

The Fukuoka Court Judgment of Chinese Forced-labor Lawsuit

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On April 26, 2002, a Fukuoka district court ruled that the defendant Mitsui Mining Company must pay 11 million Japanese yen to each individual plaintiff, total 165 million yen to the 15 plaintiffs, in a forced-labor compensation lawsuit. Although the verdict did not recognize the responsibility of the Japanese government, we, plaintiffs and lawyers, consider it a historic victory.

1. A Simple History of the Chinese Forced Labors

During WWII, under the requests from the national construction industry association, coal and metal mining industry association and other organizations, the Japanese government planned to import Chinese labors. On November 27, 1942, the Japanese cabinet made the decision in favor of forced-labor and put it into implementation, as one step of the Labor Mobilization Plan under the National General Mobilization Act. Eventually there were a total of 38,935 Chinese who were forcibly brought to Japan and forced to work in 135 factories of 35 mining, construction, shipyard, or port companies.

The Japanese government, through Congressional hearings and other channels, has repeated the same claim that these laborers came to Japan voluntarily for the purpose of making money based on mutual contract. However, the fact is that these laborers were forcibly brought to Japan under bayonet, by deceit, threat, or violence from street corners, farm fields, or homes. There were cases in which Japanese soldiers encircled a village and arrested all able-bodied men and sent them to Japan. It was called "rabbiting" or "labor hunting." The Chinese forced-laborers, aged 11 to 78, were from various occupations including peasant, POW, former soldier, security guard, prisoner, carpenter, doctor, teacher, company employee, and of different education levels that include middle school, college and military school graduates and those with medical training certificate. Apparently, these people were arrested on the spot and were forced to come to Japan.

The reality of the labor treatment was inhumane without adequate food or clothing, without holidays or salary. It was literally slave labor. All plaintiffs unanimously testified that the treatment was inhumane, was than the treatment meted to cows or horses. Some ate mice or grass; some used newspapers as clothes, some became distraught due to deep despair. As high as 17.5% of the total forced-laborers, 6,830 people, died. The court judgment is correct in describing the situation as "harsh and inhumanity".

Soon after Japan's surrender, the Japanese government requested the companies to create "Chinese laborers enforcement process reports" (factory report). The Ministry of Foreign Affairs (MOFA) created "Chinese laborers enforcement situation research report" based on the above company reports. However, the Japanese government later ordered all these so-called "Imaginary MOFA Report" burned when they knew they were exempt from war crime responsibility by the American occupation authority. A couple of years ago, these documents were rediscovered to be in the possession of a Chinese-Japanese family, who risked their lives to save them. Now we can know the full story of the forced-labor situation.

2. The Fukuoka Court Lawsuit

There are 15 Chinese plaintiffs, and the defendants are the Japanese government and Mitsui Mining Company. The plaintiffs requested the defendants to apologize through main Chinese and Japanese news media and to pay 23 million yen in compensation to each plaintiff. Mitsui Mining Company had the most forced-laborers (5,517) as a company and among them, 2,371 worked in Miike Mining factory. Miike had the most forced-laborers as a factory, and 11 of 15 plaintiffs worked in Miike.

The Fukuoka Lawsuit charges that the Japanese government and the Mitsui company conducted illegal activity to plan and implement the forced-labor policy under Japanese civil law. We also held that forced-labor is a violation against the ILO treaty No. 29. Since Japan signed the ILO treaty in 1932, the treaty was also valid as domestic Japanese law. Violation of the ILO treaty is also against domestic Japanese law.

In addition, we also held and testified that the forced-labor is a violation against the ILO treaty's criminal punishment obligation, against The Hague Convention on Battlefield, against Humanity, against the protection obligation of Chinese laborers and against the obligation to restore these laborers to their previous status after the war.

The defendant Japanese government claimed that in the case where the government acted as the state power under the Great Japanese Empire constitution, it has no obligation to pay the compensation. Mitsui Mining claimed the statutory limitation for this case. They could not deny the fact.

The lawsuit started from May 10, 2000, conducted 14 oral hearings and debates which finished in one and a half year, and judgment was passed in less than two years. This is a very harsh and tense lawsuit in Japan. Our lawsuit team provided many documents and evidence, and conducted hearings with four witnesses and two plaintiff representatives.

We first played the video record of NHK Special "The Imaginary MOFA Report" (1993) in the court to show the reality of the forced-labor history. We also provided the court various proofs such as the above video, the MOFA report, the company reports, similar lawsuit cases, academic publications, the Japanese Congress records (including the Japanese government statements on the forced-labor), various materials from the Congress library (including from relevant GHG documents, Washington National Archives).

3. The Contents and Significance of the Fukuoka Judgment

The judgment is a historic event on Japan's war reparations. It directly deals with the Chinese forced-labor case, admitting the historical fact in details, and recognizing the action as "illegal action jointly" planned and conducted by the Japanese government and the companies.

It reads: "The Japanese government received strong request from the Coal Association and other Japanese industry associations, ...negotiated with these industry society, ...made the cabinet decision to import Chinese laborers to Japan as a state policy and implemented this policy." "The reality is to forcibly bring Chinese laborers to Japan against their will by deceit or threat..." It continues: "From the points of living, food, and the suffering from violence by the company's Japanese employees, the forced-labor was harsh and inhumane." "The defendant companies ...for the purpose of substituting laborers, jointly with the government, conducted forced-labor using deceit, threat and violence under very harsh condition. The situation was extremely vile."

Since the forced-labor is judged an illegal action, the government and the company certainly should bear the responsibility. However, the judgment exempted the government's responsibility by applying the so-called "sovereign immunity" theory. The judgment admitted that the "sovereign immunity" theory has been criticized and has been fundamentally refuted by the new constitution No. 17, however, it still apply this theory to this case under the legal system of the Great Japanese

Empire constitution.

Regarding Mitsui Mining's statutory limitation claim, the judgment refuted it as "apparently against justice and balance ideas". For example, under the condition of paying salary and providing enough food to the labors, the company received 7,745,206 yen from the government as compensation for the implementation of forced-labor, which is equivalent to several billion yen today. However, Mitsui Mining did not pay any salary to the laborers. The judgment also pointed out the fact that the government and the company burned the MOFA reports and factory reports, which made it extremely difficult for the plaintiffs to seek compensation.

The judgment does not recognize four other charges from the plaintiffs. (1) The judgment does not recognize request for the apology; (2) The judgment does not recognize the responsibility of the government and the company to protect Chinese laborers' life and health; (3) The judgment does not recognize the responsibility of the government and the company to restore the laborers' former status after the war; (4) The judgment refuted the plaintiff's claim that the government and the company conducted new illegal action by ignoring criminal punishment and destroying evidence. However, the judgment ruled against the defendants' (the Japanese government's and companies') claim that Chinese individuals' right to compensation has been given up by the Sino-Japanese Friendship Declaration. This is a judgment according to international law and based on facts.

4. Future Perspective from the Fukuoka Judgment

Mitsui Mining appealed against the judgment on the same day. Even though its agent expressed the willingness to reconcile in the superior court, Mitsui Mining is still prepared to continue fighting the case.

The plaintiffs certainly will continue to ask the government and Mitsui to apologize and compensate. It is a problem that the judgment did not recognize the government's responsibility and did not recognize the claim for an apology.

This forced-labor case is planned and conducted by the state government based on the wartime National General Mobilization Act. However, the National General Mobilization Act applied to imperial subjects (Japanese nationals and organizations) only, but did not apply to foreigners. There was no legal base to forcibly bring Chinese forced-labors to Japan. The current constitution's No. 98 Item 1 declares that all other laws/acts against the constitution was invalid, so the court should not use the "sovereign immunity" wartime theory to exempt the government's responsibility. It is also against justice and balance ideas to punish a company under the state policy at the same time exempting the state.

The judgment does not recognize the government and the company's responsibility to protect Chinese laborers' life and health in wartime and after the war, because there was no contract (while the government claimed this is based on contract). This is not acceptable.

Many of the forced-labors received criticism and persecution upon returning to China because they worked for the enemy country during wartime. One of the plaintiffs, Zhang Baoheng, made a detailed memo on the forced-labor facts. This was not for this lawsuit case, but for the purpose of explaining to the Chinese people what happened in forced-labor when he was supposedly "helping the enemy". This testimony shocked the court. However, the Japanese government still repeats the same lie: "They came by will," "by contract," "for the purpose to make money" without any apology. This further burdens the plaintiffs' hearts. The Japanese government must first recognize the fact and apologize from heart.

This year is the 30th anniversary of establishing the Sino-Japanese diplomatic relations, and the 60th anniversary of the Japanese cabinet decision to import Chinese forced-labor. The PRC Foreign Ministry issued a statement on judgment day requesting the Japanese government to take

initiative and responsibility to resolve the historical problems. However, the Japanese government responded, "We won. Our stance was recognized."

For true Sino-Japanese friendship, Japan cannot avoid this issue. Japan should overcome this problem by learning from Germany and planning for the government and companies to make compensations. In fact, some of the mainstream media in Japan are beginning to recognize this. The Asahi Shimbun, one of the most respected daily newspapers in Japan, recently proposed that "once the truth about forced-labor has been determined, Japan should work toward new legislation and the establishment of funds that specify corporate responsibility. Debate to advance public awareness over personal claims is also encouraged" (Asahi Shimbun Asia Network Proposals, June 22, 2001).

For this purpose, this Fukuoka judgment is important and significant. Based on the Fukuoka judgment, if we can mobilize nationwide strength and wisdom, it is not impossible to reach a just judgment and to establish a compensation fund plan for this forced-labor issue. Today's meeting is an encouragement to our lawsuit efforts. We appeal to the international community to support us to make the Japanese government accountable for its illegal actions.