

**The Significance of Hiroshima High Court Decision  
on A-Bomb "Black Rain" Lawsuit**

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**Introduction**

The Hiroshima High Court on July 14, 2021 ordered the issuance of Atomic Bomb Survivor's Certificate to 84 Plaintiffs, recognizing that they all had been affected by the "Black Rain" that fell shortly after the A-bomb explosion in Hiroshima and that they must be considered as hibakusha as defined by the A-Bomb Survivors Relief Law.

This report presents the gist of that court decision and attempts to indicate that the decision is useful for reflecting what should be appropriate aid and remedy to be extended to hibakusha, the A-bomb survivors, as well as other radiation victims at large.

**1. Laws Providing for the Aid to A-bomb Victims**

The first laws set in place for providing relief to hibakusha included the Act for Atomic Bomb Sufferers' Medical Care instituted in 1957 and the Law Concerning Special Measures for A-Bomb Sufferers enacted in 1968. In 1994, these two laws were consolidated into a single act which is the Law Concerning Relief to Atomic Bomb Survivors, currently in effect.

The provisions of the A-Bomb Survivors Relief Law are intended for living hibakusha alone (deceased hibakusha are excluded from the law subjects) and designed to help hibakusha only for the health damage they still suffer and that is known to be caused by the A-bomb radiation. It is explained that these limitations are placed because the health damages hibakusha suffer are "special damage", distinctive of other common war damages.

The A-Bomb Survivors Relief Law distinguishes four categories of "hibakusha":

- (1) Those who were in the city zones or in the zones adjacent to them in Hiroshima and Nagasaki at the time of the A-bomb explosion;
- (2) Those who were in the areas within 2 kilometers from the ground zero at the time of the explosion or during the two weeks that followed;
- (3) Those who were in situations where they might physically be exposed to A-bomb radiation at the time of explosion or afterwards;
- (4) Fetus in the womb of people who fall under the three categories above.

The definitions of hibakusha categories (1), (2) and (4) correspond very precise to concepts that leave almost no room for discretion, while that for category (3) gives some room to discretion and its substance is to be determined by legal interpretation. So far, most hibakusha have been categorized as (1) or (2), whereas category (3) has been considered as a supplementary sub-category.

The number of holders of Hibakusha Certificate peaked in March 1981 with 372,264 individuals. By March 2023, their number has decreased to 113,649 and their average age 85.

The A-Bomb Survivors Relief Law provides for free health checkup, free medical care for sickness and wounds caused by the A-bombing (A-bomb disease), free medical care for sickness and wounds other than A-bomb disease (public health insurance premiums are to be paid by hibakusha), and a few types of allowances (payment of money). At present, about 90% of the hibakusha receive some type of allowance.

Hibakusha have fought many court battles to obtain the entitlements by virtue of the A-Bomb Survivors Relief Law, including lawsuits for A-bomb disease recognition, for the application of the A-Bomb Survivors Relief Law to hibakusha residing outside Japan and for the issuance of Hibakusha Certificates etc. They have won many of these lawsuits so far.

## **2. Hiroshima High Court Ruling on A-bomb “Black Rain” Lawsuit**

As mentioned at the beginning, Hiroshima High Court decided that the people caught in the A-bomb “Black Rain” should be considered as hibakusha. On that ground, it ordered that the Hibakusha Certificate should be issued to the Plaintiffs. With this decision, the Hibakusha Certificate was accorded also to those who were not the plaintiffs of the initial lawsuit but who

could be recognized as having been in similar situations as the initial plaintiffs at the time of the A-bomb explosion. The number of those who have obtained Hibakusha Certificates has already exceeded 4,000.

The "Black Rain" is a black-colored rain containing mud or oil that fell from pyro cumulonimbus clouds formed in the sky right after the A-bomb explosion. It contained radioactive particles produced within the fireball created by the A-bomb explosion. Therefore, people who were showered with that rain were exposed to radiations externally. They were also exposed internally to radiation, by taking into their bodies food and drinks contaminated with these particles.

The area where the "Black Rain" showered following the A-bomb explosion in Hiroshima extends to all directions around the ground zero. According to Doctor MASUDA Yoshinobu, its longer diameter was over 50km and shorter diameter 30km (see the map of the Black Rainfall areas). The Ministry of Health and Labor assumed that the Black Rain fell over an oval-shape area with a little less than 30km of major axis and 15km of minor axis. But it recognized as hibakusha of category (3) only those who were located within an oval area of 19km by 11km (heavy downpour zone), and since 1976, has issued the Hibakusha Certificates to them, by which they were entitled to receive official aid measures provided by the State.

For many years, those who were showered with "Black Rain" outside the heavy downpour zone have been demanding that Hibakusha Certificates be accorded to them, claiming that they should fall under the category (3) hibakusha, but the Ministry of Health and Labor has turned down their demand, saying that there was not scientific evidence to support their claim. In 2015, these people (the Plaintiffs) took their case to the court. Both the Hiroshima District Court (tribunal of first instance) and the Hiroshima High Court (second instance) accepted the demand of the Plaintiffs doing justice to all of them.

The gist of Hiroshima High Court ruling is as follows:

- "Those who were placed in situations where the occurrence of any health damage by A-bomb radiation cannot be denied" shall be considered as category (3) hibakusha.
- While it belongs to the Plaintiffs to prove that they were actually caught in the "Black Rain" and that the possibility of incurring health damage by exposure to radiation cannot be excluded, they do not need to prove that the radiation exposure in question was so

“significant” as to cause late effects on their health.

- Even if a person is not showered with “Black Rain”, in the event that this person aspires air-born radioactive particles, drinks well water containing radioactive particles that fell on the soil or eats vegetables with these particles stuck on their surface, he or she is likely to suffer from health damage due to internal radiation exposure. The Plaintiffs are recognized as having suffered these types of radiation exposure and therefore they can be categorized as (3) hibakusha.
- It is not appropriate to conclude that the “Black Rain” did not fall at all in the areas located outside the “downpour zone”(see the map).
- Having disease is not a requirement for the recognition as category (3) hibakusha.

### **3. Significance of Hiroshima High Court Ruling**

In this part of the report, the significance of the ruling, as well as how the decisions contained in the ruling could be used efficiently for providing relief to the victims of radiation exposure other than those caused by the atomic bombing are discussed. The opinion of Lawyer TAKEMORI Masahiro, Plaintiffs’ representative in the A-bomb “Black Rain” lawsuit, is used as reference in the discussion.

i The ruling took into account the stochastic effects of mutations in DNAs as well as in chromosomes provoked by the A-bomb radiation and acknowledged that being showered with “Black Rain” might have caused health damage on human body. This way of thinking is at the antipode of that of the Ministry of Health and Labor which ignored the stochastic effects of radiation exposure, in its attempt to deny health damage insisting on the difference in exposure dose of each individual hibakusha.

ii The ruling decided that the scope of category (3) was wider than it had been usually understood. Therefore a wider interpretation of the category (3) definition should be used for the hibakusha recognition procedure. The Ministry of Health and Labor claimed that, at the time of atomic bombing in Nagasaki, no precipitation of the “Black Rain” was seen in the areas 7.5km from the hypocenter or beyond, to assert that people who were in these areas cannot be considered as falling under category (3). This argument is not appropriate since it is clear that, in Nagasaki, radioactive particles fell over a vast area spreading to the east of the ground zero.

iii The ruling judged that it was possible (not deniable) that the intake of radioactive particles produced by the atomic explosion into the body (internal exposure) caused health damage and concluded that the people suffering the damage should be entitled to official hibakusha aid scheme. Such an idea of aid for radiation victims should be largely taken into account for designing appropriate aid measures for other type of radiation exposure sufferers such as those victims of Fukushima nuclear power plant accident.

iv In dealing with nuclear power plant accidents or pollution with harmful substances, the Japanese government intends to use scientific knowledge as they did with the damage of atomic bombing, for the purpose of minimizing the extent of damage and reducing the scope of remedies provided to victims. This ruling, on the contrary, argues that if possibility of health damage cannot be totally excluded by the latest scientific knowledge, measures for relief should be provided to victims. Scientific knowledge should be used in this way.

I wish to examine whether or not the aid for A-bomb victims provided by virtue of the A-Bomb Survivors Relief Law is appropriate in the light of Article 6-1 of the Treaty on the Prohibition of Nuclear Weapons, but I will do it in another occasion.

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<References>

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# Hyetograph of the Black Rain of the Hiroshima A-Bombing

