

FORCED LABOUR A SORE TOPIC BETWEEN SOUTH KOREA AND JAPAN AS COURT VERDICT LOOMS

BY GIGI CHOY

- Since 2012, there have been flurry of lawsuits seeking to overturn historical legal decisions favouring Japanese firms who used conscripted workers**
- But experts say wrangling in courts may be a setback for reconciliation efforts**

When it comes to sore topics between South Korea and Japan over the second world war, it's not just "comfort women" that are a source of pain – there are also long-standing historical tensions over forced labour.

Nearly 150,000 Koreans were conscripted to help the Japanese war effort by working in factories and mines in Japan. South Korea says 5,000 victims of these wartime forced labourers are still alive.

So an upcoming decision by South Korea's Supreme Court on a forced labour case involving Japanese firm Mitsubishi Heavy Industries, set for November 29, is being keenly watched – especially as it comes after the top court's October 30 decision ordering Nippon Steel & Sutimoto Metal to compensate four Koreans for forced labour during Japanese colonial rule.

The November verdict will be on an appeal to a 2013 High Court ruling ordering Mitsubishi to pay 80 million won (US\$71,000) to each of the five plaintiffs who claim

they were exposed to radiation from the 1945 atomic bombing of Hiroshima while conscripted as forced labourers.

South Korea kicks off naval showcase without Japan after row over controversial 'Rising Sun' flag

In 2012, South Korea's Supreme Court began overturning High Court decisions in favour of Japanese corporations.

"Korean courts are giving plaintiffs a second chance by presiding over lawsuits, many of which were already adjudicated in Japan," said Timothy Webster, associate professor of transnational law at Case Western Reserve University. Webster said the court's decision in the Nippon Steel case suggested Korean plaintiffs were more likely to win their lawsuits on home turf.

"I think the same conclusions will come out because the issues are almost the same," said Choi Bong-tae, the lawyer who represented forced labour victims in the 2012 trial.

There are 14 cases – seeking to overturn historical decisions – pending in South Korean courts. Several Japanese companies are facing multiple lawsuits, including Mitsubishi, Nachi-Fujikoshi, and Nippon Steel. It is likely even more will be filed in the aftermath of the October Nippon Steel ruling, said Celeste Arrington, Professor of Political Science and International Affairs at the George Washington University.

Left-leaning Japanese activists and lawyers have formed extensive societal networks to hold the Japanese government and corporations from the country accountable for their wartime actions, Arrington said. "Liberals" in Japan are not

those on the left of politics; they are generally advocates of “individual rights” and oppose the efforts of President Shinzo Abe and his conservative Liberal Democratic Party to revise the war-renouncing Article 9 of Japan’s post-war constitution.

“Unless victims’ human rights relief is fulfilled, the problem will never end,” said Ken Arimitsu, programme coordinator of the Tokyo-based Network for Redress of World War II Victims.

The South Korean Supreme Court’s decision is seen as reinterpreting a 1965 treaty which normalised relations between Japan and Korea, threatening to destabilise an already rocky bilateral relationship.

“The Abe administration views the 1965 treaty as settling any and all bilateral issues between Japan and South Korea,” said Jeremy Yellen, assistant professor of Japanese studies at the Chinese University of Hong Kong.

Why South Koreans are trapped in a lifetime of study

South Korean president Moon Jae-in’s rejection of the 2015 agreement over so-called “comfort women” – women who were forced into sexual servitude by the Imperial Japanese Army – has also strained diplomatic relations between the two countries.

Yellen does not think the Japanese position is resolute. “For years, Tokyo used the very same clause [Article II of the 1965 treaty] to argue that every bilateral problem pertaining to the colonial past has already been settled.”

But by apologising and pledging ¥1 billion (US\$8.3 million) to surviving victims, Yellen said the 2015 agreement, which was negotiated between the administrations of Abe and impeached former South Korean president Park Geun-hye, “cracked open the door to other issues in Japan’s wartime past”.

Japanese Foreign Minister Taro Kono issued a stern warning to Moon’s government in a recent interview with Bloomberg: “If any country gets into an agreement with the Korean government in international law and the Korean Supreme Court could overturn an agreement anytime they wish to, it will be very difficult for any country to do anything with South Korea.”

Kono is the first member of the Japanese cabinet to acknowledge that victims of forced labour have the individual right to make claims for damages. However, the Japanese government’s current interpretation holds that this right cannot be exercised in court.

South Korea’s foreign ministry pushed back and urged the Japanese government “to deal with the issue wisely” for the sake of “the future-oriented development of South Korea-Japan relations”.

A senior North Korean official, Ri Jong Hyok, added fuel to the fire by calling on Japan to compensate and apologise to Korean victims of wartime forced labour.

The spat between Japan and South Korea follows the controversy over the approval of the Hashima Island World Heritage Site. Japan reneged on its promise to acknowledge that “a large number of Koreans and others ... were brought against their will and forced to work under harsh conditions” by omitting the word “forced” in a report submitted to Unesco.

All hail South Korea's sharing economy (except its taxi drivers)

According to a Kyodo News report, Mitsubishi Materials is close to finalising a compensation fund for 3,765 Chinese victims of forced labour. Lawyer Kang Jian of the All China Lawyers Association, however, argues that the company is using the fund as a smokescreen to shirk legal responsibility.

According to Kang, Mitsubishi Materials only agreed to negotiate the settlement because it was worried about group litigation – which works like a class-action suit, where one member of a party collectively represents all its members – in China's procedural law. Just three forced labour victims signed settlements, and one of them was signed by a victim's daughter.

“Mitsubishi beautifies the name of the compensation fund and uses small money to cover up history with word games,” Kang said.

Webster from Case Western Reserve University points out that Mitsubishi Materials has offered more compensation, such as payments to survivors and bereaved families as well as funding for the construction of memorial sites, than other Japanese corporations that have settled in the past. Yet he remains sceptical about the company's true motive.

“If Mitsubishi actually feels ‘guilty’ about what it did during the war, why wouldn't it take the same approach with all the other cases brought against it? They've taken this act of compensation and actually made a public spectacle or advertisement out of it.”

Abe's three-day trip to China in October this year, the first by a Japanese prime minister in seven years, signalled rapprochement between Beijing and Tokyo. Webster said China had taken a “hands-off attitude” on the wartime forced labour

issue. The website of the Chinese Foreign Ministry clearly states that the Sino-Japanese Joint Statement in 1972 and the 1978 Treaty of Peace and Friendship waives the state's rights to demand war reparations from Japan. The Chinese government, however, has supported individual rights to claim compensation from Japanese corporations.

So far, Chinese courts have accepted just one war reparations case, a February 2014 damages lawsuit that Chinese victims of forced labour brought against Mitsubishi Materials and Nippon Coke & Engineering.

Japan honours Malaysian PM Mahathir Mohamad, hoping for an ally in checking China's influence

"The Chinese government may have been – may still be – reluctant to back or promote redress claims for human rights violations for domestic reasons," said Dr William Underwood, a researcher who has published on second world war forced-labour redress efforts.

Japan's plans to submit an International Court of Justice (ICJ) complaint are complicated by ICJ rules that require all states to consent to appear before the court.

IN THE LEGAL COURT OF LAW THERE IS A WINNER AND LOSER. IN OTHER FORMS OF RECONCILIATION BOTH SIDES CAN WIN

Japan cites the ICJ ruling on Germany v Italy over state immunity, which protects a state from being sued in the courts of other states, as a precedent for wartime forced labour lawsuits. But the concept of state immunity is not applicable to cases involving individuals and corporations. The ICJ only has jurisdiction to deal with legal disputes between states. Therefore, Japan can only seek a non-binding advisory opinion from the ICJ without South Korea's permission.

More than 70 years after the second world war, debate over compensation and war reparations remain unsettled. Barak Kushner, associate professor of Japanese history at the University of Cambridge, questions whether legal methods are the best way forward to address these issues. He believes legal pursuit of a firmer Japanese statement about responsibility will create a strong backlash from conservatives in Japan.

“In the legal court of law there is a winner and loser. In other forms of reconciliation both sides can win,” he said.

<https://www.scmp.com/week-asia/politics/article/2174385/forced-labour-sore-topic-between-south-korea-and-japan-court>