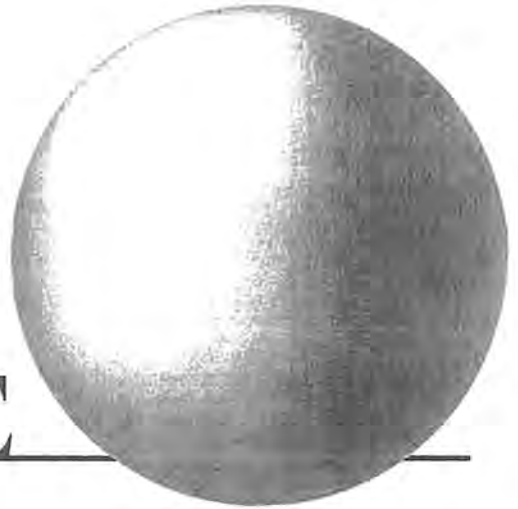


UNIVERSAL PRINCIPLE



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

featuring

- CEDAW Reviews Women's Rights in Japan
- The New Law Jeopardizes Rights of People with Mental Disabilities
- Counter Terrorism or Civil Liberties?

NO.11 Spring 2004

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JCLU WITH UN CONSULTATIVE STATUS Now.

Dear Universal Principle Readers,

JCLU is pleased to announce that it was granted a Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nation. JCLU's application for the status has been considered by the UN NGO Committee and the recommendation by the Committee was finally approved by ECOSOC Council in July, 2003.

JCLU plans to contribute more to discussion and work at the UN with the status, particularly for Civil Liberties and Human Rights.

*February 2004
Japan Civil Liberties Union*

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CEDAW reviewed

Women's Rights in Japan

features

As a State Party to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Japanese government reported on the implementation status of the CEDAW to the UN Committee on the Elimination of All Forms of Discrimination against Women (The Committee) through its 4th (1998) and 5th (2002) periodic report*. The Committee reviewed these reports as the monitoring body of the CEDAW on 8 July 2003. This feature reports JCLU's intensive actions to acquire effective concluding comments by the Committee.

* In this Feature, the documents with a * mark are available from the index on the JCLU's website in English.

The First Stage Pre-sessional Working Group

[Jinken Shimbun, March 28 2003, No.341]

On December 22, 2002, the JCLU, and other human rights and women's rights NGOs based in Japan, launched the "Japan NGO Network for CEDAW (JNNC)" with an aim to coordinate and encourage NGOs to lobby the Committee. The JCLU also started a new project for the CEDAW and supported JNNC through the project. The first task of JNNC, with its 46 affiliated NGOs, was to prepare for NGO briefing at the Pre-sessional Working Group by the Committee.

As a part of normal procedure to monitor the State Parties' implementation status of the CEDAW, the Committee raises questions, called, "List of Issues (LoI)," to the State Parties regarding the governmental report. The State Parties have to reply to them in about two months. Then, the Committee dialogues with the government based on the response at its consideration.

To draft the LoI, the Committee invites NGOs to its pre-sessional working group and hears NGOs' opinions on women's rights in Japan. This time the working group for the LoI addressed to the Japanese government was held on February 3 at the United Nations Head Quarters in New York. The JCLU presented its position on the implementation status of the CEDAW in Japan with five other NGOs under the coordination of JNNC.

The JCLU presentation* focused on: 1. Establishment of National Human Rights Commission 2. Discriminatory Remarks by Public Authorities and 3. Introduction of male midwives.

Many questions were posed by the Committee experts to NGO presenters. Among them, experts showed their interest in the independence (or lack of it) of the National Human Rights Commission, and in discrimination against part-time labour and trafficking of women.

In the same month, the Committee sent the LoI, which consisted of 31 questions, to the Japanese government. Reading the LoI, JNNC wrote its own response* from the critical perspective of the NGOs and sent them both to the Committee and the government. The JCLU contributed by writing response related to the National Human Rights Commission.

Second Stage Writing Reports

[Jinken Shimibun, May 23 2003, No.342]

Most NGOs as well as the JCLU finished their NGO reports and one page summaries of these reports by June. The summaries were combined as the "Summary Report from NGOs in Japan" and sent to the Committee by JNNC. This practice was implemented at the request of the Committee which always becomes burdened with huge amounts of NGO reports. Among NGOs in Japan, the summary report was recognized as an effective tool to highlight their concerns to Committee Experts. But this was the first trial in regards to the CEDAW.

The JCLU's first report for the CEDAW* consisted of the following sections. Each section is a Proposal of Recommendation to the Government to be adopted by the Committee.

1. Independency and effectiveness of proposed National Human Rights Commission in Japan.
2. Gender education for judges, legal trainees, prosecutors and law enforcement officers.
3. Effective countermeasure against discriminatory remarks by public officials and sexual harassment in public workplace.
4. Deliberate discussion in introduction of male midwives for women's right to choose.
5. Establishment of clear criteria of arresting perpetrators in accordance with The Law for the Prevention of Spousal Violence and the Protection of Victims.

Main Stage Consideration started

[Jinken Shimbun, July 28 2003, No.343]

On 8 July, the Committee considered the 4th and 5th periodic report of the Japanese Government during its 29th session. Nine years have passed since the last consideration. The JCLU sent its mission with five members to observe the session and to lobby the Committee Experts. The total number of missions sent from NGOs were 16 with about 50 members.

Trying to avoid overlap with issues covered by other NGOs' reports, the JCLU's mission focused their issues for lobby action on two points: National Human Rights Commission and Gender Education for Justice Personnel.

Prior to the Consideration, JNNC hosted a lunch-time briefing for Committee Experts on the 7th. From the JCLU, Ms. Masako Kamiya, the Representative Director and Professor of Gakushuin University, briefed on the above two issues. The Committee also had hearings with NGOs, and Ms. Miho Ohmi, a member of the Japanese Association of International Women's Rights, made a presentation as a representative of JNNC affiliated NGOs.

The next day, the whole session was spent on consideration of the Japan report. Ms. Mariko Bando, then Director of the Gender Equality Bureau, Cabinet Office, headed the Government delegates. The Ministry of Foreign Affairs, the Ministry of Education, the National Police Agency, and other ministries also joined. However, the Ministry of Justice was absent despite its responsibility for the National Human Rights Commission, the detention system, and legislative policies on most gender issues.

A series of lobby actions have worked so effectively that experts raised many critical questions to the government about the matters presented by the NGOs.

As for the JCLU's concerns, some experts expressed doubts on the effectiveness of remedies and the independency of the proposed National Human Rights Commission from the Government. It was also pointed out that CEDAW was not effectively applied in courts. The contents of gender education for judges were questioned, too.

Moreover, experts urged the Government ratification of Optional Protocol, the elimination of indirect gender discrimination against parttime workers (in Japan, most married women have much poorer chances of gaining fulltime jobs than men. Even if the work itself is the same as that of the fulltime workers, the salary of a parttime worker is generally smaller), the introduction of affirmative action, the revision of discriminatory provisions in the Civil Code (the Japanese Civil Code keeps discrimination against children born out of wedlock in its provision on the distribution of inherited wealth), etc.

After the consideration, JNNC's activity in New York concluded with the a press conference and a reception with Government delegates.

Concluding Comments Result and Future Task

[Jinken Shimbun, September 26 2003, No.344]

The intensive activities by the JCLU and other JNNC affiliated NGOs were proved successful by the Committee's fruitful Concluding Comments.

The Concluding Comments released in early August included thirteen recommendations. The JCLU's proposals on the National Human Rights Commission and gender education were closely reflected. In paragraph 38 of the Comments, the Committee recommended that the government establish an independent National Human Rights Commission in accordance with the Paris Principle. This means an international organ found the current government proposal to be insufficient.

Paragraph 22 also reflected the JCLU's proposal. The comment says "It also recommends campaigns to raise awareness about the Convention," "aimed, inter alia, at parliamentarians, the judiciary and the legal profession in general." One expert said during the consideration that the government should take all possible countermeasures against continuous sexist remarks by Shintaro Ishihara, the Metropolitan governor. The intensive lobby actions on this issue, made by the JCLU and other NGOs during the consideration, were very effective (refer to the JCLU's report for the examples of discriminatory remarks by Public Officials).

As for domestic violence, establishment of the criteria proposed by the JCLU was not referred to in the Comment. But in paragraph 26, "the Committee urge(d) the State party to broaden the Law for the Prevention of Spousal Violence and the Protection of Victims so as to

include different forms of violence, increase the penalty for rape and include incest as a specific crime in its penal legislation."

After the release of the Concluding Comments, each NGO's tasks were to disseminate them among citizens and other NGOs, and to utilize them in each fields as much as possible. The JCLU took various actions to accomplish these tasks. On 29 July, it held the regular seminar and shared its experience on its lobbying activities. It also released a statement to the government which demands a monitoring system to observe the implementation status of the CEDAW, as well as the realization of the Concluding Comments on JCLU-concerned matters.

The JCLU Project for CEDAW is currently performing in-depth research on the realization of the Concluding Comments.

Translated by Satoshi Ueno

features

The New Law Jeopardizes Rights of People with Mental Disabilities



Dr. Timothy Harding , Director of the Institute of Forensic Medicine at the University of Geneva, criticized the new law at the JCLU regular seminar on September 5, 2002.

Since around 2000, some violent crimes have allegedly been committed by offenders with a history of hospitalization for mental illness. Due to the mass media's sensational coverage of these crimes - including the Nishitetsu bus-jacking case and the notorious Ikeda Elementary School case - there has been a growing sentiment among the Japanese public that people with mental disability accused of crimes should not, for the sake of social safety, be allowed to go free.

In response to this sentiment, in the spring of 2002 the Japanese government and ruling Liberal Democratic Party drafted the "Law Concerning Medical Treatment and Observation of People Who Have Committed Grave Acts Against Others While in a State of Insanity" ("The New Law"). This New Law, which imposes indefinite hospitalization on people accused

of committing serious crimes in a state of insanity, has become controversial in Japan. Mental patients' groups staged protests for over a year, arguing that The New Law would incite discrimination against people with mental disabilities. Despite this opposition, the New Law was adopted in July 2003.

The JCLU's Committee on Human Rights of People with Mental Disabilities began researching the New Law in June 2001, and hosted two seminars to analyze the law with experts, people with mental disabilities, and citizens. The first two articles in this feature present the results of the committee's research from the perspective of international human rights, as well as an outline of the New Law. After a year of research, the JCLU released a comment opposing the New Law. An outline of this comment can be found at the end of this feature.



Current Mental Health System

In the current system, a prosecutor can order a summary psychiatric examination when the mental responsibility of the accused is in doubt. If the result of the examination is criminal insanity or quasi-criminal insanity, the accused is sent to a mental hospital and not prosecuted in accordance with the present Mental Health Law.

In Japan, prosecutors are extremely afraid of judgments that find the accused innocent, so they tend to readily order psychiatric examinations to keep the court from judging that the accused has no mental responsibility. This prosecution policy sends many of the accused to mental hospitals rather than to prison, and detains them in these hospitals longer than the normal duration of imprisonment.

The criterion for selecting a doctor to conduct the examination is unclear. Most of these doctors are not sufficiently trained in forensic psychiatry. Furthermore, there are not enough doctors. In Osaka, for example, at one point just one doctor was conducting all the examinations.

Not only does the new system reviewed in this article fail to remedy such problems, it makes the situation worse in terms of patients' rights.



Crime and Human Rights of People with State of Insanity

2002 General Assembly Memorial Symposium

[Jinken Shimbun, July 26 2002, No.337]

On May 22, 2002, the JCLU held a symposium titled "Crime and Human Rights of People with State of Insanity," following its annual General Assembly at Plaza F in Yotsuya, Tokyo. Mr. Yoichi Kitamura (Lawyer) and Ms. Nobuko Kobayashi (Tokyo Centre for Mental Health & Human Rights), both of whom were JCLU directors,

discussed the newly proposed law. Professor Saku Machino also made comments.

Yoichi Kitamura

Mr. Kitamura first outlined the New Law. Crimes targeted by this law include arson, forcible indecency, rape, homicide, homicide with consent, injury, robbery, constructive robbery, and attempts to commit these crimes. People accused of committing these crimes but who are acquitted or not prosecuted due to criminal insanity enter into the following process stipulated by the New Law.

The prosecutor files the case in District Court. The judge then orders hospitalization of the accused to determine if he or she is criminally insane, and the results of this examination are reviewed by a collegiate body consisting of one judge and one "Mental Health Hearing Examiner" (psychiatrist). Then, one of three things occurs. If it is determined from the examination that the accused may commit serious crimes in the future if left untreated, then either inpatient or outpatient treatment for mental illness is required. If it is determined that the accused is not dangerous, then no treatment is required.

The period of hospitalization ordered by the Court is not defined by the New Law. The Court reevaluates the situation every six months, and mandatory outpatient treatment is limited to three years and can be prolonged for two years. In each case, the accused can apply to terminate his or her treatment.

Next, Mr. Kitamura described the examination, which is conducted by the collegiate body consisting of a judge and a psychiatrist. Comments can be submitted to the body by the accused, the guardian of the accused, the prosecutor of the case, the hospital treating the accused, and the probation office. The decision is made by consensus of both the judge and psychiatrist.

Although the court proceeding is not, as a rule, open to the public, victims of the case can sometimes observe it with court approval. The proceeding is conducted under court authority, and it is unclear as to whether the parties can participate well in the process.

The accused, prosecutors, etc. can appeal the judgment of the proceeding.

Nobuko Kobayashi

The next speech, made by Ms. Kobayashi, was titled "The Status of Mental Health from the Perspective of Patient Advocacy." Ms. Kobayashi was critical of the New Law but emphasized that opposition to the law does not mean support for the status quo. She made the following observations.

The summary psychiatric examination system is controversial and does not have a sound basis in forensic psychiatry. In addition, Japan still maintains the largest number of psychiatric beds in the world, meaning that a "locked ward policy of hospitalization," in which patients are hospitalized for long durations, is the main treatment for mental health problems.

According to Medical Law, psychiatric services - namely mental hospitals - have fewer human resources than other medical services. At the same time, community mental health services are not sufficiently developed to meet the needs of people with mental health problems.

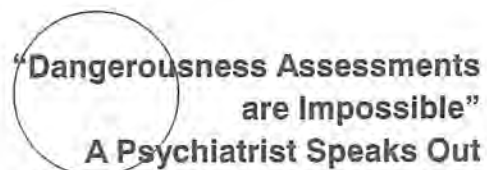
These issues have already been pointed out by international organizations, which have repeatedly recommended improvements to the Japanese mental health system and patients' rights.

The New Law's follow-up system, which has probation officers check up on outpatients, does not seem realistic considering current community care resources. At the moment, public health centers are responsible for the care of people with mental disabilities, but their services have been diminished by the recent wave of administrative reform. It is unlikely that non-experts, such as probation officers, would be able to promote sufficient social rehabilitation.

Ms. Kobayashi concluded by saying that the New Law emphasizes the importance of a safe society but does not reflect the opinions and needs of mental patients. She asserted that in Japan, where patients' rights are not

established, the New Law would cause mental patients to be marginalized.

After the two speeches, various audience members made comments. Among them was Professor Saku Machino, JCLU Director, who stated his view that the New Law proposes to avoid excessive detention, with the pretext of social safety concerns, through the establishment of a mental health system at the local community level. He also stressed that the complete withdrawal of the law was never constructive.



**"Dangerousness Assessments
are Impossible"
A Psychiatrist Speaks Out**

[Jinken Shimbun, September 27 2002, No.338]

On September 5, Dr. Timothy Harding addressed a JCLU regular seminar entitled "Japan's Mental Health System from an International Human Rights Perspective: Flaws in the Bill on Medical Treatment and Observation of People Who Have Committed Serious Crimes While in a State of Insanity" (Coordinator: Ms. Nobuko Kobayashi; Translator: Mr. Yoichi Kitamura). Dr. Harding, a psychiatrist and professor, is Director of the Institute of Forensic Medicine at the University of Geneva. He was in Japan from 1985 to 1989 as part of an International Commission of Jurists mission that recommended reform of the Japanese mental health care system. The following is an excerpt from his speech.

Past and present

History teaches us that the mentally ill are particularly vulnerable to human rights abuses. They were among the first victims of the Third Reich in Germany. In Europe, to combat this situation the European Court and the Convention on Protection of Torture (CPT) have devoted considerable effort to protecting the mentally ill from violations of their human rights.

In the United Kingdom, however, the popular press has contributed to the image of the dangerous madman lurking in the shadows of every residential area and

threatening innocent people in the streets, children at school, and old people in their homes. But the facts show that the mentally ill contribute very little to the overall rate of violent crime in society. I believe the same may be true in Japan, although I am unable to read the popular press, following the Ikeda incident last year.

So, one piece of advice to the NGO community and the JCLU in particular: try to involve journalists in the debate on human rights of the mentally ill - and not just journalists from serious newspapers or TV programs, but also from the mass media.

Legal Provisions/ Institutions/ Professional Competence and Options: A Dynamic Interaction

To examine the legislation on treatment of mentally ill criminals in different justice systems, not only provisions laid down by the New Law but also institutional frameworks and the range of professional mental health competence and options should be taken into consideration, because these three elements intricately interact with each other.

Specifically, in addition to legal provisions the following elements are important:

- a) The state of psychiatric services within the prison system;
- b) The availability of mental health professionals with competence in the forensic field;
- c) The intentions of the authorities to create new secure forensic psychiatric services.

The New Law in Japan

Four points can be raised regarding the New Law:

- a) The new provisions do appear to fill a 'legislative gap' bridging the legal and psychiatric systems. At present, many mentally disordered offenders are 'diverted' to the mental health system by procedures which lack transparency or due process.
- b) A potential for arbitrariness exists in the new proce-

dures. The examination of the facts is discretionary and the accused are not necessarily represented by a lawyer, but are 'accompanied' by an attendant who may be a lawyer.

- c) The role of the psychiatrist who sits with the judge is ethically ambiguous, even more so than that of a forensic specialist.
- d) It seems unlikely that the special courts would be subject to critical scrutiny, since the proceedings are essentially secret and not in the public domain. The same would be true of the contribution of mental health professionals, both those sitting with a judicial role and those writing expert reports. A closed and non-transparent system is likely to develop a dysfunctional way of working, characterized by an unhealthy symbiosis between judges and psychiatrists and a lack of accountability. It is unlikely that such courts would be aware of critical issues, such as the fragility of dangerousness assessments and the availability of appropriate treatment services.

Above all, the government has advanced much more rapidly with its legal proposals than with plans to develop treatment services. It can be feared that special secure hospitals with an essentially custodial function will be created without a pathway of care leading to the community. The new hospitals will therefore rapidly become overcrowded and treatment standards will fall.

The proposals appear to give tasks to psychiatrists which they cannot perform effectively (predicting dangerousness and making judicial decisions). On the other hand, mental health professionals well-trained in forensic work and working as a multi-disciplinary team can be very effective in treating mentally ill offenders, reintegrating them into the community, and significantly reducing the risk of future violence. Paradoxically, the proposals say nothing about the need to train an adequate number of professionals to perform these tasks, which would contribute both to patient welfare and to public security.

Discussion

After Dr. Harding's speech, an intensive discussion was held regarding the assessment of dangerousness and other issues. Dr. Harding said psychiatrists may be able to assess an individual's potential dangerousness within the span of a few hours, but not far into the future.

**Reported by Mitsuko Osugi
(Lawyer, Kyoto Civil Liberties Union)**



JCLU Criticizes The Law as Stigmatizing Patients

[Jinken Shimbun, September 27 2002, No.338]

"The bill may exacerbate discrimination against people with mental disabilities," warned the JCLU in its comment on the "Law Concerning Medical Treatment and Observation of People Who Have Committed Grave Acts Against Others While in a State of Insanity." The comment, made on July 29, 2002, was sent to the Prime Minister, Minister of Justice, and Minister of Welfare and Labour.

According to the JCLU comment, the New Law's premise is that it is possible to determine the likelihood that an accused person will commit serious crimes in the future. The comment contests this premise - stating that no research to date has proven it to be the case - and demands that the government release the scientific data used to make such claims. The comment also demands that the government provide an opportunity for this issue to be discussed in the Diet.

When an accused person is ordered to be hospitalized in accordance with the New Law, people are likely to avoid that person due to prejudice - thereby increasing the social stigma attached to people suspected of committing crimes. As a result, according to the JCLU comment, the procedure must be strictly designed so as not to bring false charges. Furthermore, it is crucial that the bill establish due process, because it introduces a completely new system that belongs neither to criminal nor civil procedure. The unprecedented judgment process, involving the cooperation of a judge and psychiatrist, does not seem to meet these important requirements. In conclusion, the JCLU comment demands that the government amend the bill from its very foundations.

Translated by Satoshi Ueno & Nobuko Kobayashi

COUNTER TERRORISM

or

Civil Liberties?

features

In the period since 9/11, not only in Europe and the US, but in Asia as well many measures restricting human rights have appeared under the pretext of combating terrorism have appeared. The JCLU surveys the operation of these measures, which are at the center of its work.

Japan's Counter-Terror Measures

The International Convention for the Suppression of the Financing of Terrorism

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

Two important measures were passed by the Diet in June 2002. The first measure is a ratification draft of a UN treaty, the International Convention for the Suppression of the Financing of Terrorism. The second, a piece of domestic legislation, is a bill entitled "Draft Law on the Punishment of Financing Criminal Acts Intended to Intimidate the Population." In neither of these measures, however, is the term "terrorism" precisely defined. The bill lacks a requirement that there be a specific connection between the provision of funds and a terror plan, and the definition of an act of terror is unclear. Moreover, the treaty—unlike the anti-terrorism treaty of the Organization of the Islamic Conference—fails to distinguish between terror and force associated with a movement aimed at achieving the independence of a people. And since the bill leaves the decision as to whether something is "terror" up to the investigative agencies, as public order legislation it contains the danger that it will stir up rage.

On April 3, 2002, the JCLU submitted a written opinion on the ratification of the treaty and on the bill. In essence, the JCLU points out that both measures contravene the principle of legality (*nullum crimen sine lege*), and constitute an infringement of freedom of thought and conscience. The JCLU opposes hasty ratification of the treaty draft and passage of the bill, explaining that there is a danger that the measures will restrict humanitarian assistance for victims of war abroad and other calamities. In addition to urging that these problematic aspects be reconsidered, the JCLU will itself make efforts to improve the legislation.

Conspiracy

[Jinken Shimbun, July 28 2003, No.343]

The Japanese government has submitted a bill entitled "Bill to Partially Amend the Criminal Law to Deal with Internationalized and Organized Crime." Here again, however, the definition of the crime of "conspiracy" at which the bill is aimed contains no element of extension beyond national borders, or involvement of an organized criminal group. According to the bill, it is sufficient that there exists a conspiracy to carry out a crime. There is no other requirement that there be preparatory conduct based on an agreement. The bill is applicable to a broad range of and a variety of crimes, and thus will expand the application of "conspiracy". On June 23, 2003, the JCLU released a statement opposing the bill from the standpoint of protecting fundamental human rights.

The Situation in Various Regions of Asia

[Jinken Shimbun, November 28 2002, No.339]

On October 23, 2002, the JCLU held its regular meeting in the Atagoyama Bengoshi Building. Members reported on their participation in an international gathering in Bangkok in August. That meeting was concerned with the fact that, since 9/11, various Asian countries, giving "anti-terror" as a reason, have intensified the application of their internal security laws, and have even restricted the human rights of individuals who, properly speaking, have nothing to do with terror. The Bangkok meeting focused on the origins of these problems, on analysis of the situation, and on ways to improve the present state of affairs.

In general, during the Cold war between East and West domestic national security laws were anti-communist in purpose. However after the end of the Cold War, in Asian countries as well, minorities who became impediments to the consolidation of citizens under globalization began to be the targets. 9/11 and "terrorism" have accelerated this development.

It was reported that Malaysia's national security law provides for so-called preventive detention; under the law, indefinite detention by order of the Minister of the Interior is possible. Following the establishment of the Human Rights Commission of Malaysia, this law is being re-examined. Also it was reported that in a case involving the detention under the same law of five leaders of a movement for government reform, Malaysia's Supreme Court handed down a judgment that the detention was unlawful. The five individuals remain in detention, however.

Toward a Viewpoint Transcending Hostility and Nationalism

[Jinken Shimbun, July 28 2003, No.343]

Taking into account and moving beyond events such as 9/11, Pyongyang Declaration on September 17, abductions by North Korea, the new military strategy of US and the nuclear issue, how should we think about the future Asian order?

Professor Kang Sangjung addressed these matters in a lecture on May 31. Professor Kang argued that regionalism should be revived anew from among Japanese Koreans (*zainichi kankokujin* and *zainichi chosonjin*) and urged that this new regionalism should have a "North-East Asian Common House," framework that would place the Korean peninsula at the center. The perspective to achieve this is a critical view that recognizes that pre-war Asianism is dead, and that offers a vision transcending nationalism. It would be helpful to create a multilateral framework to resolve the North Korea problem, and a "Pyongyang Declaration" based on this vision would be of great value.

However, since the hard line policy of the United States is connected to a decline in US influence because of the coexistence of North and South Korea, there are interests that desire a continuation of the North Korea crisis. On the other hand, North Korea is exhausted and can hardly withstand any more pressure, so there is concern that an unexpected accident could occur. Accordingly, if the US promises non-aggression and North Korea in turn promises to abandon its nuclear development, progress in Japan-North Korea negotiations can become a practical prescription.

Thus, for this purpose, it is necessary that Japan change its media broadcasts. Because of September 17, and because North Korea has admitted the facts of the abductions, Japan has increased the North Korea bashing in its broadcasts. Broadcasts of this nature will be an obstacle to progress in negotiations between Japan and North Korea.

Translated by John Tobin

RIGHT TO KNOW

Self Defense Agency Leaks the List of the Information Disclosure Requesters

[Jinken Shimbun, July 26 2002, No.337]

In June of 2002 it became known that the Self Defense Agency (SDA) investigated the backgrounds of and made Lists of individuals who had applied for information disclosure requests to the SDA under the Information Disclosure Law, and then circulated the lists among its top staff. There were more than one hundred names on the lists, and they came from a wide range of backgrounds, including a former Self Defense Force officer and an ombudsman.

On July 1, 2002, the JCLU issued and sent to the director general of the SDA a statement strongly protesting the organizational creation and distribution of the lists in questions.

The statement points out and sternly protests that these acts violate the current Law for Protection of Personal Information Held by Administrative Agencies which allows administrative agencies only to hold personal information files for a specific purpose as necessary to carry out their duties as provided for by law, and that the act of distributing the lists is prohibited under the same law as the leakage and use with unjust purpose of personal information learned during the course of their assignment.

The JCLU calls upon the government to undertake a thorough investigation, to consider punishment of those responsible and to establish measures necessary for the proper management by government agencies of personal information to prevent any threat to the right to know, the individual's right to control his or her own personal information, and the freedoms of assembly and association.

Translated by David M. Schultz

JCLU Endorses Lockheed "Declaration" Lawsuit

[Jinken Shimbun, July 26 2002, No.337]

When Hisashi Muto, a member of the JCLU, requested disclosure of the Supreme Court documents relating to the "declaration" made by the highest court during the investigation of the famous Lockheed corruption case pursuant to the court's Basic Rules on Disclosure of Information in May 2001, a large part of the documents were denied disclosure or were classified as "nonexistent." Muto, represented by 5 attorneys who are members of the JCLU's Disclosure of Information Committee, filed lawsuit with the Tokyo District Court in May 2002 claiming damages against the Japanese government for infringing his right to know.

This lawsuit has attracted attention as the first case where the disclosure of documents relating to the administration of justice is being questioned. The JCLU made a decision to support this lawsuit in June 2002.

Translated by Mie Fujimoto

Statement Calling for Fundamental Reconsideration of the National Resident Registry Network

[Jinken Shimbun, September 27 2002, No.338]

On September 25, 2002, the JCLU issued a statement calling for a fundamental reconsideration of the National Resident Registry Network (Juki Network) that began its operation in August 2002.

The statement asserts that there is a strong risk that the current Juki Network system violates the right to control one's own personal information that is guaranteed by the Constitution.

Emphasizing the need for administrative efficiency, the national government hastily began to operate the Juki Network without sufficient legislative preparations to protect this right. There is also a strong suspi-

cion that personal information may easily be leaked under the present system but that the national government has not dealt with the issue.

In light of the true aim of local autonomy, sufficient respect should be given to local governments which have taken measures to postpone connecting itself to the Juki Network in order to protect their residents' rights.

The JCLU supports the decisions of these local governments, and calls upon other local governments to take all possible measures to protect their residents' rights. At the same time, the JCLU calls upon the national government to immediately reconsider the current Juki Network, which threatens the basic human rights and poses many other problems.

Translated by David M. Schultz

Appellate Procedure to Judicial Decisions Denying Disclosure of Judicial Administrative Information

[Jinken Shimbun, November 28 2002, No.339]

On the 15th of November, 2002, JCLU presented its proposal to the Chief Justice of the Supreme Court and the members of the "Asu no Saibansho wo Kangaeru Kondan-Kai" committee, which was established at the General Secretariat of the Supreme Court on January 30, 2002, to deliberate on court reform. The proposal asks to improve the current procedure set along the Outline of the Office Procedure Regarding the Disclosure of Judicial Administrative Documents Owned by Supreme Court (Outline), which was established in April 2001. The suggestion is in line with the pending court reform in that it hopes to enhance the effective disclosure of information in the judicial area.

The current Outline does not provide for any procedure to contest a Supreme Court decision denying the disclosure of judicial administrative documents, numerous people have been left without any remedy in the face of such a decision. JCLU therefore suggests that the courts should adopt their own Bill on Disclosure of information, or as a tentative measure, the Supreme Court

justice, together with an advisory board consisting of third parties, should be given jurisdiction to hear appeals from decisions denying disclosure of judicial administrative documents.

The full text of the proposal (available in Japanese only) can be accessed at the JCLU's website or obtained upon request to the Secretariat of the JCLU.

Translated by Yumiko Ichige

JCLU Requests Amicus Curiae and In-camera Proceedings for Administrative Litigation

[Jinken Shimbun, November 28 2002, No.339]

On October 4, 2002, the JCLU submitted its "Opinion Regarding the Reformation of the Administrative Litigation System" (the "Opinion") to the Prime Minister Junichiro Koizumi, as head of the Office for Promotion of Judicial System Reform, and Mr. Hiroshi Shiono, chairman of the Committee on Administrative Litigation organized in the Office.

Firstly, the Opinion recommends the adoption of the amicus curiae system. Amicus curiae is important in administrative litigation because of the tendency of such litigation to have far-reaching effects beyond that on the plaintiffs. Amicus curiae can also assist the plaintiffs who tend to have less resources than the administrative bodies in collecting evidence.

Secondly, the Opinion recommends the introduction of in-camera proceedings. In-camera proceedings were not adopted by the present Information Disclosure Law because of opposing voices that such proceedings may conflict with Article 82 of the Constitution which guarantees public trial. The JCLU argues, however, that such a conflict would not arise as long as the content of the trials is disclosed.

The full text of the opinion (available in Japanese only) can be accessed at the JCLU's website or obtained upon request to the Secretariat of the JCLU.

Translated by Yumiko Ichige

RIGHTS OF FOREIGNERS

JCLU Demands National University Entrance Exam Qualification for All Foreigners' Schools

[Jinken Shimbun, March 28 2003, No.341]

International students in Japan who graduate from international schools are not always eligible to take national university entrance exams. The Ministry of Education did not recognize international schools as equivalents of official Japanese high schools. On March 6, 2003 the Ministry of Education announced a new policy that would allow new graduates of certain European and North American international schools to take Japanese university entrance exams. Other Asian international schools were excluded. It reinforced discrimination against North and South Korean schools; the subject of concern and recommendation of treaty monitoring bodies under various international human rights treaties. The policy infringed on the right to education of foreign children in violation of the government's obligations under the Convention on the Rights of the Child. In March, as part of the general public response, the JCLU released a statement demanding the Ministry of Education to take measures to allow the graduates of all foreign schools to take national university entrance exams.

On August 6, 2003 the Ministry of Education announced a revised plan to take effect in September. The September revision added five Asian schools, including the Tokyo Korean School and the Tokyo Chinese School, to the list of sixteen European and North American international schools whose graduates were qualified to take university entrance exams. Since then, other foreign schools have been added.

North Korean schools, however continue to be excluded. The government claims that the curriculum of the North Korean international schools cannot be confirmed as equivalent to Japanese high school curricula. The North Korean graduates are not officially recognized; in order to take exams, the students need permission from their desired school.

Efforts to Eliminate Racial Discrimination Lawsuits and Proposal for Anti-Discrimination Law

[Jinken Shimbun, March 28 2003, No.341 & May 23 2003, No.342]

A number of lawsuits challenging racial discrimination have been raised in various places in Japan over the recent years. The background and significance of such discrimination lawsuits were studied at the JCLU's regular seminar held on March 15, 2003.

The first speaker, Mr. Debito Arudou, a formerly U.S. Citizen who has acquired Japanese nationality, reported his own experience as the plaintiff of a racial discrimination lawsuit. Mr. Arudou was denied entry into a public hot spring bath facility in Otaru City, Hokkaido. He commenced a lawsuit in February 2001 against the facility and Otaru City. The Sapporo District Court found the facility liable but denied the city's liability in its November 2002 decision. Mr. Arudou appealed the denial of the city's responsibility. The JCLU is officially supporting this appeal case which is currently pending in Sapporo High Court. Mr. Arudou pointed out that Otaru City was fully aware of the discriminatory practices of the public bath facilities but failed to take any effective actions such as enacting an ordinance prohibiting racial discrimination.

The second speaker was Mr. Hiroshi Tanaka, Professor at Ryukoku University and JCLU Representative Director who is an expert on foreigners' rights. Mr. Tanaka expressed his hope that policies adopted by progressive municipalities will influence other municipalities, and will result in changing policies at the national level.

At the meeting, the JCLU's Foreigners Rights Committee announced its proposed outline for a Law on the Elimination of Racial Discrimination (See the next page). The Committee has solicited public comments and is currently working on revising the proposal based on various opinions which it received.

Translated by Mie Fujimoto

**RELEASE OF:
PROPOSED OUTLINE FOR LAW ON THE ELIMINATION OF RACIAL
DISCRIMINATION
(Draft Proposal Ver. 1 of JCLU Foreigners Rights Committee)**

After much discussion, Japan ratified the International Convention on the Elimination of Racial Discrimination in 1996. However, the position of the Japanese government has been that, "We do not recognize that the present situation of Japan is one in which discriminative acts cannot be effectively restrained by the existing legal system or in which explicit racial discriminative acts, which cannot be restrained by measures other than legislation, are conducted; therefore a law prohibiting racial discrimination and other legislation is not considered necessary." (Comments of the Japanese Government on the Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination regarding report and examination of the Japanese Government).

Nonetheless, as the number of foreigners living in Japan continues to increase year to year, in reality there exists strongly-rooted racial discrimination here, which includes discrimination against foreigners in labor, housing, the provision of services, and various other areas. In the Hamamatsu Jewelry Store foreigner exclusion case and the Otaru Onsen racial discrimination case, claims seeking compensation from the proprietors of discriminating businesses were upheld based on the International Convention on the Elimination of Racial Discrimination. However, such cases are just the tip of the iceberg. Relief under the Convention and in the courts, by themselves, are clearly inadequate for the elimination of discrimination. To truly do away with discrimination, we need to specify and define clear rules as to what constitutes unacceptable discrimination, clarify the responsibility of national and local governments in the elimination of discrimination, and enhance relief measures.

As evidenced by discrimination against foreigners, the existing mechanism for the protection of human rights centered on the Constitution and the courts is inadequate to provide relief for actually occurring abuses of human rights, and as such there are heightened calls for the creation of new mechanisms. Currently, debate is underway concerning the establishment of a domestic human rights body, but the fact of the matter is that nearly no debate has ensued concerning substantive law that will be applicable to such a body.

This subcommittee has targeted the enactment of substantive law for the elimination of racial discrimination as one facet of new and effective human rights protection mechanisms, and the members set forth below have prepared a draft proposal outline therefor. 'Buraku' discrimination and other serious discrimination based on traits other than race also exist in Japan, but we believe that the coverage of all discrimination under one law is not necessarily appropriate since each form of discrimination has its own characteristic aspects. As such, this subcommittee focused on the issue of discrimination against foreigners, and drafted a special law concerning racial discrimination which also addresses discrimination against foreigners.

Premised on the establishment of a truly independent national human rights body, for the time being we will assume that such a body will implement the racial discrimination elimination law. While it is necessary to also examine and propose specific relief procedures, initially we will propose the substantive law as a springboard for debate, and subsequently we will examine procedural issues.

Furthermore, the repeal of the nationality clause of the Livelihood Protection Law and measures for the realization of civil service employment rights are necessary in the event this racial discrimination elimination law is enacted. In addition, depending on the manner in which relief measures are prescribed, reservations concerning Article 4(a) and (b) of the International Convention on the Elimination of Racial Discrimination may have to be withdrawn.

This proposed outline was prepared as a springboard for debate, and we request your opinions towards improving the proposed outline.

March 15, 2003

Japan Civil Liberties Union
Foreigners Rights Committee
Shun Hashiba (Attorney at Law)
Akira Hatate (Labor Issues Researcher)
Toshiaki Fujimoto
(Lecturer at Kanagawa University)
Mie Fujimoto (Attorney at Law)

PROPOSED OUTLINE FOR LAW ON THE ELIMINATION OF RACIAL DISCRIMINATION

1. Purpose

This Law seeks to contribute to the realization of a society that respects those human rights recognized under the Constitution and international law, by eliminating racial discrimination through the prohibition of racial discrimination by all persons and the enactment of measures designed for the relief and prevention of harms therefrom.

2. Definitions

In this Law, the term "Race" shall mean race, color of skin, ethnicity, nationality or national origin.

In this Law, the term "Racial Group" shall mean any group comprised of persons who share a specific Race.

In this Law, the term "Public Official" shall mean any staff member of national or local public entities, and persons otherwise engaged in civil service pursuant to law or ordinance.

In this Law, the term "Racial Discrimination" shall mean the following actions:

- (1)(Direct Discrimination) Treating any person at a disadvantage to others in the same circumstances, based on Race;
- (2)(Indirect Discrimination) An apparently neutral rule or criterion would put a person belonging to a specific Racial Group at a disadvantage compared with other persons.
- (3)(Harassment) Acts related to Race, that have the purpose or effect of intimidation, insult, derision, or the creation of an otherwise unpleasant environment, or that have the purpose or effect of damaging the dignity of specific person(s) shall be deemed as discrimination under Paragraph (1).

The following acts shall not constitute Racial Discrimination:

- (1)To the extent necessary for the purpose, differing treatment in cases where different treatment based on nationality is truly unavoidable;
- (2)In cases in which by the nature of a certain occupation, characteristics related to a specific Race correspond to definitive working conditions, the purpose for the establishment of said conditions is just, and the conditions are proportionate to the purpose, the differing treatment based on said characteristics;
- (3)Special measures enacted for the purpose of pre-

venting or rectifying disadvantages related to Race.

3. General Prohibition of Discrimination

No person shall suffer Racial Discrimination.

4. Specific Areas

[Labor]

1) Employers must not engage in Racial Discrimination in the following matters or otherwise in connection with labor contracts:

- (1) Recruitment and hiring;
- (2) Work hours, wages, days off and leave, work safety and sanitation, and other labor conditions;
- (3) Assignments and promotions;
- (4) Education and training;
- (5) Benefits;
- (6) Mandatory retirement, resignations and dismissals

2) Job placement organizations, job training organizations and organizations granting qualifications must not engage in Racial Discrimination.

3) Labor unions, employer groups, and other occupational groups must not engage in Racial Discrimination for entry into said groups and in the treatment as members of such groups.

4) National and local public entities must not engage in Racial Discrimination, including in matters of hiring and promotions.

[Medical Treatment and Social Security]

1) All persons shall have the right to enjoy physical and mental health to the maximum level attain-

able, free of Racial Discrimination.

2) All persons shall have the right to receive medical treatment as required in emergencies to sustain life and prevent irreversible health injuries, free of Racial Discrimination. Such emergency treatment must not be refused based on grounds of undocumented residency or employment.

3) All persons shall have the right to participate in health insurance, welfare pension insurance, National Health Insurance, and the National Pension Plan free of Racial Discrimination.

4) All persons shall have the right to receive livelihood protection (seikatsu-hogo) free of Racial Discrimination. Provided, however, that the foregoing provision shall not apply to foreigners who have resided in Japan for less than one year.

5) All persons shall be able to enjoy rights related to child welfare, maternal and child health, pediatric health care, health care for infectious diseases, welfare services for the disabled, welfare services for seniors, public health, and the like, free of Racial Discrimination.

[Education]

1) No person shall suffer Racial Discrimination in any form or at any stage in education.

2) National and local public entities must utilize all appropriate methods in an effort to fulfill the special needs associated with specific Racial Groups, including opportunities to receive ethnic education, education of native languages, and education of the Japanese language.

3) In no form and at no stage will education include content which encourages Racial Discrimination. In particular, school-based education must be oriented towards the elimination of racial discrimination.

[Housing]

No person shall suffer Racial Discrimination in the disposal (including purchase and sale) of, or the use (including renting) of, real estate for business use or housing for oneself or one's family.

[Provision of Goods, Etc.]

No person shall suffer Racial Discrimination in connection with the receipt of any goods or services provided for public use including retailers, transportation, accommodation, food and beverage establishments, playhouses, and parks.

[Participation in Groups]

No person shall suffer Racial Discrimination in joining, withdrawing or in the treatment as a member of those groups for which the public are eligible to become members.

5. Prohibition of Discrimination and Incitement of Discrimination by Public Officials

Public Officials must not engage in Racial Discrimination in their positions as persons engaged in public service.

Public Officials must not incite Racial Discrimination against any person. Incitement shall mean working to cause or bring about the likeliness of a decision to carry out a specific act against a person, regardless of whether through instructions, orders, solicitations or other methods.

6. Responsibilities of National and Local Public Entities

The national government shall be responsible for the comprehensive promotion of policies for the realization of the human rights recognized under the Constitution and international law through the elimination of Racial Discrimination.

Local public entities, in an effort to eliminate Racial Discrimination in regional societies, shall give due consideration to the effect of this Law in the administration and affairs of the local public entity, shall enact ordinances, and shall otherwise be responsible for the comprehensive promotion of policies for the elimination of Racial Discrimination at local public entities.

7. Publicity and Promotion of Awareness of the Law

National and local public entities must widely promote awareness of this Law by adopting adequate and affirmative publicity measures, and must provide all persons with easy access to information concerning this Law.

8. International Human Rights Law as a Supplemental Means for the Interpretation of the Law

In the interpretation and application of this Law, consideration shall be given to general interpretations and applications internationally recognized in connection with the International Covenant on Human Rights, the International Convention on the Elimination of Racial Discrimination, and other conventions related to human rights.

INDIGENOUS PEOPLES

Ainu Dignity Rights Case

Yukari Hideshima, attorney at law

[Jinken Shimbun, July 26 2002, No.337 &
September 27 2002, No.338]

The real names, specific health issues including the listing of disease names such as hereditary syphilis and secondary trachoma, and hometowns of as many as 514 ethnic Ainu described with discriminatory expressions about Ainu such as "barbarous race" that had originally been published in "Research Report on the Hygienic Conditions of Kyu dojin [lit, Former Aborigines] in Yoichi-Cho Yoichi-Gun" (Hokkaido Police Department, 1926) and "Ainu Medical Matters" (Fujihiko Sekiba, 1896) were reprinted and publicized by a researcher in 1980 in the "Ainu History Data Book" (8 volumes.)

Four Ainu Plaintiffs (one of whom was the grandchild of individuals whose names and diseases had appeared in the book) filed suit in Sapporo District Court against the researcher and the publisher requesting compensation for damages, collection of all copies of the book, and a formal apology since the reprinting and publication of these facts violated the dignity rights ("Jinkaku ken" in Japanese) of ethnic Ainu and it is against the convention that bars all forms of ethnic discrimination.

On June 27, 2002, the Sapporo district court civil section 4 dismissed the claim, ruling that "although the plaintiffs claim a violation of their dignity rights as members of an ethnic minority, the damage is indirect since the plaintiffs can only claim psychological pain as Ainu rather than specific violations of their privacy or dignity rights." The Plaintiffs appealed on July 11, 2002 and five court hearing procedures were held at Sapporo High Court civil section 3. The next hearing is set for February 19. It is predicted that the defendants will submit counter-arguments and we ask support so that we will be able to have the opportunity to cross-examine the defendants and expert witness who had not been permitted in district court.

Translated by Kanae Doi

MASS MEDIA

JCLU Concerns Regulation of News Reporting in Proposed Lay Judges System

[Jinken Shimbun, March 28 2003, No.341]

On March 11, the Office for Promotion of Justice System Reform presented a draft proposal to the Committee on Lay Judges (Saiban-in) System and Criminal Affairs. This draft proposal included certain restrictions on coverage and news reporting regarding lay judges such as confidentiality obligations of lay judges, protection of lay judges' personal information and prohibition to contact lay judges. These restrictions raise concerns about the chilling effect on news reporting and adverse effects on the freedom of expression.

The JCLU is of the opinion that it is necessary to strengthen public scrutiny as the speeding up of criminal trials which is one of the goals of the Justice System Reform poses a risk to weaken the rights of the accused and defendants. The opinion announced by the JCLU opposes to the introduction of these restrictions and requests a close reconsideration of the issues.

Translated by Hiroshi Takekawa

INTERNATIONAL CRIMINAL COURT

Discussions Toward Ratification of ICC

[Jinken Shimbun, September 27 2002, No.338]

JCLU took several actions towards the establishment of the International Criminal Court (ICC). To commemorate the execution of the Roman Code, JCLU held a regular meeting entitled "The preparations made towards the establishment of the ICC". There, one of the JCLU members, Mikiko Otani, introduced the discussions done at the ICC Preparation Committee and Miho Tsujii, who belonged to the "Women's Causus demand-

ing justice among genders," reported about the viewpoints of "gender justice" considered essential for the ICC.

[Jinken Shimbun, November 28 2002, No.339]

Also in November of the same year, JCLU made several presentations at the symposium "Possibilities and challenges of the ICC" held at Keisen Jogakuen University. Presentations were made by Dr. Claus Kress (ex-delegation member for Germany), Vahida Nainar (ex-representative of the Women's Caucus), Yasushi Higashizawa (Secretary General of the JCLU), Makoto Teranaka (Secretary General of the AI Japan) and Professor Akira Maeda. The participants of the symposium demanded that Japan immediately join the Roman Code, and that civil society should take on active roles towards the establishment of the ICC.

Translated by Takashi Yamaguchi

NATIONAL HUMAN RIGHTS COMMISSION

JCLU Demands Overhaul of Human Rights Protection Bill

[Jinken Shimbun, November 28 2002, No.339]

On November 8, 2002, the JCLU submitted another statement demanding that the Human Rights Protection Bill - which proposed the creation of a national Human Rights Commission - be significantly revised and resubmitted to the Diet. The bill had been carried over from the previous Diet session.

While the JCLU has recognized from the outset that a national effort to combat human rights violations must include a national human rights commission, the JCLU statement included major criticisms of the bill. One was that the proposed commission would not be sufficiently independent of the Ministry of Justice, making it unlikely to resolve human rights violations that occur in the detention centers, prisons, and immigration control facilities under the Ministry's jurisdiction. A second major criticism was that the bill would subject the news media to a "special relief procedure," jeopardizing freedom of expression and freedom of the press.

Other criticisms of the Human Rights Protection Bill were presented in JCLU's November 6, 2002 joint statement with the International Human Rights NGO Network. For details regarding JCLU's position, please refer to Universal Principal No. 10 or the JCLU's website (Website includes full text of statement in Japanese.)

Translated by Mari Calder

Editor's Note: The Bill was withdrawn in October 2003 with dissolution of House of Representative. But Ministry of Justice is preparing the new bill, in which the Commission is still put under the Ministry's jurisdiction. The UN Committee on Elimination of Discrimination Against Women and the UN Committee on Rights of Child, both of which held consideration of Japanese Government Report after withdrawn of the bill, recommended to ensure the independency of the proposed Commission.

WOMEN'S RIGHTS

Trafficking of Women in Japan

[Jinken Shimbun, May 23 2003, No.342]

Finished with its NGO Report for The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the JCLU project for the CEDAW held a regular JCLU seminar on April 9 to share the report with citizens and other NGOs, and to raise their awareness of women's rights and the CEDAW. At the seminar, the project invited Ms. Keiko Ohtsu, the Director of "HELP Asian Women's Shelter," to speak about the trafficking of women in Japan and HELP's activity. Trafficking and forced prostitution was anticipated to be one of the major issues for CEDAW consideration.

According to Ms. Ohtsu, HELP was established in 1986. Since then, its shelters have accommodated approximately 4,600 women and children regardless of their nationality. The number of women who escaped from trafficking has been decreasing in recent years. But, she stressed, this never means trafficking cases are actually decreasing. Rather, the victims are arrested on grounds of illegal stay by police and the Immigration Office. Then they are deported. In Japan, the acts of trafficking women

and paying for sex are not clearly criminalized by law, but prostitution is illegal. So in most cases, those arrested are neither trafficking brokers nor buyers, but women.

The nationality of trafficked women changes as time goes on. Before the mid-90s, most of them were from Thailand. But in the past five years, the number of Colombian women has been increasing. As long as they stay in the shelters, women are cared for by volunteers who speak their native languages. But after they return to their countries, HELP cannot guarantee their living. In fact, a Thai woman who once stayed in a HELP's shelter, died in a traffic accident after her return to Thailand. Ms. Ohtsu said she didn't know the truth, but it was said that the woman was killed by way of exemplary punishment. Safety is most essential for trafficked women.

The view of the Japanese Ministry of Foreign Affairs is that most such of these women recognize they would be prostitutes and hope to earn money in Japan. So, they are not 'trafficked.' Ms. Ohtsu argues that even if they recognize this as so, it is, indeed, that they are in debt bondage and are forced into prostitution.

In Japan, public awareness and governmental policy on women immigrants are still lacking. "I hope new legislation will be enacted which prohibits trafficking and protects victimized women," Ms. Ohtsu concluded.

Translated by Satoshi Ueno

Midwives File Lawsuit to Challenge Resolution on Introduction of Male Midwives

By Kimiko Kayashima

Group for Reforming Midwives' Association

[Jinken Shimbun, November 28, 2002, No. 339]

On April 5, 2002, six midwives filed a lawsuit with the Tokyo District Court demanding confirmation of the invalidity of a resolution adopted by the Japanese Midwives' Association.

The Association, constituted by midwives throughout the country is a non-profit entity which aims to enhance mutual cooperation among its members and to improve the status of the profession. The resolution in question was passed in March 2000 by the executive members of the Association. It supported the relaxing of midwife qualifications to allow males to become midwives. The resolution was passed under the procedure which did not comply with the Association's articles of incorporation. Based on this resolution, the Association's executive members submitted a request to the Liberal Democratic Party (LDP) to "make males eligible to become midwives" and to "change the name of the profession from the feminine 'josanpu' to the neutral 'josanshi'." The efforts to introduce male midwives failed due to strong oppositions, but the revision of the name was effected in March 2002.

Under these circumstances, the court presented a proposal of settlement in October 2002, which was fully in line with the plaintiffs' arguments. The court urged the Association to re-elect representatives, convene a general meeting, and re-submit the subject of the present lawsuit at the meeting. The Association emphasizes the promotion of gender equality as the reason for introducing male midwives. However, the plaintiffs believe that the introduction of male midwives may lead to interference with women's health and rights.

Translated by Mie Fujimoto

Editor's Note: Following the commencement of the lawsuit, the Association confirmed that the Association will hold thorough discussions among its members and determine its conclusion 2 years later. The parties to the lawsuit reached a settlement in January 2004, where the defendant confirmed that the Association will be managed in accordance with this new resolution.

In 2003, JCLU took up this issue in its report for Convention on the Elimination of Discrimination Against Women. There are precise background of this issue in "Universal Principle No.10."

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.

JCLU Officers : Representative Directors Yoshihiko Fuketa, Junichiro Hironaka, Masako Kamiya, Hiroshi Tanaka; Secretary-General: Yasushi Higashizawa

Committees & Projects: ICESCR Committee, Foreigner Rights Committee, Freedom of Information Committee, Human Rights Consulting Committee, Mass Media Committee, AIDS and Human Rights Committee, Mental Patients Rights Committee, Citizen and Judicial Reform Project, International Laws and Lawsuits Project, CEDAW NGO Report Drafting Project, UN NGO Status Project

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