Volume 2 | Issue 7 | Article ID 2004 | Jul 13, 2004

Resolving the Wartime Forced Labor Compensation Question

Norio Minami

Resolving the Wartime Forced Labor Compensation Question

by Minami Norio

As many as 72 wartime forced labor compensation lawsuits were filed between the 1990s and January 1, 2004). In March the Niigata District Court returned a landmark judgment, for the first time ordering the Japanese state to pay compensation in a case concerning the draconian conditions of World War II forced laborers

This is a very busy year for the still unresolved issue of postwar compensation, especially for wartime forced labor. Although the Sapporo District Court dismissed the claims of the Chinese forced laborers' Hokkaido Lawsuit on 23 March, three days later the Niigata District Court returned a landmark judgment in a suit brought by ten Chinese and the bereaved relatives of an eleventh against the Japanese state and the Hong Kong Transportation Company (Rinko Corporation, based in Niigata City), ordering the payment of 8 million yen per person, with a total award of 88 million yen.

Fewer Than 10% of the Nearly 40,000 Forced Labors are Still Alive

A ruling on a similar case involving former forced laborers is slated for 24 May at the Fukuoka High Court. In this case, a lower court decision was returned by the Fukuoka District Court in April 2003 against Mitsui Mining.

It has been estimated that during the war some 38,000 Chinese were forcibly brought to Japan to supplement domestic labor. These people were forced to work under draconian conditions at 135 locations throughout Japan, such as coal mines, metal mines, construction sites, and ports. Of these, just under 7,000 died. Those who survived have been dying one after another in the 59 years since Japan's defeat, so that less than one-tenth of the total number of forced laborers is still alive. They and the bereaved relatives of others strongly desire swift and complete settlement of the issues.

One point of contention is the existence of a report that the Japanese Ministry of Foreign Affairs is alleged to have produced entitled, *Investigative Report into Working Conditions of Chinese Workers*. This report scrupulously recorded the names, numbers of deaths, causes of death etc. of persons forcibly brought to Japan, but the state insists on making the farfetched claim that it cannot confirm the *Report*'s existence despite the fact that it existed in a Ministry of Foreign Affairs document. During a series of court proceedings it became clear that the government had falsely testified at Diet briefings, claiming that "all copies of the report were incinerated." Representatives of the state have been forced to acknowledge this fact in court and to offer an apology.

The Niigata District Court clearly recognized the realities of forced migration and forced labor. It severely criticized institutional mendacity over wartime reports on workplace conditions, and the continued cover-up of the existence of the Foreign Ministry's *Investigative Report* as "extremely malicious" and reflecting a "disingenuous attitude."

Another point concerns whether to recognize the prewar legal doctrine of "state immunity" that held the state not liable for unlawful acts. The Niigata District Court rejected claims to "state immunity" as "being inimical to fairness and justice." Moreover, it rejected all arguments put forward by the state to the effect that "the statute of limitations has expired" or that "right of claim has been abandoned," very clearly recognizing the stateï¿½s legal liability.

Concerning resolution of the postwar compensation problem, the opposition Communist and Social Democratic Parties support the victim claims. In addition, the Democratic Partyï¿½s Human Rights Research Council (Haraguchi Kazuhiro, chair) has put forward the opinion that,

https://doi.org/10.1017/S1557466004000658 Published online by Cambridge University Press

like the kidnapping of Japanese by North Korea, it should be solved as a human rights problem that cannot be ignored, and that damages should be awarded on the basis of facts.

Chinese Forced Labor Cases Presently in Progress

First hearing in progress

Nagano Gunma Fukuoka 2nd	Before the court Before the court Before the court	TBA TBA TBA

Cases Under Review

Liu Lianren Mitsui Mining Fukuoka Nishimatsu Hiroshima Oeyama Tokyo 2nd Hokkaido Niigata Transport (Rinko Corp.)	7/12/01 total victory for plaintiff 4/26/02 partial victory for plaintiff 7/9/02 decision against plaintiff 4/15/03 decision against plaintiff 3/11/03 decision against plaintiff 3/23/04 decision against plaintiff 3/26/04 total victory for plaintiff	9/04/ case set to close 2/9/04 case closed 3/30/04 case closed defence progressing date not yet set appeal by plaintiff appeal by defendant, counter appeal by plaintiff	TBA ruling: 5/24/04 ruling: 07/04 within the year? TBA TBA TBA

The Niigata Daily editorialized the day after the District Courtï¿½s ruling, that "finally a victory for the plaintiffs has been achieved. The background to this appears to be an era that emphasizes relief for human rights." It continued, "the state can no longer avoid its responsibility. Severe self-criticism is being forced upon a state that has frolicked past the problem of postwar compensation behind the cover of the old legal theories of the Meiji Constitution." This is arguably of the same mind-set as that emerging from the Democratic Party.

A Proposal for Redress Modeled on the German Trust-Fund System

Within the governing Liberal Democratic Party there is a certain anxiety about the sharp heightening in recent years of anti-Japanese sentiment among Chinese youth, one of whose causes is the unresolved question of postwar compensation. This has given rise to the opinion that a complete settlement should be reached before the 60th anniversary of Japanï¿½s defeat next year. Recent incidents have heightened political tensions between Japan and China. These include: the incident of August 4, 2003 in Qiqihar City, Heilongjiang in which one person died and some 40 people were affected by a poison gas bomb left behind by the Japanese army; the incident in Xi'an of Chinese outrage at a lewd comedy skit put on by Japanese students; the incident involving a Japanese construction company buying prostitutes en masse during a company vacation in southern China; the problem of Prime Minister Koizumi's visits to Yasukuni Shrine in Tokyo where the souls of fallen Japanese soldiers, including Class A war criminals, are enshrined; and conflicts concerning sovereignty over the Senkaku (Diaoyutai) Islands. Even within the ruling party, concern about such incidents forms the background to efforts to seek a comprehensive resolution of postwar compensation issues.

To make recompense for forced migration and forced labor, a certain amount of money is necessary. Those who survived their ordeal hardly even received payment of their wages, which amounted to 80 million yen. This translates to roughly 80 billion yen today.

A sum of money over 1000 yen per person was deposited and set aside and this sum (now worth roughly 10,000 yen per person) is not regarded as being barred by the statute of limitations. Therefore, it is still in the national coffers. Because these funds by rights should go to each individual, former slave laborers have the right to receive them regardless of the stateï¿½s assertion that all claims to damages and compensation were renounced in 1972 by the Sino-Japanese Treaty of Amity and Friendship, signed upon the re-establishment of Sino-Japanese diplomatic relations.

Moreover, the enterprises that used Chinese laborers were paid some 56,720,000 yen (roughly 56.7 billion yen in todayï¿½s terms) immediately after the war as "indemnification." That such a large sum was paid not to the victims but to the perpetrator firms is extremely unfair, even incomprehensible, but if this indemnity compensation was returned as well, the total would exceed 1.3 trillion yen.

Using these wages and indemnification funds as a basis, it would be possible to establish a compensation fund modeled after the "Remembrance, Responsibility and the Future" Trust set up in Germany and Austria to compensate for Nazi forced labor. A similar settlement should be reached in cases involving Koreans.

Further, the "comfort women" problem and compensation for poison gas munitions

https://doi.org/10.1017/S1557466004000658 Published online by Cambridge University Press

abandoned by the Japanese military after the war both require early settlement, as does the 1932 Pingdingshan massacre incident in Liaoning Province.

Breaking the Logjam of Postwar Compensation Court Cases

In addition to the forced labor case before the Fukuoka High Court, a great many hearings will be held over the next twelve months.

The Tokyo High Court is scheduled to close arguments on the first "comfort women" suit on 7 June. A second "comfort women" suit is also set to close within the year. On 28 September, arguments will conclude in the appeals court concerning the Liu Lianren forced labor case, which won a full victory in a lower court decision; a ruling is expected to be handed down early next year.

Other cases include the Osaka Forced Labor Case (Osaka High Court), the Nagano Forced Labor Case (Nagano District Court), the Gunma Forced Labor Case (Gunma District Court), all of which are likely to close arguments and see rulings next year (see chart). Trials concerning Unit 731, the Nanjing Massacre, and indiscriminate bombing raids (all at the Tokyo High Court) are also expected to close arguments and see rulings next year.

For the benefit of Sino-Japanese relations, trust between both peoples is indispensable. Japan must sincerely reflect on the devastation it wreaked in the past war, and along with vowing never again to cause another war, resolving these issues should help guarantee peace and stability in relations with the countries of Asia.

This article was published in Shukan Kinyobi 508 on May 21, 2004.

Minami Norio is a lawyer on a legal team representing Chinese seeking compensation for wartime damages. He was interviewed by Kasuya Koichiro.

Translation for Japan Focus by Ben Middleton, Associate Professor of Sociology, Ferris University, Yokohama. His article on the Heiminsha, a group that put up the only sustained opposition to the Russo-Japanese War of 1904-05, is forthcoming in Umemori Naoyuki (ed.) "Teikoku wo ute: Heiminsha 100-nen kokusai shinpojium," He is presently researching 20th century Japanese sociology, especially the work of Takata Yasuma.

https://doi.org/10.1017/S1557466004000658 Published online by Cambridge University Press