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More than six decades after the end of World War II, responsibility for wartime suffering remains a highly sensitive political issue in Asia, nowhere more so than in the Japan-Korea relationship. When the two countries normalized relations in 1965, one treaty provision was intended to settle claims by the Korean government and its people for compensation for injuries suffered during the era of Japanese rule (1910-45). More than forty years later, Japan's Ministry of Foreign Affairs still keeps documents created during treaty negotiations hidden from public view.

Foreign Minister's Lee Dong-won (far left) and Shiina Etsusaburo (far right) at the Treaty signing

On December 26, Tokyo District Court ruled that the Ministry violated Japan's information disclosure law by failing to respond in a timely manner to a request to release these documents. Although the court stopped short of ordering disclosure of the material, it established an important precedent by holding that excessive delay violates the law.

The Request for Treaty Records

The original information request was filed in April 2006 on behalf of more than three hundred individuals residing in Japan and the Republic of Korea. The requester group is led by scholars and

prominent individuals from both countries and others who seek to establish a clear historical record. Most poignantly, the group includes individuals who claim to be victims of Japanese sexual slavery during the war years (labeled "comfort women" by wartime Japanese authorities) and others who assert they suffered inhumane treatment as labor conscripts at mines and other work sites. The group was formed in December 2005 with the declared purpose of compelling disclosure of documents related to the 1965 treaties in order to force the Japanese government "to recognize the facts and responsibility of Japan`s colonization of the Korean peninsula" and "to secure apologies and compensation for Korean victims of the Asia-Pacific War and their survivors." (See this (http://www7b.biglobe.ne.jp/~nikkan/).)

Under terms of the 1965 treaties, the government of Japan agreed to provide the equivalent of 300 million US dollars in property and services and long-term low interest loans of 200 million dollars in exchange for agreement that claims "concerning property, rights and interests" of the Korean government and its people "have been settled completely and finally" (*kanzen katsu saishutekini kaiketsu*). The Japanese government invariably cites this language in response to suits filed in Japanese courts by Korean plaintiffs who claim they were victims of forced labor, sexual slavery or suffered other injuries during the colonial period.

This latest development in the struggle to clarify accountability for wartime acts was triggered by the release of 35,000 pages of documents related to the treaty negotiations by the South Korean government in 2005. These documents show that Korean representatives had pressed demands for victim compensation that were rejected by Japanese negotiators and that the great majority of funds received under the 1965 treaties were used for economic development. In Korea, these revelations led to public outrage and the November 2007 passage of legislation providing compensation for victims of wartime labor conscription. (See William Underwood, "Names, Bones and Unpaid Wages: Seeking Redress for Korean Forced Labor (http://www.japanfocus.org/products/details/2219)," and part two (http://www.japanfocus.org/products/details/2225).)

Special Treatment for Voluminous Requests

The suit identifies one of the most serious weaknesses in Japan's information disclosure system. Although the law generally requires that government agencies make decisions on information requests within 30 days of receipt, it also provides escape clauses that enable officials to delay decisions indefinitely. In this case, the Ministry of Foreign Affairs invoked Article 11 of Japan's disclosure law, which empowers government agencies to respond to requests for

voluminous records in two steps. First, the agency must render decisions concerning a reasonable portion of the material no later than 60 days from receiving the request. Second, the agency can set a "reasonable period of time" to address the remaining documents. (An English translation of the law is available here (http://www.soumo.go.jp/english/gyoukan/060516~03.htm).)

The "reasonable period" set by the Ministry for the great bulk of the treaty material was two years, with an end date of May 26, 2008. Faced with such a lengthy delay, plaintiffs filed suit on December 18, 2006. In its decision issued one year later, a Tokyo District Court panel led by Chief Judge Sugihara Norihiko agreed with plaintiffs that two years exceeded the "reasonable period" allowed by Article 11.

The Right to a Timely Response

The Court began its analysis by citing the purposes clause of Japan's disclosure law, which declares that the law is grounded in popular sovereignty and the need for accountability in government. In its own words, the Court said the purpose of the law is to "make possible the people`s accurate understanding and evaluation" of government action, in order to promote "the responsible formation of public opinion." To meet this objective, the Court said that disclosure must be prompt (sumiyaka) and that the term "reasonable period" in Article 11 must be interpreted in light of this requirement for prompt action.

The Court underscored the fundamental importance of information disclosure as a core element of democratic government. Requesters do not merely have a right of access to information; they also have a right to a timely response. Why? Because only with timely information can the people grasp the true circumstances and exercise their sovereign authority in a responsible manner. Although the Court refrained from specifying a precise term that would meet this requirement, it did say the reasonable period had surely expired prior to the final court argument held in November 2007, one year and seven months after the request was filed.

In response to arguments made by Ministry lawyers concerning administrative matters such as the labor required to copy a large volume of fragile old documents, the Court said that the Ministry has long been aware of the strong public interest in these documents, specifically noting that certain portions had been subject to as many as 12 separate requests. The Court said the Ministry should have taken measures to facilitate disclosure in an efficient manner by creating microfilm or digital copies.

Ministry of Delay

In the six-year period since Japan's disclosure law came into effect, government agencies have mostly worked with diligence to meet statutory timelines. Among initial decisions on information requests by all government agencies in 2006, for example, 86.7% were rendered within the statutory norm of 30 days.

But there has been one outstanding exception to this overall picture of bureaucratic rectitude: the Ministry of Foreign Affairs (MoFA).ã€€It appears that MoFA has adopted a standard policy of delaying responses to requests for as long as possible. One primary tool of delay is Article 11, which empowers agencies to extend ordinary response times. MoFA employs this provision far more often than other agencies; moreover, it frequently fails to fulfill its own self-imposed timelines. In fiscal 2006, for example, government agencies failed to meet targets specified in Article 11 notices in a total of 186 cases. Of this number, fully 182 concerned requests filed with the MoFA. Government data also show that at the end of fiscal 2006, the total number of undecided requests carried over by all government agencies to the new fiscal year was 2,971. Of these cases, responses to 219 had already been delayed beyond statutory limits. MoFA accounted for no fewer than 216 of these delayed responses.

Compared to other government agencies, MoFA does not receive an especially large number of requests. MoFA received 993 requests in fiscal 2006, ranking number eight among all government agencies. (The Justice Ministry was first with more than 16,000 requests.) In finding the MoFA delay unlawful, the Court took special note of the Ministry`s established pattern of delay, concluding that the Ministry`s efforts to comply with the law are inadequate (*fujuubun na torikum*).

The Disclosure Process Begins

Although plaintiffs succeeded in obtaining a decision declaring MoFA's failure to act unlawful, they were unable to gain a court order to the Ministry to actually release the requested information. Because Japan`s judges interpret their constitutional power in a manner that prohibits all closed proceedings, judges do not examine government files confidentially "in camera" as in the United States and other countries. Without examining the documents at issue, the Court was unable to decide whether a statutory exception to disclosure might apply.

However the matter is resolved, the complete process of review and disclosure is likely to continue for years. Material subject to the request has been estimated at between 30,000 and 70,000 pages. But the lawsuit may have already had a salutary effect. As court proceedings have moved forward, Ministry officials have made small partial releases of requested records. As expected, the Ministry has cited various exemptions provided in Japan's disclosure law to

withhold portions of disclosed records and, in some cases, to withhold entire documents. Of particular importance, Article 5 (3) of the law empowers officials to withhold information that, if disclosed, might cause "a risk of damage to trustful relations with another country or an international organization, or a risk of causing a disadvantage in negotiations with another country or organization." Japan has not concluded a treaty with North Korea resolving wartime claims. Officials can easily cite this provision to withhold information that might undercut the Japanese position in potential negotiations with the North Koreans.

The Ministry filed an appeal of the decision on January 6, 2008.

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