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South Korea, Japan and Comfort Women

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**By: Jason Ducena*



On January 8th, a Seoul district court ordered the Japanese government to pay 100 million Korean wan—approximately \$91,800—to the 12 still living Korean “comfort women” who had been forced into sexual slavery by the Japanese military during World War II.[1] This ruling was ostensibly rejected by the Japanese government, in which Prime Minister Suga Yoshihide stated, “[T]he ruling will never be accepted.”[2] The judgment, as well the resulting actions of the Japanese government, have led to conflict between the two nations on an issue that remains a crucial talking point between the two.[3] This is not the only judgment from Korean courts that have or will adjudicate this issue. On April 21st, another South Korean court will rule on a separate damage suit against the Japanese government on this very issue.[4] Both the January ruling and the upcoming April ruling dealt primarily with the legal issue of sovereign immunity.[5] Sovereign immunity, a concept derived from British common law, rests on the idea that a government cannot be sued without its consent.[6]

To understand the basis of these legal suites, it is important to understand the history of what these “comfort women” have gone through, what they mean and the compensation they have, arguably, not been awarded. “Comfort women” were a branch of sexual slaves that the Japanese government used to boost morale within the Japanese army during World War II when Korea, and various other Asian

countries, were Japanese colonies.[7] Ordered by the Emperor Hirohito, the women were kidnapped or coerced into slave roles at brothels and forced to provide sexual services under harsh conditions (such as the risk to STDs, immense physical pain, pregnancy) to their captors.[8] These women were from colonies under Japanese control and it has been estimated that between 20,000 and 410,000 women had been enslaved in these brothels.[9] The Japanese initially burned any evidence of this system post-World War II and attempted to downplay its significance until 1993, when it formally apologized for these atrocities.[10] When it comes to South Korea, today, only 18 comfort women remain alive.[11]

“Comfort women” have been a major source of controversy between Japan and Korea that even has spilled over into international law. The controversy stems from the continuous refusal of the Japanese government to give proper apologies and compensation to the victims.[12] In addition, “comfort women” have been a source of controversy outside the impacted countries; such as a Harvard law professor denying the crimes and calling “comfort women” prostitutes (which invited intense criticism both domestically and abroad),[13] to United States (“US”) district courts adjudicating the issuance of “comfort women” statutes in US cities.[14] These women represent a stark point of contention between Japan and Korea that has had lasting effects on their relationship.[15]

Perhaps the singular focus of what many “comfort women” have been seeking, besides a formal, thorough apology, is compensation for the harm they suffered at the hands of their captors and rapists. In 2015, the Japanese government announced it would give reparations to the surviving Korean “comfort women” however, the South Korean government asked for a stronger apology than what was given, which Japan condemned and denied.[16] Essentially, this compensation/apology is what lies at the heart of the current damages suit in Korean courts. The victims have tried to gain further compensation for the trauma they have suffered. Now, as stated above, the Japanese government has denied these judgments on the grounds of sovereign immunity, but with further judgments waiting to be heard in South Korean district courts, it is uncertain whether Japan will change its stance on these judgments. However, judging from the way that the Japanese government has reacted to past assertions of further damages, it seems unlikely that they will accept these judgments as valid.

Jason Ducena is a 2L at Cardozo Law School. He attended SUNY New Paltz and majored in English with a concentration in creative writing as well as History Minor. Jason is interested in Intellectual Property and International Law.

[1] Mitch Shin, *Conflict Between South Korea and Japan Surges Again With Court's 'Comfort Women' Decision*, The Diplomat (Jan. 26, 2021) <https://thediplomat.com/2021/01/conflict-between-south-korea-and-japan-surges-again-with-courts-comfort-women-decision/>.

[2] *Id.*

[3] *Id.*

[4] Kyodo News, *South Korea court to rule on “comfort women” suit against Japan in April* (Mar. 24, 2021)

<https://english.kyodonews.net/news/2021/03/af03da59388a-s-korea-court-to-rule-on-comfort-women-suit-against-japan-in-april.html>.

[5] *Id.*

[6] Legal Information Institute, *Sovereign immunity*, Cornell Law School (Last visited Apr. 1, 2021)

https://www.law.cornell.edu/wex/sovereign_immunity.

[7] Erin Blakemore, *The Brutal History of Japan's 'Comfort Women'*, History (Jul. 21, 2019) <https://www.history.com/news/comfort-women-japan-military-brothels-korea>.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Elizabeth Shim, *South Korea comfort woman dies; 18 remain alive*, UPI (March. 3, 2020) https://www.upi.com/Top_News/World-News/2020/03/03/South-Korea-comfort-woman-dies-18-remain-alive/8641583259586/.

[12] Blakemore, *supra* note 7.

[13] Jung Da-min, *Criticism grows in academia over Harvard professor's paper on comfort women*, The Korea Times (Feb. 10, 2021)

https://www.koreatimes.co.kr/www/nation/2021/02/181_303911.html?fl.

[14] Agnes Constante, *Supreme Court Declines Case over Lawsuit to Remove 'Comfort Women' Memorial*, NBC News (Mar. 31, 2017)

<https://www.nbcnews.com/news/asian-america/supreme-court-declines-case-over-lawsuit-remove-comfort-women-memorial-n740996>.

[15] Shin, *supra* note 1.

[16] Blakemore, *supra* note 7.