DECLASSIFIED EXT PROS SECT 3(E) AND 3(D) OR (E) NNDG 775 012

Dr Oppie

Can we talk this over?

RM

Cmdr Hurney

I shall be glad to talk it over with you any time

DCO

24 Jan '27

I think this is a vicious bill & should not be supported. It is a deliberate & unnecessarily restriction of the Constitutional right of petition. There can be no objection to administrative regulation of the

hearings, a clear definition of what is meant by legality and how far the courts should review the actions of an administrative agency, and a more precise exposition of the process whereby recourse is had to courts. The committee also was asked to consider the possibility of drafting standard rules of procedure to be used in all administrative or quasi-judicial hearings.

T. L. Blakemore
T. L. BLAKEMORE
Legal Officer
Governmental Powers Division

Noted: CWK

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

5 November 1946

MEMORANDUM FOR THE RECORD

SUBJECT: Anticipated Legislation to Abolish Japanese Military and Naval Codes

1. A check sheet of 16 October 1946 from C/S to GS requests that appropriate action be recommended by Government Section when legislation to abolish Japanese Military and Naval Penal Codes becomes imminent.

2. The Chief Legislative Officer of Government Section has been informed of this request and will report to the Legal Unit any initiation of legislation of this nature.

T. L. BLAKEMORE
Legal Officer
Governmental Powers Division

Noted: CLK

Govt Sect

64

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

2510

CHECK SHEET

(Do not remove from attached sheets)

File No

Subject: Bill for Abolition of Military and Naval Penal Codes.

Note No.	
4.	From: C/S To: Government Section Thru: G-2, for Info. Date: 16 October 1946 1. It is requested that your section follow the progress of the legislation to abolish the Japanese Military and Naval Penal Codes to insure that no action is taken which is objectionable. 2. In the event that the passage of this legislation becomes imminent, it is requested that you recommend appropriate action. P. J. M.
5	FROM: G-2 TO: Government Section Date: 19 October 1946 1. In order that we may be closely coordinated, it is requested that you keep this section informed of your views on the progress of the legislation to abolish the Japanese Military and Naval Penal Codes. C. A. W.

AFPAC AGO Form No. 37

0353

2602

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets)

File No.:

Subject: Bill for Abolition of Military and Naval Penal Codes

Note No.: 1

From: G-2

To: C/S
D/C/S
G-3
G-2, 8th Army
COMNAVJAP
Government Section

Date: 14 Sept 1946

1. This office has information to the following effect:

a. On 22 Aug. a proposed draft bill "Act Abolishing the Army and Naval Penal Codes", was filed with the General Affairs Bureau of the House of Representatives (HR Legisl. "IN" number 8), sponsored by the following persons:

HOSOSAKO Kanemitsu	(Indep)
KITAURA Keitaro	(Liberal)
MIZUTANI Chozaburo	(Socialist)
YOSHIDA Yasushi	(Progr)
KOSHIMA Tetsuzo	(Coop)

all of whom are members of the Lawyers Association.

b. This bill would abolish the military and naval penal codes not only in Japan, but also outside Japan, that is, in relation to still undemobilized personnel in Southeast Asia etc. First Demobilization officials fear the effect on unrepatriated undemobilized troops would be harmful and make the maintenance of discipline very difficult, and that it will lead to recurrence of such incidents as the near-mutiny on the "Tatsuharu Maru. Through their officer in charge of liaison with the Diet, Mr. Tajima, they have expressed their point of view to the sponsors and other Diet members and felt they had secured understanding of this apprehension; and they did not think the bill would be pushed.

c. The Demobilization Board fears that if such a bill were passed, its effect on discipline of undemobilized troops would be such as to affect adversely the business of demobilization. They say they have no objection to the abolition of Army and Navy penal Codes within the confines of Japan proper.

21 S
12

2. It is the opinion of G-2 that the abolition of the military and naval penal codes particularly outside of Japan, that is, in relation to still unrepatriated, undemobilized personnel would adversely affect the machinery of demobilization. There is already a record of mutiny aboard repatriation ships.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets)

5.

File No.: Subject: Bill for Abolition of Military and Naval Penal Codes (Continued)

Note No.: From: G-2 To: Date: 14 Sept 46

1 (Contd)

3. G-2 feels that this whole matter should be held in abeyance until demobilization is completed and that the concurrences of the SCAP agencies wholly concerned with demobilization and repatriation should have been obtained, viz: COMNAVJAP, 8th Army, G-3, G-2 and G-4, in all proposals affecting disarmament, demobilization and repatriation under Chief of Staff orders. See check-sheet 24 June 1946

C. A. W.

2 From: D C/S (SCAP) To: Government Section Date: 20 Sept 46

Information is requested concerning the status of any proposed legislation such as indicated in the preceding note.

L. J. W.

From: Government Section To: C/S (SCAP) Date: 30 September 1946

3 1. The proposed legislation has been drafted but has not been introduced. It is unlikely that any action will be taken at this session.

2. GS agrees with G-2 that the abolition of the military and naval codes outside of Japan might be unwise at this time but sees no objection to their abrogation within the home island.

C. W.

FROM: G-2 TO: Government Section Date: 19 October 1946

5 1. In order that we may be closely coordinated, it is requested that you keep this section informed of your views on the progress of the legislation to abolish the Japanese Military and Naval Penal Codes.

C. A. W.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

File

5 November 1946

MEMORANDUM FOR THE RECORD

SUBJECT: Anticipated Legislation to Abolish Japanese Military and Naval Codes

1. A check sheet of 16 October 1946 from C/S to GS requests that appropriate action be recommended by Government Section when legislation to abolish Japanese Military and Naval Penal Codes becomes imminent.

2. The Chief Legislative Officer of Government Section has been informed of this request and will report to the Legal Unit any initiation of legislation of this nature.

T. L. Blakemore
T. L. BLAKEMORE
Legal Officer
Governmental Powers Division

Noted: CLK

GENERAL HEADQUARTERS
SUPREME COMMAND FOR THE ALLIED POWERS

Government Section

Land Reform Bill

16 October 1946

MEMORANDUM FOR RECORD

SUBJECT: Suggested Amendments to the Land Reform Bill

1. Reference check sheet General Whitney to Colonel Schenck, "Suggested Amendments to the Land Reform Bill," September 24, 1946.

2. Suggestions in reference check sheet were considered October 4 at meeting of Colonel Kades, Mr. Bisson and Dr. Grajdanzev with representatives of the Natural Resources Section. Decided that passage of land reform bill by Diet should not be jeopardized by pressing for immediate amendments but that agreed changes would be accomplished later through ordinances or through amendments to the law introduced at next Diet session.

3. At second meeting on October 11, with Mr. Bisson and Dr. Grajdanzev representing Government Section, agreement was reached on all points raised in reference check sheet. Action to implement this agreement, either through supplementary ordinance or amendment to the law to be made at next Diet session, was to be as follows (lettering as in reference check sheet, paragraph 3):

a. Two-year time limit to be specified in supplementary ordinance.

b. The date (November 23, 1945) for tenancy relations to be regarded as final for purposes of applying the land reform program will be made mandatory by a supplementary ordinance.

c. Changes in the proposed Central Land Commission to make it more impartially representative are under discussion between representatives of Natural Resources Section and the Minister of Agriculture. Government Section will be informed as to the progress of these discussions.

Additional members appointed to the prefectural Land Commissions will be limited to a total of five. These 5 appointed members must be unanimously approved by the 20 original members of the prefectural Commissions.

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Provisions governing appointment of these 5 additional members will accord with the agreed formula reached with respect to the 3 additional members appointed to the local Land Commissions.

With respect to the composition of the local Land Commissions, agreement was reached on a formula limiting discretionary appointments by the prefectural governor and providing for three alternative possibilities, as follows: (1) If the original 10 elected members agree on the choice of a chairman from their own number, they may conduct their work without having the Governor appoint three additional members. (2) Even though the 10 elected members agree on the choice of a chairman, they may at their discretion request the governor to appoint three additional members. These additional members, as provided in the land reform law, must be unanimously accepted by the 10 original members and shall have the right to vote. (3) If the 10 elected members fail to agree on the choice of a chairman, the governor will appoint three additional members, one of whom shall be chairman. The two additional ordinary members, but not the chairman, must be acceptable to all 10 original members. All three appointed members shall have the right to vote.

The above formula (to be applied also with regard to the Minister's appointment of 5 additional members to the prefectural Commission) will require an amendment to the land reform law. The Minister will be asked to submit such an amendment at the next Diet session.

d. It was agreed that the Commissioners shall be paid a salary. Since the law specifies that the position is honorary, the law will have to be amended at the next Diet session in this regard.

e. Agreement was reached that the discretionary authority of the Minister and of the governors in respect to factors entering into determination of land values will be eliminated. The Land Commissions' discretion in valuations will not exceed the ceiling prices for differing types of land as set by the 1938 rental values multiplied by the coefficients 40 and 48. These points will be incorporated in supplementary ordinance or ordinances.

f. By agreements reached above, particularly in points (c) and (e), the more significant discretionary powers vested in the governor will either be reduced or eliminated. In view of this fact, the Government Section representatives waived any further action to limit governor's discretionary authority.

g. A Model contract form will be included in a supplementary ordinance. It was agreed that model contract forms should be distributed in sufficient quantity to make them freely available but that their use should not be made obligatory, at least for the next year or two.

Concern was expressed by Natural Resources Section representatives that until knowledge of these model forms becomes more widespread, they might be disregarded in certain cases and that in such cases the courts would invalidate leases not drawn according to an obligatory model. After their use has become more customary, it will be possible to require standardized contracts in all cases. The Government Section representatives accepted this position.

h. After some discussion, it was recognized that an Imperial Ordinace issued at this time might nail down a desirable objective more firmly than a Ministerial Ordinance. A Cabinet ordinance was suggested as an alternative in this case. In general, it was agreed that discretion be excerised according to the importance of the particular matter concerned.

4. The Natural Resources representatives believed that difficulty would be encountered with Minister Wada on some of the above points, notably with respect to land valuations (e) and composition of the Land Commissions (c). Cooperation of Government Section in accomplishing the actions required had been previously offered and was reaffirmed.

T.A. Bisson T A Bisson

A.J. Grajdanzev A. J. Grajdanzev

Noted: AK

CW

Land Reform Bill

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

24 September 1946.

MEMORANDUM FOR THE RECORD.

SUBJECT: Suggested Amendments to the Land Reform Bill.

1. The land reform bill now before the Diet corresponds in the main both with the SCAP memorandum of May 9, 1946 and with the proposals made to the Allied Council by Mr. MacMahon Ball. The more important recommendations of both documents have been incorporated in the bill.

2. Certain defects that exist in the bill are, with one or two exceptions, not those stressed by Mr. Ball in the Sunday Observer dispatch. These defects are outlined in paragraph 7 below, summarizing discussions by Dr. Grajdanzev with NRS representatives. They can be remedied either by changes in the bill or by the provisions of supplementary Ministerial ordinances. Most of the changes suggested by Dr. Grajdanzev in his conferences with NRS representatives have not been accepted. These suggested amendments are summarized in the accompanying check sheet.

3. The Rural Land Reform program presented to the Allied Council on June 12, 1946 by its British Commonwealth member, Mr. MacMahon Ball, consisted of ten points, numbered from (a) to (j), as follows:

a. The maximum average area of tenant-cultivated land which any non-operating landowner may own should be reduced to 1 cho.

b. The maximum area which any landowner may own should be 3 cho on the average for the islands of Honshu, Kyushu and Shikoku and 12 cho for Hokkaido.

c. Tenants should be limited to the purchase of family maintenance units of land.

d. A Land Acquisition Board should be established to administer the land transfer program. It should be under the chairmanship of the Minister for Agriculture and Forestry and include equal representation of landowners and tenants. Prefectural and local Land Commissions representing equally the interests of landowners and tenants should be appointed to administer the program at prefectural and local levels.

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e. The Land Acquisition Board should purchase land for re-sale to tenants. The purchase price should be paid in Government bonds to be redeemed periodically over a period of 24 years as repayments are made by tenants, but with provision for earlier redemption if circumstances are favorable.

f. Tenants purchasing land should be protected against the consequences of any future fall in land values by periodical re-appraisements of their commitments.

g. The provisions of the program should be applied to the land situation as at December 8, 1945 and all subsequent sales of land and substitution of nominal owner operation for tenant cultivation should not be recognized.

h. The time in which the transfer is to take place should be reduced from 5 years to 3 years.

i. Consolidation of holdings should be carried as far as possible at the same time as the transfer of land from landlords to tenants.

j. Provision should be made for rent ceilings and written tenancy contracts guaranteeing security of tenure to tenants and rights in any improvements they make.

4. This program, accepted by all members of the Allied Council,* became widely known as the "Ball program." However, the more important points of the "Ball program," notably (b), (d), (e), (f), (g), (j), were already contained in the recommendations of the Natural Resources Section presented on May 9, 1946. This memorandum emphasized point (h) as desirable in its accompanying comment. There is some question as to whether point (a) was an improvement on the NRS proposal in this regard. Point (c) would be approximated as closely as practical obstacles to its uniform application would permit.

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*The Soviet member accepted the program but made the following additional proposals: (1) that all tenant-cultivated land should be subject to purchase by tenants; (2) that the purchase price be set at ¥440 per tan of paddy land (instead of ¥757.60 plus a ¥220 subsidy to seller) and ¥260 per tan of upland (instead of ¥464.98 plus ¥130 subsidy); that tenant-cultivated land in excess of 6 cho per landowner should be confiscated and that the amount between 3 and 6 cho should be purchased at 50 per cent of the established price (the so-called "expropriation" proposal).

Point (i) added further complications to an already complex problem, and Mr. Ball himself would press for its realization only "as far as possible." In essential outline, the program "worked out" by the Allied Council on the basis of Mr. Ball's recommendations thus differed little from the first SCAP proposals, which, incidentally, were well known to Mr. Ball.

5. The two parties were not only in substantial agreement from the beginning. The final result, as expressed in the legislation now pending in the Diet, needs certain changes but is still in substantial accord with the original proposals.

Thus, the proposed law fully covers points (f) and (i) of the "Ball program."

Point (a) is carried out even more completely in the pending bill.

With some needed changes, points (b), (e) and (j) will be fully covered by the proposed law.

Although point (c) is not included in the bill in the terms specified, it will be closely approximated in practice under the program embodied in the bill.

Point (d) is not adequately covered. Provisions for the composition of the local and prefectural Land Commissions are not satisfactory and should be amended before the bill is passed.

Point (g) is made optional in the bill, whereas it should be mandatory. An improvement is made, however, by moving the date even further back.

Only point (h) is not included at all. As now drafted the bill does not set a time limit for completion of the program. This should be inserted.

6. There follows a detailed comparison of the ten recommendations of the Allied Council (the "Ball program") with the proposals incorporated in the land reform bill.

a. <u>The maximum average area of tenant-cultivated land which any non-operating landowner may own should be reduced to one cho</u>.

The proposed law divides tenant land into (1) that which lies outside the limits of the village, town or city in

which the owner's residence is situated and (2) that which lies inside these limits. In the first case, all tenant land is purchased by the government (Art. 3, par. 1). In the second case, the owner is permitted to retain one cho for himself or to lease one cho to a tenant (Art. 3, par. 1). For Hokkaido the limit is four cho.

This provision improves upon Mr. Ball's recommendation by reducing still further

7. Discussions with NRS. The substantive questions raised in the preceding analysis were discussed by Dr. Grajdanzev with representatives of Natural Resources Section in a 2½ hour conference on September 12 and a one-hour conference on September 19, 1946.

Agreement was reached on five points. On these points the NRS representatives (M.B.Williamson, R.S. Hardie, W.I. Ladejinsky) undertook to secure indicated changes by the procedure of supplementary ordinances. Their position in this regard was governed by the Agriculture Minister's opposition to making further changes in a bill already introduced in the Diet. The G.S. representative accepted this position reluctantly, as he felt that in several cases insertion in the bill was needed to provide a firm guarantee. Mr. Wada, the Agriculture Minister, proved willing to accept only one of these points (that noted in (b) below)agreed to by the GS and NRS representatives.

GS: No reason seen why the law should become inoperative in these circumstances. The persons responsible for failure to complete the reform in the time specified would be punished, and the reform pushed to completion under new management.

Action: To secure a three-year limit either through amendment of the bill or issuance of a supplementary ordinance. Agriculture Minister Wada favors a two-year limit, but does not want to include it either in the bill or in a supplementary ordinance.

(j) GS: The land reform bill omits provision for a standard tenant-landlord contract and does not provide for payment to the tenant of the value of improvements in case his contract is not renewed.

NRS: Accepted, although claimed that the bill covers these requirements in part.

Action: To secure that a standard contract form be required and that a provision for payment of improvements be supplied, both through a supplementary ordinance. The NRS representatives did not feel the issue sufficiently important to bring it to the attention of the Agriculture Minister

No agreement was reached on two major issues: (1) the composition of the Land Commissions; and (2) the date at which tenancy relations are to be regarded as final for purposes of application of the land reform program. The NRS representatives thought the bill adequate in both respects. While they were willing to seek the assent of the Japanese authorities to changes held necessary by the GS representative, they were not sanguine as to the prospects of securing these changes. A summary of the discussion on these points (lettered to accord with items in paragraph 6) follows:

(d) GS: No special point was made of the Central Land Commission's composition. Although this Commissions proposed membership is not entirely satisfactory, it was thought that its functions were not so vital in nature as to enable its decisions to endanger the reform. On the local and prefectural levels, however, it was held that the Land Commissions should

(1) consist of elected members <u>only</u> (on the "5-3-2" basis), with additional experts permitted to take part in the discussions <u>but not to vote</u>.

(2) have members chosen through elections conducted by the Local Election Administration Committees.

(3) have chairmen unanimously chosen by the members from among their number. The conditional right of the governor to appoint a chairman (in case the members disagree) should be eliminated. The chairmen should be permitted to vote only in case of a tie.

(4) have adequate salaries paid to their members.

NRS: Objection chiefly raised as to the first point, but no assurance given on the others. On the first point, it was thought that the three members that may be added to the local Commission as technical experts (appointed by the governor but acceptable to the ten members) would be more apt to decide cases on their merits. Agriculture Minister Wada, in current discussion with NRS, opposed (1) on the ground that the local Commissions are weighted against the landlords because the 2 owner cultivators will side with the 5 tenants against the 3 landlords.

GS: The argument on the first point is both important and revealing. It is important because the reform will hinge basically on decisions by the local Commissions, which are empowered to draft the plan which determines choice and allotment of the transferred lands. It is revealing because Wada's position on the three additional experts indicates that these will be added to the local Commissions in order to strengthen the voting power of the landlords, although heretofore such an interpretation was purely conjectural.

Argument turned mainly on the local Commissions, but there was equal reluctance to change the defective composition provided for the prefectural Commissions.

No action was taken to secure changes in the composition of the Commissions.

(g) GS: The date (November 23, 1945) set for tenancy relations to be regarded as final is satisfactory. Its enforcement, however, is left to the discretion of the local Commissions (when they "deem suitable"). It should be made mandatory.

NRS: The optional provision is acceptable, since cases in which landlords have withdrawn lands from tenantry contract since November 23, 1945 are few. The total area which has changed hands is estimated to be only 2,880 cho. Hardship cases which may arise can also be handled better under discretionary authority. It is preferable to leave the decision in all cases to the Land Commissions, which are given the requisite authority to deal with issues as they arise.

GS: If the number of cases is small, it becomes even easier to make the date mandatory. The discretionary authority of the Commissions can be limited to exceptional cases of extreme hardship. This particular loophole has already been exploited by the newspaper correspondents, and for this reason also it should be plugged.

No action was taken to secure this change.

Two other points, generally applicable to the whole bill, were discussed. It was agreed that, to accord with the draft Constitution, Cabinet or Ministerial ordinances should replace Imperial Ordinances wherever supplementary enactments were required. Imperial Ordinances might reinterpret and change certain aspects of the land reform bill without permitting Diet review. However, no assurance was given that Imperial Ordinances might not be issued in connection with the land law.

The GS representative held that the rather wide discretionary powers vested in the prefectural governors, notably in appointments to and dismissals from the Land Commissions and in the determination of land prices, should be withdrawn. In virtually all such matters, the authority could be vested in the Commissions without intervention by the governors. Dismissals represent a special case. They should be handled either by court action (for graft or similar offences) or by the Minister of Agriculture subject to appeal by the Commissioner concerned to the central Land Commission.

The NRS representatives believed that since the governors are henceforth to be elected, greater trust may be placed in them. To this, it was replied that both sides are represented in the Commissions, but the governor (whether elected or not) may favor one side.

No agreement was reached on this point, and no action taken.

A. J. GRAJDANZEV
T. A. BISSON

Noted: CLK

Analy

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

5 August 1946.

MEMORANDUM FOR THE RECORD

SUBJECT: Amendment to Electric Power Enterprise Law.

1. A conference was held to discuss the Electric Power Bureau's draft bill amending the Electric Enterprise Law. Those present included Mr. Koike, Chief of the Electric Power Bureau, Mr. Imai of the same Bureau, Mr. Hirano of the Nippon Hassoden; Mr. Pierce of the Industry Division, Miss Jackson of the Legal Division, Mr. Sieker of the Anti-Trust and Cartel Division, Major Brentlinger of the ESS; and the undersigned who acted as chairman of the meeting.

2. The bill is designed to transfer from existing ordinances and regulations, which will expire with the abrogation of the National General Mobilization Law on September 30, 1946, governmental controls over privately and municipally owned electric generating and distributing enterprises acquired since 1938 to the Electric Enterprise Law of 1911 as subsequently amended.

3. Conferences on earlier drafts of the bill had resulted in the inclusion of provisions to establish a Central and Local Electric Power Committee which are designed to make their independent investigations and studies and submit them to the Power Bureau. It is expected that in the course of time the Central Committee will develop into an effective public utility regulating agency which will be of great value to the economy as a whole by providing electric power at the lowest possible rates to industry and individual consumers and by placing the industry on a sounder financial basis.

4. All GHQ members present had no objection to the government's desire to retain these supervisory and rate-scheduling controls in the interest of the public welfare as provided for in the proposed bill. It was agreed that there was no objection to the proposal of the Ministry to introduce the Bill in the present session of the Diet.

CYRUS H. PEAKE
Governmental Powers Branch

Legal 34