

Reform of Human Rights Institutions in Japan*

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INTRODUCTION

The Constitution of Japan promulgated in 1946 defines that “All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin” (Article 14) . In 1948, the Government of Japan established the Human Rights Bureau as a national administrative agency for human rights under the Ministry of Justice. The Human Rights Bureau was modeled after the Civil Liberties Bureau in the United States of America. On the other hand, the Government created the “Human Rights Volunteers” (*Jinken Yogo Iin* in Japanese) . The Human Rights Volunteer is a commissioned private citizen appointed by the Minister of Justice working for the protection of human rights at the community level. This system is not a kind of foreign borrowing, but a “made in Japan” modeled after the commissioned welfare volunteers (*Minsei Iin*) system that has already existed.

After the promulgation of the Constitution, the Government took positive actions for protecting human rights through various legislative measures. In 1947, the Government amended the Civil Code to abolish a patriarchal system

and enacted the Labor Standard Act of 1947 to prohibit child labor. The Universal Declaration of Human Rights of the United Nations also influenced the promotion of human rights in Japan. In 1948, the Government enacted the Child Welfare Act to prevent child abuse through the establishment of Child Guidance Centers nationwide. In the 1950s and 1960s, the Government enacted the Anti-Prostitution Act in 1956, the Act on the Promotion of Employment of the Persons with Disabilities in 1960, and the Law for Special Measures for *Dowa* (discriminated districts) Projects of 1969 (revised in 1982). In the 1980s and 1990s, the Government expanded human rights protection to cover the discrimination against HIV/AIDS carriers and Hansen's Disease patients, crime victims, and foreign nationals. It should be noted that these actions were sometimes urged by the international community. For instance, the Government enacted the Child Abuse Prevention Act in 2000 after the ratification of the UN Convention on the Rights of Child in 1994.

In parallel, the Government started a study to reorganize national institutions for human rights in the 1990s as also advocated by the UN human rights institutions. In 1993, the General Assembly of the United Nations adopted the so-called "Paris Principles" that encouraged the State party to establish a well-financed and adequately staffed independent national human rights institution. In addition, the 49th Session of the United Nations General Assembly in 1994 adopted a resolution that the decade from 1995 to 2004 would be the UN Decade for Human Rights Education. In response to these, the Government of Japan established the Headquarters for the Promotion of the UN Decade for Human Rights Education in the Cabinet in 1995 and enacted the Act on Promotion of Education and Enlightenment of Human Rights in 1999. On the other hand, the UN monitoring committees such as the International Coordinating Committee of National Institutions for the Promotion

of Human Rights (ICC) and the UN Human Rights Council persist to set up an independent mechanism for investigating complaints against violations of human rights in Japan. In the report, the UN Human Rights Committee criticized that the Human Rights Volunteers of Japan is not an independent mechanism, since it is supervised by the Ministry of Justice and its powers are strictly limited to issuing recommendation (UN Human Rights Committee 1998) . In response to the UN committees, the Government of Japan established an Advisory Council on the Promotion of Human Rights Protection to discuss about the reorganization of human rights institutions in 1997. In 1998, the Advisory Council on the Promotion of Human Rights Protection published two reports; the first report recommended establishment of a national human rights institution that is independent of the Government and the second report referred to the reform of the Human Rights Volunteers system (Ministry of Justice 2001a; 2001b) . Based on the series of reports, the Cabinet drafted a bill to establish a new independent administrative committee on human rights and human rights redressal system in 2002. However, the bill was not enacted because of the dissolution of the lower house in October 2003. After that, the Ministry of Justice continued to review the bill. Recently, the Cabinet has drafted a new bill to establish an independent national institution on human rights. Details of the bill will be discussed in the latter part of this paper.

STRUCTURE OF HUMAN RIGHTS INSTITUTIONS

National human rights institutions of Japan consist of the Human Rights Bureau of the Ministry of Justice and the “Human Rights Volunteers” appointed by the Minister of Justice. The Human Rights Bureau carries out human rights remedies activities and human rights protection through eight

Regional Legal Affairs Bureaus and 42 District Legal Affairs Bureaus and 287 local branch offices. “Human Rights Volunteers” are private citizens appointed by the Minister of Justice, on fair and impartial grounds under the Human Rights Bureau of the Ministry of Justice. At present, about 14,000 volunteers have been posted across Japan.

The system of “Human Rights Volunteers” was established based on the concept that people in various fields should work to encourage respect for human rights, make efforts to avoid infringements of the rights of residents, and protect human rights in the local community. The volunteers are posted in each municipality and engage in the activities to protect and promote human rights. They speak about human rights in front of community residents to raise public awareness on human rights, or engage in human rights counseling for the residents at human rights counseling offices of legal affairs bureaus and public facilities, including city offices and department stores. In 1994, the Ministry of Justice revised the Act on Human Rights Volunteers to introduce commissioned Child Rights Volunteers to deal with the problems affecting children’s rights such as bullying, corporal punishment and child abuse. They are appointed from among human rights volunteers.

However, there is controversy regarding the ability and performance of human rights volunteers. Their average age is 65 years and 80 percent of human rights volunteers are over 60 years. The male accounts for 68 percent, while the female 32 percent (Ministry of Justice 2001b) . Most of them are “local gentry” from the local community. The mayor of local government nominates the candidates for the human rights volunteers to the Ministry of Justice. Then, the senior people will be preferred from a standpoint of authority and availability.

The Ministry of Justice justifies a commissioned human rights volunteer

system, emphasizing volunteers' familiarity and flexibility in the local community. However, the Advisory Council on the Promotion of Human Rights Protection pointed out that the human rights volunteers lack professional knowledge on legal affairs which limits their performance (Ministry of Justice 2001b) . In the second report, the Advisory Council recommended to reform the human rights volunteers system through measures such as increase of female volunteers and representation of multiple generations (Ministry of Justice 2001b) .

RECENT LEGISLATIVE ACTIONS FOR HUMAN RIGHTS

In recent decades, the Government of Japan has promoted human rights protection through various measures. The major legislative actions are as follows:

Women

Women still suffer various kinds of gender discrimination in homes and at workplaces. In addition, violence against women, such as abuse by husband or partner, sexual harassment in the workplace and sex crimes, is one of the most important problems concerning women's rights. With regard to these women's human rights issues, the Government formulated the Gender Equality Plan in 2000 and established the Council for Gender Equality in the Cabinet Office in 2001. In the same year, the Government enacted the Act on the Prevention of Spousal Abuse and the Protection of Victims in 2001. The Act was further revised in 2004 and 2007 to cover not only bodily harm but the words and deeds of one spouse that cause equivalent psychological or physical harm to the other which the national and local government bear responsibilities to

prevent. On gender equality promotion, the Government revised the Equal Employment Opportunity Act in 2006 to prohibit discrimination based on gender at any stage of employment, including indirect discrimination or detrimental treatment due to facts such as pregnancy and child birth, as well as to enhance employers' obligations in measures against sexual harassment.

Child

Japan faces an increase of tragic incidents of child and infant abuse by parents and other adults that even cause deaths in some cases. To deal with it, the Government enacted the Child Abuse Prevention Law in 2000 and revised it in 2007 to enhance safeguards against child abuse. It defines the types of child abuse and strengthens the responsibilities of local government to protect children from abuse. It emphasizes the coordinated efforts of Child Guidance Centers, medical doctors and nurses, school teachers and police departments to detect and protect victims as early as possible.

Elderly Persons

In response to the increasing abuse against elderly persons under the custodial care in home and at welfare institutions, the Government enacted the Act on Prevention of Elderly Abuse and Support for Attendants of Elderly Persons in 2005. The Act provides for the definition of the abuse against the elderly. It classifies the abuse against elderly into the sub-categories such as physical assault, neglecting care services, psychological abuse, sexual abuse, and economic abuse. The Act stipulates the responsibilities of national and local government to prevent the abuse against elderly persons and take necessary measures to protect victims from abuse and assault.

Persons with Disabilities

In 2004, the Government revised the Basic Law for Persons with Disabilities to prohibit violation of the rights and interests of persons with disabilities or discrimination against them on the basis of their disabilities. The Act defines that national and local governments have a duty to prevent discrimination against persons with disabilities, and the people shall also endeavor to ensure persons with disabilities are not discriminated against. Based on the Basic Law, the Government established a taskforce in the Cabinet Office in 2010 to work on an antidiscrimination bill for the disabled. This action comes as part of government efforts to improve domestic legislation in preparation for the ratification of the United Nations Convention on the Rights of Persons with Disabilities. Once enacted, the antidiscrimination law will provide criteria for discrimination and will become a legal basis for disabled people to protect themselves from discrimination and to demand damages for any wrongdoing they suffered.

Human Rights Infringements via the Internet

With the spread of the Internet, various problems related to human rights, including defamation of individuals, invasion of privacy, and expression encouraging discrimination have increased. In 2001, the Government enacted the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders. The Ministry of Internal Affairs and Communications makes efforts to support appropriate operation of the Act. This Act gives conditions for limiting liability for damages in cases where providers or bulletin board managers delete, or do not delete, information infringing human rights on the Internet. It also prescribes the right of the

victim to demand the disclosure of identification information of the sender of the information infringing human rights. Regarding malicious incidents violating the rights of the privacy and reputation of others, the human rights organs of the Ministry of Justice are working to eliminate violations by contacting the individual responsible when this individual can be identified, or to request the provider to remove the offending contents if the perpetrator cannot be identified.

RECENT TREND OF HUMAN RIGHT INFRINGEMENTS

According to the Human Rights Bureau of the Ministry of Justice, a total of 22,168 cases of human rights infringements are reported in 2011 (Table 1) . It is an increase of 2.2 % from the previous year. The most striking feature is the increase of bullying incidents in schools. In 2011, a total of 3,306 bullying cases in schools were reported, an increase of 21.8 % from the previous year. The Human Rights Bureau analyzes that currently bullying incidents against children are becoming more and more serious. The methods have tended to become more extreme and persistent, and insidious bullying is on the increase. Bullying may cause suicides or result in severe injuries or death. Many of these bullying incidents could be attributed to the widespread influence of the Internet. The population of Internet users in Japan has been increasing annually and was 96.1 million that consists of 79.1 percent of the population in 2011. In accordance with such spread of the use of the Internet, due to its anonymity and capability of sending information with ease, various human rights problems have arisen such as infringement of individual reputations and publication of harmful information or of expressions, which promote discrimination. Unfortunately, it is obvious that the school-age children use the

Human Rights Infringements Cases (newly received in 2011)

Type	Number of cases	%
Assault, maltreatment	5,127	23.1
Infringement on the security of residence and living	3,732	16.8
Bullying in schools	3,306	14.9
Compulsion, coercion	3,283	14.8
Defamation and invasion of privacy	1,788	8.1
Infringements of the rights of workers	1,275	5.8
Infringements of the rights by school teachers	1,055	4.8
Discriminatory treatment	753	3.4
Infringements of the rights by special public officials	214	1.0
Others	1,635	7.4
Total	22,168	100.0

Source: Human Rights Bureau, 'Heisei 23 nen ni okeru Jinken Shinpan Jiken no Jokyo ni tsuite (Gaiyo) .' Available at <http://www.moj.go.jp/JINKEN/jinken03_00064.html>

Internet for bullying. It is necessary for them to recognize that the bullying is a serious human rights infringement and not to damage the reputation and privacy of individuals. The Human Rights Bureau analyzes that the root of the problem is weakening of the consciousness for respect for human rights and compassion and kindness towards others. It is important to nurture the consciousness for human rights to respect the differences of others as individuals to solve the problems of children's bullying.

REFORMING NATIONAL HUMAN RIGHTS INSTITUTIONS IN JAPAN

In September 2012, the Cabinet has drafted a bill to reform national human rights institutions in Japan. The bill aims to establish an independent

administrative committee on human rights in the Cabinet, based on the recommendations of the Advisory Council on the Promotion of Human Rights Protection in 2001. The Advisory Council emphasized the increase of human rights infringement cases such as abuse against children and the elderly people, violence against women, discrimination in terms of disabilities, and the bullying in schools and workplaces and recommended to establish an independent human rights institution to deal with such serious human rights infringements cases more effectively. Furthermore, the international monitoring organs such as ICC and the UN Human Rights Council urge to set up an independent human rights institution outside of the Ministry of Justice. In accordance with these recommendations both from inside and outside, the Government decided to draft a bill that aims to introduce a comprehensive measure to protect human rights by establishing an independent national institution for protecting and promoting human rights. In the current system, the Human Rights Bureau works under the command of Justice Minister and obeys the internal rules of the Ministry of Justice. However, if a public authority commits any human rights infringement, it will be difficult for the Human Rights Bureau to deal with it fairly and independently. Therefore, the draft bill proposed the establishment of an independent *Human Rights Commission*. The Commission will consist of five commissioners who will be appointed by the Prime Minister with the consent of the Diet. The Human Rights Volunteers will be appointed by the Human Rights Commission and work under supervision of the Commission. The draft bill proposes to give the status of part-time national public officials to those commissioned as human rights volunteers. However, the secretariat of the Commission will be posted in the Ministry of Justice, according to the bill. The Ministry of Justice explains that the use of existing regional and local legal affairs bureau will be efficient and effective in the implementation of human

rights programs throughout the nation with the support of the human rights volunteers.

CONCLUDING REMARKS: GOOD GOVERNANCE OF THE HUMAN RIGHTS INSTITUTIONS

In the promotion of human rights protection and the relief of victims, the human rights institutions should always be honest and transparent in the operation of governing. It requires a good governance of human rights institutions. If public institutions lack “the rule of law,” transparency, accountability, and efficiency and effectiveness of service delivery, it will be difficult for them to gain public trust in the governing. It should be noted that the promotion of citizen participation and the collaboration among the stakeholders will be a key for the high performance of public institutions. As often criticized, Japanese public administration still remains a bureaucratic, ‘top-down’ structure. Such an arrangement will be necessary for public agencies to investigate human rights infringements. However, in the creation of society without discrimination, a model of networked governance that implies a horizontal cooperation and coordination of multiple stakeholders in human rights protection will be more suitable. From such a point of view, the establishment of independent *Human Rights Commission* is not enough. For example, when we deal with the problems such as school bullying and child abuse, we need a coordinated effort of child guidance centers, public health centers, medical doctors and nurses, school teachers, PTAs, police departments, the commissioned welfare volunteers as well as human rights volunteers in the local communities. It must be a tough challenge for the reformers. However, there is no short cut for the creation of the world without discrimination.

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