

## **Special Law on the Inspection of Collaborations for the Japanese Imperialism**

### **I. Relevant treaties and recommendations based on concluding observations**

#### **ICERD: Article 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### **II. Main points**

The Special Law on the Inspection of Collaborations for the Japanese Imperialism (hereinafter “Special Law”) was promulgated and took effect on December 29, 2005. The Special Law is regarded as a means of settling an unresolved issue concerning individuals who collaborated with Japanese imperialism by confiscating the assets they acquired in exchange for such collaboration, and returning them to the state. In accordance with the Special Law, the Presidential Committee for the Inspection of Collaborations for Japanese Imperialism [sic] was established. The committee investigated individuals suspected of cooperating with Japan during Japan’s annexation of Korea, and prepared a list containing their names. Subsequently the committee determined, again in accordance with

the Special Law, that land and other assets inherited by the descendants of individuals whose names appeared on the aforementioned list, and who had acquired said assets through their alleged collaboration with Japan, would be confiscated and returned to the state.<sup>1</sup>

### III. Background

#### 1. Burden of proof on those challenging the [law / accusations]

The investigation conducted by the Investigative Commission on Pro-Japanese Collaborators' Property resulted in a list of 168 alleged pro-Japanese collaborators; assets amounting to a total of 219.6 billion won were confiscated from their descendants and returned to the state. The latter part of Article 2.2 of the Special Law states that assets acquired by pro-Japanese collaborators between the outbreak of the Russo-Japanese War and August 15, 1945 shall be presumed to have been acquired in exchange for pro-Japanese activities. Here we have the application of a legal principle known as "presumption of guilt," which is unacceptable in a democratic nation. Descendants who maintain that their assets were not acquired in exchange for pro-Japanese activities have been forced to bear the burden of proof. Proving that their ancestors did not engage in pro-Japanese activities a century ago is not within the realm of possibility. Consequently the great majority of the descendants in question have no choice but to comply with the government's ruling.<sup>2</sup>

#### 2. Retroactive application of the law unheard of in modern age

The Special Law is an *ex post facto* law, the likes of which are not found in modern nations, and thus violates Article 13 of the Constitution of the Republic of Korea.

##### Article 13.2

No citizen shall be restricted in his/her political rights, nor be deprived of property rights by means of retroactive legislation.

##### Article 13.3

No citizen shall suffer unfavorable treatment on account of an act not of his own doing but committed by a relative.

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<sup>1</sup> Investigative Commission on Pro-Japanese Collaborators' Property, *Investigation on Pro-Japanese Collaborators' Property: Activities of the Past Four Years*.

<sup>2</sup> *Ibid.*

These protections notwithstanding, the Constitutional Court of Korea ruled on August 4, 2013 that the confiscation of the assets of individuals who received noble ranks from Japan is constitutional. Since Japan is the perceived opponent, even the Constitutional Court approved retroactive application of the law in total disregard of the Korean Constitution, and ruled the confiscation of assets on the basis of ancestors' activities constitutional. This judgment was unquestionably a deliberate act of discrimination against Japan, and only Japan.

#### IV. Conclusion

An examination of the charges against individuals accused of being pro-Japanese reveals titles like “Central Council advisor; parliamentary councilor for North Hamgyong and South Pyongan provinces” and “Prosecutor, Daegu District Court; councilor, Korean Exposition). Obviously their bearers were people who were instrumental in the modernization of Korea. Confiscating the assets they handed down to their descendants is utterly unjust and certainly not consistent with the spirit of modern law. Moreover, given that when Japan is viewed as the opponent, a nation's Constitutional Court will disregard its Constitution, and hand down the ruling that it did, we must conclude that we are not dealing with the judicial institution of a modern nation. Clearly these are actions motivated by prejudice against Japan, and the Special Law is in violation of Article 2-1 of ICERD.

#### V. Proposed Recommendation

We urge the Korean government to acknowledge the fact that the Special Law is an *ex post facto* law directed, discriminatingly, toward persons who cooperated with the Japanese, and only toward them. We recommend that the assets confiscated from the descendants of “pro-Japanese collaborators” be returned to them.