

The Trials for Recognition of A-Bomb Injuries and the Feelings of Hibakusha

Masayoshi NAITO, Attorney at Law
Japan Association of Lawyers Against Nuclear Arms (JALANA)

1. Introduction

A-bomb injuries are disorders caused by radiation from the atomic bomb. The point of contention in the class action lawsuit concerning the recognition of A-bomb injuries begun in 2003 is whether or not the disorders suffered by the Hibakusha are late-onset effects of radiation from the A-bomb. Nationwide, 29 rulings in favor of Hibakusha have been won and a certain degree of change in the administrative recognition criteria has been gained.

Through a description of the institutional background to the A-bomb injury recognition trials and their progress, facts that have become clear from the lawsuits and the inhumanity of the A-bomb will be discussed in this paper along with the feelings of the Hibakusha.

2. Japan's legal institutions and recognition of A-bomb injuries in relation to Hibakusha

(1) Japan's legal institutions and Hibakusha

The A-bombs were dropped on Hiroshima and Nagasaki on 6th and 9th August 1945. The A-bombs devastated both cities in an instant, and by the end of 1945 had killed 140,000 people in Hiroshima and 70,000 people in Nagasaki. Further, Japan was under US military occupation until 1952, during which time the Hibakusha were neglected by the Japanese government, many of them dying in that period.

Following the Bikini Atoll incident in March 1954, in which many Japanese fishing boats were exposed to radiation during the first US H-bomb test at Bikini Atoll, the ban-the-bomb movement picked up steam, with over half the Japanese voters signing a petition to ban the A- and H-bomb. This resulted in the establishment of a legal institution for Hibakusha in 1956.

Under the current law, (the Hibakusha Aid Law-1995) people who were within a certain distance of ground zero at the time the A-bomb was dropped (within roughly four to five kilometers of ground zero) and others, for example, who entered within two kilometers of ground zero within two weeks of the bombing were issued with a Hibakusha Health Card, are entitled to become Hibakusha in the legal sense of the term and to be covered with self-pay portion of medical expense (It should also be noted that Japan has a universal health insurance

system.).

Japan, however, has not paid victim compensation for life or physical injury to any non-combatant war sufferers (including the 100,000 people that died in one night in the conventional bombing of Tokyo) except for some military personnel and others who cooperated with the war effort. This has been linked with the fact that Japan has taken no responsibility vis-a-vis the affected countries for the war of aggression.

Due to this equilibrium, the system of relief for Hibakusha has been limited to those who have suffered radiation effects, and there has been no compensation for those who died in the A-bomb explosions. In that sense, Japan's Hibakusha institutions are legal institutions that are specifically for survivors who have suffered radiation effects.

(2) The system for recognition of A-bomb injuries and the Hibakusha who arose

The system for recognition of A-bomb injuries is that in the case that a legal Hibakusha becomes ill, the illness is recognized as an "A-bomb injury" if a. the illness is due to the effect of A-bomb radiation, and b. treatment is recognized as being necessary. Hibakusha who are recognized as suffering from an A-bomb injury are paid a monthly allowance of just over 130,000 yen.

Nevertheless, over this long period of time, only very few of the legal Hibakusha have been recognized as suffering from A-bomb injuries (the number of legal Hibakusha immediately prior to the institutional reform of March 2008 as a result of litigation stood at around 250,000, but only approximately 2200 of these had been recognized as suffering from A-bomb injuries). This is because the Japanese government, based on the epidemiological data of the ABCC (Atomic Bomb Casualty Commission) and Radiation Effects Research Foundation, had limited recognition of A-bomb injuries to only specific malignant tumors and non-cancer disorders such as cataracts in people who were close-range Hibakusha, within two kilometers of ground zero (receiving a primary dose of 100mSv).

In the midst of this situation, Hideko MATSUYA, a Nagasaki Hibakusha who was exposed at the relatively distant range of 2.45 km demanded recognition of A-bomb injuries through litigation and won her case in the Supreme Court. Since the government, however, in contrast made the practical procedures for recognition of A-bomb injuries even stricter than they had previously been, a class action lawsuit came to be proposed through the advocacy of the Japan Federation of A- and H-Bomb Sufferers Organizations. This was a reflection of the feeling of the Hibakusha, who after more than 60 years since the end of the war, "wished fervently to condemn the cruel realities of the effects of the A-bomb before they

died."

3. Facts that came to light in the lawsuits for recognition of A-bomb injuries

(1) Effects of radioactive materials

The government (the defendant country) has claimed that there were almost no effects from residual radiation from the Hiroshima and Nagasaki A-bombs. The government has claimed that since Hiroshima and Nagasaki were mid-air explosions, the fireball did not come into contact with the land surface, the generation of induced radioactivity was extremely small, radioactive fallout also dispersed in the atmosphere, and the government has therefore also denied the existence of internal exposure due to residual radioactivity.

The government's claims, however, are clearly different from the actual experience of the Hibakusha. People who were exposed at some distance and then later entered the cities, coming within the vicinity of ground zero after the A-bomb had been dropped, suffered from acute symptoms such as hair loss (epilation), purple spots (purpra) and diarrhea. The courts rejected the government's claim that only close-range direct exposure led to radiation effects and recognized as A-bomb injuries illnesses of people who were exposed at a distance and those who were exposed when entering the cities later.

(2) Sustained radiation effects

Prior to the litigation, the government also had recognized as radiation effects only those leading to a small number of disorders such as specific malignant tumors and cataracts. However, even after recovering from acute symptoms, Hibakusha continued to suffer symptoms known as "Bura-bura disease," which is characterized by listlessness, easy pus formation, frequent colds, and a loss of stamina. Researchers at the time named this "chronic A-bomb symptom" and pointed out that some kind of change had taken place in the bodily constitution of the Hibakusha. This, however, was not widely perceived by the medical world, as it did not appear on any of the testing data at the time, and did not become a basis for recognition of A-bomb injuries by the government.

In the lawsuits for recognition of A-bomb injuries, symptoms that were seen in many Hibakusha were presented to the courts. Through these and research outcomes, including those of the Radiation Effects Research Foundation, it became clear that sustained internal inflammation, immunological deterioration, and so on were associated with A-bomb radiation. Building up these cases, the courts recognized that the effects of radiation had caused a continuation of suffering of Hibakusha over long periods of time and that effects of the A-bomb radiation led to not only cancer and malignant tumors, but also a wide range of illnesses such

as heart attacks, strokes, liver function disorder, and hypothyroidism.

4. Multiple effects recognized by the courts

Late-onset disorders due to radiation appear from a few years to several decades after the event, and it is also becoming clear that radiation has an effect on immunity. Through listening to the sufferings of many Hibakusha, the courts expanded the range of effects of radiation. Based on the facts that a large part of radiation effects are still not elucidated, that the A-bomb resulted in effects not only due to radiation but also due to heat rays and bomb blast, and that the A-bomb also brought about mental and social suffering associated with social collapse, the courts took a wide view of the effects of radiation as being synergetic with these factors.

5. The reason for the inhumane nature of A-bomb radiation being clarified

Here I will discuss the background to the strict A-bomb injury recognition.

(1) Limiting of the effects of radioactivity and the US cover-up

The surveys of Hibakusha that became the basis for the recognition of A-bomb injuries has its background in the fact that they were begun by the US for military purposes and that the truth of exposure was covered up.

Recognition of A-bomb injuries is based on Hibakusha survey data over the last more than half a century by the ABCC, set up in 1947 and its successor, the joint Japan-USA research organization, the Radiation Effects Research Foundation. ABCC, however, was originally established for US military purposes, and therefore Hibakusha were for nothing but data. In addition, the US occupation force was afraid of having the inhumanity of the A-bomb effects known to the world, and so banned research by Japanese doctors or took their data back to the USA with them.

The basic scheme for the epidemiological survey was completed by ABCC in 1955, but that period coincided with the period of "Atoms for Peace" proposed by US President Eisenhower, the resistance against Japan's ban-the-bomb movement triggered by the Bikini Atoll incident, and there is also a possibility that the survey was conducted for the purposes of researching the correlation between radiation and external radiation dose in connection with nuclear power stations. At the same time, there was at work in the US an intent to deny the fact that Hiroshima and Nagasaki were contaminated with residual radioactivity from the A-bombs. Because of that, the survey conducted looked only at the effects of the primary radiation that people were exposed to at the instant the A-bombs exploded.

(2) Neglect of the Hibakusha and the Japanese government's collusion in the cover-up

Meanwhile, the Japanese government also tagged along with the US in colluding with the cover-up of the truth of exposure, and carried out neither an independent study nor treatment, simply neglecting the Hibakusha. As a result, many lives were lost up to the time of the end of the occupation and the opportunity to carry out a survey of the truth of exposure was forfeited. Not only that, but in the class action lawsuit the broad and sustained effects of radiation were also denied, and the claim denying the effect of residual radiation continually made. This was not simply a problem of the system of recognition, but is seen to reflect the current nuclear and nuclear power policy of the Japanese government which views these ideas as objectionable.

6. The recognition of A-bomb injury trials, the inhumanity of nuclear weapons and the voices of the Hibakusha

(1) Military effectiveness and collateral effectiveness are discussed with regard to the inhumanity of nuclear weapons

When nuclear weapons are used in a way that they explode high in the atmosphere, the military effectiveness is small and always results in an inhumane killing and wounding of non-military targets.

On the other hand, if a military target such as underground silo is attacked with a nuclear weapon for military effectiveness, a huge amount of radioactive material will be generated. However, even in the case of the atmospheric explosion at Hiroshima and Nagasaki, there were impacts from radioactive materials over a wide area. When a ground attack is made, there are many different kinds of impacts on non-military objects over a wide range.

Seen in this light, it can only be said that there is no method of using nuclear weapons that would be legal under the International Humanitarian Law.

(2) Invisible radiation damage and the collapse of society

Japan has experienced Fukushima after Hiroshima and Nagasaki. The big problem in Fukushima is that the outer extent of damage due to radioactive materials is unclear, and because of this, before physical health effects appear, the division and collapse of human society, and discrimination, occur along with the social disquiet. Here, there are common points with the damage associated with biological and chemical weapons.

In the case that nuclear weapons are used, in combination with the spiritual, psychological and social damage due to the overwhelming destruction by heat rays and blast, there also occur a variety of complex problems associated with the as

yet indefinable radiation effects. In addition, in a future large-scale nuclear war, global-scale environmental contamination and, for example, starvation as a result of environmental destruction would overlap.

(3) The voices of the Hibakusha

We Japanese lawyers have come into contact with Hibakusha through the recognition of A-bomb injuries trials and so on.

After relating the situation at the time of exposure, some of the Hibakusha said they vomited and became ill after providing testimony to the court about their experiences at the time of the bombing. One Hibakusha said that she was shocked when the Korean War broke out. Because of what had happened at the end of the Second World War, she had thought that war would never happen again, and yet another war had occurred. That Hibakusha said that she was afraid to turn on the light in the evening. Further, saying you are a Hibakusha, meant that one would be the object of discrimination and prejudice.

Hibakusha have overcome experiences that are themselves painful to recollect, and while saying that one is a Hibakusha is to invite discrimination, Hibakusha have prevented a third nuclear attack by appealing to Japan and the world for No More Hiroshima, No More Nagasaki and No More Hibakusha. They have also become the plaintiffs in the recognition of A-bomb injury trials.

They have done this because of their sense of responsibility as "survivors" of the A-bomb hell. This is a responsibility that comes with those who have lived this far. As people who have heard their voices, we are obligated to inherit those feelings and responsibilities.