

Japan's Bar Associations and Human Rights Protection

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The author made all translations from Japanese that appear in this article.

INTRODUCTION

Commitment to the protection of fundamental human rights for all persons is one of the defining characteristics of democratic government. In most countries courts play a central role through formally adjudicating claims by individuals who assert they are victims of human rights violations. Japan's 1947 Constitution makes a strong declaration of fundamental human rights and it is well established that anyone can seek remedies in court for violations of these rights¹⁾.

But many claims never reach the courts because victims lack financial resources or sufficient knowledge concerning the legal system or due to other factors. This is a common problem throughout the world. Less formal means to raise human rights claims can play an important role by addressing some of these claims. Because many important charges of human rights violations are made against agencies of government, there is a special need for authoritative investigations by entities independent of government itself. Examples of such third party organizations found in many countries are briefly described below.

The authors of Japan's Practicing Attorneys Act (*Bengoshi Ho*)²⁾, drafted during the period immediately following World War II, envisioned that bar associations and their members would play a critical role in human rights protection. The very first provision of that law proudly declares that the mission of attorneys is "the protection of human rights and realization of social justice." The purpose of this essay is to introduce some initiatives undertaken by Japan's bar associations to serve this mission, especially the activities of the "human rights protection committees."

¹⁾Evaluation of the performance of the courts and of attorneys' efforts in human rights litigation is beyond the scope of this paper.

²⁾An English translation of the Practicing Attorneys Act, including revisions through 2002, is available at www.nichibenren.or.jp/en/about/pdf/practicing_attorney_law.pdf. Neither judges nor prosecutors are members of the bar associations or subject to the Practicing Attorneys Act. Upon resignation or retirement from their public offices, they can apply for bar association membership and become attorneys subject to the Act.

I. INDEPENDENT HUMAN RIGHTS INSTITUTIONS IN OTHER COUNTRIES

Approximately one hundred countries around the world have established offices of ombudsmen or other independent officials charged with investigating claims of rights abuse and seeking remedies. The United Nations recognizes such bodies as "national human rights institutions." Examples of Asian countries that have established such bodies include the Republic of Korea, Thailand, Mongolia, the Philippines, Indonesia, India and many others.

Other countries have entered multinational human rights treaties that create regional commissions independent of national governments empowered to hear such claims. One prominent example is the European Human Rights Convention, which created the European Human Rights Commission, with power to hear complaints from individuals in member countries.

Japan has not created an independent national human rights institution, nor has it agreed to treaty language that would empower individuals to bring appeals to a multinational institution. The nearest Japanese equivalent to a national human rights institution is the "Human Rights Conciliator" system operated by Japan's Ministry of Justice³⁾. This program employs thousands of volunteers to hear complaints at counseling centers in Ministry of Justice offices nationwide. According to the Ministry of Justice website, these conciliators hear complaints concerning such matters as sexual harassment, privacy violations, hazing of school children, physical assaults and others. The Japanese government has cited the activities of this system in regular reports submitted to fulfill its obligations under the International Covenant on Civil and Political Rights. In a response to such a government presentation, in 1998 Japan's national bar association submitted comments criticizing the ineffectiveness and lack of independence of this system⁴⁾.

³⁾See <http://www.moj.go.jp/ENGLISH/HB/hb.html>.

⁴⁾"The institutions for the protection of human rights that form the heart of the mechanism for human rights protection in Japan have no independence from the government. The Civil Liberties Commission system (*an alternative English rendering of "Human Rights Conciliator" system*) is supported by private volunteers. Membership in the commission is largely regarded as honorary. Many of the members are of advanced age and there are too few women. These commissions are not able to deal adequately with cases

Japan is a signatory to six major human rights treaties. However, Japan has never agreed to any treaty language that would empower individuals to file appeals with any multinational body. Japan has either refused to ratify Protocols or has opted out of treaty language which would authorize individuals to file appeals directly with a multinational human rights body⁵⁾.

Human rights advocates have long demanded that Japan establish an independent human rights commission, but Japan's national legislature has so far refused to take action⁶⁾. At least until the day such an entity is created, Japan's bar associations are likely to serve as the most important non-governmental organizations actively investigating human rights abuses by government agencies and demanding institutional reform and remedies in individual cases.

II. JAPAN'S BAR ASSOCIATIONS

A. The Constitutional Role of the Autonomous Bar

Although Japan's bar associations pre-date the 1947 Constitution and the 1949 Practicing Attorneys Act, their role and status in society were dramatically changed by those documents. By shifting the locus of sovereignty from the emperor to the people, the Constitution laid the foundation stone of a democratic revolution. It then erected a sophisticated structure atop that foundation by proclaiming a long list of individual human rights and by expressly granting courts the power to

of human rights violations, which can be difficult cases because of their complexity, the highly technical nature of the offence, or the reprehensible nature of the offence." Japan Federation of Bar Associations, "Alternative Report to the Fourth Periodic Report of Japan on the International Covenant on Civil and Political Rights." The full text of this document is available in English and Japanese in the international human rights section of the JFBA website. www.nichibenren.or.jp.

⁵⁾E.g., Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment enables individuals to send communications to the multinational "Committee Against Torture" charged with overseeing implementation of the Convention and to allow the Committee to comment. State parties are required to make a declaration in order to activate this provision. Japan has not made such a declaration. The JFBA has demanded that the Japanese government do so. See Japan Federation of Bar Associations, "Report on the Japanese Government's Implementation of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

⁶⁾The JFBA issued a formal statement demanding creation of an independent body on February 21, 2003.

determine the constitutionality of acts of the legislature and the administration.

But until the Practicing Attorneys Act became law in 1949, the constitutional design remained incomplete. The courts may have gained the power of judicial review, but only attorneys have the legal authority to represent parties before the courts. In order to insure that attorneys would pursue their human rights mission with vigor, especially in cases brought against the government itself, the attorneys would have to be independent of government control. The 1949 law established such autonomy for the first time in Japan's history⁷⁾.

In the pre-war period lawyers were regulated and subject to discipline by the Ministry of Justice. One of the great achievements of Japan's post-war reform is the autonomy of private attorneys; the bar associations now hold the sole authority to admit members and to discipline attorneys for violations of the Practicing Attorneys Act and violations of ethical standards and other rules adopted by the bar associations⁸⁾.

B. Organization

All active attorneys are required to register with both a regional bar association and the national bar association (the Japan Federation of Bar Associations ("JFBA"))⁹⁾. As of July 1, 2007, 23, 119 private attorneys held memberships in 52 regional bar associations in Japan and all were members of the JFBA.

The JFBA maintains offices in an impressive 17 story building located next to the courthouse in central Tokyo (shared with the three local Tokyo bar associations). It employs a full-time staff and also funds administrative positions filled by member attorneys on a part-time basis. The total JFBA budget in fiscal 2005 was more than 4.2 billion yen (nearly U.S. \$40 million), of which approximately 90% was funded by membership dues.

⁷⁾For useful background, see John O. Haley, *Authority Without Power — Law and the Japanese Paradox* (Oxford University Press, 1991), especially p.106.

⁸⁾Practicing Attorneys Act, articles 56, *et. seq.* Like other persons, lawyers can be prosecuted by the government for criminal violations of law, even if the charges are related to law practice (e.g. fraudulent conversion of client assets).

⁹⁾Practicing Attorneys Act, articles 8 and 9.

The president and other officers are elected annually from among the members. Japan's bar associations work primarily through a network of committees with discrete areas of responsibility. In addition to operational committees required by law and association rules, the JFBA maintains five standing committees concerned with core functions of the bar association, including the human rights protection committee described below, and dozens of other committees concerned with a full range of legal issues. A sampling of those expressly charged with human rights issues include committees on constitutional law, criminal procedure, gender equality, children's rights, and rights of the aged. The international human rights committee works on reports to multinational institutions such as the JFBA Report to the Committee on Torture described in the next section.

C. Human Rights Advocacy

Both the national and local bar associations are active in lobbying regarding proposals for legislation and government policies with potential to affect fundamental human rights. For example, in recent years the bar associations have mounted significant lobbying campaigns to express opinion on wiretapping legislation, laws governing protection of personal information, and reform of the legal system itself including the multitude of issues spawned by the pending introduction of a new "lay judge" system.

JFBA representatives also engage in lobbying with multinational institutions, especially those related to the United Nations. The JFBA and other non-governmental organizations play an especially important role by submitting formal statements to multinational human rights bodies. The JFBA report submitted to the Committee Against Torture¹⁰⁾ in January 2007 is a recent example that delivered a powerful effect. The 89-page JFBA report provides a comprehensive review of Japan's system of detention and treatment of criminal suspects, persons detained on charges of immigration violations or for other reasons, and includes summaries of specific cases alleging abuse and recommendations for reform. Together with

¹⁰⁾This Committee is established by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, which Japan ratified in 1999, the 139th country to do so. Member countries are required to submit periodic reports to the Committee.

reports submitted by four other NGOs, it appears that the JFBA report exerted strong influence on the Committee.

In May 2007, the Committee issued Conclusions and Recommendations finding that various aspects of Japan's treatment of detainees and prisoners do not conform to its obligations under the Convention. The Committee sharply criticized certain practices, especially related to detention of criminal suspects, recommending for example that Japan "should take immediate and effective measures to bring pre-trial detention in conformity with international minimum standards."¹¹⁾

The most significant national policy issue of all is potential revision to the 1947 Constitution. Japan's dominant political party, the Liberal Democratic Party ("LDP"), has demanded revision of the 1947 Constitution since it was formed in 1955, but has never succeeded in achieving this goal. Heavy news coverage of the ongoing constitutional controversy has focused on proposals to revise Article 9, which prohibits Japan from utilizing force as a means to settle international disputes and from maintaining the capacity to wage war. However, the LDP agenda calls for many other changes as well.

Of particular relevance, the party has maintained the consistent position that the 1947 Constitution places too much emphasis on citizen "rights" and not enough emphasis on citizen "duties". The LDP's proposal for a new constitution was formally unveiled at its annual meeting in November 2005, which celebrated the fiftieth anniversary of the party's founding. One provision would expressly restrict fundamental rights by declaring that individuals "bear the duty to exercise rights and enjoy freedoms in a manner which does not violate public interest and public order."¹²⁾

Japan's bar associations have strenuously opposed revisions that would reduce the scope of human rights protection. At its 48th annual Human Rights Conference held in Tottori in November 2005 the JFBA adopted a resolution that

¹¹⁾See <http://www.ohchr.org/english/bodies/cat/cats38.htm> for the full texts of the "Conclusions and Recommendations" of the Committee Against Torture, the report submitted by the government of Japan, and reports submitted by the JFBA and four other NGOs.

¹²⁾The text of the proposed new constitution is available at the Liberal Democratic Party website, <http://www.jimin.jp> (accessed October 15, 2007).

formally delivered a response to such calls for revision. The core of the JFBA position is that any change to the Constitution must respect the concept of “constitutionalism” (*rikkenshugi*) and three core elements of the 1947 Constitution: popular sovereignty, respect for fundamental human rights, and pacifism¹³).

D. Human Rights Protection Committees

In order to facilitate achievement of the attorneys’ mission of protecting human rights and realizing social justice, all bar associations appoint human rights committees charged with hearing human rights appeals and providing assistance in appropriate cases.

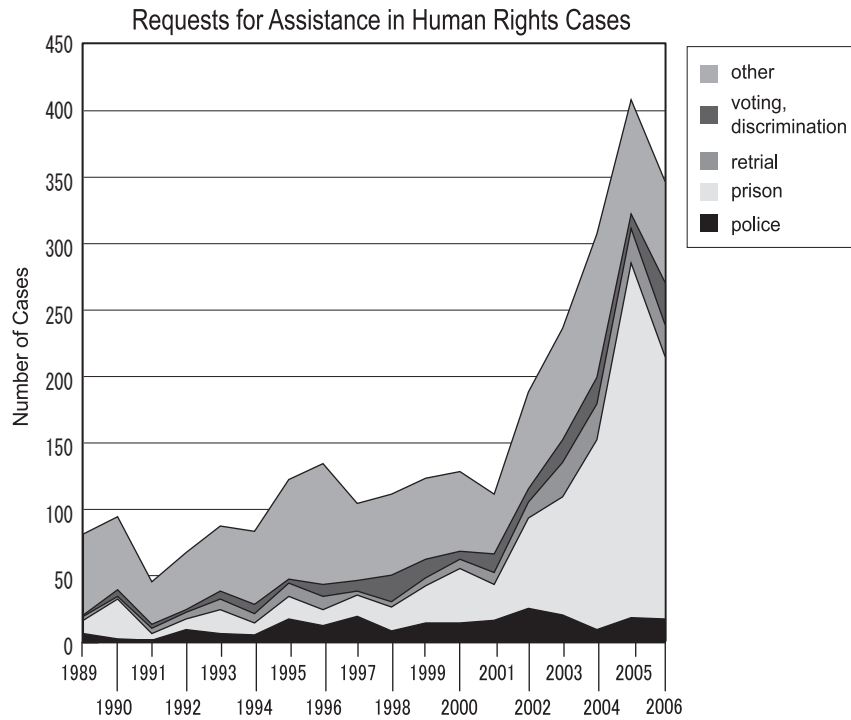
The history of these committees began with the rebirth of Japan’s legal profession immediately after World War II. The JFBA adopted its first Association rules under the authority of the new Practicing Attorneys Act on July 9, 1949. Article 74 of those rules expressly provided for the appointment of five standing committees, including the Human Rights Protection Committee. Article 75 set out the mission of the Committee and empowered it to propose formal warnings and demands for punishment (or remission of punishment) to be considered for adoption and announcement in the name of the JFBA itself. Initial membership of this committee was set at twenty. Today the total membership is 120 attorneys, who work through seven separate subcommittees covering the following topics: Retrials, Investigative Agencies, Detention Facilities, Medical, Civil Liberties (freedoms), International Human Rights and Social Security¹⁴). The JFBA currently provides three staff attorneys to support the activities of the Committee.

The Human Rights Protection Committee has seen a sharp rise in the number of appeals in recent years, from 110 cases in 2001, to a peak of 407 in 2005¹⁵) (See chart.). Most of this increase concerns complaints against conditions in Japan’s prisons. Of the hundreds of appeals, most are either found unsuitable to the

¹³“Declaration Demanding Adherence to Constitutionalism and Respect for the Fundamental Principles of Japan’s Constitution,” Japan Federation of Bar Associations, Nov. 11, 2005.

¹⁴Japan Federation of Bar Associations Human Rights Protection Committee, “*Jinken Shinpan Kyusai Moshitate Jiken Chosa Guidebook*” (May 2006).

¹⁵2006 White Paper on Attorneys (2006 *Bengoshi Hakusho*), p.191.



Year	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Police	5	1	0	8	5	4	16	11	18	7	13	13	15	24	19	8	17	16
Prison	10	30	5	8	18	9	17	12	16	18	28	41	27	68	89	143	267	197
Retrial	3	2	4	5	8	7	10	10	3	4	6	7	9	12	26	27	26	24
Voting, Discrimination	1	5	3	2	6	7	3	9	8	20	14	6	14	10	17	20	11	32
Other	61	55	32	43	49	55	75	91	58	61	61	60	45	73	84	108	86	76
Total	80	93	44	66	86	82	121	133	103	110	122	127	110	187	235	306	407	345

committee's mandate or are referred to local bar associations. The cases that remain are subject to a formal set of procedures, including a preliminary investigation resulting in a report submitted to an executive committee (*jounin iinkai*) which then decides whether a full investigation is warranted. A full investigation can lead to the recommendation of several different formal dispositions ranging from dismissal of the complaint to formal warnings as noted above. These procedures

were streamlined and formalized by a JFBA regulation issued in 1995.

During the 2005 and 2006 fiscal years (ending March 31), the JFBA issued formal recommendations or warnings in eleven cases. Topics included the rights of persons suffering from Hansen's Disease (leprosy) and victims of mass food poisoning (the Kanemi cooking oil case), the death of a prisoner in custody, lengthy pre-trial detentions, the rights of the aged, compelled participation in national flag and anthem ceremonies, and others. Of the eleven declarations, four were "keikoku" warnings, the most severe form¹⁶⁾. As of May 1, 2006, fifteen cases were subject to formal investigations by the JFBA Human Rights Committee, with nearly half (seven cases) under investigation by the "social security" (*shakai hoshō*) subcommittee, which has a very broad mandate. (Cases included the rights of the homeless, individuals who claimed to be victims of a Cold War-era "Red Purge" resulting in employment termination, athletic competitions for the disabled, rights to education, and other matters.)

E. Proceedings Before the JFBA Human Rights Protection Committee

Bar association regulations provide that the Committee meets for two full days of each month, ordinarily the second Thursday and second Friday. The regular schedule for these two days is fixed, with meetings of the committee leadership and of subcommittees at prearranged times. On the morning of the first day, an executive committee (*seifukuiincho kaigi*) meets to consider new applications, review progress in ongoing cases and otherwise discuss the business of the Committee. On the afternoon of the first day, a larger executive committee (*jounin iinkai*) meets to review the texts of preliminary and final investigation reports submitted by the seven subcommittees and other work in progress. Most of the second day is committed to separate meetings of the seven subcommittees, followed by a plenary committee meeting of all members. All proposals for formal action must

¹⁶⁾Texts of the Committee reports and formal recommendations and warnings are published in a five volume compendium spanning the period from 1950 to the present. *Nichibenren jinken shinpan moshitate jiken—keikoku—kankoku—youbou reishu (Akashi Shoten)* (hereinafter "Human Rights Appeals"). A series of summaries of important cases under the title "Questioning Human Rights — From the Frontlines of Human Rights Protection Activities" has been published in the monthly journal *Hogaku Seminar*, commencing in April 2006. As this is written, the series continues with its 19th edition in the October 2007 issue.

be approved by this plenary committee prior to submission to the JFBA governing board.

When new appeals are accepted for formal review, a preliminary investigation must be conducted by members of the subcommittee with jurisdiction over the subject matter. The preliminary report must be completed and submitted within two months. If this report is accepted and a formal investigation authorized, another team (including at least one member who worked on the preliminary report) is appointed to investigate and prepare a more detailed report, which must be submitted within one year. Each investigation team must submit a formal work plan including the due date, which must specify the date of a scheduled meeting of the *jounin iinkai* for review.

Committee rules require that questioning of witnesses take place at the bar association rather than the office of a member attorney and that more than one committee member be present. Questioning may be tape-recorded with consent of the witness.

III. CASE STUDY: GOVERNMENT SPYING ON CIVIL SOCIETY GROUPS

A. The Public Security Intelligence Agency and Surveillance

On November 25, 1999, Kyodo News, Japan's primary national news wire service, reported that a government intelligence agency maintained undercover surveillance on forty well-known civil society organizations¹⁷⁾. The account was based on purported government documents that had been leaked to Kyodo reporters. According to these documents, the organizations under surveillance included such mainstream groups as the Japan branch of Amnesty International, a prominent women's rights organization, consumer groups, several lawyers groups, and journalists and writers groups, including the Japan Pen Club.

The government agency, known as the Public Security Intelligence Agency (the "Agency" or "PSIA"), is an intelligence organization attached directly to

¹⁷⁾Similar concerns have been raised in the United States in recent years. See <http://www.aclu.org/safe/free/spyfiles/>.

Japan's national Ministry of Justice¹⁸⁾. The Agency was established under a 1952 statute which limits its mandate to investigating organizations it determines to pose the threat of "subversive activities" (*hametsu katsudo*) and requesting sanctions against them¹⁹⁾. This mandate was expanded by a new antiterrorism law that came into effect on December 27, 1999, empowering the Agency to investigate organizations that commit "indiscriminate mass murder."²⁰⁾

According to an English language report for the year 2006 published on its website, the domestic focus of the Agency's investigations includes tracking the "Aum" cult and successor groups (Aum members committed heinous crimes in the 1990s such as the release of poisonous gas in the Tokyo subway in 1995 resulting in twelve deaths and thousands of injuries), and "the Communist party and radical groups" who "exercise anti-war and anti-nuclear movements" and "criticize the government regarding important bills such as the national referendum, the amendment of the Fundamental Law of Education and the newly established 'conspiracy offense'."²¹⁾

The documents obtained by Kyodo were from an annual report prepared by the Kinki regional bureau of the Agency. They provide a description of the bureau's intelligence operations, including a list of the forty target organizations described above.

Most of these organizations are well-known citizen advocacy groups, often engaged in commenting on pending legislation, issuing declarations on topics of public policy and other traditional acts of public advocacy. There is no credible claim that any of them poses a threat of violence. Instead, they are typical examples of organizations known around the world by the term "civil society." The post-Cold War emergence of robust civil society groups worldwide has been lauded by countless writers and government leaders for their role in promoting open debate

¹⁸⁾<http://www.moj.go.jp/ENGLISH/PSIA/>.

¹⁹⁾Subversive Activities Prevention Act, Law No. 240 of 1952.

²⁰⁾Act Regarding the Control of Organizations That Committed Indiscriminate Mass Murder, Law No. 147 of 1999.

²¹⁾See "Focal Issues of Domestic Public Security Situation in 2006" posted at <http://www.moj.go.jp/ENGLISH/PSIA/psia02.html> (accessed on October 10, 2007).

of public policy and breathing life into democratic societies²²).

The documents suggest that senior officials in Japan's Ministry of Justice view the activities of such groups as threats to public order. It is hard to imagine any reasonable basis for such a conclusion. The members of these groups tend to be writers and intellectuals, not bombers. And they operate in the open.

A whistleblower named Hironari Noda appeared after the Kyodo News report to provide background to the documents. Noda had been employed by the Agency from April 1994 through December 1999. After leaving government service, Noda described his experience in various public fora, including a detailed interview in *Tsukuru*, a monthly journalism review²³. According to his account, the documents had likely been prepared by intelligence officers for submission to the regular annual meeting of senior Agency officials for the 1996 fiscal year. Noda also described some of his own activities as an undercover agent infiltrating citizen meetings.

On the face of it, it appeared that the national government was spying on citizens engaged in lawful activity. What, if anything, could be done about it?

Leaders of the forty civil society groups decided their first step was to appeal to the public for support. They held a joint press conference on January 19, 2000 and a public rally three months later, on April 25. On April 27, they lodged a protest directly with the Agency. But did they have any redress under Japanese law?

They sought advice and considered the possibility of filing suit. Under

²²E.g., see the writings of Lester M. Salamon and Helmut K. Anheier, such as *The Emerging Non-Profit Sector: An Overview* (St. Martin's Press, 1997). For a comprehensive overview of Japan's civil society organizations, see Frank J. Schwartz and Susan J. Pharr (eds.) *The State of Civil Society in Japan* (Cambridge University Press, 2003).

²³The interview with Hironari Noda appears in "Inside Story on the New Aum Approach, According to a Former PSIA Official" (*Koanchosacho motoshokuin ga kataru aum shinpo no uragawa*), *The Tsukuru*, March, 2003, p.80. Noda reported that he worked as an undercover agent in the Kansai region. Among his exploits, he described a gathering of judicial apprentices (*shushusei*) who were addressed by a recent graduate of Japan's Legal Training Institute who had been denied appointment as a judge. Noda reported the identities of those present to his superiors, possibly exposing them to retaliatory treatment by the secretive bureaucracy that controls appointments and promotions of Japan's judges.

prevailing Japanese practice, the most likely avenue for redress in the courts would be a suit against the national government demanding financial compensation for violation of constitutional rights. But leaders of some of these groups decided that prospects on this front were discouraging. Although Japan's Constitution declares protection for both freedom of speech and freedom of association, there appear to be no court precedents that have found government surveillance to cause a "chilling effect" or other unlawful impact on these rights. The Kyodo News report indicated that forty different groups had been subject to surveillance. If possible, group leaders wanted to act in unison; it was very unlikely, however, that all groups would wish to join in such a suit.

Instead, representatives of thirty-eight of the civil society groups elected to jointly file an appeal for redress with the Human Rights Protection Committee of the JFBA.

B. The JFBA Reviews Government Surveillance of Civil Society Groups

Lawyers for the civil society groups submitted their appeal to the Human Rights Protection Committee on July 6, 2000. The appeal was accepted and an investigation team appointed. This team took statements from the appellants, examined the leaked documents, heard testimony and considered other evidence. It sought information from the Public Security Intelligence Agency. In a written response to questions submitted by the Committee, the Agency denied targeting any groups that did not present the threat of "subversive activities" (*hametsu katsudo*) required by the statute (Response to Committee request dated July 24, 2001). The investigation team did take special note of testimony delivered by the head of the Agency at a meeting of a committee of the Upper House of Parliament on November 25, 1999, the day that the Kyodo scoop was published in daily newspapers. Under questioning by members of parliament, the Agency chief declined to confirm the authenticity of the leaked documents, but nonetheless took the opportunity to assert a broad interpretation of the Agency's authority. He declared that this authority extends not only to groups who posed a threat of subversive activities, but also to others who might be subject to influence of such

groups²⁴).

Such reasoning would provide a rationale for a much broader scope of surveillance, possibly including the forty civil society organizations listed in the documents.

Members of the Committee were especially impressed by a passage in the leaked documents that describes particular instructions to government agents. According to these instructions, in the event that individuals refuse to cooperate with an investigation, agents should say that they are investigating activities of such groups as the Japan Communist Party or radical groups (*kageki-ha*). The Committee report points out that, if government agents indeed had proper motives, there would be no need to provide such a cover story²⁵).

C. Conclusions of the Committee

Based on the available evidence, the Committee concluded that the leaked documents were genuine and that surveillance of the civil society organizations was not the result of potential relationships to groups that pose the serious threats suggested in the parliamentary testimony of the Agency head. The Committee concluded instead that surveillance was directed at the activities of the civil society organizations themselves²⁶).

Applying a standard that had been declared in a 1960 decision of the Nagoya High Court²⁷), the Committee concluded that the Agency had exceeded its legal authority. The Nagoya High Court had held that for Agency investigations to be lawful, there must be “sufficient rational, objective reasons” to believe a risk of subversive activities is posed by the target of the Agency’s investigations. This was clearly absent in the present case.

²⁴) *Human Rights Appeals*, *supra* n. 16, volume 4 at 955-56. This policy was restated by the Agency in its submission to the Human Rights Protection Committee dated July 24, 2001.

²⁵) See Kenzo Akiyama, “The Frightening Reality of the Public Security Intelligence Agency,” the fourth entry in the series “Questioning Human Rights — From the Frontlines of Human Rights Protection Activities,” *Hogaku Seminar* No. 619, July 2006, 124-125.

²⁶) *Human Rights Appeals*, *supra* n. 16, volume 4 at 934-35.

²⁷) Nagoya High Court, Kanazawa Branch, Decision of Feb. 27, 1960, cited *id.*, at 937.

The Committee further explained that due to the chilling effect of government surveillance, the Agency's actions constituted violations of the constitutional rights of the organizations and their members, including the freedom of association, freedom of thought and belief and freedom of speech. The Committee also concluded that the actions violated privacy rights²⁸⁾.

The final report of the Committee was approved by the governing board of the JFBA on January 18, 2002 and a formal warning to Public Security Intelligence Agency was issued five days later. The warning demands that the Agency take three steps: 1) cease surveillance of the civil society groups immediately, 2) provide the civil society groups with the information the Agency had gathered and delete all such information from Agency files, and 3) clarify the details of its surveillance operations and the manner in which the government uses the information gathered.

A JFBA member describes what happened next: "On January 23, 2002, after contacting the PSIA in advance, the chairperson of the Human Rights Protection Committee and the JFBA vice president in charge of the matter visited the PSIA offices in order to deliver the warning letter. However, PSIA officials refused to meet them. A PSIA public relations officer also refused to accept the warning letter, saying 'The PSIA solemnly goes about its duties according to the law. It does not accept complaints and warnings.' Because the JFBA could not deliver the warning letter, the best it could do was send it by certified mail."²⁹⁾

This writer concludes his report as follows. "The PSIA absolutely refuses to accept any criticism; it is unaccountable and does not disclose information. This is the reality of the PSIA. Even now, does the PSIA continue to monitor and spy on citizen groups? One is left with a very eerie feeling."³⁰⁾

IV. CONCLUSION

A JFBA counter-report submitted to the UN Human Rights Commission in 1998 includes the statement that many requests for human rights assistance "concern institutions of detention, including prisons, detention centers, police

²⁸⁾ *Id.*, at 938.

²⁹⁾ Akiyama, *supra* n. 25 at 125.

³⁰⁾ *Id.*

detention centers and mental hospitals. The police and other authorities, however, are uncooperative with investigations by bar associations." The reaction by the PSIA in the case study reported above appears to fit this pattern.

The autonomy of Japan's bar associations achieved by the 1949 Practicing Attorneys Act is an important milestone in the effort to protect human rights in Japan. Despite numerous calls from within and outside of Japan, the country has not established an independent human rights protection body or acceded to treaty language that would empower individuals to communicate with multinational human rights institutions. Investigations by bar association committees appear to provide the most reliable source of information on these matters independent of the government and the courts. Moreover, along with other NGOs the bar associations also play a vital role by periodically reporting their findings to international human rights bodies.

There can be little doubt that continued vigorous efforts by attorneys and bar associations to fulfill the mission of "protecting human rights and realizing social justice" established by Article One of the Practicing Attorneys Act will remain critical to the effort to secure fundamental human rights in Japan.