

The Struggle of Japanese Lawyers in Support of the Hibakusha

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1 Introduction

Good day, or good evening, to everyone, wherever you are. I'm Takeya Sasaki, a lawyer in Hiroshima, where I was born and raised. Having had contact with many hibakusha, I now serve as one of the co-presidents of the International Association of Lawyers Against Nuclear Arms, also known as IALANA.

2 The Atomic Bombings and Hibakusha

(1) The Pacific War launched by the Great Empire of Japan

On December 8, 1941 the Imperial Japanese Army landed on the Malay Peninsula and attacked Pearl Harbor in Hawaii, thereby marking the start of the Second World War. The fighting lasted four years and nine months.

During those years Japanese military units invaded the Korean Peninsula, China, Southeast Asia, the Nampo Islands, and other Asian countries and regions, where they plundered the people, forced them to perform hard labor, burned their homes, killed them, and committed other horrifying and barbaric acts which cannot be explained away.

I feel the deepest sympathy for the victims, and express my sincere apologies for their suffering and loss.

(2) On the morning of August 6, 1945, Hiroshima became an international symbol.

As a result of this war, Japan had no fighter planes and, and had no battleships and no sea supremacy. Tokyo had been bombed 130 times in nine and one-half months, and many of the cities, towns, and villages on the main islands had been attacked in air raids. No later than July 1945 the defeat of the Japanese Army was considered certain, at which time the atomic bombings occurred.

It was a beautiful day in Hiroshima on the morning of August 6th.

At that time I lived in a village that was 31.5 km east of ground zero. It was 10 minutes after eight when three bombers flew overhead at a distance of 1.5 km away from my house. Five minutes later the atomic bomb exploded 600 meters over the Shima Hospital, which was located 160 meters southeast of the Gembaku Dome. It was the tragedy of Hiroshima.

On that day I witnessed the fearsome burst of orange light and heard the deafening explosion. And I saw the mushroom cloud with these eyes.

The fireball, an artificial sun which was created one second after the explosion by the nuclear-fusion chain reaction, had a surface temperature of 5,000 degrees

Celsius. That fireball produced a supersonic shockwave which destroyed houses, set them afire with heat rays, and turned the city into a giant conflagration whose flames were fanned by the blast. People exposed to strong radiation died instantly, while others were crushed to death under toppled buildings, blown away like pieces of paper by the shock wave, scorched by heat rays, and burned to death while frantically trying to escape. Hiroshima had become a living hell.

Just that one small atomic bomb, called “Little Boy,” killed about 140,000 people out of Hiroshima’s total population of 350,000 by the end of 1945. In Nagasaki, one bomb killed 74,000 of the population of 270,000.

In the postwar years, the hibakusha have continued living in fear of light and fire, of sound and wind, and of the atomic bomb sickness caused by radiation.

The world now has 13,000 modern nuclear weapons. While Putin has invaded Ukraine, threaten to use nuclear weapons, and attacked the nuclear power plants, some politicians have started to advocate nuclear sharing. It’s an extraordinary situation.

(3) The foundation of Hidankyo and the enactment of the A-Bomb Survivors Medical Care Law

At first, the Japanese government provided no postwar relief to the hibakusha. In March 1954 at Bikini Atoll, the United States tested a hydrogen bomb that was 940 times more powerful than the Hiroshima-type bomb. The movement in opposition to atomic and hydrogen bombs experienced a groundswell on this occasion, and at this juncture the hibakusha realized that they had to unite in solidarity.

In August 1956 the hibakusha founded the Japan Confederation of A- & H-Bomb Sufferers Organizations (Hidankyo) Since that time, Hidankyo has demanded the government livelihood protection, and continued to advocate that “humanity and nuclear weapons cannot coexist.”

As this trend played out, the Atomic Bomb Survivors Medical Care Law was enacted in April 1957. This enabled hibakusha to get health diagnoses at government expense, and if they are certified to have “atomic bomb sickness,” they can receive medical treatment free of charge. However, they cannot receive livelihood protection or compensation for health damage.

The Japan Federation of Bar Associations, to which all lawyers belong, released a report on a proposed Atomic Bomb Survivors’ Support Law in December 1974, and at its General Meeting in November 1979 it passed a resolution urging the government to “quickly enact a support law based on the principle of state compensation.” The Atomic Bomb Survivors’ Support Law was finally enacted in December 1994.

Under the support system that was created, if the illness of a hibakusha is certified as atomic bomb sickness, then under the current system that hibakusha is paid a “special medical care allowance” of ¥142,170 (€1,089), and, if the illness is cured, a “special allowance” of ¥52,500 (€402). Further, if a hibakusha suffers from any one of 11 specified diseases including liver dysfunction, that person is paid a monthly “health management allowance” of ¥34,970 (€268).

3 The struggle by Japanese lawyers to help the Hibakusha

(1) Shimoda Case

Mr. Ryuichi Shimoda, who had lost five children ages 16, 12, 10, seven, and four at a place 1.4 km from Hiroshima ground zero, survived with his wife and two-year-old child. He filed a lawsuit in 1955, seeking compensation from the government for pain and suffering, and payment of a solatium because of the atomic bombing. Lawyers put their heart and soul into this lawsuit.

The court’s decision in December 1963 was the first in the world to conclude that the dropping of cruel bombs violated the basic principle of warfare that one must not cause “unnecessary suffering,” and that because the bombs were “cruel weapons” which inflicted “unnecessary suffering,” they violated international law. This is known widely by scholars of international law as the “Shimoda Case.”

The “prohibition of unnecessary suffering” to which the decision refers means combatants. Suffering is never to be inflicted on noncombatants or civilians.

(2) Individual lawsuits to gain A-Bomb sickness certification

There were also lawsuits by individuals to gain atomic bomb sickness certification. Being certified requires proof that one has an illness caused by the bombings, and that one is receiving medical treatment for that illness. Here I’ll give four examples.

① Akira Ishida Lawsuit in Hiroshima

Mr. Ishida, who was 17 years old at the time, was in a streetcar 710 meters from ground zero in Hiroshima. He developed cataracts, but the government turned down his application to certify his condition as atomic bomb sickness. He filed a lawsuit and in July 1976 he won the first court victory for atomic bomb sickness certification. I too served as counsel.

② Hideko Matsuya Lawsuit in Nagasaki

When Ms. Matsuya was three years and five months old, she was caught in the bombing 2.45 km from ground zero in Nagasaki. A roof tile propelled by the shock wave struck her in the head, producing a depressed fracture in her cranium. As a result, she suffered right hemiparesis and heat trauma. The government did not recognize this as atomic bomb sickness.

After victories in Nagasaki District Court and Fukuoka Appellate Court, in July 2000 the Supreme Court recognized that the bombing was the cause,

judging comprehensively by Matsuya's proximity to the bombing, her subsequent symptoms, and other factors. The victory was finalized by the court's determination that medical treatment would be required if drug therapy, physical therapy or other treatment was in fact needed. All hibakusha won an extremely valuable judgment.

③ Takeo Konishi Lawsuit in Kyoto

Mr. Takeo Konishi had been suffered from illnesses including leukopenia. He was 19 years old and 1.8 km away from Hiroshima ground zero when the bomb exploded. He submitted a self-written petition to Kyoto District Court. Konishi then obtained the support of lawyers, and he won victories in Kyoto District Court in November 1998, and Osaka Appellate Court two years later.

④ Kazuo Azuma Lawsuit in Tokyo

Mr. Kazuo Azuma who at age 16 was part of a student mobilization at a factory 3 km from ground zero in Nagasaki when the bombing occurred. He applied for certification due to impaired liver function, but was turned down. Subsequently he was victorious in Tokyo District Court and Tokyo Appellate Court, and the judgment was finalized in April 2005.

Winning these court decisions took many years and the efforts of many lawyers.

(3) World Court Project

In 1992 IALANA proposed the World Court Project to the International Court of Justice in a bid to pass judgment on cruel and hellish nuclear weapons. In response, we established the Japan Association of Lawyers Against Nuclear Arms in August 1994.

We held many public lectures and increased the concern of the general public for this matter. In May 1995 we visited the ICJ to communicate the reality of the atomic bombings by presenting the 14 justices and the library with photographs of the bombing aftermath, videos, hibakusha testimony anthologies, articles, and other materials which describe the tragedies of Hiroshima and Nagasaki. We also asked the justices to visit Hiroshima and Nagasaki, and listen to what the hibakusha have to say.

We found out that although the ICJ had never examined witnesses in the past, officials had obtained the opinions of advisors in relation to disputes over international borders.

After returning to Japan, we pressed the Japanese government to have the mayors of Hiroshima and Nagasaki cities, and hibakusha to be court advisors, and to submit photographs of the atomic bombing aftermath as evidence, but the government didn't assent.

The Republic of Nauru had submitted an opinion to the ICJ, arguing that the use and threat of nuclear weapons are illegal, so we encouraged Nauru to ask that the mayors of Hiroshima and Nagasaki be called as court advisors.

I received a telephone call from a New Zealand lawyer who was representing

Nauru. He requested that the mayor of Hiroshima be a witness, and wanted to know if the mayor would consent. Of course the mayor consented.

On September 5th France conducted a nuclear test at Mururoa Atoll despite objections, but opinions released by the governments of Australia and New Zealand were lukewarm.

Three people including me asked those countries to issue strongly worded opinions, and both governments changed their opinions. Those two countries took action in response to a single faxed message. We were surprised and also moved.

The Japanese government was alarmed because it would lose face if the mayors of Hiroshima and Nagasaki appeared in court at the behest of other governments, and it requested that the mayors speak as advisors. On November 7th the mayors related the tragedies of Hiroshima and Nagasaki in the ICJ “Great Hall of Justice.”

Then, the advisory opinion of July 1996 was issued.

Paragraph E of the dispositif states that the threat or use of nuclear weapons would generally be illegal, and Paragraph F states, “There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”

It was 25 years later, in January 2021, that the Treaty on the Prohibition of Nuclear Weapons entered into force.

Article 6 of the treaty includes provisions for the support of hibakusha. It states in part, “Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons ... adequately provide age- and gender-sensitive assistance ... including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.”

(4) Collective lawsuits for A-Bomb sickness certification

It isn't easy for just one hibakusha to file a lawsuit to gain atomic bomb sickness certification, then carry on with a trial for years on end. That's why hibakusha banded together in collective lawsuits.

These hibakusha wanted the government to recognize that their cancer, leukemia, heart disease, cataracts, and other diseases were caused by the atomic bombings, and in 2005 they collectively filed a lawsuit against the government. It had the participation of 306 people from all over Japan.

The government repeatedly claimed that the people physically affected by radiation are those who were within 2 km of ground zero and were exposed to the initial radiation, but that people farther away from ground zero, and those who entered Hiroshima after the bombing, were not affected by radiation. So the government underestimated impacts including the effect of residual radiation.

We launched a full-bore counterattack on the government's argument and demolished it.

By means of this struggle, we got the government to recognize, through many judgments, not only the direct exposure of initial radiation, but also exposure by radioactive fallout and residual radiation, in addition to internal exposure, which involves genetic damage by high-energy alpha rays when radioactive substances

enter the body and are deposited there by breathing, eating, and drinking.

We won 18 court victories in a row. Thanks to that string of successes, in 2008 the government relaxed the requirements for certification. On August 6, 2009 — 64 years after the atomic bombings — hibakusha signed a confirmation note with the prime minister, and made him promise to take action that would avert lawsuits. The prime minister apologized to the hibakusha. The victory rate for collective lawsuits was 91.2%.

(5) No More Hibakusha Lawsuits

But around 2014 there had been a substantial increase in certified hibakusha, and the government launched an attempt at stricter rules for determining the need for medical treatment, which was a certification requirement. By this means the government turned down applications from people who would otherwise have been certified as hibakusha.

This led to “No More Hibakusha” lawsuits with 120 participants. These lawsuits either ended in victories, or led to resolutions based on new certification criteria. The victory rate was 77.1%.

(6) Black Rain Lawsuit

After the bombings, black soot was produced by the incomplete combustion of fires. In the atmosphere, small radioactive particles attached themselves to the soot, which further adsorbed water vapor. The result was drops of black, mud-like water. This was the radioactive “black rain” that fell on a large part of northwest Hiroshima City and prompted a collective lawsuit called the “black rain” lawsuit.

Last July the court victory declaring all 84 plaintiffs to be hibakusha was finalized, and procedures to apply for A-bomb Survivor Health Handbooks have begun.

4 Conclusion

In sum, we have realized some big successes. Lawsuits to gain atomic bomb sickness certification shattered the myth that only the initial radiation dose is important for atomic bomb sickness certification. Additionally, those lawsuits showed the Japanese people the danger of nuclear weapons and the threat of radioactive substances. Lawsuits and the hibakusha support movement are winding down after having accomplished so much.以下の部分は佐々木が英語で

While standing by the hibakusha, we shall continue our utmost efforts to eliminate nuclear weapons, which is the objective of JALANA, to assist the hibakusha, to support the victims of nuclear-power accidents, and to build a society which is not dependent on nuclear power.

Thank you for your attention.