited to providing remedies to victims for harms from Human Rights infringements. The JCLU takes the position that, as the primary institution in the nation for the protection and promotion of Human Rights, the Commission should have overarching responsibilities. The UN Paris Principle on National Human Rights Commissions (E/1922/22) also recognizes this as a role of a Human Rights Commission. As such it should be empowered to undertake surveys and research with respect to Human Rights infringements in the nation and make public reports, recommendations and advisory statements. The Interim Report states that such advisory roles, including the government's submission of a "Human Rights White Paper", cooperation with UN human rights monitoring bodies and foreign human rights commissions, and governmental reports under human rights treaties should be taken on by other agencies. As outlined above the JCLU takes the position that, the Commission's mandate should include these advisory responsibilities.

3. Range of Discrimination to be Covered by the Commission

The JCLU is generally in agreement with the Council regarding this issue. It is noted that affirmative remedies, such as mandatory reparation payments, imposed by the Commission can themselves be an infringement on citizens' fundamental freedoms and Human Rights. Therefore the activities to be covered by the Commission and the remedies it can enforce should be clearly defined in a limited manner in order to avoid any unnecessary governmental intervention in civil life.

4. Legal Assistance for Victims

The Council states that the present legal remedy system is not effective for purposes of remedying Human Rights infringements. The JCLU however strongly disagrees with the Council's subsequent conclusion that emphasis must, therefore, be put on administrative, i.e. non-judicial, remedies such as affirmative remedies to be implemented by the Commission. It is the JCLU's position that legal remedies obtained through the court system are indispensable for purposes of protecting and ensuring citizens Human Rights. Moreover, such legal remedies, as opposed to informal remedies, should be the primary remedial tools for victims of Human Rights abuse.

It is the JCLU's position that the government of Japan should drastically improve the present legal aid system as provided by the Japanese Legal Aid Association. In particular the government should provide monetary assistance, in form of subsidies or preferential tax treatment, to civil groups that support victims of Human Rights infringements.

In addition to the above, the legal procedures should of course be open to the Commission and it should generally have the ability to support and advise individual victims in such procedures.

5. Discriminatory Speech/Hate Speech

The JCLU takes note of the importance of the freedom of expression, itself a Human Right, and the need to limit infringement of this right by the government. Therefore the remedies at the Commission's disposal with respect to hate speech should be limited to guidance, consultation, and mediation. The Commission should not be given the power to enforce affirmative remedies, such as injunctions or mandatory retractions, with respect to hate speech. In light of the protection required for freedom of speech itself, such remedies against hate speech should be judicial remedies only entrusted to the courts.

It is noted that the Council considers that affirmative remedies by the Commission are necessary because the present judicial system is not easily accessible

to victims and generally does not offer victims adequate relief. As outlined in the Section 4 above, the JCLU is of the position that the present judicial and legal aid/assistance system must be drastically improved. This improvement should be made the explicit goal of the government and included in the Commission's mandate. The JCLU recommends that the Council consider providing the Commission a concrete role in the trial procedure.

6. Human Rights Infringements by Public Authorities

It is the JCLU's position that the Commission's most important role is to provide remedies to victims of Human Rights infringement by public authorities. As the reach of the administrative agencies of government has expanded in recent decades, the breadth and depth with which public authorities on both the national and local level reach into individuals' lives has also expanded. In particular, administrative procedures and penalties are a great cause of concern. Two areas in which this concern has been at the United Nations in the past treatment of mentally ill patients who are often subjected to mandatory hospitalization and the illegal treatment of individuals in detention centers and correctional institutions.

Given the traditional ideology in Japan of "*kanson-mimpō*", in which the state takes primacy over the individual, it is important to provide citizens with substantial protection against Human Rights infringements by public authorities at all levels. In light of this the JCLU is of the opinion that the Council is mistaken in putting Human Rights abuses by government authorities on the same level as those by civilians and the mass media. Protection against infringements by the government should be made the primary role of the Commission in order to ensure that these very fundamental infringements are not disregarded.

The Council states that it did not make the administrative penalties and other administrative actions a target of remedies to be enforced by the Commission because of the existing internal complaint procedures where citizens' complaints can be addressed. This however disregards the fact that such internal complaint procedures do not generally provide sufficient indepen-

dent review or scrutiny. There is a limit to what can be achieved through internal review procedures and access to review and remedy by an independent third party, such as the Commission, it is essential to ensure citizens' Human Rights.

7. Human Rights Infringements by Mass Media

The JCLU notes the great importance of freedom of expression and freedom of the press, in a democratic society. At the same time, the JCLU recognizes that the news media today sometimes violates human dignity and privacy, through defamation, excessive coverage and sensationalism. In light of the importance of freedom of expression and the press are to a democratic society in which the media has a role to inform people and provide diverse perspectives on the issues that arise in society, these rights must also be given great deference.

The JCLU therefore is of the opinion that remedy of Human Rights infringements by the news media should be left predominantly to self-regulation and ultimately to the civil court system. Only to the extent self-regulation procedures are not available should the Commission provide consultation and mediation procedures. The JCLU agrees with the Council's proposal that a complaint and response system should be set up, including a third party review board or commission set up by the industry. This would be similar to the third party review board established by the broadcasting organizations to handle, inter alia, complaints from viewers.

The JCLU however, cannot agree with the Council that the Commission should be given the power to administer affirmative remedies in cases of privacy invasion and excessive coverage of crime victims and their families, criminal defendants, and minors accused of crimes. Given the importance of the freedom of the press such media behavior should be subject to civil law suits, not the informal remedies of the Commission.

Where victims of Human Rights abuse do not have adequate access to the judicial system this should be remedied (see Section 4 above.) The government should take measures to broaden these citizens' access to the courts.

Some newspaper companies have established third party review boards. JCLU asks other media companies to follow this trend in providing remedies for victims of media coverage. Especially those magazine publishers which often cause defamation and privacy invasion should establish these boards immediately.

Even where these review boards do not work effectively, the role of the Commission should be limited to solely consultation and conciliation.

8. Legal Force of Commission

Generally the JCLU's position is that where a non-public entity or individual is subject to a Commission investigation, they should have the right to stop such investigation and not be forced to participate in it. This is necessary to ensure that there is no undue or unnecessary intervention by the Commission in civil life. Where the case being investigated involves a possible Human Rights infringement by public authorities, however, the subject of the investigation should not in any way be able to stop the investigation.

The JCLU takes note that there is concern that the Commission will not be able to undertake effective investigations without enforcement powers. However, as presently provided for in the Councils report, the range of discrimination and areas to be targeted by the Commission are not clearly outlined. Moreover, there is no substantive definition of what constitutes a Human Right infringement by one private person against another private person. This clearly creates a potential for over-broad and undesirable intervention by the Commission in the lives of citizens. Therefore the Commission's authority should be limited by making the investigation procedure voluntary with respect to private parties and by providing clear definitions of and limitations to the Commission's scope of authority.

9. Independence of the Commission

JCLU considers that the Commission's independence is of primary importance and must be taken into account when determining its organizational structure. Given that the Commission is charged with executing

affirmative remedies with respect to public authorities as well as private parties it will clearly have to be substantially independent from the government.

The Commission should be established as an independent executive commission, i.e. under supervision of the prime minister as an external organ of the Cabinet Office (as defined under National Governmental Organization Law article 3). The secretariat of the Commission should be staffed by persons appointed independently by the Commission itself, i.e., not by the government or ministry. In this context the JCLU refers the Council to the UN Paris Principle and "*National human rights institutions : a handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights*" published by the UN Human Rights Centre. Both documents repeatedly emphasize the importance of such commissions' independence from the government.

The Commission should generally be independent from the government to the extent possible. However, it is of primary importance that the Commission is completely independent from those parts of the national government that are most likely to be the cause of Human Rights infringements. In particular, its full independence must be guaranteed from government divisions in charge of police matters, prosecution, detention, immigration and the medical treatment/confinement of the mentally ill.

In order to guarantee the Commission's independence its members should be appointed multi-dimensionally in accordance with a transparent and equitable system. Multi-dimensionality in this context means that the membership of the Commission should reflect diversity and knowledge as to gender, social class, ethnicity, and religion.

Finally, financial independence is crucial for the Commission to be able to fulfill its mandate properly. The Commission should be able to submit its budget to and request funds directly from the Ministry of Finance in the same manner as each of the Ministries does. It should not be required to submit its budget to any other ministry and thereby be included in the budget of such

ministry and made subject to its influence and control.

Translated by Laura Becking & Ueno Satoshi



JCLU Comment on the Final Report of the Council

[Jinken Shimbun, July 23, 2001, No. 331]

1. Independence of the Commission

The JCLU welcomes the position in the Final Report recognizing that a new Human Rights Commission will have to be established as there are limitations to simply empowering and enhancing existing internal mechanisms. The Council has now also outlined clearly in the Final Report that the Commission must be independent from the government and this independence must be institutionally guaranteed. Moreover for this purpose the Council suggests that a council system in which the Commission would make decisions on an internal consultation and consensus basis, would be the preferable decision making structure. The JCLU agrees with the Council on these matters, in particular with respect to the Commission's independence from the government.

However, with respect to the secretariat of the Commission, the Final Report makes reference to the example of the present Civil Liberties Bureau within the Ministry of Justice. As the only organ within the Ministry of Justice that is in charge of civil liberties, its role will partly be taken over and included in the Commission structure. To the extent the Final Report is suggesting that the existing Civil Liberties Bureau should be turned into the secretariat for the Commission, the JCLU must object. In order to function independently from the government, the Commission must have an independent secretariat. It would be an unacceptable breach of the Commission's independence if the secretariat were to be placed within the Ministry of Justice or any other Ministry in the manner that the Civil Liberties Bureau is today. The secretariat of the Commission must be an integral part of a consensus-based Commission independent from the government. More-

over, civilians rather than government employees or officers should be appointed to the secretariat staff.

2. Remedies for Human Rights Infringements by Public Authorities

The Final Report takes the position that a limited type of Human Rights infringements by public authorities, namely discrimination and physical abuse, should be subject to affirmative remedies of the Commission. In particular discrimination and abuse by public authorities are to be remedied by way of conciliation, consultation, arbitration, legal assistance and public admonition.

It is JCLU's position that affirmative remedies should be applied by the Commission to all Human Rights infringements by public authorities and should not be limited to discrimination and abuse. As outlined above in the Section 6 of the previous article with respect to the Interim Report, this is necessary in light of the pervasive presence of public authorities in the private lives of citizens in combination with the traditional admiration of public authority and disregard for individuals' rights in Japan.

Moreover, the Final Report provides that the Commission should take on, and make subject to affirmative remedies, only those infringements of citizens' rights by government authorities that are so great that they may not be ignored under Human Rights Law. This implies that "non-serious" infringements should not be subject to the Commission's scrutiny.

The Council attempts to clarify this position by explaining that there are existing governmental complaint procedures in place with respect to issues such as false charges, mistreatment of detainees and environmental destruction, and that therefore these types of infringements do not rise to the level of human right infringements and should be dealt with only through the existing complaint procedures. The Council reasons that this is in keeping with the role of the Commission and concepts of burden sharing among governmental organs.

The JCLU disagrees with the above vague distinction between serious and non-serious infringements

by government authorities. If the Council intends to limit the scope of the Commission's authority concerning government action, it should do so clearly by defining its terms adequately. Therefore the JCLU requests that the Council should clearly define what is to be considered a serious infringement and within the scope of the Commission review and remedy system and what is not.

It is the JCLU's position that government action that is already subject to some internal review system should not be unilaterally excluded from this definition. In particular the mistreatment of detainees in detention centers and police facilities should be included as serious infringements subject to the Commission's affirmative remedies. This is required in light of the Commission's key role as a third party check on government activity thereby ensuring citizens' protection against governmental infringement of their freedoms and rights. The JCLU, moreover, notes that this is in line with recommendation made to Japan by Human Rights monitoring bodies such as the Human Rights Committee under the ICCPR.

3. Regulation of the Freedom of Expression: Remedy of Human Rights Infringements by Media and Hate Speech

The JCLU appreciates the Council's revised position limiting the use of affirmative remedies by the Commission with respect to Human Rights infringements by the media and hate speech. The JCLU also welcomes the Council's recommendation that the Commission should provide litigation assistance with respect to Human Rights infringement cases brought by private citizens against other private citizens.

However, as outlined in Section 7 of the above article, the JCLU takes the position that the Commission's powers relating to individual expression should at all times be limited to guidance, recommendation, mediation and litigation assistance. The Final Report still provides for affirmative remedies by the Commission under some circumstances. Such affirmative remedies include the power to demand deletion or prevent publication.

The Council argues that this is necessary given the inadequacy of the present judicial remedies, inter alia, the lack of any judicial remedy against incitement. As outlined above however, the present failings of the judicial system may not serve as an excuse to shift such matters out of the judicial remedy system and into an informal remedy system such as that provided by the Commission. In light of the careful balance that must be struck between private citizens' right to freedom of expression and freedom of media and their other Human Rights, the JCLU's position is that such affirmative remedies should be left fully to self-regulation systems and the judicial system.

The JCLU's position is that where the government intends to restrict people's right to expression, all the elements of such restriction should be carefully considered and defined by law. Therefore, the JCLU asks the Council to draft another bill to prohibit discrimination in which such clear definitions are provided.

4. Litigation Assistance

The Final Report partially addresses the issues raised by the JCLU with respect to lawsuit assistance, see Section 4 of the previous article. In particular, the Final Report provides for a documents provision system in which the Commission should provide documents collected or created in its investigation to victims pursuing a civil case in the same or related matter. This is welcomed by the JCLU. In the present system victims pursuing civil cases against a person who has infringed their human rights can not obtain any documentation or information established in a related criminal case. Additionally, the Final Report provides for attendance by the Commission in civil law suits of victims and allows for the initiation by the Commission of civil cases on behalf of victims.

The JCLU welcomes these changes, but also reiterates, as outlined in Section 4 of the above article, the need to drastically improve the present legal aid system as provided by the Japanese Legal Aid Association, civil groups and lawyer groups that support victims of Human Rights infringements.

Translated by Laura Becking & Ueno Satoshi

FREEDOM OF EXPRESSION

Facing

features

LEGAL RESTRICTIONS

Currently the Japanese government is proposing new bills which may restrict freedom of expression as a pretext for protection of other human rights such as children's rights or privacy.

The JCLU, as a protector of freedom of expression in Japan, has expressed its concern each time these bills were proposed. In this feature, readers will find an overall picture of the current legal restrictions in 'The Background'. The article 'The Convention on Cyber-Crime and The Challenge That Exist' shows the problems with each bills and convention and the 'Law on the Prohibition of Child Pornography.'

In the background of these attempt at regulation, there is a concern among citizens with the excessive media activity like 'media scrum' and defamation. But government led regulation is not the only way to solve these serious concern. In the article 'Symposium: Self-Regulation of the Mass Media and Freedom of Expression' each media introduces their own efforts for self-regulation. Mr. Sakai, the JCLU Director shows an alternative approach in his group 'Lawyers Network for Media Victims' in the last article.

The Background*

1. Introduction

Protection of the freedom of expression in Japan underwent a major change after the Second World War, with the conversion from the prewar regulation-based system, to the present freedoms-based system.

In Japan, as in many other countries, the form of regulation of the freedom of expression has traditionally depended on the type of media in question (see figure 1), i.e. the published media, the broadcasting media and telecommunications media (represented by the telephone). There are thus major differences in the way that both the content of information and business activity are regulated between each category of media. It is important to note that traditionally, where print media is concerned, there was no law that comprehensively regulated either content or business activity. Before the Second World War, the content and publication of newspapers was strictly regulated by a web of regulations such as the Newspaper Ordinance. Under the present Constitution, however, they have been abolished, allowing the

* This article is excerpt of the contribution to the World Report "Freedom Of Expression and The Administration of Justice" by Article 19 and the International Bar Association. The report will be released in 2003.

establishment of an absolute freedom.

Article 21 of the 1947 Constitution of Japan ("the Constitution") establishes the protection of the freedom of expression, providing: "*Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. 2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.*" (See "Article 19 world report 1999"). However, in the courts, there is a tendency for the freedom of expression that is protected by Article 21 to be interpreted as the freedom to assert opinion, giving the freedom to receive information and the freedom to amass information a comparatively lower level of protection. As for the freedom to transmit information, it can be argued that there has not been a complete and clear decision whether it comes within the scope of Article 21.

Civil actions that fall under the general laws of defamation may be subject to a criminal punishment or the obligation to pay compensation.

The criminal punishment for defamation is up to three years forced labor or imprisonment and a fine of up to 500,000 Yen.

The tort law of defamation is set out in Article 710 of the Civil Code. However, the following situations have been established by precedent as defences both to criminal and civil responsibilities.

- A matter relating to public interest
- Exclusive purpose of public good
- It is the truth or there are reasonable grounds to believe it is the truth

The position of telecommunications, which has traditionally been regarded as a means of personal communication, has drastically changed with the development of the internet. As exemplified by the word 'internet broadcasting', we have come to a

point where telecommunications and broadcasting are much the same: with newspapers being broadcast as typed media (*katsuji housou*), and flash news bulletins being given on the net becoming the norm. As a result, there is an increasing possibility that the current method of categorizing media types will undergo a change. For example, it is possible that there will be the establishment of a whole new category of types of media called 'cyber media', although this assumes that the present. Practice of differentiating between categories is continued.

Another point to consider when discussing the restrictions on freedom expression is the question of which competing interests are recognized as valid reasons for such restrictions (see figure 2). Firstly, there is the distinction between prior and ex post facto regulation, the former including the state's power of censorship which is absolutely prohibited by article 21 of Japan's Constitution (the fact that this includes state censorship during war time has led to Japan's the protection of the freedom of expression in Japan being considered particularly strong). Secondly there are two distinguishable methods of regulation, namely regulation of content, and regulation unrelated to content, i.e. selling restrictions.

Another consideration is the source of regulation. The "state's power of regulation" was mentioned above, but it is important to distinguish whether this is exercised by the legislature, the courts, or even social pressure. These distinctions are illustrated by figure 3.

The last half of the 1990s saw an increase in the introduction in the Diet of bills affecting the general media and private individuals. As mentioned above, an important reason for this was the event of the internet. For details on which laws were actually passed, or are at present being debated please see figure 4. These laws will not just regulate the internet, but are bound to have an effect on the media in general.

Translated by Jem Stevens

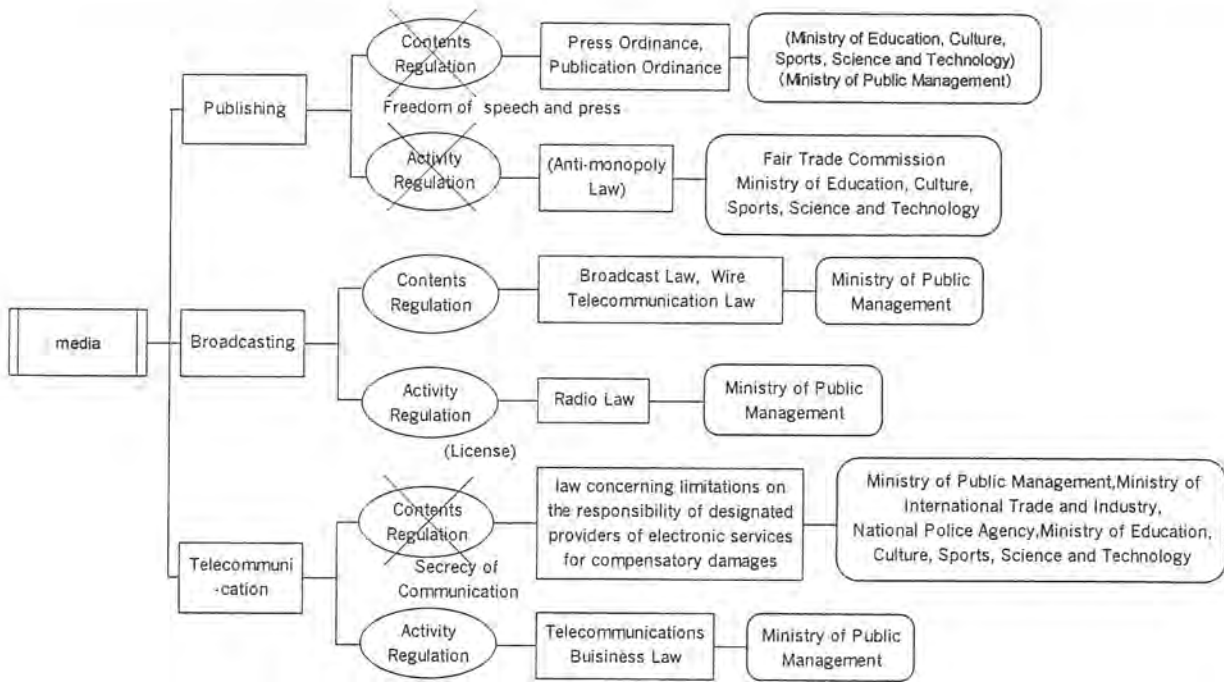


Fig.1 Regulation of the Media in Japan

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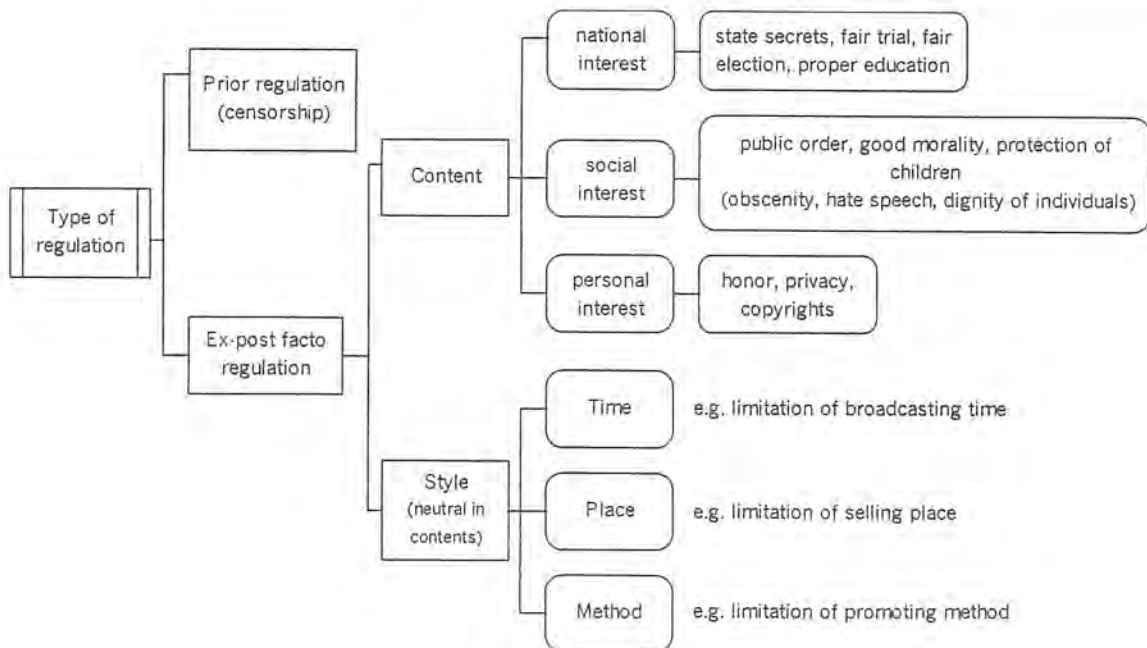


Fig. 2 Types of regulation restricting the freedom of expression

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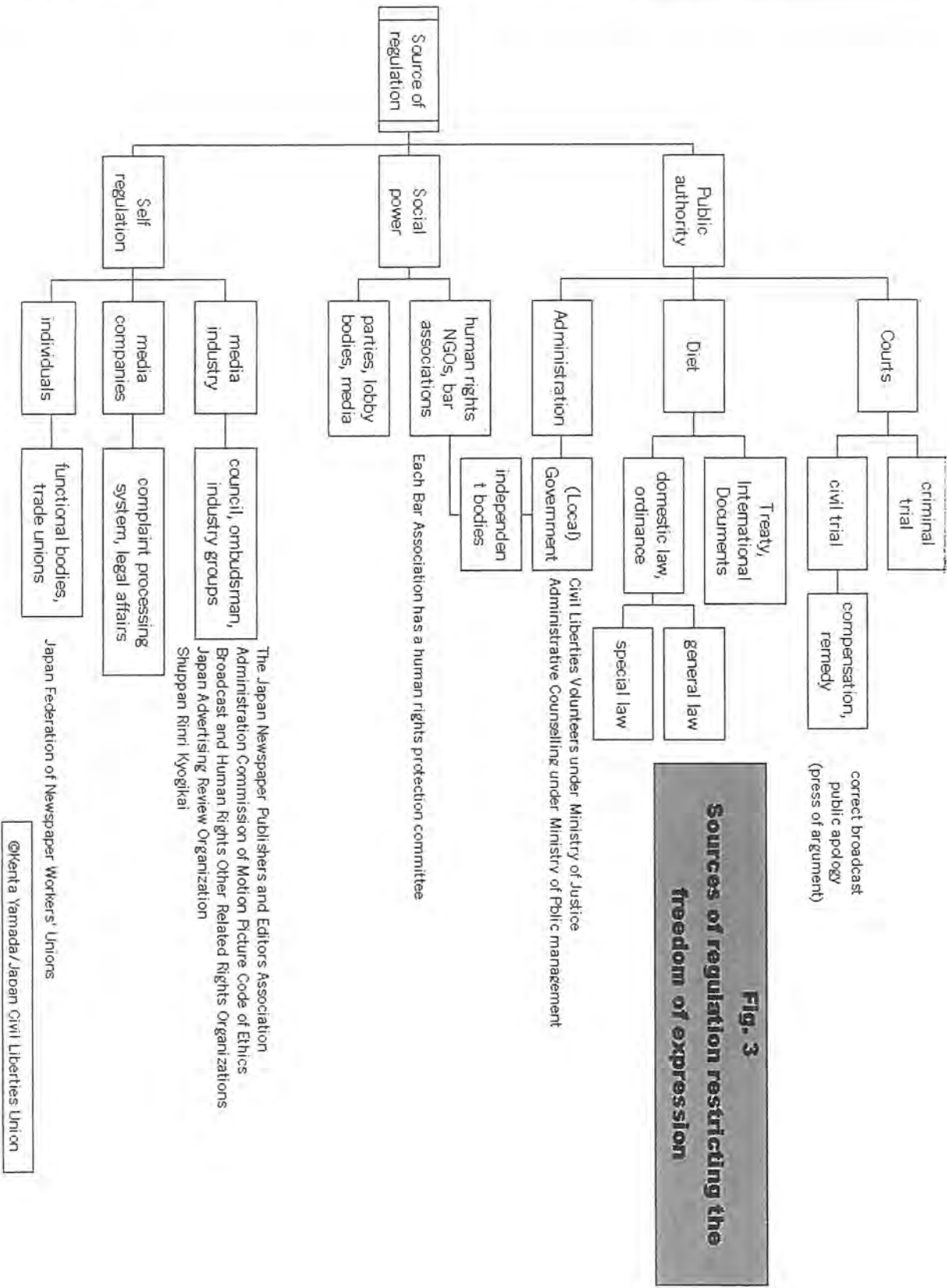


Fig. 3
Sources of regulation restricting the freedom of expression

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Fig. 4 Legislation restricting the freedom of expression

Problem in contents or method		Violation of system security and credibility	
Harmful contents	Illegal contents	Illegal activity	Dishonest activity
violence adult slander harassing email Spam mail chain mail link without permission	obscenity, child pornography defamation, contempt damage to credit, obstruction of business discrimination privacy violation abuse, intimidation, harassment violation of copyrights or trademark rights forgery, fraud Penal Code Minor Offense Law Copyright Law Law for Punishing Acts Related to Child Prostitution and Child Pornography Stalker Regulation Law Anti-Prostitution Law Open-Ended Multi-Level Marketing Prevention Law Antique Business Law Convention on Cybercrime (signed in 2001) *Convention for the Suppression of the Financing of Terrorism (ratified in 2002) *Comprehensive Convention on International Terrorism Self-Defense Forces Law law concerning limitations on the responsibility of designated providers of electronic services for compensatory damages *Basic Law on Social Environment for Young People Juvenile Ordinance Law Regulating Adult Entertainment Business Convention on Rights of Child (ratified in 1994) Covenant on Economic, Social and Cultural Rights (ratified in 1979) *Juvenile Law	unauthorized access to computer system data modification computer system destruction production/possession of computer virus illegal data interception (wiretapping) impersonation breach of duty to protect personal information Unauthorized Computer Access Law Wiretapping Law Penal Code Code of Criminal Procedure Law Concerning Electronic Signatures and Certification Services	SPAM email harassment email Denial of Service Attack lack of responsibility in security
			<div style="border: 1px solid black; padding: 5px; text-align: center;"> Legend Law Title has been enacted in this three years. *Law Title is possibly enacted in near future Law Title covers net crimes </div>
			<div style="border: 1px solid black; padding: 5px; text-align: center;"> ©Kenta Yamada/Japan Civil Liberties Union </div>

The Convention on Cyber-Crime and the Challenges that Exist

[Jinken Shimbun, October 1, 2001, No. 332]

Japan attended this international convention to deal with the issues of crime in cyber-space. The Council of Europe was under final deliberation in 2001 for procedures that would be ratified and enacted immediately to effectively regulate the Internet. For the Convention, Japan participated as an observer in the discussions. Although there has been a sincere effort to legally regulate the Internet in Japan, it is imperative that Japan starts taking concrete measures for domestic laws and regulations by the beginning of 2002.

The types of crimes committed on the Internet can be divided into three categories:

1. Crimes against the computer itself that impede the safety of a computer network (illegal access).
2. Crimes committed through computers (e.g. net fraud).
3. Crimes related to contents/expressions on the net (e.g. defamation of character).

Presently, several measures have been taken legally and morally to cope with each category so far. For example for the first category, the law called '*Law on the Prevention of Illegal Access*' has been enacted. This regulation imposes penalties for such actions as an invasion into computers (programs and networks) of others or impersonating another person such as using his passwords without permission. The '*Wire-Tapping Law*' can be regarded as one of the measures of this category.

The '*Law on the Prohibition of Child Pornography*' contributes to the elimination of obscene expressions on the net that appear harmful to children. As for the crimes committed under the category of defamation of character or privacy, other legal regulations have been enforced to address these problems.

However, the present legal system has many problems left behind for the authorities. There are bills in

place to resolve these problems, such as the '*Draft Convention on Cyber-Crime*'. This bill's strengths and weakness are under examination. The following is a brief introduction to this bill and points that might cause problems.

First, the '*Draft Convention on Cyber-Crime*' consists of substantive provisions about computer-related crimes mentioned earlier and procedural provisions as regulations. The main contexts of the latter sections are preservation of data, demand for an offender to submit data, interception of traffic data (e.g. temporary memory data), interception of content data, etc. The distinctive character of it, is that it applies to a wide-range of computer-related offences (it is not limited to terrorism). In addition, it is dangerous because of the unlimited extent to which this could be used during a criminal investigation. There is also the great possibility that it might violate freedom of expression, for it prohibits mere possession of child pornography.

Another concern is terrorism, whether it is done on the Internet or via violence against a nation. It is regarded as an urgent priority for the Government to take legislative measures against terrorism, especially since the recent terrorist act on American soil. One can predict that the policies created at the Convention on Cyber-Crime would be applied to the domestic legislation in Japan. For the dangers of disclosure of money transactions as well as the interception of electronic mail are threats. These issues should be raised and appropriate laws enacted to prohibit such actions.

At the moment there are several bills concerning the freedom of expression that are laid before the Diet and/or are on the final stages of discussion. The JCLU supported alternative plans regarding these bills after detailed research was done and they have been made public. The JCLU also hosted an open discussion about the possible invasion of freedom of expression that could occur if these bills are passed. The JCLU feels that it is imperative to contribute suggestions on the 21st Century model of Freedom of Expression and criminal procedures on the whole.

Translated by Tomoko Nakagawa

Editor's Note: The Convention on Cyber-Crime has been opened for signature in November 2002 and Japan signed it immediately. With five ratifications the Convention will be enacted. For its ratification Japan will need some amendment of domestic laws, but at the time of this note there are no amendments proposed to the Diet yet.

As for the 'Law on the Prohibition of Child Pornography', the law stipulates that after three years from its enactment the government shall review its implementation status and take any necessary measures to modify it. In accordance with this provision, the government reportedly started its review including the amendment proposal that may prohibit even 'virtual pornography'. The aforementioned provision also says that the government shall take into consideration international trends on the protection of children's rights. There was a major change in the international scene over the past three years regarding children's rights. Japan signed two international treaties on this issue that urged states to prohibit child pornography. Treaties are the 'Convention on Cyber-Crime' and the 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography'.

General Assembly and Memorial Symposium "Self-Regulation of the Mass Media and Freedom of Expression"

[Jinken Shimbun, July 23, 2001, No. 331]

On May 26 2001, the JCLU held a general assembly and symposium "Self-Regulation of the Mass Media and Freedom of Expression." This well attended event was probably the first time that people from each of the motion picture, broadcasting, newspaper, magazine and internet media industries were invited for discussion. Below each panelist is introduced with the panelist's key note speech and afterwards the main points of the discussion. The procession and coordination of the meeting was Director Kenta Yamada.

Motion Pictures

Over 50 Years of History of the Eirin Commission

**Mr. Mamoru Matsuo, Secretary General of the
Administration Commission of Motion Picture
Code of Ethics**

In the movie industry, censorship began with the GHQ (General Headquarters of Supreme Commander for Allied Powers), but as America professed to be a democracy, it could not continue censorship activities. Upon GHQ's strong suggestion that there be an independent rule making organization, the Motion Picture Code of Ethics Rules Committee came about as the first intra-industry organization. As an aside, "Season of the Sun", which was the first in the series of movies depicting the behavior of young people, had a scene which caused newspaper movie critics and others to raise a commotion. There then began a movement to regulate what could be expressed in movies. This perplexed the movie industry and the parent organization of the current Administration Commission of Motion Picture Code of Ethics (the "Eirin Commission") was formed by intellectuals with no connection with the movie industry.

In 1965 and 1972 there were two cases where movies passed the Eirin Commission audit, but were brought up on indecent exposure charges. These cases resulted in not guilty judgments. In the opinion for the

latter of the two cases, the court stated that "the authority of the opinion of the Eirin Commission should be heeded." It was with this opinion that the Eirin Commission was socially recognized.

In Japan, almost all domestic theaters participate in the Zenkoren Union. The Eirin Commission audits all movies before they are shown at member theaters. That movies are audited before they are screened gives the impression of authority, however in order to avoid suspicion, freedom of expression is always held in the highest regard during an audit.

Broadcasting

Realizing Rights Relief Through BRO

**Mr. Harumi Miyoshi, Secretary General of the
Broadcasting and Human Rights/Other Related
Rights Organization (BRO)**

The opportunity that prompted self-regulation of the broadcasting industry came in 1992 when the Diet indicated the contents of programs were against public morality and policy.

Points of contention about the self-regulation have changed each time new problems have been raised. Exposure of a fake documentary caused arguments on an excess of programming and methods of expression. Then the issue of the day changed to political fairness and justice in response to remarks that implied politically biased broadcasting by the Director of the broadcasting company at the Advisory Council for Programming of The National Association of Commercial Broadcasters in Japan. Next, recurring problems with subliminal messages were exposed. This shifted the issue to fairness of expression away from political issues.

On the other hand, there was also the issue of the Kawano Report related to the 1994 Matsumoto Sarin incident, and the 1995 attorney Sakamoto video issue. Broadcast journalism debated issues that included broadcasting ethics.

With this as a background, the Ministry of Posts and Telecommunications intended to build a private ad-

visory organization for its Broadcasting Bureau Chief. This organization would have the ability to comment on even the contents of programs under the pretext of researching the establishment of the multi-channel era. However, the broadcasting industry prevented this, and went as far as to compromise on changing the establishment's name to the "Conference for the Broadcast Audience in the Multi-channel Era."

However, the movement from the government and the Liberal Democratic Party to establish a rule making body was remarkable. To put an end to this, referencing the examples of other countries, the Broadcasting and Human Rights/Other Related Rights Organization (BRO) was formed as a third party organization, and started its functions from June 1997.

At the same time, each television station established guidelines and made materials and news reports. The Audience Center was overhauled and each company started to organize their verification programs.

BRO takes care of matters relating to those whose rights have been infringed under broadcast law or programming standards, where the petitioner and station are irreconcilable and the dispute is not before a court. Aside from the six matters that went through the committee decision in these four years, fourteen matters were resolved by BRO mediation last year.

Newspapers

Each Company is Introducing Third Parties

**Mr. Yoshiyuki Hashiba, Tokyo Head Office Editing
Committee, Mainichi News**

Newspaper companies have their special sections taking calls from readers, but in fact, protest calls go straight to Reporting Departments. Furthermore, branch offices do not have such independent customer complaint departments. Because reporting departments are characteristically deadline-driven, they just cannot give sufficient attention to resolving these direct protesting calls.

In order to correct this and show that it can prop-

erly respond to customer complaints in October of last year, The Mainichi Newspaper has made a third party organization called the "Open Newspaper Committee."

Thinking that governmental movements to regulate the media have always come from public distrust of newspapers, it is necessary to show a visible stance for newspaper companies.

The role of this committee is, first to have a committee member check the complaints of human rights infringements caused by reporters and then check the head office's response. Even if there is no claim, the committee member will make an announcement on the problematic article. In the midst of this rapidly changing media environment, this is advancing the goal of better reporting.

Publishing

Staff Training that is the Basis for Responsiveness

**Mr. Junichiro Ishii, assistant chief editor,
Weekly Bunshun**

For checking articles, first of all the chief editor reviews all articles. Above the chief editor, the editing bureau chief reviews all of the articles again. Above the editing bureau chief, the executives make a review. The word "self-regulation" has a negative image for magazines, although I recognize that this is out of date. Speaking as an magazine editor, self-regulation means each editor recognize and practise proper coverage and proper report.



In order to report correct information, our editing department is taking measures such as the following: First, new employees during the training period study the issue of defamation for a long period of time. Thereafter, the company conducts additional training centering on legal issues for employees 12 years after they join the company.

Other than that, the company's legal department makes a report on legal issues relating to publications both inside and outside the company in the "Legal News" and distributes it to employees every other month. Also staff are sternly urged to be careful to avoid excessive reporting causing damage, like when television, newspaper and magazine reporters crowd around and surround a victim's home.

Net

The Provider's Principle is to Maintain the Privacy of Transmis- sions

**Mr. Tohru Maruhashi, Legal and Foreign
Department Manager and Representative, Nifty**

The main job of internet connection companies (providers) is to offer the technology and a place for users to directly send information and express opinions. The providers do not themselves send information, so they are totally different from the other mass media. Rather, the issues of expression that have to do with the confidentiality of communication and the prohibition of censorship.

For the provider industry, the word self-regulation brings unease. The provider industry cannot "self" regulate someone else's information and the object of normal regulation is the restriction of illegal information. Again the business stance is that if you do not want to receive harmful information up to a point, clearly state it in a contract.

The Telecom Services Association, a group for the provider industry, is proposing guidelines as common denominator for this. Practically, if there is possible illegal information on a web page, the provider will

request that the individual take it down. If the information is assuredly illegal, then the provider may take down the information itself. However, this is an after the fact response. According to the telecommunications business law, because there are restrictions on privacy and a prohibition on censorship, these are the only measures that can be taken..

Discussion

Further steps needed across the media

Maruhashi

If providers do not make inspections, etc. there will be the criticism that information from the internet is uncontrollable. For this, as a global trend, there is a movement that there should be a hotline that industry or citizens group check the contents and report to the police or providers.

However, there must be an appropriate amount of cooperation and anyway, providers are just a media for users to transmit information, so the providers cannot do things like inspections.

Hashiba

We are inclined to disclose information meaning to indicate to our readers our information and our stance. We do not just want to say that the newspapers are doing so much so we are fine. Regarding freedom of expression, we want to be a part of the group and work together with other media and inclined to pile up the discussion, going the distance.

Ishii

Based on that magazines have individual characteristics and there are problems across different media, each individual editing department must think about this on their own.

The future task is to start examining the establishment of a committee to review the contents of our magazine. This committee is presumed to be autonomous and apart from actual activity of the editing department and filled with expert editors, or people from the

company's old boy network.

If some mass media experts would examine it from a different perspective, it would be helpful. The point is not to plan on dulling the force of self-regulation, but rather how to plan for autonomy.

Miyoshi

BRO is just something for the broadcasting industry to get across to people with. It is in that way that BRO, is a pioneer. The issue is however, that there is still the problem of how can BRC (Broadcasting and Human Rights/Other Related Rights Committee), which was formed to resolve and advise on complaints, procedurally address the problem of complaints.

BRO has established standards regarding activities which it handles, like regarding rights abuses under broadcasting standards, and broadcasting laws. BRC has taken further steps by setting standard on the cases regarding the complaints regarding privacy violations and defamation. However, it is now necessary to examine whether in the future BRC keeps this standard. It is thought that it is not necessary to intercept all legally related and issues before the courts.

Matsuo

There was outside pressure regarding the showing of the film "Battle Royal", but within the movie industry self-regulation is going strong. However, as always, there is outside pressure for legal regulation, so we must keep watch that the ratings (audience classified by age) are properly enforced.

On the other hand, the world of movies is more than just films, movies are also making an appearance in electronic media. In the movie world, other than the Administration Commission of Motion Picture Code of Ethics, there are four societies such as the Japan Video Ethics Committee and the Ethics Organization of Computer Software and in the future there is talk about making one set of ethics standards for all visual media.

Written by Fumie Shibata & Toshiaki Fujimoto

Translated by David C. Peters

One Year After the Establishment of LAMVIC

Article of Correction 4 Days After Consultation

Makoto Sakai, Representative of LAMVIC &
JCLU Director

[Jinken Shimbun, May 31, 2002, No. 336]

LAMVIC stands for LAWyers network for Media VICTims. Prevention is most important in cases involving defamation or the violation of privacy by the news media, but thinking that it is also meaningful to take quick action once harm has occurred, some 30 attorneys who have put their efforts into gaining relief against harm caused by the news media gathered last year on July 18 to establish this organization.

Before LAMVIC was established a questionnaire survey was carried out. According to that survey, those people who suffered some sort of harm due to a news report or news gathering were, at the time of the news gathering, completely occupied with coping with the matter that was the subject of the news gathering itself, and had no time to spare to deal with the problem of the media. Also, those people who thought about taking some kind of action to cope with the news media did not at the time think of consulting an attorney.

Premised on this state of affairs, this organization was established in the belief that there is a demand for a network of attorneys who can quickly deal with situations in which the media is about to cause harm or has already caused harm.

It is not quite one year from the establishment of LAMVIC, but it already has received 30 to 40 consultations, either by telephone or through its internet site (<http://hodohigai.hoops.livedoor.com>). In one case, a member attorney flew immediately to Hokkaido, and as a result of quick negotiations, reached an agreement within four days after the article in question was published

whereby an apology and correction would be published. This was carried in the next day's morning edition, resulting in a resolution of the matter. Most matters about which LAMVIC is consulted go no further than the consultation itself, but there is currently one case in which a lawsuit is planned.

When there is defamation or an invasion of privacy by the mass media, family and community life as well as personal relations in the workplace are disrupted, and the injured party falls into wretched circumstances. In the case where the media makes a false report or invades a person's privacy, we expect that the media, sincerely accepting the seriousness of the damage, will handle the matter in a positive manner. Is it not that very attitude on the part of the media that gives strength to the freedom of the press?

At this time bills for the Human Rights Protection Law and for the Personal Information Protection Law have been submitted to the Diet. While the purpose of LAMVIC is the quick and accurate relief of harm caused by the media, we also believe that interference with the media by government authorities is inexcusable. From that point of view, we can never accept the contents of these bills. In the unfortunate case that there is harm caused by the media, we believe that if the media takes the stance of positively striving to provide redress for the harm in question, the media will be able to receive the support of the people. Was it not the very inadequacy of the media's stance in this regard that led to the submission of the bill for a so-called "media control law?"

While LAMVIC is still a small organization operating mainly in the Tokyo area, in the future we would like to expand the number of our members with the same goals throughout Japan, and be prepared to be able to provide speedy relief from harm caused by the media. At the same time, we would like to strongly urge the media to establish an independent relief organization such as a press council.

Translated by David M. Schultz

RIGHT TO KNOW

'Defense Secret' Clause included in the Self-Defense Forces Law

[Jinken Shimbun, December 1, 2001, No. 333]

On October 26th the JCLU expressed its opposition to the 'defense secret' clause included in the proposed amendment to the Self-Defense Force Law and urged political parties and the Chairmen of both Houses of the Diet to conduct full deliberations of the issue. (The said amendment was adopted into law by the Diet on 29 Oct. and came into legal effect on 2 Nov. 2001.)

The JCLU expressed several major objections to the proposed amendment. First, the scope of the term 'defense secrets' is excessively broad and inclusive. This means that even actions similar to the 1965 disclosure of the so-called 'Mitsuya Study' by a Diet member could constitute a violation of the law. (The Mitsuya Study included analysis of military scenarios envisaging a second Korean War. Disclosure of the Study caused an outcry due to its conflict with the rule of pacifism embodied in Article 9 of the Constitution.)

Second, the clause applies not only to members of the Self-Defense Forces, but to anyone. Further, the law provides for criminal punishment not only in the case of intentional disclosure of "defense secrets", but for negligent disclosure as well. Thus, members of the press and public could be found liable for "conspiracy," "instigation" or "abetting" even a negligent disclosure.

Finally, the content of the amendment is virtually the same as key language in the so-called "National Secrets Act" which failed to gain approval of the Diet in the 1980's. Moreover, it does not contain the prohibition on overbroad interpretation, intended to limit potential violations of human rights, which was included in the failed bill.

For the above reasons, the JCLU announced its opposition to the proposed amendment, stressing the risk

of serious infringement of the rights of freedom of expression, press and publication and that the unclear scope of application renders it incompatible with the principle of *nulla poena sine lege* (crime and penalty must be defined by law).

Translated by Jem Stevens

The Diet Information Disclosure Act

[Jinken Shimbun, December 1, 2001, No. 333]

Broad disclosure of information held by the Diet and transparency of the Diet are indispensable to the concept of popular sovereignty. In Japan, however, this issue has yet to be discussed at the government level. The JCLU, which has promoted national information disclosure for many years and has already proposed information disclosure legislation to apply to the executive and judicial branches of government, has recently drafted a Diet information disclosure bill. The JCLU submitted that bill to the chairpersons of both Houses, political parties, and others on October 1, 2001.

The organizations subject to this proposed bill would include the House of Representatives, the House of Councilors, the National Diet Library, the Judge Impeachment Court, the Judge Indictment Committee, and any agency within the Diet or under the jurisdiction of the Diet. This bill would require disclosure of all information regarding Diet activities.

To ensure prompt enactment of the bill, the JCLU referred to the Information Disclosure Law, which came into effect in 2001 and is applicable to administrative agencies, and followed it as closely as possible. Since the Diet is the supreme organization of the State, however, special arrangements were necessary for some of the bill's provisions. For example, one provision suggests that members of the Diet should be excluded from the review panel that will consider appeals of disclosure decisions. The JCLU hopes that this provision will allow the review panel to execute its authority of investigation free of pressure from political parties and thus work for the benefit of the people. The present Administrative Appeal Law is to govern appeal procedures.

The bill is available in Japanese on the JCLU website.

Translated by UENO Satoshi

Disclosure of Criminal Case Documents

[Jinken Shimbun, May 21, 2001, No. 330]

A regular seminar was held on March 21, 2001 entitled "To Promote Disclosure of Criminal Case Documents." JCLU Member Hisashi Muto spoke of his experience when his request based on the Finalized Criminal Case Documents Law for disclosure of the documents of the Lockheed case (Marubeni route) was rejected. J. Hironaka, JCLU member attorney, commented on the issues involved in the Jun-Kokoku-Quasi-Appeal against such rejection. Finally, Toshiaki Fujimoto, JCLU member attorney and member of the Information Disclosure Committee, reported on the draft Bill of Disclosure of Criminal Case Documents.

Background of the case requesting disclosure of the documents of the Lockheed case

Hisashi Muto

I would like to report on the process of the Jun-Kokoku-Quasi-Appeal which I instituted. Based upon the Finalized Criminal Case Documents Law, I requested disclosure of the documents of the Lockheed - Marubeni route- case. However, I was merely allowed to read the judgment, the records of "foreign interrogation by permission", and some other documents related to the procedure, but not to copy the records.

This shows there is a defect in the Law. I think the defect was revealed more distinctively this time than the time when Mr. Shinji Nakamura asked for disclosure of the information on the case of Mr. Shin Kanemaru concerning his violation of the Control of Political Funds Law.

When we went to the Tokyo District Public Prosecutors Office in November 1996 to ask for disclosure of the documents of the Lockheed - Marubeni route- case, while it was supposed to be disclosed in principle according to the Law, they acted as if the case documents

were not to be disclosed. It was not until September 1998 that we were allowed to read the judgments of the case. To see the records of examination upon request, we had to wait even longer, until June 1999. By then, two and half years had already passed since my appeal.

We asked for permission to copy the records in December of the same year, but we received a Notice of Denial of Copying in August of the following year. We then filed the Jun-Kokoku-Quasi-Appeal in January 2001 with the Tokyo District Court to quash the said denial by the Tokyo District Public Prosecutors Office. In February, attorneys Hironaka, Iida and Kanda met the judge in charge of said Quasi-Appeal. The JCLU has been supporting our case since June 2001.

Defense council's position on the case

Jun'ichiro Hironaka

According to the prosecutor in charge, inspection of the documents could be permitted but copying couldn't. We wondered why because copying was permitted in most cases. Usually copying is permitted for attorneys who want to read the documents of related cases, as is the case for scholars and insurance companies. As the judgment of the Urawa District Court indicates, we deem the copying to be an integral part of inspection. With the advent of the Information Disclosure Law, copying now must be allowed whenever information is disclosed.

We are mindful that some conditions could be imposed for copying because it has a different harmful consequences than inspection. But the blanket ban on copying amounts to denial of disclosure itself. The Public Prosecutors Office says that they are worried about harmful consequences accompanying copying such as unintended circulation. However, the sanction in the form of damages would be sufficient for those who do not comply with the conditions provided. We made clear in our Jun-Kokoku-Quasi-Appeal that it was not realistic to treat administrative information and judicial documents differently. If the former should be disclosed freely, the latter should be treated likewise.

Adoption of the Bill of Disclosure of Criminal Case Documents

Toshiaki Fujimoto

To correct the defects of the present Finalized Criminal Case Documents Law, as were pointed out by Messrs. Muto and Hironaka, the Information Disclosure Committee of the JCLU would like to propose a draft "Bill of Disclosure of Criminal Case Documents." The Committee has already drafted a "Bill of Disclosure of Legislative Information" and a "Bill of Disclosure of Court Information."

To facilitate the realization of the Disclosure of Criminal Case Documents Law, we made articles the same as those in the present Disclosure of Information Laws. Article 1 provides that "Under the idea of sovereignty of the people, criminal case documents shall be disclosed upon request to guarantee the right to know." We also showed disclosure of criminal case document is the right of people by clearly indicating "Every person" can request the disclosure.

We omitted Article 6 of the present Finalized Criminal Case Documents Law, which provides for the obligations of the inspector. Furthermore, we expanded the scope of the object of disclosure from "criminal trial case" under the present law to all documents related to criminal procedure including investigation, trial, execu-

tion of penalty, and the like.

In addition, we aimed at making uniform the period during which the documents should be kept. The present Law exempts exception of disclosure of the cases 3 years passed in Clause 2 of the Article 4. We omitted this clause although the other exceptions (Article 7 of the Bill) are the same as the present Law.

The present Law commissions the prosecutor in charge of custody to implement disclosure, but we added "the chief of the police department who was in charge of the investigation." Finally, we added that a response shall be made within 20 days after the request of disclosure (Article 12). Such a condition is not included in the present Law. The charges for disclosure shall be the actual cost of disclosure.

Editor's Note: Mr. Muto's Jun-Kokoku-Quasi-Appeal was rejected. Then Mr. Muto and his defense council filed a Tokubetsu-Kokoku-Special-Appeal to the Supreme Court on September 2001. The proceeding continues now.

As for the draft Bill of Disclosure of Criminal Case Documents, the committee proposed its summary and hears public comments on the bill by the end of Nov. 2003. The summary of the bill is available on the JCLU website (Japanese Language Only).

Translated by Naomi Doi



RIGHT TO KNOW

Conference on Freedom of Information and Civil Society in Asia

[Jinken Shimibun, May 21, 2001, No. 330]

'The Conference on Freedom of Information and Civil Society in Asia' took place on April 13 and 14, 2001, at Aoyama Gakuin University. Japan's Information Disclosure Law had just come into effect on April 1, 2001, moving Japan from the era of creating disclosure systems to that of actually using information disclosure as a tool. In fact, among countries in Asia, Korea and Thailand already have information disclosure laws in force, India has information disclosure laws at the state level, and there is a high level of interest in information disclosure in Indonesia, the Philippines, and other South East Asian countries.



NGO members, academics, journalists, and government officials were invited from five Asian countries to participate in the conference. Closed sessions were held all day long on the 13th and during the morning of the 14th, and an open session was held on the afternoon of the 14th. Based upon the discussions that took place during the open session, the following introduces the circumstances and issues of each country represented at the conference. Please note that information regarding the operation of Japan's Information Disclosure Law is not included in this article.

Korea

In Korea, the city council of Cheong-ju, upon the initiative of assembly members, enacted Korea's first information disclosure ordinance in 1991, and from that time on the creation of ordinances at the local level has continued. On the national level, Korea's Information Disclosure Law came into force in January of 1998.

The national law features the placing of "the

people's right to know" in the purpose provision, and because public bodies are made subject to the law, the law applies not only to administrative agencies, but also to the national assembly, the courts, and public corporations. Furthermore, where information is not disclosed, an appeal may be made to the Administrative Appeals Commission, of which conference delegate Prof. Sung is a member.

The Administrative Appeals Commission is made up of academics and lawyers, and its decisions are legally binding. Also, it is possible to directly file suit in court without completing an appeal to the Administrative Appeals Commission. Among the cases heard by the Appeals Commission, there was one involving the disclosure of prices of apartments sold by the public housing corporation. Because the public housing corporation is a corporation, the information was not disclosed as it was considered to be protected corporate information. However, the Appeals Commission decided that the public housing corporation is different from a normal corporation, and ruled for the disclosure of the information. The public housing corporation filed suit in

court to appeal this ruling, but the court upheld the Appeals Commission's decision.

In the case of a request for disclosure of tax information, the debate was divided over whether or not electronic data that had not yet been made into a document constituted a document under the law. The same question arose over whether or not meeting minutes should be disclosed, and where the meeting minutes were held to be a document and therefore subject to disclosure, the tax information was held not to constitute a document. Currently, there is a debate underway leading towards the reform of Korea's Information Disclosure Law.

Thailand

Thailand's Official Information Act was enacted during a period of political reform in 1997, one month before the establishment of the new constitution. At that time there was a rough draft of the new constitution, however those people who were pushing for reform doubted that reform could be achieved based on that draft alone. Therefore, the Administrative Procedure Act and the Official's Liability Act, as well as the Official Information Act, were enacted in order to supplement the constitutional reforms.

As with Korea's law, not only administrative agencies, but also the Parliament, the courts, and local governments were made subject to Thailand's Official Information Act. In the case of the courts, information related to on-going trials is an exception to the rule, and may be withheld. Other agencies and individuals who wield public power may be designated by the office of the Prime Minister to be subject to the law. Requesters may appeal decisions not to disclose information, and the Official Information Commission as well as Information Disclosure Tribunals were created to handle such appeals.

The Official Information Commission is made up of government ministers and ministerial advisors, as well as experts appointed by the cabinet. Conference participant Professor Prokati is an expert member of the Commission, and Mr. Serirak is an official with the Office of

the Official Information Commission. The Commission issues advice on the operation of the law, and where an appeal is made against the non-disclosure of information, an Information Disclosure Tribunal hears the appeal and issues a decision which is binding on the government. The people may appeal an unfavorable decision by filing suit in court.

India

There is an active movement for information disclosure in India, and there already are various information disclosure laws in place at the state level. The Freedom of Information Bill was submitted to the Indian Parliament in July of 2000, but it has many problems, as the breadth of information that is protected from disclosure is too great, it lacks guaranties of the right to request disclosure, and it does not provide for adequate appeal procedures. On the state level, the movement for information disclosure has developed in tandem with efforts to help those suffering from poverty. In Indian society, there is a direct link between the lives of those people who suffer from poverty and the fact that accurate information is not communicated to those people. For example, it is not unusual for money that is supposed to be used for the improvement of homes to disappear, and bricks that are meant to be used to build those homes crumble at the touch of a hand. Here, there is a concrete link between the people's right to receive information that concerns their lives and the right to participate in the process of decision making.

Indonesia

There has been an active movement by NGOs for transparency in Indonesia since 1998. 18 NGOs have formed an alliance to debate and create a draft bill for an information disclosure law. NGOs working in various areas, such as the environment, local government, human rights, judicial problems, and the problem of corruption, all are part of the alliance, and they have been working together since February of 2000. Currently, they are cooperating with the National Law Commission that was created by the President to try to create an information disclosure bill. Meanwhile, the House of the People's Representatives has independently created a bill which will likely be officially submitted for ratification. In ad-

dition to creating a draft law, the NGOs are continuing their lobbying activities and their general campaign for an information disclosure law.

The Philippines

The Constitution of the Philippines guaranties the right to information. However, the Supreme Court has stated that in order to guaranty the right to information disclosure that is provided for in the Constitution, it is necessary to have a separate information disclosure law. Recently the Philippine people's interest in an information disclosure law was heightened due to the media's exposure of former President Estrada's having failed to

List of foreign panelists

- Sung Nak-in, Professor, Seoul National University (Korea)
- Ha Seun-soo, Attorney-at-Law, People's Solidarity for Participatory Democracy (Korea)
- Kittisak Prokati, Professor, Thammasat University (Thailand)
- Nakorn Serirak, Office of the Official Information Commission (Thailand)
- Kavi Chongkittavorn, Editor, The Nation (Thailand)
- Abha Singhal Joshi, Commonwealth Human Rights Initiative (India)
- Josi Khatarina, Indonesian Center for Environmental Law (Indonesia)
- Nepomuceno Malaluan, Action for Economic Reform (The Philippines)

disclose his assets that led to him being ousted.

Panel Discussion 1

Legal Issues Associated With Information Disclosure

In this panel discussion, there was a debate by representatives from countries that currently have information disclosure laws - Korea, Thailand, and Japan. Appeal procedures were the central issue, and there was a comparison of the respective systems. In Thailand, there is first an appeal to the Official Information Commis-

sion, and the Commission makes its recommendation to the Cabinet. Where that recommendation is appealed, an Information Disclosure Tribunal is convened. However, it is rare for an Information Disclosure Tribunal to be convened, and most appeals are settled through the mediation of the Commission. In Korea there is no independent review body, and all appeals go through the normal procedure for administrative appeals. The panelist from Japan, Mr. Akiyama, is a member of the Information Disclosure Review Board that was set up under the Information Disclosure Law; he emphasized the importance of third party participants in deciding whether or not the decision to withhold information is correct, while pointing out that at that time Japan's law had just come into effect and therefore there were not yet any appeals.

Panel Discussion 2

NGOs and Information Disclosure

In this panel discussion, the debate centered on the question of why information disclosure is necessary for NGOs and the people. Panelist Joshi said that "NGOs are the bridge bringing information to the people," and in order for people to enjoy their legitimate rights it is necessary to have information disclosure. Panelist Khatarina set out the idea that in order to participate in the process of policy formation it is necessary to have a good understanding of the problems at hand, and that an information disclosure law is important for NGOs because the more transparent the government the easier it is for NGOs to participate in the decision making process and the more the voice of the people will be heard.

Panelist Malaluan suggested that as NGOs are users of public information, the freedom to access public information makes possible effective analysis of public policy. Panelist Serirak commented on the use of the information disclosure law by NGOs from the point of view of a government official, pointing out that because there are aspects of the government that are not positive about information disclosure, it is good for NGOs to aggressively demand disclosure on the behalf of the people. This author, as the panelist from Japan, stated that, for the people, information disclosure provides the means to make their own decisions, and it is necessary

for people to be conscious that the right to know is their personal right. Panelist Ha stated that information disclosure is necessary in order for the people to understand that they hold sovereign power in society, and that participatory democracy is advanced as a result of information disclosure.

Panel Discussion 3

The Media and Information Disclosure

In this panel discussion, the debate centered on the role of the media in information disclosure. Panelist Chongkittavorn stated that in Thailand, because it takes time to receive information through use of the information disclosure law, there is a tendency to place more importance on collecting information through personal connections, and thus the media has not actively used the information disclosure law. The panelist from Japan, Akio Nakajima of the Asahi Shimbun, said that through his experiences using information obtained through Japan's information disclosure ordinances and the U.S. Freedom of Information Act in his own reporting, he has found that information disclosure systems can be effective means for reporting.

Another panelist from Japan, Yasuhiko Tajima of Sophia University, stated that the issue will be whether or not the media, which have up to now simply tried to be the first to report the announcements of the administrative agencies, can move to doing thorough investigations, analyses, and commentaries based on information obtained through the information disclosure system.

In addition to the above discussions, Hideo Shimizu, Shigeki Okutsu, Hiroshi Miyake, Akira Morita, Kenta Yamada, and Lawrence Repeta participated as coordinators, and there were reports on information disclosure in Asian countries as well as varied discussions. It is impossible to light out all that was discussed at the conference in this short article, but Information Clearinghouse Japan plans to put together a detailed report on the conference. In the future, there are plans to develop an internet web site to disseminate information on information disclosure in Asia.

Written by Yukiko Miki,
director of Information Clearinghouse Japan
Translated by David M. Shultz

EDUCATION

The National Flag and Anthem are Putting the Freedom of Conscience at School in Danger!

[Jinken Shimbun, May 31, 2002, No. 336]

It might be hard to believe that the National Flag (often called "Hinomaru" because it symbolizes the rising sun) and the National Anthem (whose title "Kimigayo" and words glorify the reign of Tenno and implicate justify the continuation of pre-World War II regime) have placed many conscientious teachers into a very difficult situation. Various local boards of education, with strong support from the Ministry of Education and Scientific Technology, have been threatening those teachers who are unwilling to educate children into docile and submissive subjects with the exercise of the disciplinary power. The National Flag and Anthem Act of 1999 is at the center of and provides the basis for such disciplinary power. By defining what is the national flag and anthem, the Act, with out explicitly stating that the people will be forced to respect those symbols on any occasion, has made it possible to coerce the observance thereof, particularly at matriculation and commencement ceremonies of public primary and secondary educational institutions. The issue here is not matter of "taste" but of respecting Japanese people as autonomous and independent individuals capable of self-governance or of depriving them of any decision-making power because they should be treated as subjects under monarchy.

In theory, the Ministry of Education and Scientific Technology has been pushing elementary and junior high schools to bring children up to be independently minded and confident in themselves, so that the children will grow up to be able to live fully. Those teachers, who have taken the idea seriously and have endeavor to develop children's capacity to think and decide by themselves, have encountered the compulsory observance of the Flag and Anthem as an affront to the freedom of conscience and of expression. As the United Nations Convention on the Rights of Child provides, the aim of edu-

cating children is to develop their personhood, abilities, and mental and physical capacity to the utmost. State should be especially careful when it might interfere with the belief and conscience of children.

As the situation appears very alarming, the JCLU invited teachers from various areas to participate in our month session on March 16th, 2002 to learn more about what is really happening at public schools with regards to compulsory observance of the Flag and Anthem.

As mentioned briefly in the preceding paragraph, "Hinomaru" and "Kimigayo" are often understood to signify the continuation of pre-World War II regime: that they have been utilized to mobilize people's absolute obedience to the Emperor, not as a person but as a system up to the Surrender of 1945; that "Kimigayo" indicates that the reign of Tenno shall continue forever, ignoring the fact that the present Constitution has placed the sovereignty among the people; that "Hinomaru" was designated to show nationality, particularly of sea-going vessels in 1870; that the adoption of both "Hinomaru" and "Kimigayo" had split the public opinion, there was a strong opposition domestically as well as within the Asian continent because the flag and anthem inevitably reminded the militant Japan of the past, and because their adoption signaled the growing insensitivity among the Japanese populace of that past. Apart from the political ramification of the 199 Act, there is serious constitutional issue relating to the freedom of religion. The flag and anthem, to any people, are part of the Shinto belief system which was the State religion up to 1945. Although there were citizens who practiced Buddhism, Christianity, Islam and other faiths during that period, every single person was forced to observe State Shinto on official occasions which meant singing "Kimigayo" and saluting "Hinomaru". The compulsory observation was prohibited since October 1945 and the present Constitution explicitly provides for the freedom of religion and free exercise thereof as well as the separation of State and religion. Were the Constitution taken seriously enough, many feel that forcing people to observe the flag and anthem would no doubt be violation of one of the fundamental human rights as defined by the Constitution. Thus the enforcement of 1999 Act has far more implication than the politically incorrectness it seems to

imply. The following are the situations that those conscientious teachers are facing at their own school as told by those teachers themselves.

An Occurrence at Minamidaira Elementary School, Hino City

In 1999, the Principal ordered A, one of the teachers teaching at Minamidaira Elementary School, to play piano to accompany the singing of the anthem for the commencement in March and the matriculation in April. When A did not comply, the Metropolitan Board of Education reprimanded A because her refusal violated articles 32 and 33 of the Local Public Employees Act. A filed complaint claiming that the board's decision to reprimand violated article 19 of the Constitution guaranteeing the freedom of thought and conscience. The complaint was rejected on the ground that the principal's order was legal and not in violation of the Constitution. January 25th, 2002. A filed case to litigate at the Tokyo District Court demanding the cancellation of the decision to reprimand. Due to the fact that the headmaster who ordered to play has already retired (which had nothing to do with the incident), A was blamed for not resigning from her position or not applying to be relocated elsewhere. Among her colleagues, she feels ostracized. The pressure was becoming particularly oppressive as the commencement date for the academic year 2001-2002 drew closer. She was also ordered to teach "Kimigayo" chorus during music class which was done in attendance of other teachers. Her subject supervisor asked her to conduct special class session pertaining to "Kimigayo". It is extremely rare for elementary school teachers to attend a colleague's class or to be asked to conduct a special class session except to report on an experimental project. The new principal has been actively pressuring her to comply with the order to play the anthem, referring to the possible exercise of disciplinary power and indicating that her behavior would inevitably affect her performance assessment. The level of harassment is such that A is under extreme pressure and is suffering from severe symptom of mental stress.

A has been trying to explain the grounds for her refusal to play at staff meetings and on other occasions but the principal has been adamant that he has the power to discipline non-compliance and that teachers as indi-

viduals do not have the right to refuse the principal's order.

An Occurrence at Kunitachi Daini Elementary School, Kunitachi City

Before the 1999 Act was passed, none of the public elementary and junior high schools sang the anthem nor displayed the flag during official ceremonies. The principal Kunitachi Daini Elementary School displayed "Hinomaru" at the commencement in March 2000 and tried to perform the anthem as well, without any explanation. The children, particularly those who were graduating that year, asked that their opinion be reflected in the ceremony, and the principal to explain why he was ignoring pupils' wishes. After the matriculation in April, a right-wing newspaper wrote up the incident as "a turmoil at the elementary school," "pupils demanding the principal to apologize in the most humiliating way." "Teachers as the puppets-masters, inciting to revolt." This was accompanied by many right-wing handouts attacking rank-and-file teachers at the school.

On August 2000, 13 teachers were disciplined for wearing ribbons wishing for the world peace at the commencement. The adornment was regarded as non-compliance with the order not to be involved in other activities during working hours. Tokyo Metropolitan Government established a committee to improve the educational situation at Kunitachi City, and one of their aims, as stated in their papers, was to enforce the 1999 Act properly. The principal made clear that his policy was to conduct the March 2001 commencement properly with "Kimigayo" singing accompanied by piano. B, who was asked to play the refused. She asked for reasons why the 1999 Act, which does not provide for compulsory observance at official ceremonies and leave the choice to the individuals concerned, was constructed to allow coercive measures according to the principal's reading. The principal refused to answer satisfactorily. In the end, "Kimigayo" was played on a tape, without pupils actually singing the song. The principal then forced teachers to spend many class hours to teach "Kimigayo" to the pupils because the tape-playing was taken not as a refusal to coerced singing but mere lack of training.

B, who was again asked to play piano at the 2002 commencement, refused and explained her reasons for not participating in the intrusion into the freedom of thought and conscience. The principal, within the precincts of the school, stated that he was requesting and asking B a favor, not demanding and ordering her to play, went on to explain to the outside world that the situation at Kunitachi Daini is abnormal. This invited some teachers from other schools to relocate to Kunitachi Daini to "normalize the situation". In the end, the principal asked one of the new teachers to play the piano and to teach the song. The fact that this new teacher wrote an article in "Seiron", one of the better-known, widely distributed right-wing journals, to the effect that he moved to Kunitachi Daini to normalize the situation, proves that his relocation was not based on merits but because of his political connections, according to B. B is saddened by the fact that the principal has accepted this political appointment without a word. Kunitachi Daini is often the target of the right-wing demonstration which has placed much pressure and unease upon those teachers willing to stand up against any politically motivated moves. B also feels that pupils are used as pawns by politicians and is much disgusted by it.

A Report from Kunitachi City Council

Mr. Sekiguchi, a Kunitachi council member, reported the situation at Kunitachi City Council. He has been active in emphasizing the importance of peace and education at the local authority. During 2000, he was successful in extracting the statement "the freedom of thought and conscience is guaranteed by the Constitution, and should naturally be guaranteed in any educational environment" from the local board of education. With this statement, it was possible for two elementary schools not to display "Hinomaru" and to play "Kimigayo". In 2001, the board refused to stand by its statement of the previous year. Mr. Sekiguchi believes that the situation has worsened and that it will be unlikely that even one school will manage to refuse forced display and singing. Before the 1999 Act, Kunitachi City, along with Hiroshima City and Sapporo City, displayed no "Hinomaru" and did not sing "Kimigayo". Thus, after the enactment of the 1999 Act, Kunitachi City became a high-profile target for the right-wing and the conservative government in power. Their collabora-

tion is apparent by the way incidents are reported in media and in the timing and contents of right-wing handouts. The Kunitachi Board of Education is very much in accordance with the Metropolitan Board of Education and has been promoted to the principalship. The debates at the city council revealed the fact that these new principals have been managing the school by avoiding any deliberation or consultation with the teachers, parents or local residents. The Kunitachi Board of Education finally agreed to talk with the Kunitachi Committee of Elementary School Principals.

A Report from Kunitachi Daiyon Elementary School

According to C who teaches at Kunitachi Daiyon Elementary School, the principal has taken a hard-line position: in April 2001, he announced that there will be "Kimigayo" singing by all participants accompanied by piano at the commencement in March and that there should be music class designated specially for the singing of "Kimigayo" during the school year. When the principal asked C to play the piano last October, she pointed out that singing the "Kimigayo" is part of the guideline from the Ministry of Education and Scientific Technology, it has not indicated that the singing has to be accompanied by piano, and asked for the ground to order piano accompaniment. The principal has not answered the question yet. In February 2002, the principal named C to play the piano at the commencement. According to C, the intent of the principal is to place those who are not obedient to the principal in a tight spot so that he would have more chance to discipline those recalcitrant teachers.

Another dilemma emerging at Kunitachi's elementary schools is the denial of egalitarian format for commencement: it used to be that the graduating pupils and 5th graders as well as parents and teachers were all facing each other on the same floor. Now the policy is to position the principals and other important people on the stage where the other participants look up. This plan

was rigorously opposed by teachers and pupils but to no avail.

The Need for an Effective Theory

Professor Akira Tsunogae of Tokyo Gakugei University spoke on the constitutional issues relating to these reports as the final speaker of the meeting. There is no denying that these incidents are fundamentally part of the problems arising from the Tenno system, and the conflicts that Tenno system causes under the popular sovereignty. There is another aspect to these incidents as well which is that we have to look for better ways to effectively guarantee fundamental human rights. It is important to deal with each case, taking into account specific differences in the facts as well as different claims which can be asserted under the different circumstances. One argument is the reasonableness of the order to play piano to accompany the singing of "Kimigayo", particularly for those whose expertise happens to be music. There is a good chance to persuade the courts that the content of the order cannot be understood as reasonable under the circumstances. The second argument is that the constitutional provision guaranteeing the fundamental human rights gives immunity to those who ask to be exempted from the order. It was Professor Tsunogae's opinion that each case should be treated separately so that the teachers concerned can effectively state their own case, and the lawyers would be asked to develop arguments and theories reflecting the facts of each case.

After Professor Tsunogae concluded the speech, the floor was opened for discussion. The participants were all sincerely concerned, creating an active and lively question and comment period to which the panelists eagerly answered. The organizers believe that the meeting was a success because the topic was timely, all the presentations were focused and vividly told, and the strategic suggestions to help and support those who are suffering are effectively outlined.

Written by Sayuri Saito
(Assistant Professor, Keisen University)
Translated by Michelle Booker

REFUGEES

Detained Afghan Asylum-Seekers in the Midst of Anti-Terror Campaign

Kanae Doi, Attorney at Law

[*Jinken Shimbun*, January 25, 2002, No. 334]

On September 11 2001, the terrorist attack against the World Trade Center of New York City's World Trade Center and the Pentagon in Washington DC shook the world. Immediately, America's President George W. Bush claimed that Osama Bin Ladin was the mastermind behind the attack.

In Japan, at the conference of the Cabinet Security Affairs office held in mid September, Prime Minister Koizumi clearly expressed his intent to support Bush's anti-terrorism campaign. The chief of the Security Bureau of the National Police Agency emphasized that "people from certain countries or associated with Islam" have to be investigated for terrorist activities. At that conference, the chief of the Immigration Bureau also stated that the Bureau would conduct intensive investigations of all Afghan nationals in Japan.

On September 17, the Bureau issued a detention order for a group of Afghan asylum seekers. The asylum seekers belonged to an Afghanistan ethnic group, known as Hazara. The detention was an effort to obtain answers as to whether any members of the detained group actually know Osama bin Ladin, and to discern the level of sophistication of the Al-Qaeda technology.

In early morning on October 3, police wearing bulletproof jackets and carrying guns detained nine Afghan asylum-seekers and held them in the immigration center. However, this detention breaches Article 31 of the Refugees Convention because the Convention prohibits a state party from imposing excessive restrictions on movement of refugees. Moreover, such a detention exceeds the boundaries of the UNHCR guideline as well as the Immigration Bureau's own customs.

The Hazara group was detained based on concerns they may be involved with the Taliban or Al-Qaeda, despite the fact that in Afghanistan the Taliban had targeted the Hazara for death. However, at present, the bureau is not disclosing a reason for the detention. In protest of this unlawful detention, the Defense Council for Afghan Asylum-Seekers was formed.

In mid-October, I visited the center in my capacity as a council member and met with Yafuya, one of the nine detained asylum-seekers. Mr. Yafuya, is a 25 year old Hazara. However, at a glance, I thought he was Japanese because the people of Hazara are Mongoloid and their features are quite similar to Japanese features.

The population of Afghanistan primarily consists of people of the Pashu ethnicity, but there are many other Afghanistan ethnic groups, such as the Hazara and its Shiah religion. The Hazara have suffered discrimination by the Taliban and Rabbani-Massoud who has been the leader of the northern Alliance for many years. Thousands of Hazara have reportedly been tortured, raped and murdered. Yafuya is no exception. At one time Yafuya was arrested and tortured by the Taliban for 20 days. It was not until he was left barely clinging to life that they saw fit to release him.

On October 9 2001, the Council filed a suit with the Tokyo District Court for cancellation and suspension of the detention order. In November, the court refused to cancel and suspend the order of detention on four of the nine, but agreed to cancellation and suspension for the remaining five asylum seekers.

Yafuya was in the group of asylum-seekers that was released from the center after being detained for one month. I could not keep from crying for joy. I invited Yafuya to my home where he told my family of his life of oppression in Afghanistan. I was shocked to hear how brutally the Hazara are treated in their country, while I was simultaneously impressed with Yafuya's undying patriotic spirit for Afghanistan.

In November, the group of nine's request for asylum was denied. An appeal of the decision was filed immediately with the Tokyo High Court. On December

18, the Court heard the appeal made by the Bureau and overturned the district court decision regarding the released four, which included Yafuya.

I was in a state of despair as I read the Bureau's notification of re-detention to Yafuya. Ironically, Yafuya consoled me, "Don't cry. I am a refugee and it is unjust that I am detained. But any day I will gain the understanding of Japanese. I never escape from anything. Because I'm fair."

It was a bitter farewell. I was able to see first hand the cruelty of the refugee detention system. I was irritated with myself for having no way to prevent Yafuya's detention.

As of January 2000, about 20 Afghanistan are detained in the East Japan Immigration Center in Ibaraki Prefecture. Some of those detained are as young as 18 and 19 years of age. Some of them say, "The Taliban and Northern Alliance kills us at once, but Japan does it slowly. So the Taliban are better than Japan."

The Council is now filling suits to suspend and cancel deportation of these nine people. In addition to that the Council is working to help approximately twenty other Afghanistan refugees through the procedures on deportation and application for refugee status.

As of January, the International Conference on Reconstruction Assistance to Afghanistan will be held in Tokyo. But what can they do for the refugees in their own land? What is genuine restoration of Afghanistan? I will never forget Yafuya's cries.

Translated by Ueno Satoshi

Editor's Note:

On February 21 2002, the UNHCR expressed its concern regarding the detention of Afghan refugees by the Japanese government in its press release. It pointed out that the Executive committee of the High commissioner's Program takes the position that detention of refugees should normally be avoided. Japan is also a UNHCR member.

The Tokyo District Court suspended the detention and deportation order for seven Afghan refugees including aforementioned detained in March. However, the Immigration Bureau appealed the ruling, and in June, the Tokyo High Court canceled the suspension of detention order.

Despite this cruel ruling, by July, the Immigration Bureau had released all Afghan refugees detained in the East Japan Immigration Center.

As the UNHCR pointed out in its press release, the conditions in which the Afghans were detained were so cruel that some of them actually attempted suicide during detention. Even after their release, the Afghans fear of re-detention will continue since have not been granted refugee status.

Finally, on May 27, one old Afghan refugee put an end to his existence, which consisted of living in fear of the possibility of re-detention.

RACISM

JCLU in The World Conference Against Racism

28 November 2002

Before the World Conference Against Racism (WCAR) held in Durban in South Africa from August 28 to September 8 2001, several Japan based human rights NGOs launched the NGO network 'Durban 2001 Japan' (the Network) in 21 March 2001 to publicize the conference and to promote NGOs' involvement. JCLU, as a member of the Network, played a major role. Mr. Masayoshi Iida, JCLU's then Secretary General, sit as a secretary general of the Network.

At first, the Network orchestrated publicity and awareness raising campaigns through dissemination of leaflets, their website, newsletters, events & contribution of articles to magazines.

The network continuously held meetings with the Japanese Ministry of Foreign Affairs and press confer-

ences prior to WCAR. At the meeting with the Ministry, the Network asked the Ministry to choose personnel with enough knowledge on human rights issues for the governmental delegation to WCAR and insisted that the delegation should include some NGO representatives. As a result, one NGO member recommended by the Network joined the delegation. The Network also asked the Ministry to hold its daily briefing during the inter-governmental conference of WCAR and to refer to the racial discrimination against indigenous people such as Okinawan and Ainu people and the Japanese colonialism in the delegation's representative speech at the conference.

From Japan about 100 people attended WCAR. Most of them utilized tour coordination by the Network.

During WCAR, the Network set up its booth in the exhibition marquee at the NGO Forum and exhibited member NGOs materials. This exhibition brought understanding of racial discrimination issues in Japan to the attendants.

On September 1, Some NGOs composing the Network held the workshop 'Colonialism, Racism & Nationalism in Japan -A Chance to Talk with Japanese Governmental Officials-' in Durban City Hall. About 40 people attended. Japanese government officials also joined the workshop and released the governmental statement toward WCAR. Attendants from South Korean, Philippine and Thai NGOs pointed out the officials had not referred to the history revisionism in Japan and also made some shrewd questions on possibility of racial discrimination prohibition law and treatment of refugees by the government. These dialogues clearly showed the differences in awareness of racism in Japan between international community and the Japanese government.

This workshop brought the joint demonstration between Japanese and South Korean

NGO at which they protested against that Japanese governmental representative had not mentioned the past colonialism and history revisionism in Japan in her speech in the Main Meeting of WCAR. The demonstration was conducted in front of the venue of the inter-governmental conference.

While the inter-governmental conference was held, the Network coordinated the briefings by the Japanese governmental delegation everyday. Each NGOs used these briefings to understand the proceedings of the closed consultation among governments, but also they used these briefings as chance to lobby to the officials.

The Japanese government was too passive with discussion of the conference. It did not take any initiative on arguments on issues Japan is deeply concerned such as discrimination based on work and descent and complementation for past colonialism. It hardly made any remarks at the conference. Some Japan based NGOs released a joint statement protesting this attitude and the representative's statement mentioned above.

After WCAR finished, the Network published its report including Japanese translation of the Declaration and the Programme of Action of the NGO Forum and the inter-governmental conference. The network dissolved in the end of November 2001.

Written by Ueno Satoshi



An Okinawan Woman demanded that Japanese government admitted her ethnic group as an indigenous people in Japan.

WOMEN

Why is a midwife's work a woman's job?

*—Thinking about the introduction
of male midwives—*

[Jinken Shimbun, March 30, 2002, No. 335]

Last year saw the approval of the Health, Midwifery and General Nursing Legislation, during an extraordinary session of the Diet, and with it the change of the Japanese title for midwife, from the female "jyosanpu" to the neutral "jyosanshi". Immediately after this, Ms. Yuko Minami, President of the Japanese Nursing Association, declared the need to "move with the times, and propose the introduction of male midwives". For February's regular meeting, JCLU invited 5 members of the Japanese Midwives' Association to discuss the question of the introduction of male midwives.

The meeting was opened by JCLU Director, Yoko Hayashi, who explained the reasons behind the choice of this subject for discussion: "Whether or not to open the possibility of gaining a midwife's license to men, is an extremely difficult question. It is not something that should be decided without deep and careful discussion. As Professor Mutsuko Asakura of Tokyo Metropolitan University Law Department has argued in her writings, "careful thought is necessary before accepting the proposition that, from the point of view of equal opportunities in employment, it is self evident that men should be allowed to practice as midwives. This is because this question is not one that can be correctly answered while ignoring the very particular nature of this work."

Why we stood up against male midwives

Junko Asahina

First to address the audience was Ms. Junko Asahina, a home midwife in Shiga Prefecture, who explained why she had decided to join the movement against the introduction of male midwives. "In March 2003, when the Japan Midwives' Association's policy on male

midwives changed, the press was full of headlines such as "Lift the Hundred Year Ban", with the assumption that if the organizations concerned were for introduction, it must be good policy. A closer look however, reveals major problems with the Japan Midwives' Association's decision making procedures in reaching this standpoint. Most of the Association's members first learned of the Association had turned in favour of the introduction through media reports. The decision to change the Association's policy was made solely by the Directors, ignoring the Association's principle of democratic decision making and going against its articles of association. It is therefore invalid." She went on to explain the activities of those involved in the movement against the introduction of male midwives, including the petitioning of the government, and the carrying out of surveys of Japan Midwives's Association members. 63% of those members questioned were against male midwives, the outcome of the survey reflecting a feeling of unease regarding the way in which the 2001 bill had been introduced without consulting interested parties.

Continue ensuring shame free child-birth!

Yukako Yajima

Next to speak was Ms. Yukako Yajima, a practicing midwife at a maternity home in Kokubunji City. While showing slides of childbirths that had taken place at the maternity home, she talked the audience through a natural birth, and explained the role of the midwife during the birth. "If a woman gives birth comfortably, she feels like she could do it all over again even though it's only just over. To help a woman give birth comfortably, we must respect and understand her wishes to be treated with kindness and care."

Every year, many young trainees join the Yajima Maternity Hospital, with the aim of becoming midwives. They are always told the same three keys to practicing warm and caring midwife. "First, during labour, the expectant mother is never alone. Second, to establish a rapport with the expectant mother, the midwife should always place one hand on her body. Finally, a midwife must accept the behaviour of the expectant mother towards her during childbirth, without judging or criticiz-

ing her." She went on to quote the words of an expectant mother, "If a male midwife came into the room, one would have to somehow change one's state of mind for the birth. This wouldn't happen with a female midwife."

Survey reflecting the voices of women & midwives

Taeko Mouri

Ms. Taeko Mouri, who practices as a midwife in the maternity home run by her mother in Kobe City. She reported the results of an urgent survey conducted last year, as part of the campaign against the change of the midwife title from "jyosanpu" to "jyosanshi". "Despite the fact that the cost of sending back the survey was left as the burden of the questionnaire, the survey had some 4453 replies. The results showed that about 70% were against the change in the midwife title, and those for the change didn't even make up 10% of those questioned. Many women expressed the opinion that "the title "jyosanpu" gives a feeling that midwives can empathise with expectant mothers" and thus were against the change. Last year, Ms. Mori attended the Committee on Health, Welfare & Labour under the House of Councillors as a expert, reporting the results of this survey and describing her experiences at the maternity home. The survey not only covered the change of the midwife title, but also the introduction of male midwives, and the unification in professions. In Japan to be qualified as a midwife, a nurse has to take one year specialist course for midwifery. There is a move to unite midwife and non-midwife courses. It found that 70% of women were against the introduction of male midwives, and 60% were against the unification. In Japan to be qualified as a midwife, a nurse has to take one-year specialist course for midwifery. There is a move to unite midwife and non-midwife nurses. The opinion that it wasn't right to be able to obtain a midwife's license after just four years of university study was also expressed.

Midwives help to cultivate maternal feelings amongst mothers

Motoko Okazaki

Next to speak was Ms. Motoko Okazaki, a midwife from the Shiga Prefecture. She that the role of the

midwife extends beyond the actual birth, to the role of councillor during the child raising process. " feeling of motherhood is not necessarily something that comes naturally, but is something that develops through giving birth, and raising children. These days, young mothers often miss out on knowledge from older relatives or local people, that they may have had the benefit of in the past. If they experience problems in child-raising, this can be a source of unhappiness and stress. But babies do cry, it's completely natural. It is the role of midwives to let mothers know this. There is a need for a place where mothers can come together and share their experiences and troubles of child-raising. To finish, Ms. Okazaki read a poem of her own composition, describing the empathy they give while caring for the mother during child-birth.

Yes, breath in slowly

Yes, that's right, slowly, slowly

Yes, ride on that wave and pu-sh

That's it, and again

Pu-sh

Yes, that's perfect

Problems caused by 'child-birth practicals' for male students

Kimiko Kayashima

The last speaker was Professor Kimiko Kayashima, of Jikei Medical University Nursing and Science Department. She spoke on her own teaching experiences. The fact that male students are now attending child-birth practicals has led to many mothers refusing to take part. Professor Kayashima then referred to papers from Ishikawa Prefecture showing that male student nurses did not observe do practicals concerning internal examinations, clysis, external genital tonsure, urethral catheterization or external genitals. Moreover, the paper specified that if male student nurses were to take part in assisting at practicals, it must always be under supervision.

Panel Discussion

After a break, the second half of the seminar was devoted to a panel discussion. Inspired by JCLU director, Yoko Hayashi's opening speech, the first question asked was what the respective arguments of those who were for and against the introduction of male midwives were. The answer from the panel was that, although the arguments in favour of the introduction varied, they commonly included the equal participation of men and women in society, equal employment opportunities and the right of male to education. It was suggested however, that these arguments were put forward just to lay the ground for the unification of the professions. Real equal participation of men and women in society is not achieved by one sidedly forcing women to put up with something against their wishes. Furthermore, it was a worry that many of the male students wishing to become midwives, were ultimately aiming to work overseas. With the limited experience they gain, because of women's reluctance to receive their assistance, it was argued that their skills would not be up to standard.

Leading on from this Director Yoko Hayashi asked who was really going to benefit from the introduction of male midwives, while it was making progress under the pretext of gender equality. The responses from the panel and the audience included comments such as "It is obstetricians who would gain the most from the unification of the professions. If the professions are unified. Obstetric nurses will be able to perform midwifery, without being told that they don't have a license", "If they all become nurses, the management of hospitals and the staff reassignment will become much easier", "The directors of the Japan Midwives's Association were at first dismayed when they were approached by the Health, Welfare & Labour Ministry with the strong suggestion that it was about time to introduce male midwives. It is the nursing department of the Ministry that has been putting the pressure on behind the scenes, so the Ministry must have something to gain." and "Although there is the mistaken belief that the status of the nursing profession will improve with the introduction of male midwives and the unification of professions, in re-

ality no one will benefit from these changes."

The question of the rights of those men who wish to become midwives was then raised by a member of the audience. In response, the speakers explained that "in the case that the right for men to choose their profession competes with a woman's right to integrity, women's rights must naturally prevail. The right for men to choose their profession should not be asserted to the extent that it violates women's feeling of shame."

Encouraging words were then spoken by Fumie Saito, Secretary to Mizuho Fukushima, the only Member of the House of Councillors to have voted against the bill changing the midwife title. She advised that "most male Councillors are in favour of the introduction of male midwives, while knowing very little about childbirth. If the reasons why it is important that midwives be female were explained and asserted more forcefully, male Councillors may begin to understand. There is a possibility that male Councillors will become opposed to the introduction."

Finally the opinion that the question of male midwives should be approached from the perspective of the rights of the prospective mother, and her right to choose, was expressed by a male member of the audience.

In Japan, the violation of women's rights during childbirth and medical treatment is becoming more and more common. This has been highlighted by the Prof. Kasai's incident, and the Fujimi Hospital incident, involving an unlicensed doctor performing unnecessary hysterectomies. The introduction of male midwives is not an issue that should be approached solely from the viewpoint of gender equality but also concerns gender differences and women's rights, and therefore requires deep delving into legal theory. Either way, a proper understanding of a women's state of mind during childbirth, and what midwifery really entails, is vital before tackling the issue.

Translated by Jem Stevens

UNITED NATIONS

CEDAW member should be independent of its government

[Jinken Shimbun, January 25, 2002, No. 334]

The Cabinet Office and various NGO groups attended a private round-table conference, held at the Cabinet Office conference room on December 26, 2002, regarding the U.N. Committee on Elimination of Discrimination Against Women (CEDAW) successor problem. Among those who attended the conference were representatives of the JCLU, including Representative Director Yoshihiko Fuketa, Secretary General Masayoshi Iida, and Professor Kyoko Kinbara of Chiba University (JCLU Director.)

CEDAW members are neither representatives nor delegates of particular governments, but instead are experts who commit themselves to assuring enforcement of the Convention. Therefore, members must be experts in the field of women's rights who are capable of expressing opinions independent of their government policies in order to fulfill this role.

When Chikako Taya announced her retirement from the position due to her appointment as a judge for the International Criminal Tribunal for the former Yugoslavia, the JCLU submitted a written inquiry to Makiko Tanaka, the Minister of Foreign Affairs, and Fukuda Yasuo, with the Council for Gender Equality of the Cabinet Office, in order to ascertain whom they intend to select as the next council member. This inquiry noted that Japan has always chosen present or past members of the civil service, and pointed out that appointment of such a person to the CEDAW council is possibly inappropriate and potentially harmful because members must be experts who are capable of acting independently of the government.

This conference came into fruition when the Gender Equality Bureau invited the various organizations that submitted opinions and inquiries.

Four members of the Gender Equality Bureau, including the Adjutant General, were present at the conference. NGO representatives included two lawyers from the "Forum Women and Labor 21," Yoko Hayashi and Asami Nakano, as well as the organization's Secretary General, Mitsuko Izumi. Risa Kumamoto, the Secretary General of the International Movement Against All Forms of Discrimination and Racism - Japan Committee was also in attendance.

At the conference, the Cabinet Office announced that it has received approval from the UN for the Japanese government's recommendation of Tomiko Saiga, present Consul General of Japan in Seattle, to complete the remainder of Chikako Taya's term. It was also explained that while the selection process must remain confidential, the Cabinet Office has advised the Ministry of Foreign Affairs to recommend a person who may be active internationally from the gender point of view. The fact that civil service members are continuously selected is nothing more than coincidence, claimed the Cabinet Office.

At the conference, Representative Director Fuketa inquired about Ms. Saga's history of dedication to the area of women's rights and international human rights, and made clear his expectation that she participate in academic conferences and gatherings concerning human rights and in discussions with NGO groups.

Attorney Hayashi and others mentioned the problems associated with selecting a member of the committee under the same criteria used in selecting a delegate to protect a nation's interests. The necessity of seeking human resources from the private sector was also pointed out.

As a result of this one hour conference, the various NGOs and the government were able to present their positions regarding the roles to be performed by members of international associations and the qualities such people should possess. The members of international associations are expected to act independently of the government while the Cabinet Office represents a national instrument was made clear.

Though it is extremely rare for the government to reply to inquiries submitted by NGOs and to hold conferences to exchange opinions, we felt we were able to participate in an active and worthwhile discussion.

We are looking forward to more open discussions in the future.

Translated by Takashi Yamaguchi

The JCLU calls for next CEDAW Committee member to be independent from Government policy

[Jinken Shimibun, December 1, 2001, No. 333]

JCLU is seeking answers from the Ministry of Foreign Affairs and other related authorities in relation to the nomination of the next Japanese member to the Committee on the Elimination of All Forms of Discrimination against Women, the monitoring body of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

On Nov 26, the JCLU submitted a written inquiry to the Minister of Foreign Affairs Makiko Tanaka and the chairperson of the Council for Gender Equality of the Cabinet Office, Fukuda Yasuo, regarding whom they were intending to select as the next Committee member and the selection process so far. The JCLU pressed strongly that they should select a specialist independent from government policy. The JCLU is looking forward to the response, which we have requested to receive by Dec 5th.

According to CEDAW, the Committee member must be of high moral standing and competence in the field covered by the convention. Furthermore, members serve 'in their personal capacity and not as delegates or representatives of their country of origin'. However, so far Committee members nominated by Japan have all been past or present members of the civil service.

In this inquiry, we are asking whom Makiko Tanaka and Fukuda Yasuo are planning to select as the

next Committee member, while inquiring whether the fact that the Japanese government has always nominated present or past members of their civil service is mere coincidence or whether it is based on a certain policy. If it is the latter, the JCLU is asking what this policy is.

The JCLU is questioning the appropriateness of nominating present or past members of the civil service as Committee members, given that they are expected to be independent.

The JCLU has been actively promoting the CEDAW principles, even since before its ratification. In 1999 we held consecutive seminars commemorating the twentieth anniversary of its adoption, successfully gaining participation of many citizens. We therefore cannot help but take a deep interest in the nomination of the next Committee member.

Given that the Committee's Concluding Observations of 1994 to the Japanese Government Report contained numerous suggestions regarding present discrimination against women in Japan and strongly urged the government to make improvements, nominating an independent specialist to the Committee would in itself be one way of making a human contribution to international society.

In the submitted inquiry, the JCLU expressed its intention to send an English translation of the inquiry to the Committee, and to contribute to the NGO alternative report to the next report of the Japanese Government, seeking a written response by Dec 5th. We will introduce the contents of the response in our next issue.

The complete inquiry can be found on our website (Japanese language only).

The Cabinet Office invited JCLU and other NGOs to inquire their position. Please refer to the article "CEDAW member should be independent of its government"

Translated by Takashi Yamaguchi

PERSON WITH DISABILITY

In Between Public Sentiment and Incidents involving the Disabled

-Activity of Committee on Human Rights of People with Mental Disabilities-

Yoshinori Nakanishi, JCLU director

[Jinken Shimbun, July 23, 2001, No. 332]

Introduction

The JCLU committee on Human Rights of People with Mental Disabilities was established in 1983 and will soon celebrate its twentieth anniversary. At the time of its inauguration, the "Utsunomiya Hospital Incident" had just come to light, and many of our members were involved as representatives of victims. At that time society focused on the rights of mentally disabled persons, so the Committee was able to make some progress in securing rights for the mentally disabled. Such progress was achieved through lobbying activities such as submitting a general outline on amending the "Mental Health Law" to the Ministry of Health and Welfare (presently, the Ministry of Health and Labor) and submitting a counter-report to the Human Rights Committee of the United Nations.

The 1990's

The "Mental Health Law" has been repeatedly subject to minor revisions since the 1990's, and the title of the law changed to the "Law concerning the Preservation of Mental Health and the Welfare of the Mentally Disabled" in 1995. The amended law shows more consideration for the rights of mentally disabled persons than did the previous statute.

However, although blatant violations of human rights such as the "Utsunomiya Hospital Incident" were no longer conspicuous, the environment was never such that mentally disabled persons were truly respected as individuals. Thus, the activities of the Subcommittee stagnated.

The Current Issue/Problem

In January 2001, the Ministry of Justice and the Ministry of Public Health and Labor convened a joint committee to study the adjudication and "system of treatment" for mentally disabled persons who have committed serious crimes. So far, the committee has held six sessions enabling specialists to express their opinions. The first session was attended by psychiatrists, and the second, by Professor Akira Machino, a professor in criminal law and a JCLU director. The third session was attended by managers of a mental institution, and the fourth by attorneys. The fifth session was attended by more psychiatrists, and finally, the sixth session by prosecutors.

It is clear that the committee is leaning toward creating a "disposal system" regarding mentally disabled persons who have committed serious crimes. Regardless of whether it can be called a safety measure, this "system" differs from that which is provided by the present law.

On June 8, 2001, while the committee was being held, there was an incident involving the killing and wounding of twenty-three children at Ikeda Elementary School in Osaka. The fact that the man responsible for these acts had a history of being hospitalized in mental institutions and was still commuting to a mental institution at the time of the incident was reported on the news. The media then created a sentiment of "not letting the mentally disabled get off free."

Against the backdrop of this public sentiment, Prime Minister Koizumi said that the issue must be viewed as both "a medical issue and an issue of defective laws." As such, he has instructed that a Response Committee be created to address the situation. We fear that a new bill may be created on the basis of little more than the previous six sessions of the joint committee.

The Committee's Agenda

Since June of 2001, the Subcommittee has attempted to understand how the Japanese Government will attempt to respond to offenses committed by the mentally disabled. The Committee has voiced opinions

from the standpoint of protecting the rights of the mentally disabled, but it is confronted by two difficult issues: (1) it is unable to see what methods the Government plans to take; and (2) it is having difficulty in developing an easily understood counter-argument to the emotionally-charged issue: "How can a mentally disabled person who has committed a crime be set free?"

The actions that the Government will take from now on are unpredictable. Thus, the Committee must be prepared, as soon as possible, with clear arguments. The meetings that the Committee will conduct are intended to provide a forum for debate, so all opinions are welcome. We hope to have as many members as possible participate in order to further expand our discussions. We look forward to your presence and participation.

Translated by Lawrence Repeta & Alison Ketner

Editor's Note: A project team of the Liberal Democratic Party reviewed new treatments for mentally disabled people who have allegedly committed serious crimes,

such as murder, arson, rape, robbery, or assault, and concluded that a new system should be introduced for the proper treatment of these people. The team proposed in its final report, released on November 12 2001, that in the case of acquittal or dismissal where the accused cannot bear responsibility for the crime due to mental illness, the treatment of the accused should be determined at the district court level by the newly established Council. According to the team's proposal, the Council will consist of the judge and a doctor of psychiatric medicine, and it will determine whether the accused should be involuntarily admitted to a mental hospital.

The government adopted this proposal and drafted a bill entitled "The Law on Medical Treatment and Observation of People Who Committed a Serious Crime under Mental Irresponsibility." The Cabinet proposed the bill to the House of Representatives on March 18 2002. The JCLU Committee, led by Mr. Nakanishi, organized a public seminar on this bill on 25 May 2002. The bill is still pending as of 13 December.

PLEASE SUPPORT JCLU

The Japan Civil Liberties Union has a fifty year history of protecting, promoting, and supporting Human Rights here in Japan, Asia and the rest of the international community. Our purpose is to continue this remarkable legacy and contribute our resources to support this endeavor during this critical time in our world. The JCLU's work corresponds to the principles drawn up in the Universal Declaration of Human Rights.

We wish to thank all of the members and volunteers who devoted their time, energy, and resources yet another year in providing the JCLU with the tools to follow through on its commitment. We also wish to continue this commitment for another fifty years. Our purpose and progress can only continue with your membership fees, donations, and contributions of volunteerism. We are an independent non-profit organization which depends solely on the support of our membership and unconditional financial donations (the JCLU doesn't receive financial support from governments). Membership fees are (a) 3,000 yen- for student members, (b) 12,000 yen to 60,000 yen-regular members. The JCLU's effort to publish our Universal Principal depends upon like-minded individuals who have the ability to translate Japanese to English, proofread and edit documents. We sincerely look for your support in the upcoming year. If you are interested in becoming a member, donating funds, or translating please contact us:

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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. 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.

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