

Statement of Protest
We Strongly Denounce the Tokyo High Court's Unfair Judgment

On December 26, 2012, the Tokyo High Court made an unfair decision on the Kotopanjang Dam appeal trial to dismiss Indonesian plaintiffs' case. This judgment was based on the 2009 Tokyo District Court's extremely unjust ruling, which, citing "Indonesia's domestic affairs," shifted responsibilities for the serious damage to local residents and the environment onto the Indonesian government, and fully acquitted Japanese ODA entities: the Japanese government, JICA, and Tokyo Electric Power Services (TEPSCO). The destruction of Kotopanjang people's lives and the environment is an international problem, not Indonesia's internal affairs. It resulted from the Japanese government's and TEPSCO's failing to implement the Three Preconditions, which requires local residents' prior consent to compensation terms and displacement as well as protective relocation of rare elephants, leading to forcible displacement and human rights violations under the Suharto military dictatorship and the destruction of rain forests on Sumatra Island, a world heritage. We denounce the Tokyo High Court's decision in the strongest words.

The Tokyo High Court's judgment simply copied the Japanese government's argument about yen loans in essence, saying that the implementers of any yen loan funded project are the recipient country's government and agencies, and the problems concerning people's displacement and environmental conservation in this case should also be addressed responsibly by the recipient country's government. As such, the judgment insisted that the Japanese government do not have any legal duty of care.

As for the Three Preconditions, which were attached to the first Kotopanjang dam yen loan agreement, the ruling also ignored the Japanese government's and JICA's responsibilities, saying that it is clear that the Three Preconditions and the special implementation agreement do not impose any legal duties on the Japanese government and Overseas Economic Cooperation Fund (OECF) in relation with the plaintiffs. The special implementation agreement, however, was part of the basic agreement that defined the yen loan terms, and therefore, included in the article on the Suspension of Disbursement. The Tokyo High Court's decision did not mention that Japanese aid entities failed to carry out their responsibilities to suspend the yen loans if the Indonesian side had violated the Three Preconditions, while some lawmakers repeatedly demanded the implementation of the preconditions in the Diet.

As for the TEPSCO's instruction of inundation without local residents' consent, the ruling also rejected the plaintiffs' case, saying that there is no enough evidence to recognize that the company directly infringed Kotopanjang people's rights and interests.

In the appeal trial, the plaintiffs including WALHI (Indonesian Environment Forum), their legal team, and the Support Action Center focused on demonstrating what damage had actually been caused by the dam construction, based on defendants' documents such as Special Assistance for Project Sustainability (SAPS) reports. As a result, in the first appeal hearing, Kaoru Aoyagi, the chief justice, requested the evidences to show (1) how Kotopanjang people had lived before the displacement in order to compare the people's lives before and after the dam

construction so as to confirm the existence of the damage, and (2) why the local residents went on to filing a lawsuit in Japan. In addition, the chief judge adopted a witness for the plaintiffs, Iswadi, the leader of the plaintiff group. In the second hearing, Iswadi described how prosperously they had lived before the displacement, and refuted the 2009 Tokyo District Court's claim that Kotopanjang people are now living satisfactorily well compared to the average standard of living in deep mountain areas in Indonesia. He testified that Kotopanjang people had actually lived in affluence before the construction of the dam.

At the same time, over 7,000 signatures to demand a just judgment from Japan, Indonesia, the Philippines, and other countries were submitted to the Tokyo High Court.

While letting a plaintiff testify, however, the court ignored such public opinion at home and abroad, failed to accept the fact of damage to the local residents, and dismissed the plaintiffs' claim based only on sloppy legal arguments.

At the press conference just after the judgment, Karim, the chairman of the Struggle Council for Kotopanjang Dam Victims, said in anger as follows: "The high court's decision that any damage caused by an ODA project is Indonesia's internal affairs is completely wrong, because the Japanese government and related Japan-based companies were involved in all stages from the ODA funding to consulting to construction. The Indonesian side only provided the dam construction site and observed the work in the first place." In a TV news program News 23 aired on July 30, 2002, a senior Indonesian government official said in an interview about the Kotopanjang dam construction that the work would go better if they had planned and performed it by themselves. It is obvious that the Japanese government, JICA, and Japan-based companies themselves planned and carried out the ODA project as a play of their own writing, and therefore, they are responsible for the resulting damage to the local residents.

Muhnur, a lawyer working for WALHI, said as follows: "Japan is a nation of shame. Kotopanjang people are going through very harsh times and being forced into poverty. The Japanese side is, however, paying no attention to the recipient country and people. I have fully realized it here."

The Japanese judiciary, which supports the interests of Japan-based global companies, now cannot avoid being ridiculed by the world like this. Using the ODA to help global companies expand overseas without reflecting upon its past wrongdoings, the Japanese government will certainly face an international wave of people's protests.

We, the Support Action Center for Kotopanjang Dam Victims, are determined to enhance our struggle at the Supreme Court, hand in hand with the Struggle Council for Kotopanjang Dam Victims, while further promoting organized protests against Japan's ODA in solidarity with anti-ODA movements in recipient countries all over the world.

January 10, 2013

Support Action Center for Kotopanjang Dam Victims