

Part I Development and the environment:
experiences of Japan : 9.Environmental
protection and the role of lawyers

権利	Copyrights 日本貿易振興機構 (ジェトロ) アジア 経済研究所 / Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) http://www.ide.go.jp
シリーズタイトル(英)	Development and the Environment Series
シリーズ番号	1
journal or publication title	Development and the Environment:The Experiences of Japan and Industrializing Asia
page range	120-127
year	1995
URL	http://hdl.handle.net/2344/00015443

9

Environmental Protection and the Role of Lawyers

Tetsuo Murata

I. INTRODUCTION

The year 1955 marked the starting point of the rapid growth period for Japanese industry, primarily the petrochemical, steel, aluminum, and other industries. The “income doubling plan” approved by the Cabinet in 1960 was a fundamental measure that sustained rapid economic growth, and it exceeded the initially planned goal.

But the growth of the heavy and chemical industries and the development of industrial complexes brought about air, water, and other types of pollution in the major cities, and brought an adverse effect on the natural environment. Additionally, building the means of high-speed transportation, and the construction of industrial complexes that constituted localized development in the outlying districts, caused pollution throughout the country. Japan’s environmental problems initially took the form of pollution-induced harm to people. As a result, in the latter half of the 1960s the anti-pollution citizens’ movement began to flourish, and lawsuits seeking redress for harm were filed around the country. It is safe to say that the involvement of lawyers in Japan’s environmental issues started when they acted as counsels in lawsuits dealing with specific environmental problems. But in 1967 the Basic Law for Environmental Pollution Control was passed; pollution controls were successively put in place by the government, and laws for the national system of pollution victim redress were gradually passed. As these events unfolded, the role of lawyers gradually expanded into areas of activity such as publishing opinions on government policy. Furthermore, as global environmental problems have recently come to present serious challenges, lawyers too have begun working internationally on the environment.

Within the wider picture of the environment in Japan, this report attempts to survey the activities of jurists—especially lawyers, and to examine the role they have played.

II. JAPAN’S LAWYER SYSTEM

An Attorneys-at-Law Act was first established in 1893. It was amended in 1933, but the present Attorneys-at-Law Act (Law no. 205 of 1949) was passed in 1949 as a part of much postwar reform legislation.

This law provides for the establishment of a bar association within the jurisdiction of

each district court, i.e., what are called district bar associations (Article 31 Paragraph 1), of which there are now 52. All the bar associations in Japan form the Japan Federation of Bar Associations (JFBA), whose members are the district bar associations and individual lawyers (Article 47). Persons who have completed their legal training are qualified to become lawyers, which requires their registration in the lawyers' list kept by JFBA. Both the district bar associations and JFBA require the compulsory membership of their lawyer members.

The district bar associations and JFBA are juridical persons in public law, and their activities are independent of control by administrative and other government agencies. The purpose of the district bar associations is to lend guidance, provide for communication, and supervise lawyers in order to maintain the dignity of the profession, and to improve the way lawyers perform their work. For that purpose the Attorneys-at-Law Act requires that bar associations create rules concerning organization, institutions, qualification screening, legal training, and other items established by law. Additionally, as the Attorneys-at-Law Act stipulates that the lawyer's mission is to protect fundamental human rights and achieve social justice, the district bar associations have formed many committees pursuant to their rules to pursue these goals. JFBA is likewise required to create rules concerning items prescribed by law, and it has also set up many committees in accordance with rules not so prescribed.

Thus JFBA and the district bar associations can be characterized as free and independent professional organizations with their own sophisticated self-governing functions. This means that in making statements on environmental issues, JFBA and the district bar associations may criticize government policy and voice dissenting opinions. On the other hand, as these organizations have compulsory memberships, views among lawyers may conflict and make for constraints.

III. ENVIRONMENTAL LAWSUITS AND LAWYERS

Following is an overview of the kinds of environmental lawsuits on which lawyers have worked in Japan.

1. Early Cases

The Attorneys-at-Law Act's Article 2 Paragraph 1 states: "The lawyer's vocation is, upon requests from litigants and other involved parties, or commissions by government offices, to conduct proceedings relating to lawsuits, nonlitigation cases, requests for investigations, petitions, and requests for reviews and other cases involving grievances against government administrative agencies, as well as other general legal duties." As this passage shows, the lawyer's basic activities involve resolving legal disputes.

As noted above, Japan had a very high economic growth rate from the latter half of the 1950s, which was brought about by exports of industrial products and investments in production facilities. This process in turn transformed Japan's industrial structure into one centered on the heavy and chemical industries. But the result was worsening pollution and increasing harm to people's health, lives, assets, and the like. In spite of this damage, the only pollution-related legislation passed by the government was the 1958 "Law Concerning the Conservation of Water Quality of Public Waters" and the "Law Concerning the Control of Factory Effluent," as well as the 1962 "Soot and Smoke

Control Law." Furthermore, these laws lacked teeth, and there was no legal system providing redress for pollution victims.

For these reasons, pollution victims filed lawsuits seeking damages against the businesses regarded as polluters, and it is safe to say that lawyers' involvement in environmental issues began with lawsuits such as these. Below are some examples of pollution lawsuits that had major impacts on the complexion of environmental issues in Japan.

a. Yokkaichi asthma lawsuit

A petrochemical complex began operating in Yokkaichi, Mie Prefecture in 1958. In 1967 a group of 12 plaintiffs, who lived nearby and suffered from asthma and other obstructive lung disorders, filed a lawsuit seeking damages against six defendant companies that made up the complex. In this case over 80 lawyers worked on the lawsuit as the plaintiffs' representative counsel, and performed the work required by the lawsuit.

In 1972 the Yokkaichi Branch of the Tsu District Court awarded the plaintiffs victory.

b. Niigata Minamata disease lawsuit

The plaintiffs in this case were people living along the downstream portion of the Agano River in Niigata Prefecture, and the defendant was a company that owned and operated an acetaldehyde factory located on the upstream portion of the river. The plaintiffs, whose health had been damaged by mercury compounds in the effluent discharged by the acetaldehyde manufacturing process, filed a lawsuit against the defendant seeking the payment of damages. In this incident 57 lawyers conducted the lawsuit on behalf of the plaintiffs.

The lawsuit, filed in 1967, came to a conclusion in 1971 when the Niigata District Court awarded victory to the plaintiffs.

c. Toyama Itai-Itai disease lawsuit

The plaintiffs in this case were people suffering from itai-itai disease, and the heirs to people who had died of the disease. The defendant was a company that was mining on the upper reaches of the Jinzu River. The company's effluent and the leachate from its slag piles contained cadmium. The plaintiffs contended that the cause of itai-itai disease was the defendant's effluent and leachate, and filed a lawsuit seeking the payment of damages. In this incident about 300 lawyers conducted the lawsuit on behalf of the plaintiffs.

The lawsuit, filed in 1968, ended in 1971 when the Toyama District Court awarded victory to the plaintiffs. The defendant appealed, but the appeal was dismissed (in a June 9, 1972 decision by the Kanazawa Branch of the Nagoya High Court).

d. Kumamoto Minamata disease lawsuit (First)

The plaintiffs in this incident were local inhabitants who had eaten, and suffered toxic disorders from, fish and shellfish contaminated by mercury compounds contained in factory effluent discharged by the defendant company. These plaintiffs filed a lawsuit against the defendant seeking payment of damages. In this incident about 370 lawyers conducted the lawsuit on behalf of the plaintiffs.

The lawsuit, filed in 1969, concluded in 1973 when the Kumamoto District Court awarded victory to the plaintiffs.

e. Osaka Airport noise pollution lawsuit

In this case, people living in the vicinity of Osaka International Airport contended that they had been harmed when their living environments were destroyed by the noise and

vibration of the many aircraft, including jet aircraft, taking off and landing at the airport. The plaintiffs filed a lawsuit against the government seeking the payment of damages and the prohibition of aircraft landings and take offs. In the first instance and the appeal of this case, the courts recognized the plaintiffs' damages and partially recognized an injunction on aircraft take offs and landings (a February 27, 1974 decision by the Osaka District Court, and a November 27, 1975 decision by the Osaka High Court), but the final appeal, while partially recognizing the payment of damages to the plaintiffs, overturned the lower court decision on the injunction and dismissed the plaintiffs' demand (a December 16, 1981 decision by the Supreme Court's Grand Bench).

2. Cases from 1975 and Thereafter

As the foregoing examples show, lawyers' activities in environmental lawsuits until about 1975 involved mainly civil suits seeking damages, but this year was the demarcation point at which, in addition to the usual payment of damages, an increasing number of civil suits demanded injunctions on the operations of public facilities or other operations, or injunctions alone. And although lawsuits had formerly been all civil suits, cases also began to assume the forms of administrative lawsuits, and the citizen (or tax payer's suit) lawsuits provided for in the Local Government Act. Additionally, lawsuits began taking aim at large-scale facilities and at the very plans of the national and local governments. This meant an expanded range of activities for lawyers in lawsuits. Reasons for this are that the planning and implementation of large-scale development projects throughout Japan engendered new environmental problems, and also that beginning about 1975 Japan's social demands vis-à-vis environmental issues changed so that people wanted not only to recover from pollution damage but also to live in better environments. In response to these changes in circumstances, one could say that lawyers' concerns regarding lawsuit theory broadened to include lawsuit theory for recovering from pollution-induced damage and theory seeking to prevent pollution from occurring in the first place.

Some examples of such lawsuits follow.

a. Date thermal power plant construction injunction lawsuit

In this case, residents of Date City in Hokkaido and the city's environs sought an injunction on the construction and operation of an oil-fired power plant. The lawsuit was filed in 1972 and ended in 1980 when plaintiff defeat became certain.

b. Lawsuit seeking cancellation of approval to build the Ikata nuclear power plant

In this lawsuit the residents of the area in which a nuclear power plant was to be located demanded cancellation of the approval given to an electric utility to build a nuclear reactor on the basis of laws relating to restrictions on nuclear materials, nuclear fuel substances, and nuclear reactors. This lawsuit was filed in 1973. Both the first instance and appeal ended in defeat for the plaintiffs, who made a final appeal, which was dismissed in 1992.

c. Lawsuit seeking cancellation of approval to build the Fukushima II nuclear power plant

This was the same kind of case as number 2 above. Local residents sought cancellation of the approval to an electric utility for building a nuclear reactor. The lawsuit was filed in 1975. Both the first instance and appeal ended in defeat for the plaintiffs. A final appeal was turned down by a court decision in 1992.

d. Odagahama citizen lawsuit

This lawsuit, filed in 1984, sought an injunction on the disbursement of construction costs for reclamation at Odagahama to be performed by Imabari City in Ehime Prefecture. In the first instance in 1988 the court rejected the plaintiffs' demand, and in an appeal the court overturned the original decision and rejected the complaint. The final appeal is now in progress.

IV. ACTIVITIES OF JFBA AND THE DISTRICT BAR ASSOCIATIONS

As noted previously, the lawyer's mission is "the protection of fundamental human rights and the realization of social justice," and thus in order to accomplish these purposes JFBA and the district bar associations have, in addition to their activities through legally prescribed committees, conducted activities from the perspective that they too should be active for the protection of human rights. For example, in 1949 JFBA set up its Human Rights Protection Committee, which has conducted investigations on violations of citizens' human rights and published opinions. Environmental problems were at first conceived as part of human rights protection, and at the 7th Human Rights Protection Symposium, held in Nagoya in 1964, the following statement was made on pollution issues: "In view of the ideals of respect for human rights and of a life in health, which are guaranteed by the Constitution, JFBA has expectations for strong administrative supervision and appropriate legislative measures meant to quickly prevent and eliminate pollution damage." Subsequently, JFBA made the Pollution Countermeasures Committee independent from the Human Rights Protection Committee in 1969, and many district bar associations also organized pollution countermeasure committees at that time.

The activities of JFBA and the district bar associations can be roughly divided into the following categories.

1. Surveys

JFBA's activities started with surveys, which are now quite numerous. One of the early surveys was a 1970 survey of damage caused by air pollution in the Fuji area. Subsequent and larger surveys include the release of a report on the results of a 1977 Seto Inland Sea pollution survey, a 1982 report on measures implemented near airports, railways, and roads, and a 1990 report on a study of the high-level nuclear waste problem.

2. Symposium reports

Each autumn JFBA holds a Human Rights Protection Symposium, each of which includes reports and proposals pertaining to environmental issues. Some examples are the 1973 specific proposals for legislation on environmental protection and ensuring local citizen participation, the 1977 proposal for protecting the oceans and sea coasts, the 1983 proposals relating to nuclear power development and environmental protection, and the 1990 forum dealing with Japan's export of pollution to, and environmental damage in, Southeast Asia.

3. Publication of opinions

The opinions released concern new government policies and legislation pertaining to the environment. Early opinions include the opinion on the 1967 bill for the Basic Law for Environmental Pollution Control, and that on the 1972 bill for the Nature Conservation Law. A recent opinion was that on the 1993 Basic Environment Law bill.

4. Legislative proposals

Legislative proposals include the Nature Conservation Policy Law bill released in 1975, and the Lake Zone Nature Conservation Law bill released in 1985. Another opinion expressed in connection with the release of the Environment Conservation Policy Law bill was that the government should immediately incorporate a system for environmental impact assessments.

5. Publications

Since 1971 JFBA has put out seven publications. Recent publications are the 1991 *Japan's Pollution Exports and Environmental Destruction, A Recommendation for a Society Free of Agricultural Chemicals*, and *Considering the Future of the Forests* (in Japanese language).

V. JFBA'S INTERNATIONAL ACTIVITIES

JFBA's international activities began with participation in the 1972 United Nations Conference on the Human Environment in Stockholm. At NGO meetings JFBA reported on damage by pollution in Japan and made an appeal for the right of human beings to enjoy a healthy environment. In 1975 the Science Council of Japan held "Science for a Better Environment: The International Congress on the Human Environment" in Kyoto, where JFBA reported on its environmental initiatives up to that time. However, the purpose at that time was more concerned with reporting on environmental problems in Japan, and did not extend to the creation of international linkages on the environment.

As noted above, until about 1975 the activities of lawyers were directed toward handling discrete lawsuits. Most of JFBA's survey and research activities were likewise directed toward discrete pollution problems, and there was hardly any research into the matter of what realizable legal systems there might be for preventing environmental damage. In 1976 JFBA dispatched a mission to the United States for the purposes of not only the kinds of studies and surveys done up to that time, but also to inquire into preventive legal systems.

JFBA's first effort to create links with other countries to work on global and international environmental problems was the 1988 International Human Rights and Environmental Protection Symposium held in Kobe. Many scholars and jurists from other countries participated in this symposium.

During 1989 JFBA conducted surveys including those on the presence of Japanese corporations in Southeast Asia, official development assistance (ODA), and tropical forests. In 1991 JFBA published the book, *Japan's Pollution Exports and Environmental Destruction*, which was based on these surveys.

As an NGO, JFBA send a delegation to the 1992 UN Conference on Environment and Development (the Earth Summit) in Brazil, and held a JFBA-sponsored symposium at the NGO Global Forum. This participation by JFBA in UNCED differed from its international interchanges until then in that instead of merely reporting on environmental problems in Japan, JFBA attempted—along with protecting the global environment—to gain an understanding of environmental problems in other countries and provide for mutual cooperation with NGOs from around the world. In that sense it was a significant event.

VI. THE SIGNIFICANCE AND CHARACTER OF LAWYERS' ACTIVITIES IN JAPAN

The foregoing constitutes an overview of environmental activities by lawyers and bar associations in Japan. They can be characterized as follows.

First, although work pertaining to the environment is one kind of important work to lawyers, in Japan environment-related lawsuits are not within the realm of everyday work, and there are virtually no law offices that specialize in environmental problems. Thus lawyers' involvement in environment-related lawsuits is often a voluntary activity, and in this respect they differ in character from the American public-interest law firms that specialize in environmental problems and the law firms that handle environmental problems for corporations. Because of that difference there are limits to what they can do.

Second, there was a tendency for lawyers who undertake environment-related lawsuits to see lawsuits dealing with environmental problems as part of an anti-pollution struggle, and for this reason their activities for the most part had the character of indictments against the offending businesses. A typical example of this would be the 1972 formation of an organization called the "The All-Japan Committee of Members of The Legal Profession Against Pollution" by a number of lawyers' groups, and the advance of their struggle through environment-related lawsuits. And as discussed above, JFBA as part of its activities has issued many action proposals, opinions, and legislative proposals, but in content these are often idealistic and have included opinions that are not necessarily pertinent within real legislative and administrative milieus.

Third, although both JFBA and the district bar associations have totally compulsory memberships, each lawyer has opinions differing from those of others on environmental issues. This means that there are limits to what these organizations can do because of their inability to directly support the people involved in environmental problems.

Despite these characteristics, the role played by lawyers in Japan's environmental issues has certainly not been a minor one.

The first is their contribution to the advancement of legal theory in environmental law. At its 1973 Human Rights Protection Symposium, JFBA announced the concept of environmental rights. The idea behind this concept is that people have the right to the enjoyment of a good environment, and that when contending in court to polluting businesses that such rights have been infringed upon, they can halt the operations of those polluting businesses. Although this thinking was not adopted in many academic theories and courts, the fact that people have the right to the enjoyment of a good environment is now starting to be recognized as a part of fundamental human rights, and it has become a spiritual support for the anti-pollution citizens' movement.

The second is the effect on society. For example, JFBA has released many opinions on environmental issues, such as the passage of basic environmental laws and the suitable nature of environmental impact assessments, and has also proposed legislation. Although they have not been directly exercised in government policy, their influence on society was certainly not ignored, for they aroused public attention.

The third is that, through the process of interchanges with other countries, lawyers have told the world about the pollution experience in Japan and provided a great deal of information, which has made others aware that solving environmental problems in all countries is an important task for the improvement of people's lives.

Fourth and last, lawsuits for recovering from pollution-induced damage indirectly facilitated the government's implementation of the pollution victim redress system.

VII. HOPED-FOR FUTURE ROLE OF LAWYERS

As seen from inside Japan, current environmental problems that must be dealt with include air pollution and other problems that remain to be remedied, urban pollution problems arising from vehicular traffic, types of pollution caused by new chemical substances, and the disposal and recycling of wastes that continue increasing in both kinds and amounts, not to mention that we are pressed to satisfy citizen demands from the perspective of creating good environments in which to live. And in the area of international and global environmental problems, Japan's lawyers must make contributions to the protection of the entire global environment while keeping in mind the economic development of each country and international cooperation.

Under these circumstances, the environmental role played by lawyers has broadened. Although their role until now has certainly never been a minor one, it will now have to assume new elements such as the following.

First is making contributions to environmental legal theory. Environment-related lawsuits are very modern in character, and therefore embrace many problems that cannot be resolved with conventional legal theory. Without a doubt, lawyers have a mission to create the legal theory that will be applied in specific ways to lawsuits.

Second is active participation by lawyers, from their standpoint as lawyers, in national and local government environmental policy. As noted previously, until now many lawyers have conducted their lawsuit-related activities with the view that they must obtain redress for pollution victims, so from the polluting companies they seek the payment of damages and injunctions on their company operations. They have also taken action according to an assumption that conceives development projects by the national and local governments as a trade-off with nature conservation. But there have also been lawyers whose stand is to take positive action for the formulation of government environmental policy as they consider what effective ways there are for environmental protection. Environmental problems now are broader and more complex, and there are some that certainly cannot be solved with only the "indictment-type" activities previously used. Lawyers' current hoped-for role is, with regard to the problems outlined above, positive activity in helping formulate policy more than in areas such as the provision of legal theory for a new legal system.

Third, there are even greater expectations for international cooperation by lawyers. The kinds of international cooperation possible to lawyers are, first, comprehending the environment-related circumstances of their own and other countries, and ascertaining the opinions of the people in each; and second, to exchange with other lawyers the environmental information thus obtained. Having done so, it will be a vital task to offer appropriate advice to people living in Japan and other countries.

In order to make these things possible, lawyers must have broad perspectives on environmental issues. Solving environmental problems requires an interdisciplinary approach taking in not merely jurisprudence, but also social sciences such as economics and political science, as well as natural sciences including medicine, engineering, biology, meteorology, and geology, in addition to the humanities. Lawyers must also have links with people in Japan and other countries who do research in such areas.