

Report for the IALANA seminar

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Current Status and Challenges of the Fight for Korean Atomic Bomb Victims' Rights

1. How Korean atomic bomb victims were formed.

By the atomic bombs dropped by the US forces on Hiroshima on August 6, 1945 and Nagasaki on August 9, 1945, people of Chosun, Koreans of that time, were victimized. It has been estimated that the number of Korean Atomic Bomb Victims ("KABV") is approximately 70,000, of which about 40,000 have died. The size of the KABV is more than 10% of the total number of Japanese Habakusha, which is around 690,000, and the number of deaths of the KABV exceeds one sixth of the number of deaths of the Japanese, about 230,000.

Location	KABV	Deaths	Survivors	in Korea	in Japan
Hiroshima	50,000	30,000	20,000	15,000	5,000
Nagasaki	20,000	10,000	10,000	8,000	2,000
Total	70,000	40,000	30,000	23,000	7,000

Approximately 23,000 KABV returned to the Korean Peninsula. Although most of the victims went back to the South Korea, around 2,000 went to the North Korea because in 1948, the Republic of Korea was founded in the southern part of the 38th parallel and the Democratic People's Republic of Korea in the northern part. In 1950, as the Korean War broke out, the victims had to experience the devastating war, and even though an armistice agreement was reached in 1953, the truce continues to this date and the Korea is still divided.

The KABV are the ones bearing the cross of the 20th century symbolized by imperialism and nuclear weapons. They are often referred to and recognized as the

Triple Victims suffering from enforced mobilization, atomic bomb and neglect of the public. As of December 31, 2021, 1,992 people are registered as the members of the Korean Atomic Bomb Victims Association.

2. Grounds and direction of the fight for Korean atomic bomb victims' rights

Currently, the KABV have not received any apology or compensation from the U.S. government for dropping the atomic bombs, or the Japanese government for provoking the Japanese war. This issue of the South and North KABV should have been resolved through the collaborative works of the South and North Korea for an apology and compensation from the U.S. and Japanese governments, but the two Korea have been divided. And in 1965, during the Cold War, the South Korean military regime concluded a Korea-Japan Agreement on the Settlement of Claims with the Japanese administration that had no reflection on the war of aggression. The agreement was not for the recovery of damages from the colonial ruling, but in the form of economic cooperation as a by-product of inter-Korean ideology competition. This normalization of relations between Korea and Japan without any compensation to the KABV made the victims begin their fight for rights on a blank canvas. In other words, The fight for the rights of the KABV started without knowing which government, Korean or Japanese, they should claim damages against.

The KABV's fight in Japan was mainly focused on the elimination of the discriminatory nature of the Japan's Atomic Bomb Victims Relief Law. Their legal rights struggle in Korea can be broadly categorized as a lawsuit against Mitsubishi Heavy Industries for damages, a lawsuit for the disclosure of the documents of the Korea-Japan talks, a constitutional petition with the Constitutional Court of Korea, and a lawsuit against the U.S. government and related companies. Their struggle has changed from the fight against Japanese company, through the Korean government, to the U.S. government and companies. In other words, the struggle has evolved through 3 phases, the Japanese company, the Korean government, and the U.S. government and companies.

3. The fight for KABV Rights in Korea

A. Litigation for damages against Mitsubishi Heavy Industries

The atomic bomb victims of Hiroshima Mitsubishi Heavy Industries filed a lawsuit against Mitsubishi Heavy Industries, Ltd. with Busan District Court in Korea on May 1, 2000 seeking an apology and the damages caused by forced mobilization, forced labor and failure to aid after the exposure to the radiation. Mitsubishi Heavy Industries argued that the plaintiffs' claims were settled through the 1965 Korea-Japan Agreement on the Settlement of Claims and denied their legal obligations, which led the plaintiffs' to start a lawsuit for the disclosure of the related documents. Apart from the result of the document release lawsuit, on November 29, 2018, the Supreme Court of Korea reached a final judgment in favor of the plaintiffs, granting damages against the defendant company.

B. Litigation against the Korean government for the disclosure of the documents related to Korea-Japan settlement agreement

On October 11, 2002, the KABV, along with other victims of the Japanese empire, filed an information disclosure suit with the Seoul Administrative Court, and on February 13, 2004, the Seoul Administrative Court partially granted the claims. While an appeal by the Korean government was pending, some documents were released in 2005. The complete disclosure revealed that nothing in the documents had any record relating to the atomic bomb victims. As a result, the Civil-Government Joint Committee announced that serious human rights issues including atomic bomb victims rights were not subject to the Korea-Japan settlement agreement and that the Japanese government still has the legal obligations.

However, even after the announcement of this Civil-Government Joint Committee, the Korean government did not negotiate with the Japanese government for the relief of the KABV, and the Japanese government refused to take any legal responsibilities on the ground of the Korea-Japan settlement agreement. This resulted in a dispute over the interpretation of the Korea-Japan settlement agreement, whose resolution has been the real pending issue.

C. Constitutional petition with the Constitutional Court of Korea

This constitutional petition was initiated in order to hold the Korean government accountable because the Korean government's omission to act brought the interpretation issue of the settlement agreement even after the announcement acknowledging that the KABV problem was not resolved through the 1965 Korea-Japan agreement and the promise to make efforts to aid the victims with the Japanese government in the future, which were the result of the Seoul Administrative Court's decision of the disclosure lawsuit brought by the KABV, along with other victims of the Japanese empire, in February, 2004, and of the release of the documents relating to the Korea-Japan settlement agreement in January and August, 2005. On August 30, 2011, the Constitutional Court of Korea held that 'the Korean government's failure to resolve the dispute over the interpretation of the two governments as to whether the victims' rights to claim compensations against Japan has been extinguished by Article 2(1) of the Korea-Japan settlement agreement by the procedure set forth in Article 3 of the Korea-Japan settlement agreement is unconstitutional because such omission violates the Constitution which declares the dignity and value of human persons, the right to pursue happiness, and the State's obligation to guarantee basic human rights.'

D. Summary of the KABV's lawsuit against the U.S. government and corporations

On August 3, 2017, the Hiroshima victims of the atomic bombing on August 6, 1945 filed a mediation petition for damage claims against the U.S. government, three U.S. companies, DuPont, Boeing, and Lockheed Martin, and the Korean government as respondents. The change of venue to Seoul Central District Court was decided on August 21, 2017, and there was one mediation session on September 18, 2017 without service on the U.S. government and the companies. The mediation was not successful and thus was converted into a civil lawsuit. On April 30, 2021, Seoul Central District Court dismissed the case without prejudice on the grounds of the dismissal of the victims' legal aid application, of the failure to deposit bond for the excessive amount of litigation costs and of the international service issues.

Apart from the case, currently in the United States, a civil court case is in the process to determine whether the use of atomic bomb is a violation of international law.

E. Establishment of the Korean Atomic Bomb Victims Support Act

Apart from these victims' individual lawsuits, the KABV tried to be remedied through legislation, and a law was successfully enacted in Korea.

In other words, the 'Special Act for Support for Korean Atomic Bomb Victims', which aimed to understand and provide support to the Koreans who were exposed to the atomic bombs in Hiroshima and Nagasaki, Japan in 1945, was passed through a plenary session of the National Assembly on May 19, 2016. Until then, as the living and health conditions of the KABV were not known, the fact-finding investigations for such conditions had been continuously requested.

The special act established the 'Korean Atomic Bomb Victims Support Committee' to investigate the actual conditions of the victims and to deliberate and decide on matters necessary to support them. The law also allowed the government to conduct commemorative projects such as building memorial spaces and towers to comfort the victims of the atomic bombing.

However, since only data collection, analysis, and report writing are specified for the fact-finding investigation, it is unclear whether the survey will include the quantitative measure of actual damages Koreans have suffered from the atomic bombing, and the scale and size of the dead and the injured. Also, the issue of the descendants, including the children, of the atomic bomb victims, is excluded in the Special Act. The children of atomic bombing victims often suffer from disabilities and diseases as a result of the aftereffects of the atomic bombs and radiations. As there has not been any support policy itself for the victims' children and descendants including basic medical aid, they have been experiencing great difficulties in the cost of using medical institutions. Although the children and the descendants of the atomic bombing victims are not explicitly defined as the victims in the Act, the KABV are making efforts to ensure that at least the investigation on their children and descendants are to be conducted.

4. About future tasks

The KABV, often called the Triple Victims, are currently neglected without receiving proper remedies from the U.S., the Japanese, and the Korean governments, and are

opening some ways for their rights through eliminating the discriminatory nature of the Japan's Atomic Bomb Victims Relief Law.

Even in Korea, although the National Assembly enacted a support law in 2016, a proper survey of the situation remains as a task for the future. For the relief and the rights of KABV, agreeing to the fact that the two governments of Korea and Japan did not negotiate on the atomic bombing damages in 1965 should be the start. If the Japanese government should intend to deny its legal responsibilities on the ground of the Korea-Japan Settlement Agreement, it should also be able to explain why remedies are being made in Japan through the abolition of the discrimination of its Atomic Bomb Victims Relief Law. Although it is already late, the governments should start to find the ways of remedies for the KABV through the dispute settlement procedure in accordance with Article 3 of the Korea-Japan Settlement Agreement and by accepting the decisions of the courts of the two countries that a remedy for the KABV was never discussed at the Korea-Japan Settlement Agreement and that compensations must be made to the victims.

Currently, the mankind is facing a new challenge of the unprecedented corona virus. This should be seen as an opportunity to resolve issues through solidarity and cooperation, and hopefully this should be an opportunity of advancing to the world without nuclear weapons through the entry into effect of the Nuclear Weapon Ban

By having epidemiological investigations on the victims of the atomic bombing and making joint efforts to register them with the UNESCO, it will be widely known that the humankind and nuclear weapons cannot coexist. The irresponsibility of the superpowers with nuclear weapons are to be condemned, and it is necessary to jointly push the ratification of the Nuclear Weapon Ban Treaty.