

INTERVIEW OF TADANORI ONITSUKA, MEMBER OF THE IMMIGRATION DETENTION CENTERS' VISITING COMMITTEE, THE MINISTRY OF JUSTICE

Interviewed by Kumiko NIITSU*
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PROFILE OF INTERVIEWEE

Tadanori Onitsuka was born in 1952. He became a lawyer in 1980, and is a member of the Daini Tokyo Bar Association. He is an active member of the human rights committee of the Association. He was the head of the Defense Counsel Group on the labor rights of foreigners from 1988 to 1998, and has been a co-director of the Immigration Review Task Force (IRTF) since 1998. This civil organization, established with the aim of improving the conditions of immigration system, conducts research on the actual situation of immigration administration and does advocacy and public information work. He was appointed as one of the first committee members of the immigration detention centers' visiting committee and has been a member since July 2010.



Attorney ONITSUKA: Photo by Kumiko Niitsu

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In July 2010, "the detention centers' visiting committee" system was newly established in the immigration control centers in Japan, to conduct monitoring as a third-party independent organization under the Ministry of Justice. To know the reality of this new system is indispensable to deepen the understanding and to further the discussions over the process. This paper will introduce an interview of one of the committee members, a lawyer, Mr. Tadanori Onitsuka. Until now no members have made their opinions public officially, and one of the probable reasons is that the names of the members are concealed for safety reasons for themselves so far; however, Mr. Onitsuka cooperated not only for this interview but also agreed for its publication as he believes that it should be open to taxpayers, while taking due consideration for the protection of information on individual inmates. In this perspective, the following interview might provide precious suggestions to the readers.

Q1. How many facilities and what types of facilities does the Immigration Detention Centers' Visiting Committee cover? Moreover, how many times do you meet and what kind of meetings do you have?

We go around all the institutions in Japan. In the east, 8 places from Sapporo to Tokyo, and some airport facilities such as Narita and Haneda. In the west, 11 places from Nagoya to Omura (Nagasaki), including airport facilities like Kansai (Osaka) or Nagoya. There are two types of immigration detention facilities: one is the immigration control centers originally made for people under the deportation order, waiting for repatriation or applying for refugee status, and the other is the accommodation facilities for people before deportation orders are issued.

The Committee is completely divided into two, the east team and the west team. Each sets up its own schedule. I belong to the east team and there have been four meetings until now. Six meetings are planned in all: 1. Introduction, 2. Planning for future inspections, 3. 4. Discussion for making the report to the head of the center, and 5. 6. Finalization of the draft report.

Q2. Procedure for the examination of opinion letters to the suggestion boxes: at which timing are the boxes opened and letters passed to the committee? How many opinion letters are there?

The suggestion boxes are fixed with chain and locked with keys, so opinion letters cannot be carried out. The size of the box is about 30x25x15 cm, and letters can be posted from the top. Each box is marked in five languages, such as, Japanese, English, Chinese, Korean and Persian, as "suggestion box" (letter box), with the following description: "Please put your opinion into this box. The visiting committee is for the consideration of the treatment in the centers, and your secret will be kept."

At first, the operation was along with a proposal from the secretariat of the Ministry of Justice, then there were talks inside of the committee, and the system of the present operation

has been adopted. Although the location of the box differs in each institution, it is basically put in the open community space, where the inmates gather during free time. For example, in the Tokyo Immigration Center in Shinagawa, 4 hours can be spent in the open space every day, from 9:30 a.m. to 11:30 a.m. and 1:30 p.m. to 3:30 p.m. It is time for inmates to play table tennis, use the telephone, buy a drink from vending machines, talk, or go to each other's room back and forth freely, and one can post a letter at that time.

The chief of the general affairs section of the center is responsible for the management of the boxes, but the chairperson of the visiting committee is responsible for the management of the keys to the boxes. Only in the committee's presence, the suggestion boxes can be unlocked and opened.

There aren't any particular papers for writing an opinion or request to be placed in the suggestion boxes, which are normally set in detention centers in Japan. Opinion letters can be written on anything such as a card or a memo, in a native language.

At the time of opening of the boxes, the number of cases and sheets are counted, and usually the committee asks the Ministry of Justice personnel for a copy, and the chairperson keeps the original to himself in order to prevent any attempts to rewrite the letters. We ask for translation through the secretariat. Translation is arranged by the secretariat in the Administration Division, and usually completed in about one month.

Then, the committee looks at translated letters and makes use of important opinions to be reflected into the final written report. No particular replies are made to the inmates after receiving the letters.

The number of cases varies by institutions. In the East Japan Immigration Center in Ushiku, there were 24 cases as of 28 January (letters written on or after 20 July).

The quantity of letters differs extremely in each institution. In the eastern region, there are many letters in Ushiku, Shinagawa, Yokohama and Narita. In Sapporo or Sendai, there are almost no letters probably because there are almost no inmates in these places.

In addition, there are lists of inmates requesting an interview with the Committee. Individual interviews are usually conducted for at least half an hour, without any presence of the Ministry staff.

Q3. Do you feel that the Procedure of the Suggestion Box System offering a direct way of complaining to the visiting committee, which should be functioned as a third party, is fully announced? Moreover, do you feel that it is easy for the inmates to exercise their rights without any fear, and that their confidentiality is guaranteed properly enough?

It is good that inmates can use any kind of paper and no restrictions exist for dropping the letters. However, regarding the maintenance of confidentiality, the secretariat is involved in the process of translation as they find the proper translators. Although there was a suggestion that the letters be exchanged between the east and the west, and for the Administration Division of the Ministry of Justice to refrain from checking the letters from centers under its own control, the idea has not been carried out so far.

Translation is a future big subject. Since there are many languages, implementation is actually difficult without any concrete budget, if there were opinions only from the committee.

It seems that securing enough budget for translation is strongly required. If the budget is secured it is much easier to ask for translation to the outside body from the Ministry, but probably, it is rather difficult.

We have to consider what we do with the problem of interpretation / translation seriously. The translators' wages are at a very low rate at the moment because it is the work of the Immigration Bureau.

It depends on the applicants' application what language they prefer to use. (Urdu, Sinhalese, etc.)

From the viewpoint of confidentiality, inmates might hesitate to consult with the committee. It cannot be fully denied that the information of individual consultation might be known to the authority at the moment. If the situation is managed properly, it is much better for the inmates themselves.

It is hard to say that the existence of and the procedure to use the suggestion boxes have been made known necessarily enough. Although there are notations by Japanese, English, Chinese, Korean and Persian, it may not be functioning enough, if the inmates cannot read any of these languages. The system has been improved a bit to make it well known, and now the brochure kit in the cell contains the explanation of the procedure.

The instruction on the box was written only in Japanese and English at first, but at the moment it is indicated in five languages, though it is still insufficient. It should be designed for the inmates using other languages. Probably, the problem of the language translation is the largest problem there. The purpose may not be attained fully unless the display in various languages as much as possible is realized.

The publication is not enough and it seems to remain at the level of mutual information exchange between inmates.

(Upon the interviewer's comment about the UK, where the inspectors employ the interpreters and translators directly without using the authority, thereby securing the independence of the organization by not letting the information of the cases pass to the authority,) In this sense, I feel the independence of the committee in Japan is still weak.

The inmates have three means to report their opinions:

1. *"opinion box"*: this method uses a particular form of paper called "gansen" prepared by the authority, and conveys the opinion to the head.
2. *"petition for the objection system"*: as mentioned under Article 41(2) of the revised version of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, this is a system of orally making a request to the guards.
3. *"suggestion box"*: this method has been newly added to the two conventional methods above.

Q4. What kinds of issues are frequently raised by the petitions from inmates to the suggestion box, and how are they treated in highly urgent cases?

Until now, through the means of the suggestion box and direct interviews, the following issues have been raised:

1. medical treatment,

2. treatment by Immigration Control Officers,
3. daily matters regarding the environment or equipment, such as dirty shower or bad meals,
4. physical exercise, and
5. communication to the outside.

I think that the problem of no.1, the medical treatment, is the most serious. About the doctor, particularly, we recognize that there are many problems in East Japan Immigration Center in Ushiku. Problems with the medical doctor are appropriately pointed out, such as not hearing the complaint properly, making troublesome medical examination with anger, too quick examination only with the prescription of medicine, etc. These kinds of issues have been taken up even in the Diet several times, and it seems that the problems are fully recognized and taken care of fairly by the Immigration Bureau; however, the biggest concern seems to be that no doctors are willing to come at all.

The biggest problem seems to be in the improper understandings by each other coming from the lack of proper language communication. If it would be settled properly, the mutual frustration between patients and the doctor might be solved fairly.

There is only one full-time doctor in the center for all the check-ups, and that might be one of the causes of the fundamental systematic problems. Sufficient consultation time cannot be secured for each inmate when there are many inmates with various kinds of sickness, without proper interpreters. An interpreter should be present during medical examinations, and two or more medical doctors are needed; and for that, more budget should be drawn properly. This proposal will be included in the final report as an important theme this year.

We have heard that it is very difficult to secure the doctors; I think one of the reasons for that is the poor equipment with low salary compared to the quantity of the work.

There are also many petitions asserting that the length of detention itself is too long or that the provisional release measure is operated very strictly and hardly utilized. We haven't established yet enough rules about how much we should involve ourselves with these kinds of complaints. For example, we need to have more sufficient discussions about whether we should make a difference in the treatment of asylum seekers and others. Probably it is difficult to put forward an opinion in the report this time, although we need to consider these problems.

With regard to meals or living environment, it seems that the Ministry is doing fairly well in spite of the low budget, and I think the cells and living places are kept clean. There seems to be proper consideration for the meals for the sick or for inmates with particular dietary needs because of their religion. In the suggestion box, sometimes we receive letters that praise the meals as delicious.

Regarding the execution of deportation, the committee members interviewed a person who claimed that violence was used within the immigration center. The committee ordered for investigation and the Ministry of Justice made an investigation by looking at data and interviewing the persons concerned. (Such examination methods leave a problem). The conclusion was that there was no such fact as claimed and there was only a use of material power. Whatever the fact is, it is important that such a petition has come out and we will put in the report that acts of violence should not be performed at any time in the execution of deportation.

The person who made the claim was released under the provisional release measure immediately after the interview, and his/her new address hasn't been informed correctly to the committee members, so it is not possible to contact this person for a further check. There is no trace of consulting with another lawyer. At the present stage, it is slightly difficult to pursue further.

It is a big subject how far such an individual case should be addressed. Although the Immigration Bureau has said that these kinds of problems are separate from the role of the visiting committee, it is not persuasive enough. On the other hand, since the problem came to light directly in the form of an interview this time, we ordered an investigation saying that it is impossible to neglect the claim. We can do up to there at this point; however, some more arrangements are needed for the committee to conduct a hearing about the situation directly from the staff in charge, and so on.

Resistance is rather strong. It is easier if we tackle the cases as lawyers as individual cases, but there is a strong recognition among committee members that making these demands and probing into the truth might be beyond the authority/duty of the committee. The Immigration Bureau considers as such and it is likely some of the other members of the committee also agree, so this point is likely to remain vague at the present stage.

Although the two committee members who interviewed the person of this case asserted that further investigation should be done, their voice did not form the majority.

There is neither specific precedent nor clear description on how much legal force there is to the committee's report to the heads of the centers.

There is little information about the facts. It is difficult to draw a conclusion, as there is a considerable disparity between the statement by the person and the photograph submitted at the time of investigation. For example, even if I receive the case as a consignment to a lawyer, it is at such a level that I cannot file a petition only based on the available information.

One way to solve these kinds of problems is to ask for an investigation by entrusting such cases to lawyers or people who are not involved in the committee. If some big and important facts are revealed, the information must be disseminated to the committee, and further investigation should be done within the committee again. However, such steps were not taken this time.

Many kinds of information related to detention often come to us from civil organizations working near the institutions. This information will be examined fairly in the committee, saying, "This is not good"; however, it is still difficult how much the committee can do at present with cases where the Immigration Bureau flatly denies the allegations.

Probably, it is important to improve the situation by thinking of the information source. For example, probably, it was possible to have "interviewed" the claimant again. However, for this case, the provisional release was made immediately after the interview. It seems that the provisional release had been decided somehow beforehand, and I hear that the procedure of the payment of guarantee money had been done in advance. However, I think that it is not desirable to take inmates out of the institution immediately after performing an interview.

It is a big theme how far we get involved in individual cases. However, probably, it would be strange if we never address individual cases. Whatever the information is, if it comes to the Committee, the organization should investigate. However, it is a big subject for us in the future to decide how far we can go or where the limit of investigation should be.

We can ask for an investigation to the Administration Division of the Ministry of Justice as

the secretariat of the Committee. For example, we can tell them, "Put this data in order" or "Submit this kind of data" and so on. Therefore, "investigation" was conducted once this time.

Orders for investigations are not given necessarily frequently and there was only this one as an individual case. In a separate case, we asked for the preparation of related materials. We have a system under which all the needed information is provided if we require so.

When a highly urgent matter is contained in the suggestion box, what do we do? It is difficult to expect a speedy response, because the procedure is such that the suggestion box is opened only when the committee comes, which is once per year at the moment. Therefore, if a person wants a speedy response to the matter, he/she should write the claim using "gansen", or, make a formal objection if the claim is related to treatment in the center.

It may be good to write a note on the suggestion box saying that you should not put urgent cases here. It should say that the box is opened once or a few times in a year.

Most probably the fastest way is as follows: call an external person by telephone, and the information is transmitted to the committee. However, the general public is seldom aware of the existence of the visiting committee itself so far. The information will not come to us without the committee being known to the public, at least to lawyers more.

The contact information for the committee is not made public. Even if an external person tries to contact the visiting committee, it may be impossible for him/her unless he/she solicits the cooperation of bar associations, which in turn could relay the information through their connection to the delegate members of the committee.

Q5. In what kind of form is the "report" compiled once per year? Moreover, what kinds of issues are likely to be picked up as main points?

After finishing an inspection, the committee will hold a meeting immediately on the same day. During the meeting, the members indicate which things are important or which should be investigated further based on the petitions by inmates.

The secretariat takes notes of all the opinions or suggestions and summarizes them. At the same time, cases that need more investigation are written down as such that more investigation is ordered to the secretariat. We have had two meetings so far on the report, and each time, the secretariat collected the comments and opinions in advance, and we discussed them on the day of the meeting.

We report on the main issues as follows: the chairperson summarizes the typical opinion first by him/herself, and then adds the opinion from the committee members. The matters that were noticed during each inspection are all included, and the results of the interviews are also added. At the general meeting without inspection, discussion is held towards the final version of the report.

Contents of the report: Talking about the East Japan part, as there are only a few inmates in Sapporo, Sendai, and Haneda, there is almost no opinion on these facilities so far. An appropriate amount of opinions or suggestions will come out on Ushiku, Shinagawa, Yokohama, and the issues in common.

Q6.What are the occupations of the members of the Immigration Detention Centers' Visiting Committee?

There are 10 members each in the east and the west: they come from various backgrounds such as the head of neighbourhood associations, doctor, former staff of an international humanitarian organization, two lawyers, scholars (Criminal Law), etc.

Q7. In your opinion, what are some remarkable results obtained as a consequence of introducing the immigration detention centers' visiting committee system?

The biggest issue that has been addressed is related to exercises or free time in the two big centers, Ushiku and Tokyo. Before the improvement, the free time was as follows: 2 hours from 9:30 to 11:30 AM and two hours in the afternoon from Mondays to Fridays, but on Saturdays and Sundays it was only either in the morning or in the afternoon and not both on one of the two days. However, based on many requests saying that it is not sufficient for weekends, the rule has been changed for the weekend so that free time is available on both Saturdays and Sundays, though it is limited to either morning or afternoon. Inmates use the telephone during the free time and they prefer to do so on weekends, as it is rather convenient for the receivers. Such strong requests had existed for a long time and it was finally attained by the intervention of the committee.

We proposed for a change relatively soon after the start of the committee, which was in July 2010, and the treatment was changed in October. It was one of the good changes.

The feeling of the inmates is considerably different if there is free time in the open environment. Their good mood owes much to the fact whether or not they can go out from the cell, walk, talk to others, or telephone freely.

Q8.Do you think the independence of the committee is fully guaranteed? If you were to grade it, how would you mark it out of 100?

50 points, probably. I feel that some degree of independence, let's say, from 60 to 70 percent, has been achieved, since the committee members can talk as freely as they like. The Immigration Bureau does not necessarily enter into the discussion, with some preference or assertion.

Plus, including the chairperson, many of the committee members are highly knowledgeable in diverse subjects like medical treatment and environmental hygiene as they are some kinds of specialists, and many opinions are very relevant and persuasive. For example, a member who is a medical doctor asserted that it is necessary to use an interpreter during medical examinations, and this opinion was expressed in the report.

For me, in this sense so far, the Ministry does not stop or oppose when I ask something to be done or ask them to show us something. I can feel that they are considerably careful on that point, and they seem to be still trying to take measure of the ideal shape and working method of the committee.

However, since the Committee does not have its own staff, it can be said that it clearly and decisively lacks independence on that point. What do we do with that? To put it bluntly, the problem owes much to the budget. The problem of the budget is large in order to solve this problem and ensure real independence. Even if it becomes *de facto* independent, if there is no budget, it cannot but be dependent on the secretariat of the Ministry of Justice after all. The budget must be expanded and that is the only way probably.

Since there was not enough budget, the committee members went either to Sapporo or Sendai, as they are very far from Tokyo and cost much. Of course all the members wanted to go to both in fact, but since the budget was restricted, the group was divided into two groups and each group visited one. Transportation expenses and daily allowances must be covered. All the members should go essentially and I think I will keep on pointing this out.

During the committee meeting, especially when we were having discussions on the compilation of the report, the secretariat asked something like "Shall we go out?" Upon discussion among committee members, the secretariat was allowed to stay. In the background of this decision, there was a consideration that without the secretariat's presence we would be in trouble with lack of someone who takes notes of the remarks. One more reason for the decision was that specific individual cases and personal names did not necessarily come out during discussions. Such confidentiality can be obtained to some extent; however, we cannot protect the names fully when it comes to the final stage of making the report.

There has been no offensive incidence until now, but I think 50 points is suitable at the moment.

Q9. In addition, are there any matters to be considered as institutional problems or for future improvement?

One clear problem is the budget.

Plus, there is not enough time, either. I am not sure how to cope with this problem, as most of the committee members are busy people. It is regrettable that not all the centers can be visited because of the scheduling problem. It is not easy to schedule, and the dates are set always when the maximum number can attend. The dates are often not suitable for me and I cannot make the visits, even though I submit various possible dates in advance, showing approximately three different dates.

If you have somewhere where you really wish to visit but if the schedule is not supported by most of the members, you cannot make it. What should we do with this problem?

It is probably better to decide the schedule for the full year in advance. Since most of the Committee members are active specialists with full schedule, matching the schedule is one of the most annoying things. This is not an essential problem but it is one of the most regrettable problems.

This is a repeat from the previous point, but medical treatment is another thing that should be improved.

Plus, according to the regulation on treatment, the chance of physical exercise should be guaranteed everyday, but in reality even the largest detention center in the eastern region, Tokyo Immigration Bureau in Shinagawa, does not make it a practice. I think it is a problem that we should not overlook. After all, the inmates' one big pleasure is in the possibility of

their own movement.

To speak roughly, I think these are the responses to this question.

The open treatment has changed much compared to several years ago; however, I am not sure about the western part of Japan on this matter, and it must be checked how it is at the moment.

One idea has also come out that the committee members in the west and the east should be interchanged. If the place to visit is far away from where the member lives, it will be almost the same to members as it requires a day's work if the airplane etc. is taken, and the inspection itself will be the same so it should be possible. We are talking about proposing also to the western team.

Until now, the meetings and inspections are held about 11 times a year, once per month. We had inspections at 7 places, and meetings at 6 times. Out of those, I was not able to join 2 or 3 times unfortunately because of the decision by majority on the schedule setting.

Probably, the increase of the capacity and ability of the committee itself is a subject also. It is impossible to make good suggestions without collecting and knowing many kinds of information. Above all, advanced examples in foreign countries have many points for reference, and we understand the necessity of learning and absorbing good precedents, and would like to study more.

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