

(English Translation)

Original Japanese version is available in the following website:

<http://justice.skr.jp/koreajudgements/statement.pdf?fbclid=IwAR2RZtv1Bg929UoQi71xQSVU8fbEFCFK73YHEliPRrCUBAvP50Rb1SwCqmWM>

Joint statement by Japanese attorneys on the Korean Supreme Court ruling regarding victims of forced labor

November 5, 2018

On October 30, 2018, the Korean Supreme Court rejected an appeal by Nippon Steel & Sumitomo Metal against a previous lower court decision, recognizing the right of four plaintiffs who had been forced into labor at the Japanese steel mills to receive damage compensation from the company. The court ruled that the steelmaker should provide compensation of 100 million KRW (about 10 million JPY) to each of the four plaintiffs.

The court ruled that the plaintiffs' right to seek compensation constituted the right to compensation for pain and suffering from the Japanese company for its inhumane, unlawful activities directly related to the Japanese government's unlawful colonial rule of Korea and its war of aggression. It also ruled that their right to seek compensation was not subsumed by the Agreement between the Republic of Korea and Japan Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation signed in 1965 (hereinafter the "Korea-Japan Claims Settlement Agreement") and that neither the Korean government's right of diplomatic protection nor the plaintiffs' individual rights to seek compensation had been extinguished.

At a meeting of the House of Representatives on October 30, 2018, Japanese Prime Minister Abe stated that the right of individuals to seek compensation had been "completely and finally" settled by the Korea-Japan Claims Settlement Agreement, and that the Japanese government would "respond resolutely" to the ruling, which he described as "impossible in light of international law."

However, Prime Minister Abe's response was based on a lack of accurate understanding of the Korea-Japan Claims Settlement Agreement and international law. Also, his "resolute response" alone would not help achieve a true resolution of the forced labor issue.

The following is proposed as a way of seeking a true resolution to the forced labor issue. It is based on an accurate understanding of the fundamental nature of the problem and of the Korea-Japan Claims Settlement Agreement.

1. The forced labor issue is fundamentally a human rights issue

The plaintiffs were forced to labor in brutal and dangerous conditions. As part of their jobs, they had to manually inject coke into blast furnaces, at the risk of electrocution. Moreover, they were exposed to abominable circumstances: they were not paid for their work, given scant amounts of substandard food, prohibited to leave, and faced physical punishment for any attempts to escape. This constitutes forced labor (See ILO Forced Labor Convention, 1930 (No. 29)) and slavery (See the 1926 Slavery Convention), and a serious violation of human rights.

This case was filed by the plaintiffs to seek remedies for the serious human rights infringement they had suffered. It is also an issue that demands a resolution for society as a whole. A true solution is one that is both satisfactory to the victims and acceptable to society. An intergovernmental agreement that is unacceptable to the victims and society cannot be deemed as a true solution.

2. The individual right to seek compensation has not been extinguished by the Korea-Japan Claims Settlement Agreement

The entity responsible for forcing brutal and dangerous labor upon the plaintiffs and exposing them to atrocious living and working conditions is Nippon Steel & Sumitomo Metal; therefore, the latter is responsible for compensating the victims.

This case occurred during Japan's colonial rule of Korea following the Japan-Korea Annexation Treaty of 1910, when Japanese government offices arranged forced labor in accordance with an official guideline published by the Japanese government in 1942 (Chosenjin Naichi Inyu Assen Yoko, 朝鮮人内地移入幹

旋要綱) to secure a labor force from its colonies in support of its war, and when Koreans were conscripted pursuant to the Japanese government's 1944 National Requisition Ordinance (Kokumin Chouyourei, 国民徴用令), which became effective throughout the Korean Peninsula. As such, the Japanese government could also be held accountable for damages.

Since this case only involves Nippon Steel & Sumitomo Metal, a major controversy focused on whether or not the plaintiffs' right to seek compensation from the company had been extinguished by the provision of "complete and final settlement" in paragraph 1 of Article 2 of the Korea-Japan Claims Settlement Agreement.

In this regard, the Korean Supreme Court ruled that the plaintiffs' right to seek compensation was not subject to the Korea-Japan Claims Settlement Agreement, and that neither the Korean government's right of diplomatic protection nor the plaintiffs' individual rights to seek compensation had been extinguished.

With regard to compensation issues between Japan and China, the Supreme Court of Japan had ruled that the right of diplomatic protection had been waived. However, with respect to the right of individuals to claim reparations for damages, it had ruled that "the term "waiver" of claims in this context does not mean to effectively extinguish claims but it only means to have the competency of these claims in litigations lost" (Supreme Court of Japan, judgment of April 27, 2007). The interpretation of the Supreme Court of Japan and of the Japanese government is that the same logic applies to the "complete and final resolution" provision of the Korea-Japan Claims Settlement Agreement.¹

Based on this interpretation, because an individual's fundamental right to seek compensation has not been extinguished, Nippon Steel & Sumitomo Metal can legally make voluntary compensatory payments, and the Korea-Japan Claims Settlement Agreement does not present a legal obstacle in this case.

Prime Minister Abe stated that an individual's right to seek compensation had been "completely and finally resolved" with the Korea-Japan Claims Settlement Agreement. However, if his statement implies that the victims' right to seek compensation had been completely extinguished, it is an incorrect statement that fails

¹ See Seita Yamamoto's "Change in Interpretation of the Korea-Japan Claims Settlement Agreement by the Governments of Korea and Japan (2014)", available at: <http://justice.skr.jp/seikyuuken-top.html> (Japanese language only).

to fully understand the ruling of the Supreme Court of Japan. Furthermore, if his statement was meant to be in line with the ruling of the Supreme Court of Japan, it is misleading to rely solely on the “complete and final resolution” provision to make the case that all rights to seek compensation had been extinguished, since the rights of individuals were not substantively extinguished and no resolution had been made on how to deal with them.

Given the Japanese government’s opinion that the Korea-Japan Claims Settlement Agreement forfeited the right to diplomatic protection, and that individual rights to seek compensation had not been extinguished, one can only question whether Abe’s response is in accord with the views of the Japanese government.²

3. The ruling is in line with advances in international human rights law that values remedies for individual victims

The notion that an individual’s right to seek compensation for serious human rights infringements, as reflected in this particular case, cannot be unilaterally extinguished by intergovernmental agreements without the consent of the victim can be found in other international examples (for instance, the Italian Supreme Court ruling regarding the Italian victims of a Nazi massacre in Civitella). This notion, which is not unusual in international circles, is the result of advances made in international human rights law to find effective remedies for human rights infringements against individuals (see Article 8 of the Universal Declaration of Human Rights). Thus, the Korean Supreme Court’s ruling cannot be “impossible in light of international law.”

4. Following the ruling, Korea and Japan should seek a fundamental solution, rather than criticize one another

Given that the case is essentially a human rights infringement issue, the focus should be placed on seeking human rights relief for the victims. Nippon Steel & Sumitomo Metal should accept the ruling of the Korean Supreme Court, recognizing that it infringed upon human rights and is responsible for those actions. It

² Response by Shunji Yanai, Director-General of the Treaties, on December 13, 1991, at the Committee on Budget of the House of Councilors, on February 26, 1992, at the Committee on Foreign Affairs of the House of Representatives, and on March 9, 1992, at the Budget Committee of the House of Representatives, and response by Koichi Kato, Minister for Foreign Affairs, on April 7, 1992, at the Committee on Cabinet of the House of Councilors, etc.

should act in a way that is acceptable to the victims and to society, which would include issuing an apology as well as making compensation payments.

With examples such as the Hanaoka Case, the Nishimatsu Construction Co. case, and the Mitsubishi Materials case, all of which concern with the forced labor of Chinese people, the Japanese companies recognized and apologized for their wrongdoings, and as evidence of their remorse, contributed funds and established foundations to provide remedies to all of the victims. The remedies included not only monetary payments to individual victims, but also the erection of a memorial stone and inviting Chinese victims to annual memorial services.

Nippon Steel & Sumitomo Metal should also take the initiative to come to terms with all of the victims of forced labor. From the company's perspective, this can help build international trust and, in the long term, foster the company's reputation. Other Japanese companies involved in similar lawsuits in Korea should also start working to find a fundamental resolution based on this ruling, and hopefully the business community as a whole will also support these efforts.

The Japanese government should recognize its own responsibility and thus, support the efforts for a fundamental resolution, rather than preventing Nippon Steel & Sumitomo Metal and others from voluntarily working to resolve the issue.

Once again, we urge Nippon Steel & Sumitomo Metal and the governments of Korea and Japan to recognize that this case is fundamentally a human rights issue, and to work towards a fundamental resolution. At the same time, we also express our resolve to exert our utmost efforts to seek a resolution.

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