

Equal legal aid for foreigners – Two practical case studies

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Good afternoon, ladies and gents, and friends who have traveled great distances to join us today. Welcome to the "2009 International Forum on Legal Aid (IFLA 2009)." I am Wu Hao-jen, your host of and a speaker at the forum.

Before beginning the discussion on how to help foreigners obtain comprehensive legal aid, I would like to share with you two cases that I have worked on in the past. The first case involves a Taiwan passport holder who received help from the legal aid system in Japan. The second case concerns Thai laborers in Taiwan who were given legal support from our legal aid system after they stood up to protest against oppression from their employer.

1. The Case of Tashi Tsering

Mr. Tashi Tsering, an exiled Tibetan holding Taiwanese passport, was furious at China's massive killing and brutal oppression against protesting citizens at Lhasa, the capital of Tibet, in March. On April 26, 2008, he was brought into arrest by the police under the charge of "Offenses of damage to credit and obstruction of business", a charge mostly used against gangsters, after shouting "free Tibet!" during the Nagano leg of the Beijing Olympic torch relay in Japan. On April 28, 2008, after 48 hours in custody, an interrogation was conducted by a prosecutor who suspected Tashi's connection with terrorists and decided on an extension of his detention incommunicable. He was detained for 20 more days, the longest period allowed by the Japanese law. Then the case was brought to the Nagano regional court and a summary conviction was made. He was allowed release on paying a fine of ¥500,000.

When the case was put under the spotlight, the Japanese society strongly criticized the authorities for succumbing to the pressure from China by giving Tashi unfair treatment. As the leader of the Chinese Communist Party Hu Jingtuo was to visit Japan in mid May, it was the belief of many that the Japanese government had given a special order to its law-enforcers not to release Tashi anytime before Hu's departure from Japan.

I was invited by the Taipei Economic and Cultural Representative Office in Japan to give a series of lectures on Taiwan in Waseda University. The representative office also kindly offered me to be their cultural counselor. So

when Tashi was put under custody, I was probably the first person to know about it in Taiwan's diplomatic system. As it was a highly political case involving a Taiwanese citizen, it was the office's responsibility to intervene. I reported to Representative Koh Se-kai, who had been an exile for thirty years during Taiwan's martial law period and knew the urgency attached to Tashi's case. He at once made an order to help Tashi. But what followed was nothing that I had expected.

According to the Japanese law, suspects under detention incommunicable had the right to hire and meet with a lawyer, and if the suspect was a foreigner, the embassy of the suspect's country was also allowed to visit. So the representative office's priority was to send people to meet with Tashi and help him with lawyer hiring. However, the official sent to visit Tashi used to be a police officer, and he said threateningly to Tashi that to hire a lawyer is costly in Japan and the representative office would not pay for him. He even suggested that Tashi confess in order to plead for a lighter penalty. When he reported this to us, believing he had done the right thing, I was enraged. Not only didn't he do what he was supposed to, but he had no understanding of how the legal system was operated in Japan. He should have informed Tashi that there was a free legal aid system, aimed to help local citizens and foreigners alike, through which he could seek assistance. It would not cost Tashi or the representative office a penny.

Another challenge soon presented itself when the Japanese lawyers employed at the representative office refused to be involved in Tashi's case, expressing their intention to steer clear of a case so highly political. Giving up hope on the bureaucrats, I resorted to my personal contacts after gaining permission from Representative Koh. I turned to Ms. Maiko Tagusari, a lawyer at the Japan Federation of Bar Associations, for help. She immediately contacted another lawyer at the legal aid center at Nagano, Mr. Syuji Yoneyama, who promised to defend for Tashi without hesitation. He then hurried to meet with Tashi at the police station.

The next day, Yoneyama asked me to find an interpreter for Tashi because Tashi did not speak Japanese, nor did the police officers at the station understand Tashi's English. Yoneyama said he needed a Taiwanese person for the job. The interpreter that the police had hired was Chinese, and Yoneyama feared unfairness may arise in the process. After analyzing the situation, Yoneyama believed that the case of Tashi, in addition to resulting from the suspected pressure from China, may also be a result of the tightened security reinforced due

to the coming G8 Summit at Lake Toya, Hokkaido to be held in July. He believed Tashi would be found guilty, but at summary convictions with a fine. He advised us to have the fine (maximum ¥500,000) ready and Tashi could be released soon. I promised Yoneyama gladly. Everything went the way Yoneyama had predicted. However, the representative office later proved an embarrassment because neither did they help Tashi find a Taiwanese interpreter nor did they accomplish their promise to help Tashi prepare the fine. (I was later informed of the reason: the representative office feared Tashi might refuse to repay the fine afterward.) At the end, Yoneyama had to look for a Taiwanese interpreter on his own, and Tashi's fine was paid with the money collected by several Japanese civil groups that supported Tashi.

B. Thai laborer protest against oppression

The second case took place on Aug. 21, 2005 when hundreds of Thai laborers working on the Kaohsiung MRT construction attacked and destroyed their dormitory and offices located at Kaohsiung Kangshan Management Center after an alleged long-term "unfair and unjust" treatment by the foreign recruitment agency, Huapan Manpower Consultant and Management Co.. Four men said to be the leaders of the commotion were indicted by the Kaohsiung district prosecutors on charges of offenses against public safety (arson), disrupting public service (stoning fire trucks that entered the site), and larceny (the company claimed that millions of dollars were lost after the riot).

It was widely reported news and many can still recall the case. However, perhaps as a result of discrimination and prejudice that the Taiwanese society has held against Southeastern foreign laborers, most local media used the word riot – a term bearing negative connotation – to describe the event. Considering the gravity of the case, Minister of the Council of Labor Affairs Chen Chu ordered Deputy Minister Lai Jin-lin to conduct a thorough investigation with several experts, and I was one of them. The place where the Thai laborers lived under the supervision of the company reminded me of a brutal Nazi concentration camp. In the company's handbook of management policy, I found a variety of rules that violated human rights. All these led me to believe that the event was more of a protest against oppression than a riot. Immediately, the urgency of such condition convinced me to put aside official papers to be written and revealed the findings through Coolloud Collective in the hope that the society – especially the prosecutors and judges – would not be misled by the media's

premature judgment. I remember that I said, not a single person would be able to live in that place for one day, not even a Taiwanese man. If the need should arise, I would be willing to testify in a court as a witness at anytime.

The laborers' protest against slavery caused by globalization was brought into court, and the people who stood up in time to help them were the lawyers and staffs from the Kaohsiung branch of the Taiwan Legal Aid Foundation(LAF). With the help from the foundation, the four defendants were found not guilty in both the first and second trial (with only one laborer found guilty for larceny. He was sentenced 6 months in jail but could be commuted to a fine.)

The legal aid foundation has been involved in almost all the foreign laborer abuse cases. In addition to the Thai laborer protest against oppression, there are the foreign laborers exploitation by Formosa Corp. (Yunlin Branch, LAF, 2006), the Indonesian care-takers exploitation by Chi-ji Group (nation-wide, LAF, 2008), the sex assault of eight Vietnamese laborers by a foreign manpower agency administrator in Tainan (Taipei branch, LAF, 2008). These cases serve to be significant reminders for the Taiwanese society where human rights for foreigners have been neglected for a long time.

The two cases above are typical, with one bringing out the human rights issues of international political dissidents (and the repression conducted in the name of anti-terrorism by countries adopting appeasement policies), and the other highlighting the human trafficking problems caused by international human laborer transportation (and the misconception of *foreigners=disgraced races=criminals* resulted from the integration of capitalism and the media. Such misconception offer governments that are eager to control its people a fast track to conviction).

It is predicted that such violations of human rights of foreigners will reoccur in the future. To look at it in a different perspective, the negligence of the human rights of foreigners will inevitably lead to serious damage to the human rights of all citizens eventually. The borderline that divides local citizens from foreigners is a ticking bomb of discrimination threatening to shake up the entire society. After all, political and social minorities are outcasts whether domestically or internationally, and we may become part of the minorities someday, voluntarily or involuntarily. The legal aid system is an important mechanism that looks after people whose human rights are violated. It is the aim of the forum to find more

approaches to enrich and reinforce the mechanism. I hope with my introduction, we will be fortunately enough to hear all of you sharing your invaluable experiences and opinions with us. Thank you.