

## **Japan: Still Waiting After 60 years: Justice for Survivors of Japan's Military Sexual Slavery System**

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#### **Introduction**

In war zones all over the world crimes of sexual violence have been and are committed against women. Women and girls "are exposed not only to the violence and devastation that accompany any war but also to forms of violence directed specifically at women on account of their gender."<sup>(1)</sup> For centuries, wartime rape was perceived as an inevitable consequence of war. Even today, in an era where global consciousness around human rights, specifically the rights of women, has risen, survivors of sexual violence are largely denied redress: there is widespread impunity for these crimes where perpetrators go unpunished and victims are denied any form of reparation. Sexual violence, including rape, is used as a weapon of war - it is used deliberately to demoralize and destroy the opposition and is used to provide 'entertainment' and 'fuel' for soldiers as part of the very machinery of war.<sup>(2)</sup>

Perhaps the most compelling example of the crime of sexual slavery and the denial of justice to victims was the system of institutionalized sexual slavery used by the Japanese Imperial Army before and during World War II and subsequent denials of responsibility for the system by the Japanese government. The women forced into sexual servitude were euphemistically known as "comfort women".<sup>(3)</sup> Up to 200,000 "comfort women" were sexually enslaved by the Japanese Imperial Army from around 1932 to the end of World War II. Sixty years after the end of World War II, survivors of the sexual slavery system have been denied justice – they are still calling and waiting for full reparations.

The courage of the surviving "comfort women" who, over time, have spoken of their suffering, is remarkable. In most cases survivors broke over 50 years of silence in which they suffered isolation, shame, mental and physical ill-health and, for the most part, extreme poverty.<sup>(4)</sup> These women have in turn encouraged other women to speak out. Their voices, along with the activism of those who defend women's rights, have mobilised and inspired a global movement demanding that crimes of sexual violence be redressed.

Survivors have vigorously campaigned for justice and the promotion of human rights - they are human rights defenders. Their testimony has influenced the development of international law as it provided a concrete example of the crime of sexual slavery. Following conflict in the former Yugoslavia and in Rwanda, gender-based violence has been prosecuted at the international tribunals established to deal with the aftermath of these conflicts. Furthermore, pressure from those defending the rights of women led to specific recognition in the Rome Statute of the International Criminal Court of the crime of sexual slavery as a crime against humanity.

Despite these impressive developments, impunity for sexual violence against women both in conflict and in peace time is still the norm; perpetrators of rape continue to walk free and survivors are denied reparation. Amnesty International believes states need to make a comprehensive effort to investigate cases, support victims and witnesses and bring perpetrators to trial fairly. More needs to be done to ensure that survivors receive full reparation: rehabilitation, including healthcare; compensation; restitution of lost homes, livelihood and property; guarantees that the crimes committed against them will not be repeated and forms of satisfaction such as restoration of their dignity and reputation through public apology and acknowledgement of the harm they have suffered.

There is overwhelming evidence that the "comfort women" system violated international law, including prohibitions against slavery, war crimes and crimes against humanity (see section 4). These laws existed at the time the system was in operation. In section 4.2 of this report Amnesty International analyses the right to reparations and concludes they are not simply a moral

obligation: under international law; a state that commits a serious crime has a legal obligation to provide full reparations. Amnesty International is calling on the government of Japan to accept full responsibility for the crimes committed against the "comfort women", by giving full reparations to survivors of the military sexual slavery system and their immediate families in accordance with international standards and in a way acceptable to the survivors themselves.

This report analyses the limited steps the government of Japan has taken to address its "moral responsibility" towards survivors (see section 4.4). Amnesty International analyses apologies made by prominent Japanese government officials to the former "comfort women" and highlights how they have been inadequate and unacceptable to survivors. Moreover, the Asian Women's Fund, established by the Japanese government to distribute "atonement money" has failed to meet international standards on reparation and is perceived by survivors as a way of buying their silence. Amnesty International asserts that much more can and must be done to meet the needs of survivors. The government of Japan's actions to date in no way meet the criteria for full reparations as outlined in this report.

Survivors of sexual slavery are now elderly; many have died without seeing justice. The Japanese government has vigorously defended its legal position on this issue and has persistently maintained that all issues of compensation have been settled by postwar peace treaties (including the 1951 San Francisco Treaty of Peace with Japan, and other bi-lateral treaty arrangements between Japan and relevant parties). As this report demonstrates of the few treaties and agreements that do seek to preclude reparations for crimes committed by Japan during World War II they do so for political reasons. Amnesty International concludes that the government of Japan and the international community have failed survivors of the sexual slavery system. Amnesty International believes that the voices of survivors and their demands for justice have to be at the core of any attempt to address past violations, the case of the "comfort women" highlights how victims' needs were ignored in post-war settlements. This report addresses the question of whether a state has the right to waive or negotiate away the rights of individual claims to reparations by entering into treaties or agreements and concludes that states have no such authority.

In section 7 of the report Amnesty International analyses the individual right to reparations in international law, a right which the government of Japan claims does not exist for crimes committed during World War II, and concludes that survivors of sexual slavery have an individual right to reparations. The quest for survivors of sexual slavery to exercise their individual right to reparations has been frustrated by Japanese courts restrictive interpretations of the right to individual reparations.

As demonstrated in section 7.2 there are a number of obstacles that must be addressed before survivors can enforce their right to reparations. Amnesty International asserts that the government of Japan should immediately implement effective administrative mechanisms to provide full reparations to all survivors and remove legal barriers towards bringing claims before Japanese courts by reforming national law. Other countries, including survivors own, should enact laws allowing survivors to bring claims against Japan before their national courts.

The struggle for justice by surviving "comfort women" and their supporters demonstrates that calls for justice do not fade; rather they can grow stronger as survivors develop strength and courage. As they age, they have an increasing sense of urgency fuelled by not wanting to die without seeing justice rendered to them. To date, Japan's actions have ignored the needs of former "comfort women" and actually compounded the human rights violations committed against them through the denial of justice. Their urgency to resolve this issue – to deliver justice – grows more pressing as survivors are now in their twilight years.

Japan is currently heavily involved as a leading donor in the post conflict reconstruction of countries that have been ravaged by conflicts. Amnesty International asserts that such commitments ring hollow if Japan refuses to deal with its own past and the injustices it has perpetrated. Japan has the opportunity to show global leadership on human rights concerns. Settling the issue of compensation and apology for military sexual enslavement - despite the time lapse - would send a clear message to the international community that Japan is committed to

human rights and would aid Japan's reconciliation with its neighbours. A refusal to address past and present human rights violations will ensure Japan's isolation from states increasingly committed to advancing and promoting universal human rights.

## **A Rights-centred Approach**

The issue of military sexual slavery by the Japanese Imperial Army is a very emotionally charged one; it symbolises suffering during Japanese expansionism and occupation. Affected governments have called on Japan accurately to record its wartime and colonial past while failing to record their own recent histories in an objective manner. Home governments of surviving "comfort women" have ignored their plight for decades and, in terms of their relations with Japan, have prioritised economic and political considerations above the interests of the survivors. By highlighting the plight of the "comfort women" and calling on Japan to offer full and adequate reparations Amnesty International is not supporting any particular political viewpoint. Rather, the organisation wants the focus to be shifted to the plight of the survivors who have largely been ignored by Japan, the post-war Allies and victims' home governments. By focusing on the survivors, Amnesty International intends to send a clear message to all governments that this is a current human rights issue not one relegated to the past - it is about lives that have been destroyed as a result of sexual slavery and the continued denial of justice.

## **Research for this Report**

The true number of women and girls kept as sex slaves by the Japanese military will never be known. Information detailing the location and number of "comfort stations" was destroyed. Many women died in combat, were executed after the war or never made it home. Some women were kept in organised "comfort stations" and were subject to inhuman and degrading forms of sexual violence, others were raped as soldiers stormed their village or were taken at the whim of soldiers and kept as sex slaves. A number of women also stayed on and assimilated with the people of the country to which they were taken. As time has passed, more and more survivors have died of old age never having spoken of what they went through and never seeing any form of justice.

This report is part of the global Amnesty International campaign to Stop Violence Against Women. The campaign highlights the need for states to meet their international and national commitments to stopping violence against women. Amnesty International undertook research for this report by sending a delegation, during March 2005, to the Philippines and South Korea to meet and interview survivors. A representative of the organisation also met with a Dutch survivor currently residing in Australia. Amnesty International met with over 55 survivors of the sexual slavery system.

## **Acknowledgements**

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## **1 Military Sexual Slavery: Widespread and Systematic**

The Japanese "comfort women" system "consisted of the legalised military rape of subject women on a scale – and over a period of time – previously unknown in history".(5)

The first military "comfort station" providing on-site sex for the Japanese army was established in Shanghai around 1932.(6) Full-scale institutionalisation of such facilities for sexual slavery appears to have begun after 1937. That year the Japanese Imperial Army captured Nanjing, China. During their assault, troops committed torture including rape and killing of civilians on such a massive scale that it is referred to as the "Rape of Nanjing".(7) Mass rapes attracted international attention and outrage(8) and were also considered "a serious obstacle to maintaining order in occupied China".(9) Thereafter the army called for the widespread establishment of military "comfort stations". Then and subsequently the Japanese authorities attempted to justify the controlled system as a means to: reduce the number of rapes in areas where the army was based; prevent sexually transmitted diseases; counter the threat of espionage(10) and provide a recreation facility for soldiers – sex would improve soldier's morale and relieve them of "combat stress".(11)

The military sexual slavery system developed with Japanese colonization and military expansion across the region. So called "comfort stations" were set up across China,(12) including Taiwan, as well as Borneo, the Philippines, many of the Pacific Islands, Singapore, Malaya, Burma and Indonesia.(13) The victims were Chinese, Taiwanese, Korean, Filipina, Malaysian, Indonesian, Dutch, East Timorese and Japanese.(14) Ex-soldiers have also disclosed in memoirs and interviews that women from Viet Nam, Thailand, Burma and the USA were also forced into "prostitution".(15) By the end of World War II "comfort stations" were a widespread and regular phenomenon.(16)

Much evidence exists detailing the official sanctioning of the "comfort women" system by the Japanese government. Reports and regulations include rules on: inspection of facilities, venereal examinations, schedules for use of the "brothels" by officers or lower ranking soldiers and rates they had to pay.(17)As the UN Special Rapporteur on Violence Against Women stated in her 1996 report:

*"These regulations are some of the most incriminating of the documents to have survived the war. Not only do they reveal beyond doubt the extent to which the Japanese forces took direct responsibility for the comfort stations and were intimately connected with all aspects of their organization, but they also clearly indicate how legitimized and established an institution the stations had become." (18)*

Documents recovered disclose that military control of the "comfort women" system was organised at the highest level. Official directives expose the role of the War Ministry and military in the 'recruitment' process and detailed reports reveal that civilian recruiters were also subject to military control.(19)

## **1.1 Decades of Denial by the Government of Japan**

For decades the truth about the sexual slavery system remained hidden; much information detailing the exact number of "comfort stations" and their location, as well as other information pointing to the direct involvement of the wartime government in the establishment of the system was reportedly burnt in the immediate aftermath of the war. Prior to 1992, the Japanese government had consistently denied its involvement in the establishment and operation of comfort stations and the enslavement of women through coercion and deceit. For example, when the issue was discussed in the National Diet (Japanese Parliament) in 1991, the government of Japan denied responsibility for the "comfort women" system by attributing it to private agents. However in 1992, following the release of documentary evidence discovered by Professor Yoshimi Yoshiaki proving the role of the Japanese government and military, the government of Japan was forced to admit its direct involvement in the establishment and organisation of the system.

Reluctance by the Japanese government to reveal details of its involvement in the sexual slavery system has continued. A report issued by the government in 1993 (see section 4.4.4), admitting its involvement in the sexual slavery system, failed to provide a comprehensive account of the sexual slavery system. Today many documents detailing the true extent of the system remain undisclosed. The Japanese government has failed to conduct a prompt, impartial and effective investigation to reveal the full extent of the sexual slavery.

## **2 The "Comfort Women" System: Evidence of Sexual Slavery**

The UN Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like practices has defined sexual slavery as, "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual abuse".(20) As discussed in section 4 of this report, there is overwhelming evidence that the system of sexual slavery conducted by Japan during and before World War II violated international law prohibitions against slavery, war crimes and crimes against humanity. As highlighted in this report, these laws existed during the time the system was in operation.

Apologists for Japan's military sexual slavery system claim that the "comfort women" were voluntary prostitutes, however, testimonies and other evidence reveal that women were enslaved, repeatedly raped, tortured and ill-treated for months or years on end, exclusively for the benefit of the Japanese military.(21) Former prostitutes were recruited as "comfort women" but, "once a part of the system, they were not free to dictate the nature or terms of their service or to leave".(22) Some women were confined in one place, others, were taken to or near frontlines where they were not only repeatedly raped but also exposed to the dangers of the battlefield.(23)

### **2.1 'Recruitment': From Force to Deception**

The Japanese military preyed on women and girls who because of age, poverty, class, family status, education, nationality or ethnicity were most susceptible to being deceived and trapped into the sexual slavery system.(24) Most victims came from poor rural backgrounds. The vast majority of women enslaved were under the age of 20, some girls were as young as 12 when abducted.(25)

The Japanese military often used extreme violence to obtain women and girls. In her report, the UN Special Rapporteur on Violence Against Women refers to large-scale coercion and violence amounting to "slave raids".(26) Narcisa Claveria, 74, from the Philippines told Amnesty International that she witnessed her father being tortured and her mother being raped. She also saw her two younger siblings bayoneted to death. Her arm was broken before she was dragged to a garrison three kilometres away with her two sisters. Korean survivor, Lee Ok-sun, 79, was taken to China when she was 16 years old; unable to return home after the war, she stayed in China for 58 years. She told Amnesty International:

*"I was in the house of the family I worked for, the father sent me on an errand, on the way I was taken: there were two men, one Japanese and one Korean, I did not know who they were, they took me to a truck, they grabbed my arms and legs and just threw me in. There were five other girls in the truck. I shouted and tried to escape but they grabbed me and tied me. At the time I didn't know where I was being taken to. It was only after I arrived that I knew I was in China".*

#### **Photo caption: Lee Ok-sun, at the House of Sharing. © Paula Allen**

Deception was also commonly used to acquire women. Particularly in Korea, poor young girls were led to believe they would be earning good wages in factory work or similar employment; most were motivated by the need to support their families. Japanese agents also deceived women by offering them training in skilled professions such as nursing.(27) In Korea, women and girls were also recruited via the Women's Voluntary Service Corps established by law to draft women into the official war effort.

While some women were forced into sexual servitude near their homes many were transported long distances to wherever Japanese soldiers were based. Korean and Taiwanese survivors describe the trauma of being transported to several countries and across battle zones during their enslavement.

Sim Dal-yun, from Korea was 12 or 13 when she was sexually enslaved, she states:

*"I did not know exactly where I was taken as at the time I could not read or write. I was taken by ship, I think to Taiwan. There were many girls on the ship. I was with my elder sister, when we arrived, my sister and I were separated; I never saw her again. I was battered and hit so harshly that sometimes I fainted, once a soldier cut my thigh with a knife. My mental state was so unstable, I was like a dead body, I just lay there; soldiers would still come in and rape me. I was so young, I was in complete shock."*(28)

The Japanese military and their agents abducted women and girls, often employing extremely violent means, other women were deceived by the military into sexual servitude, many for years on end. These women, most of whom were very young were often transported across long distances and served in "comfort stations" where, as highlighted below, their movement was restricted and they were detained, often in foreign lands.

## **2.2 Detention and Control over Movement**

At the "comfort stations", the women and girls were closely monitored and movement was restricted. Many women speak of never being allowed to leave the camps, which were usually surrounded by barbed wire making escape virtually impossible.(29) Even if the women had been able to escape there was nowhere for them to go, they were in war zones, in foreign lands, unable to speak the local language and invariably had little or no money. Korean survivor, Lee Ki-sun, was 17 when she was told she was going to work in a factory but was taken to a "comfort station" in Taiwan. She told Amnesty International she could leave the boundary of the "comfort station", however, she had nowhere to go, being in a strange country unable to speak the language.(30) Chang Jeum-dol testified:

*"When I was 14, some men were recruiting workers; they said I could work in a factory and make money – my family were very poor so I had to make my own living. I was taken to Manchuria, kept there for a year and a half then transferred to Singapore. It took a month to get there. I don't remember how long I stayed there. They gave me a small room. I ran away, but soldiers and guards were everywhere, I had nowhere to run to, I got caught and was beaten a lot. Due to that incident, I cannot hear very well in my left ear. When I was first raped, I didn't know what was happening. I was too young. I cried and cried thinking about my mother. I had to serve up to ten men a day. Every week we were given a medical test. In the comfort station in Manchuria I did not get paid at all and I was not allowed out, conditions were very bad and life was unbearable. Some soldiers did not use condoms so I got pregnant, I tried to prevent it by taking herbs but it didn't work. Even during the pregnancy I was made to have sex up until the sixth month. I gave birth to a baby after eight months, but the baby was born upside down and died. I could not get proper care after the birth and lost many teeth. I got pregnant again but lost the baby".*(31)

**Photo Caption: Chang Jeom Dol (82) at home in Seoul. © Paula Allen**

## **2.3 Rape and Sexual Violence**

Survivors have testified that it was mainly young, sexually inexperienced girls that were forced into sexual slavery.(32) Lola Elizabeth, from the Philippines told Amnesty International that she was forcibly taken to a garrison when her village was raided, "I was 13 or 14 at the time. Imagine being raped at that age. I cried and cried when they held me down. I could not stand up after they had finished with me, I ached all over and I was lying in my own blood."(33)

Lola Piding told Amnesty International:

*"When night came I was forced to go into one room, there were five of us inside the room, which was dark. Soldiers entered the room. A soldier touched me and caressed me. I pushed him and*

*he fell, he then pushed me against the wall. I tried to shout and struggle but he put a cloth over my mouth and raped me. After the first soldier two more followed. I lost sense of what was happening; I was so weak. The other girls were also raped. I had not yet started menstruating at that time."*(34)

**Photo caption: Lola Piding, Manila. © Paula Allen**

Filipina survivor, Lola Pilar, 79, was raped when soldiers raided her village. Her family then fled the area. A year later she was abducted:

*"For two months I was tied to three other women [by rope around their waists]. There was a distance of 0.5 metres between us so we could do chores. We all had to go to the toilet and wash together...At night all four of us were raped. Five men a night raped me, the soldiers alternated, so there were different men each night - they were patrol forces so the troops changed all the time. If I refused they'd slap and hit me.*

Women had to endure repeated rape, some forced to 'serve' 50 soldiers a day. Women have testified that their genitals were swollen and they experienced constant bleeding. They could not sit, sleep or urinate without pain. Soldiers would wait in line and rape the women one after the other, some were gang raped. Others were kept as the personal sex slaves of individual officers. Pregnant comfort women often had to 'work' throughout their pregnancy and many women were made to provide 'services' throughout menstruation.

**Photo caption: Lola Pilar (76, left) and Lola Narcisa (74), at Lila-Filipina (a comfort women support group) office © Paula Allen**

Korean Choi Gap-soon, 86, was taken to Manchuria at the age of 14 and was enslaved for 12 years. She told Amnesty International:

*"Some soldiers were good, others were evil, some kicked and punched me in the face; I lost some teeth. I was kicked in the vagina and when I refused to serve the soldiers I was beaten by my boss. I worked from nine in the morning until four pm serving soldiers; there was always a long queue, waiting soldiers would shout 'haiyaku, haiyaku' which means 'quickly, quickly'. From five pm until eight am the second shift began, this was for high-ranking officers who paid more and were allowed to spend the night with women. I had to serve 40-50 men per day. I was in extreme pain all the time, it felt like my vagina was on fire."*(35)

As highlighted in the testimonies below women were subjected to serious assaults such as knife and bayonet stabbings, cigarette burns and beatings which often occurred during rape.

## **2.4 Inhuman Conditions in "Comfort Stations"**

Treatment of the women and girls was often appalling. The accommodation varied from place to place but almost all victims testify to harsh conditions and extreme cruelty.

Many women were not allowed to communicate with other "comfort women" or were not allowed to talk in their own languages. Many survivors state they were given Japanese names, thus losing their own identities. (36) Kim Pok-deuk, 88, told Amnesty International she was about 18 years old when she was deceived into thinking she was going to a well paid factory job but was taken to the Philippines and made a sex slave for eight years. She and at least 20 other girls were kept in a one-storey building, guarded at all times and were not allowed out. She had to speak Japanese most of the time and was also given the Japanese name 'Fumiko'. She said: "generally, I tried not to provoke any soldiers, I just did what I was told; sometimes I'd say something sweet to the soldiers in order to avoid violence."

The women and girls experienced a great deal of physical and mental violence, they were often beaten, frequently suffering injuries such as broken bones. As the UN Special Rapporteur on Violence Against Women stated in her report:

*"[I]n addition to the deep-rooted and long-lasting trauma of their sexual abuse, the harshness and brutality of their conditions of servitude are apparent. They had no personal freedom, were treated with violence and savagery by the soldiers and with indifference by the station operators and army doctors. Due to their frequent proximity to the front-line, they were exposed to attack, to bombings and to the threat of death, conditions which made the soldiers who frequented comfort stations even more demanding and aggressive". (37)*

The health of the women and girls deteriorated in the "comfort stations", many died as a result of disease, malnutrition, exhaustion and ill treatment. There was constant fear of pregnancy and disease including widespread sexually transmitted diseases (STDs). Forced, usually weekly, health checks were carried out by army doctors but these were limited to preventing the spread of STDs. The women in most cases received no treatment for the cigarette burns, bayonet stabs or other forms of torture and ill-treatment inflicted on them.(38)

The military treated the women as property to be used and disposed; as a convenience which was their right or even a necessity. Such attitudes are revealed in the memoirs of an officer:

*"During the battle, which lasted about 50 days, I did not see any women at all. All I knew that as a result of (being without access to women), men's mental condition ends up declining, and that's when I realized once again the necessity of special comfort stations. This desire is the same as hunger or the need to urinate, and soldiers merely thought of comfort stations as practically the same as latrines."(39)*

Despite the fact that most women were subjected to the worst forms of cruel inhuman and degrading treatment, ironically some survivors had compassion for the soldiers. Kim Soon-ak, was deceived into believing she was going to work in a factory but was taken to a "comfort station" in China. She said:

*"It seemed that some of the soldiers were also forced to have sex with the women, many were too young. They did what they were told by their superiors; for them it wasn't based on a desire to have sex. While I was there I just had one thought – I want to live, I have to survive, I can't die like this. So I just did what I was told".(40)*

Many women were murdered or committed suicide during their enslavement. Some were released before the war ended, usually due to ill health. At the end of the war some "comfort women" were summarily killed, some died in combat at the frontlines, while others were simply left stranded. Survivors faced severe hardship whilst attempting to make their way home, some died in transit. There are accounts of women who assimilated into the countries they were taken to.(41) Some survivors returned to their home countries but rarely to their hometowns. On return, the women often kept silent about what happened to them, for many "rape and brutalisation were but a prelude to a life of suffering. The view that a raped woman is a defiled woman dies hard everywhere in Asia"(42) and resonates in other parts of the world too. The location of shame upon the violated woman is a thread that links the experiences of "comfort women" to other victims of sexual abuse in war, peace, at home and elsewhere across the world.

## **2.5 The Lasting Impact of Sexual Slavery on Survivors**

The impact and trauma of rape extend far beyond the attack itself. Women survivors face emotional torment, psychological damage, physical injuries, disease, social ostracism and many other consequences that can devastate their lives. In many societies, due to cultural injustices and patriarchal norms, loss of virginity and inability to bear children make women unmarriageable; women who have been raped are not perceived as 'virtuous'; once lost, this perceived virtue can never be recovered.(43)

Testimonies of the former "comfort women" reveal that the trauma stays with them all their lives. Their greatest pain is that of lost opportunities: they were unable to live like other, 'normal' women.

Many survivors, now in their late 70s or 80s, remained isolated and reclusive and did not speak of their ordeal for over 50 years. Most lived and continue to live in poverty.

The impact of sexual enslavement was devastating for many women, particularly when they faced rejection by their family, friends and community.(44) Nearly all Korean survivors Amnesty International met had been unable to have children due to internal injuries caused by mass rape, or contracting STDs which went untreated. The violations of sexual and reproductive rights inherent in the system of sexual slavery endured by the comfort women were compounded on an ongoing basis by these long lasting impacts on their sexual and reproductive lives.

The Korean women interviewed led reclusive lives and many spoke of their fear and hatred of men. Mun Pil-ki, 80, who lives in the House of Sharing(45) said she had been repeatedly injected with drugs to prevent STDs and was unable to have children: "men are my enemy; I preferred adoption to having my own child". Lee Young-soo, 78, never married: "I was too scared, I wasn't pure... I don't envy people who are living in a happy marriage. I feel free alone". Lee Ki-sun, 83, was kept in a "comfort station" for seven years where she was raped every day. She was unable to have children and never married. She told Amnesty International:

*"Sometimes I want to be reborn, reincarnated as a woman and have a baby and a happy life. Whenever I see other people visited by their grandchildren, I wish I had some, I feel envious of them...I feel lonely".*

**Photo caption: Lee Ki-sun in Tongyoung, South Korea ©Paula Allen**

Survivors have also spoken of finding sex repugnant, some have been unable to enter into relationships or have had abusive relationships continuing the pattern of violence. Lee Doo-soon, 84, spent six years in a "comfort station" in China, she is one of few Korean survivors able to have children and said: "relationships I've had didn't involve love or feelings I was just abused by men. I couldn't love any man. I could never have married; I couldn't even think such thoughts".

Kang Soon-ae, 77, was abducted by Japanese military police when she was 13 years old. Her ordeal left her deeply scarred:

*"The soldiers went mad; they cut the breasts off the girls and stuck them to the wall of a cave. They took my clothes off – I was so small, they were so big, they raped me easily. I was bleeding, I was only 14; I was seriously hurt. They all raped me. I can't describe what happened; I don't know when these feelings will pass. I can't feel any pain now - my flesh is all dead. My life was ruined, totally ruined. I couldn't even control my own body. I was so ashamed I could not depend on anybody, so I lived alone in life. In 1961, I tried to kill myself, I jumped in the Mapo River but a man saved my life, he was fishing at the time..., I thought about killing myself often...I feel tired, really tired; nobody knows my pain. I can smell the men, I hate men. The Japanese government should see me, realize what they did. They have to admit what they create".*

**Photo caption: Kang Soon-Ae (77) in her home, Seoul. © Paula Allen.**

All survivors Amnesty International met suffered a misplaced sense of shame. Sim Dal-yun, 78, had returned to the South Korean countryside with her younger sister. For nearly 30 years she would not face other people: "I was not like a normal person, I just hid myself, I was even scared to register as a victim, I thought I'd be taken away. But I'm not afraid anymore".(46) Filipina survivor, Lola Belan did not leave a room in a relative's house for five years: "All I did was cry...My cousins slowly helped me recover. I was ashamed of what happened, I was scared, if people were laughing I thought they were laughing at me."(47) For Lola Piding:

*"My thoughts were very painful, I could not express what happened to me, I'd been a virgin...It took me three years to consent to sleep with my husband, I buried everything and tried to forget. When I saw men in uniform I'd panic and get scared. When I finally spoke out neighbours called me 'japayuki'.(48) I explained that I am not a japayuki and that I want justice".*

Similarly, Lola Ammonita from the Philippines, said that "people did stop calling me japayuki but it took two years, when I heard people say the term it was so painful, I had arguments, I said...I did not go to Japan the Japanese came here and did me harm".

Most survivors told Amnesty International they had felt too ashamed to speak about their experiences even to their own families. Jan Ruff O'Herne, a Dutch survivor, was born and raised in what was then the Dutch Indies (now Indonesia) and was 19 years old when the Japanese military invaded and all Dutch people were taken to prison camps. When she had been in the camp for two years she was forcibly taken to a large house and was told she was there for the sexual pleasure of the Japanese military.

She said:

*"I only told my mother that story once and I could never talk about it again, that was the problem, we could never talk about it, it was a secret within the family. When the war was over we had these women, these so called "comfort women", these abused young women that had been through the most horrific wartime experience and we had no counselling, we were too ashamed to talk about it anyway. We just had to get on with our lives as if nothing had happened, that was really hard because for us the war never ended because the shame continued, we were always afraid someone might find out, we carried this horrific shame. I really couldn't do anything about it, you carry all the shame, you feel dirty, you feel sorry, you feel different, you feel unworthy, they took away my youth, my possessions, my dignity. It is so amazing that after the war, men came back with all these medals on their chest and all women came back with were these scars"...(49)*

**Photo caption: Jan Ruff O'Hearne at her home in Adelaide, Australia © Kevin deLacy**

A number of survivors were unable to return home for many years. Amnesty International met four Korean survivors who had returned to Korea in recent years, having been abandoned in China after the war. Following the Korean War and the emergence of North and South Korea the Chinese authorities automatically recorded the citizenship of Ha Sang-sook, 78, and Baek Nup Dae-Gil, 83, as North Korean, making it very difficult for them to return to South Korea. They now live in a small apartment in Seoul, Baek halmoni (grandmother) has forgotten how to speak Korean and relies on Ha Sang-sook to translate; she rarely talks and leads a very lonely existence. There are reportedly ten more South Korean survivors still in China holding either Chinese or North Korean citizenship.(50)

Lee Ok-sun, 79, was in China for 58 years before she was able to return to Korea. She told Amnesty International:

*"I couldn't get pregnant, I couldn't even think about having a baby, I got diseases which impacted my ability to have children..."I'm Korean, my family are here, my family thought I was dead so they registered me as dead. I looked for my family as I needed them to come to Korea. My sisters refuse to see me, my brothers and I sometimes meet. It's up to them (her sisters), even my family don't like the fact that I was in a comfort station. I wasn't forgiven. It wasn't my fault, I had no choice, I was forced, but people are like that, I can't do anything about it...I had hoped for over 50 years to become a Christian – but I couldn't go to church as I'd been a comfort woman, I felt so guilty. It took 50 years. In 1994, at Easter for the first time I went to Church and got baptised"...(51)*

### **3 Survivors Break their Silence**

As highlighted in section 1.1 the Japanese government for decades concealed evidence of its involvement in the setting up of the "comfort women" system and repeatedly denied government involvement. In addition to this, it is also clear that the Allied powers were aware of the existence of the "comfort women" system. Allies interviewed a number of surviving "comfort women" immediately after World War II.(52) However, despite knowledge by the Allied powers of the enslavement programme the International Military Tribunal for the Far East, set up by the Allies to prosecute Japanese perpetrators of war crimes, failed to address this issue.

Diaries and memoirs of former Japanese soldiers published after World War II mentioned "comfort" facilities in places occupied by Japan but official war histories did not. The issue only started drawing public attention following publication of the first books about "comfort women" in the mid 1970s.(53) In 1982 eight Japanese intellectuals issued a public statement calling on the government to recognize past injustices and apologize to Korean "comfort women".(54) In 1984 a major Japanese newspaper addressed the issue for the first time.(55) In 1990, Professor Yun Chung-ok published the findings from her ten years of research in a Korean newspaper.

Increased empowerment of women led to women's organisations particularly in Japan and in countries that were affected by the sexual slavery system uniting to demand the Japanese government acknowledge the crime of military sexual slavery. Prominent female politicians in Japan also began to raise the issue in the Diet. In a Diet session in June 1991, the Japanese government denied any involvement by the wartime government. This enraged survivors, prompting them to break nearly 50 years of silence over the atrocities committed against them.

### 3.1 The Survivors as Women's Human Rights Defenders

In Seoul in August 1991 Kim Hak-soon became the first survivor to speak publicly of her ordeal. Aged 74, her decision was based on having no living relatives to be ashamed of her past. She in turn inspired many other women to break their silence, including Lola Rosa Hensen who spoke on television and radio in the Philippines in 1992 urging survivors not to feel ashamed but come forward and demand justice. These remarkable women gave strength and courage to many others, becoming champions of justice for all victims of Japanese military sexual slavery.

*"We are very thankful to Lola Rosa Henson, if she hadn't spoken out other women would not have come forward. When I met other women we helped each other as everyone experienced the same thing. We were united in one cause – in seeking justice. We demonstrate and fight for justice so that what happened to us will not be experienced by other women. We do not want war, if there is war women are victims of violence". (56)*

Many of the surviving "comfort women" now organize regular demonstrations and participate tirelessly in local, national and international conferences, speaking about violence against women. They have addressed UN bodies and pursued litigation in Japan and the USA. Korean Lee Ok-sun, who has testified across the world, says "my story should be told, I don't want to talk about it because it is so painful, but we have to do it to protect other women from the same thing happening again. The truth has to be told".

One demonstration has been held every Wednesday since 8 January 1992 outside the Japanese embassy in Seoul, South Korea. Survivors and their supporters vow to continue the demonstration until the issue of sexual slavery is finally settled by the government of Japan. Chang Jeum-dol told Amnesty International that she had recently moved house to central Seoul to attend every week: "I will live up to 100 because I want an apology and reparation, it is not a matter of money, I need to talk to the Japanese government face to face; they should see me and listen to what I have to say". Lee Yong-soo aged 78, who regularly travels three hours to attend the demonstration said:

*"More and more of the grandmothers are passing away, I'm sad about that. I have a responsibility to speak out, if I do not no one will know. I'm an activist, if I were younger I'd do anything... Korean and Japanese people have to be friends - we are targeting the Japanese government not Japanese people."*

**Photo caption: Lee Young-Soo at the "Wednesday Demo" © Paula Allen**

The "comfort women" and their supporters have also filed ten complaints in Japanese courts, six of which have been dismissed by the Supreme Court, exhausting all domestic remedies. They

have also attempted to file cases in the USA. Korean survivors filed a class action suit in Japan in 1991; Filipina survivors in 1993 and Dutch survivors in 1995. Kim Hak-soon was a plaintiff in the 1991 Korean lawsuit, which was rejected by Japan's Supreme Court in November 2004. Lola Rosa Hensen, from the Philippines, was a plaintiff in the 1993 suit. Both women died in 1997 while the Japanese courts were still considering the cases.

As a response to the ongoing cycle of impunity for wartime sexual violence, lack of redress for survivors of Japan's sexual slavery system and as a way to honour all survivors and challenge the international community to address the demands for justice by the "comfort women", women's rights activists came together in 2000, holding The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery. A non-judicial tribunal, it made recommendations based on legal findings and gave survivors the opportunity to testify in a formal environment and have their experiences publicly acknowledged. Such acknowledgement has been recognised as essential to redressing feelings of shame and guilt.(57) Conversely, as highlighted in this report, the response by the government of Japan, faced with mounting activism, has largely ignored survivors' needs.

As well as demanding justice for the crimes perpetrated against them, many survivors now campaign to end violence against women across the world. Lola Julia Porras, told Amnesty International "Women are being raped now; they are being killed. For me justice is that women have rights, the dignity of women should be upheld". The women also seek to give strength to survivors of similar experiences across the world. Lola Ammonita says "I spoke in the former Yugoslavia to women who themselves had been raped in the conflict, after I spoke they came up to me, they were crying, they said they themselves were not ready to speak about what happened to them but that I had given them courage and hope".(58)

#### **4 The "Comfort Women" System as a Crime under International Law and the Failure to Provide Full Reparations to Survivors**

##### **4.1 Japan's Sexual Slavery System as Crimes under International Law**

The Japanese government has maintained on many occasions that the system of sexual slavery it conducted from 1932 to 1945 did not amount to violations of international law at the time it was in operation.(59) It argues that such acts only became crimes under international law after the war. There is, however, compelling evidence that the system violated the international prohibition on slavery and amounted to war crimes and crimes against humanity.

###### **4.1.1 Slavery**

By 1932, Japan had ratified treaties prohibiting forced labour and sex trafficking, including:

1. *The International Agreement for the Suppression of the White Slave Traffic 1904* condemned forced prostitution and provided for coordination of information on the procurement of women and girls for prostitution and immoral purposes by abuse or compulsion.(60)
2. *The International Convention for the Suppression of the White Slave Traffic of 1910 as reaffirmed in 1921*, expanded on the above Agreement by providing for criminal punishment for offenders.(61)
3. *The International Convention for the Suppression of the Traffic in Women and Children (1921)*, created duties on states to take necessary steps to prevent trafficking.(62)

Japan has asserted that article 14 (3) of the *The International Convention for the Suppression of the Traffic in Women and Children (1921)* exempted it from prohibition of trafficking of women from its colonized nations (for example, Korea). (63) This interpretation has been strongly contested as "inconsistent with the fundamental purpose of that article, which was to allow countries to eradicate such traffic gradually, not to foster the future creation of traffic in women. Indeed, Japan's reading of article 14 to create colonial "safe harbours" for the sexual slave trade is a perverse one that altogether violates the spirit of the Suppression Convention."(64)

The debate on this point is largely academic as there is overwhelming evidence that slavery was prohibited by customary international law both in peacetime and during international armed conflict by 1932 when the first "comfort station" was established. At least 20 international agreements suppressing the slave trade, slavery or slavery-related practices had been concluded and the vast majority of states had prohibited slavery under national law, including Japan. Convention (IV) respecting the Laws and Customs of War on Land and its annex(65) (hereinafter the Hague Regulations), which governs occupied territory and was considered customary international law by 1939,(66) protects civilians from enslavement and forced labour. The Charters of the Tokyo and Nuremberg Tribunals (as well as Council Control Law No. 10) include "ill-treatment or deportation to slave labour" as war crimes and both Tribunals convicted individuals of these crimes (although not in relation to sexual slavery of "comfort women"). The prohibition of sexual slavery under customary international law applies regardless of whether or not the crime was committed in a then Japanese colony.

It has also been argued that the prohibition was not only part of conventional and customary international law at the time the women were subjected to sexual slavery, but also *jus cogens* (a peremptory norm of general international law that cannot be modified or revoked by treaty) (67) and an obligation *erga omnes* (owed to the entire international community).(68)

The Japanese government has additionally contended that the "comfort women" system did not fit within the definition of slavery at that time: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."(69) However, as presented above in section 2, the testimony of survivors refutes this position. Furthermore, the report of the Special Rapporteur on Contemporary Forms of Slavery convincingly demonstrates that this position has no basis whatsoever:

*"According to the Japanese Government's own admissions...the women were "deprived of their freedom" and "recruited against their own will". Moreover, some women were purchased and therefore easily fit the classic mould of slavery. The exchange of money, however, is not the only or even the most significant indicia of slavery. To the extent that any or all of the "comfort women" experienced a loss of autonomy, thereby rendering their treatment by the Japanese military as anything akin to the treatment of chattel, criminal liability for enslavement would clearly attach for both the perpetrators of the criminal acts described and their superior officers. Once again, in the particular case of "comfort women", the Japanese Government's own studies have highlighted the extent to which the women were deprived of personal freedom, moved along with military troops and equipment into and out of war zones, denied control over their sexual autonomy and subjected to hideous regulation on a chattel-like basis of their reproductive health in an effort to protect the military troops from sexually transmitted diseases."(70)*

In 2000, the International Labour Organization Committee of Experts concluded that "comfort women" were forced labourers and that there should be appropriate compensation (although it had no power to order relief).(71)

Finally, in a case brought by Korean victims of sexual slavery, a Japanese court has also ruled that the system of sexual slavery violated the, *The International Convention for the Suppression of the Traffic in Women and Children (1921)* and the *ILO Convention Concerning Forced Labour (ILO Convention No.29)*.(72)

#### **4.1.2 Rape as War Crimes**

Japan has asserted that rape was not a war crime until 1949 when it was incorporated into the Fourth Geneva Convention. There is, however, a wealth of evidence that the crime was part of customary international law for the duration of the system of sexual slavery operated by Japan.

Rape during war time was prohibited in armed conflict in national law as early as the 17th century in the Articles of War decreed in 1621 by King Gustavus II Adolphus of Sweden. The 1863 Lieber Code – the first attempt to codify rules of war - provides for the prosecution of rape.(73) The Declaration of Brussels of 1874 – which further developed the laws of war, provides: "The honour and rights of the family... should be respected."(74) Although phrased in now outdated concepts of violence against women as an offence against family honour rather than women themselves, the phrase is widely accepted to encompass the right of women to be protected from rape, other forms of torture and forced prostitution.(75) Article 46 of The Hague Regulations (which Japan had ratified on 13 December 1911) reiterated that "family honour and rights...must be respected". Acts of sexual slavery would also almost certainly be covered by the Martens Clause in the Hague Regulations.(76) The Nuremburg Tribunal held that the Hague Regulations were accepted as part of customary international law by 1939.(77)

The 1919 Versailles Peace Commission concluded that Germany was responsible for numerous war crimes in World War I including rape in accordance with "explicit regulations [of] established custom [and the] dictates of humanity".(78) The Convention relative to the Treatment of Prisoners of War of 1929 provided "[p]risoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex." Japan signed the Convention on 27 July 1929 and was therefore under an obligation not to defeat its object and purpose.

Article 27 of the Fourth Geneva Convention, which incorporates the Hague Regulations earlier "family honour" language, did not "create" the war crime of rape in the manner that Japan has claimed it be interpreted. On the contrary, this provision was included as a declaration of an existing principle of customary international law.(79) Crimes of rape during World War II were prosecuted as war crimes in a number of cases, including at the International Military Tribunal for the Far East.(80)

Finally, in a case brought by Chinese victims of sexual slavery, the Tokyo District Court ruled that the sexual slavery system violated Article 46 of the Hague Regulations.(81)

#### **4.1.3 Rape and Sexual Slavery as Crimes against Humanity**

Rape and the abduction of girls and women for the purpose of sexual slavery were both widely recognized as violations of the laws of humanity at the time of World War I.(82)

Both the Charters of the Nuremburg and Tokyo Tribunals defined enslavement, deportation to slave labour and other inhumane acts (which would include rape) as crimes against humanity.(83) Council Control Law No. 10 lists some of the inhumane acts: "crimes against humanity [are] atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape or other inhumane acts committed against any civilian population."(84)

There is overwhelming evidence that the system of sexual slavery conducted by Japan during World War II violated international law, including, the prohibitions against slavery, war crimes and crimes against humanity. These laws existed at the time the system was in operation. Accordingly the crimes give rise to obligations for Japan to ensure that those responsible are brought to justice and to provide full reparations to victims

In 2001, the Women's International Tribunal on Japanese Military Sexual Slavery, a non-judicial body established by non-governmental organizations working to achieve justice for comfort women, expressed the following view: "The evidence showed that the comfort stations had been systematically instituted and operated as a matter of military policy, that they constituted crimes against humanity under the law then applicable."(85)

#### **4.1.4 Recent Development in International Law – Rape as Torture**

Since 1993 rape has also been found by the International Criminal Tribunals for Rwanda and the former Yugoslavia in certain circumstances to amount to torture.(86) International law has recognised the seriousness of these crimes, for example, torture is expressly listed as a crime against humanity in the Rome Statute and since the Second World War has been recognized as a peremptory norm of international law.

## 4.2 The Right to Reparations in International Law

When a state commits a serious violation of international law against its nationals or the nationals of other states, including, by subjecting an estimated 200,000 women to a system of sexual slavery, it has an obvious *moral* obligation to provide reparations to survivors to address the crimes in order to help them rebuild their lives. As discussed in section 4.4 Japan has accepted that it has a moral responsibility for the sexual slavery system it conducted in World War II and has taken limited steps to address it.

The issue of reparations, is, however, not simply a matter of moral obligations. Under international law, a state that commits serious crimes including war crimes and crimes against humanity of rape and sexual slavery, has a *legal* obligation to provide full reparations to:

**the state/s of survivors** (under the law of state responsibility) so that they can channel them to the survivors or programs for the benefit of survivors.  
**survivors directly** (under international human rights law and international humanitarian law).

However, the government of Japan has refused to take such measures, claiming that no such legal obligation exists in this instance. As demonstrated below in section 5 and 6, that claim has no basis whatsoever.

**Photo caption: Demonstration with Malaya Lolas (Freedom Grandmas) and Amnesty International members in front of the Japanese embassy in Manila on International Women's Day 2005. © Paula Allen**

### 4.2.1 Reparations for Sexual Slavery

In the context of violations of international human rights law and international humanitarian law, which prohibit sexual slavery, reparations involve measures aimed at repairing the harm and damage suffered by a victim or survivor and their families. International courts have confirmed that the aim must be to take measures to wipe out all the consequences of the violation.(87) Of course, for serious violations such as sexual slavery, it is impossible fully to achieve this goal as the mental and physical effects of the horrific crimes will remain with survivors for the rest of their lives.(88) Nevertheless this goal requires that the most comprehensive measures are taken to address survivors' suffering and help them rebuild their lives.

Reparations can also serve to punish and deter, as they clearly extend beyond restitution and compensation. Developing international norms on reparations have also seen the concept broaden to include important symbolic and future-oriented measures, very much linked to restorative justice.(89) Reparations include the following full range of measures:

**Restitution:** measures aimed at restoring the victim to the situation prior to the violation. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

**Compensation:** monetary measures to address any economically assessable damage resulting from the violations, such as: physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including

loss of earning potential; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

**Rehabilitation** includes medical and psychological care, legal and social services.

**Satisfaction** is a broad category that includes verification of the facts, full and public disclosure of the truth, public apology including acknowledgement of the facts and acceptance of responsibility; bringing to justice persons responsible for the violation; commemorations and tributes to the victims and the inclusion of accurate documentation of the human rights violations in educational materials and historical records.

**Guarantees of non-repetition** is also a broad category of measures to prevent the recurrence of violations. It is forward looking and includes measures such as, law reform, ratification of human rights or international humanitarian law treaties, structural reforms relating to independence of the judiciary, human rights training for law enforcement officials and the protection of human rights defenders. (90)

With such a broad range of reparations not all measures will be appropriate to, or needed by, all survivors. Decisions as to what is required, when and by whom would be at least partly informed by a victim-focussed approach, which would include close consultation to assess needs and expectations.

Reparations are one of several elements of transitional justice which include prosecutions, truth-telling and institutional reform. None of these elements should be considered in isolation. A reparations programme devoid of links to other aspects of justice is likely to fail. Victims are likely to perceive monetary compensation as insincere or even blood money if there are no parallel efforts to document the truth and record it in histories, prosecute perpetrators, and commemorate victims in symbolic memorials.

A responsible state which accepts its legal obligations can provide reparations in a number of ways, including: through the government of the affected state ensuring that victims and survivors can seek reparations before its national courts without obstacles; through establishing administrative mechanisms to distribute relevant monetary and non-monetary reparation (for example, a letter of apology) directly to victims and survivors and to fund projects for other forms of reparations (for example, commemoration, truth commissions or rehabilitation projects). Government representatives can also take specific measures such as full and public apology. The material and symbolic acts of reparation are closely interrelated; neither should be neglected.

If, however, like Japan, a responsible state refuses to accept its legal responsibility under international law, there are two main avenues for enforcing the right to reparations.

**Where violations are committed against the nationals of another state**, the government of the affected state can seek reparations on behalf of its nationals from the government of the responsible state through diplomatic channels or, if that is unsuccessful, subject to jurisdiction, through the International Court of Justice or through other mechanisms established by the international community.(91)

**Victims and survivors can seek reparations directly** against their own government (if it has committed the violations) or against another responsible government through the national courts of the responsible state, or, if there is adequate legislation, through the national courts of the affected state or other states.

Both avenues are independent of each other and if an award is made by the responsible state to the affected state, it will not preclude claims by individual victims seeking to ensure that full reparations are provided.

### 4.3 Reparations Sought by Survivors of Sexual Slavery

Former "comfort women" have consistently called for a number of measures to address both the system of sexual slavery they were subjected to and the denial of justice and reparations for over 60 years. They have also called for full public disclosure of the facts including in history textbooks.

In the absence of any serious attempt by the government of Japan to establish the truth of what occurred before and during the Second World War, the Women's International War-Crimes Tribunal on Japan's Military Sexual Slavery in Tokyo in December 2000 attempted to provide an extensive report on the system of sexual slavery used by Japan during this period. This people's tribunal was organized by Asian women and human rights organizations to hear cases of sexual slavery and other crimes involving sexual violence. The government of Japan declined to participate. It drew on over a decade of sustained activism by groups based in affected countries(92) as well as international initiatives, including at the UN. Based on detailed testimonies and consultation with survivors, the Tribunal recommended:

*"The Government of Japan must provide each of the following remedial measures:*

1. *Acknowledge fully its responsibility and liability for the establishment of the "comfort system" and that this system was in violation of international law.*
2. *Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.*
3. *Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.*
4. *Establish a mechanism for the thorough investigation into the system of military sexual slavery, for public access and historical preservation of the materials.*
5. *Consider, in consultation with the survivors, the establishment of a Truth and Reconciliation Commission that will create a historical record of the gender based crimes committed during the war, transition, and occupation.*
6. *Recognize and honour the victims and survivors through the creation of memorials, a museum and a library dedicated to their memory and the promise of "never again".*
7. *Sponsor both formal and informal educational initiatives, including meaningful inclusion in textbooks at all levels and support for scholars and writers, to ensure the education of the population and, particularly, the youth and future generations concerning the violations committed and the harm suffered.*
8. *Support training in the relation between the military slave system and gender inequality and the prerequisites for realizing gender equality and respect for the equality of all the peoples of the region.*
9. *Repatriate survivors who wish to be repatriated.*
10. *Disclose all documents or other material in its possession with regard to the "comfort stations".*
11. *Identify and punish principal perpetrators involved in the establishment and recruitment of the "comfort stations".*
12. *Locate and return the remains of the deceased upon the request of family members or close associates."*

The Japanese government has failed to take meaningful measures to implement most of these recommendations, on the basis that it has no legal obligation to do so. Some limited measures called "gestures of atonement" or "humanitarian" measures that it has taken have been useful but inadequate (see 4.4 below).

Amnesty International supports these recommendations of the Women's International Tribunal which, if fully implemented in practice, would provide comprehensive reparations to survivors. In addition, the organization recommends that as an important guarantee of non-repetition, Japan should as soon as possible ratify the Rome Statute of the International Criminal Court which

provides that the new International Criminal Court can prosecute any future crimes of sexual slavery and other forms of sexual violence.

**Photo caption: Demonstration with Malaya Lolas (Freedom Grandmas) and Amnesty International members in front of the Japanese embassy in Manila on International Women's Day 2005. © Paula Allen**

#### **4.4 Measures Taken by the Japanese Government**

Since 1992, the Japanese government has accepted that it has a moral responsibility towards the survivors of the "comfort women" system it conducted in World War II and has taken limited steps to addressing it through: some research and public reporting, "gestures of atonement" such as official apologies, and "humanitarian" initiatives. Amnesty International welcomes these measures.

Much more can and must be done, however, to address the needs of the survivors. Actions to date in no way meet the criteria for full reparations outlined above. Many survivors see them as further attempts by the Japanese government to evade its legal responsibility to provide full reparation that arises from the sexual slavery system operated by the Japanese military in violation of international law. For the survivors whose public testimony was instrumental in forcing the Japanese government to stop denying responsibility, the inadequacy of reparations that have followed has caused further distress and suffering.

##### **4.4.1 What Constitutes an Appropriate Apology?**

Before examining apologies made by Japanese officials it is useful to examine the concept of apology itself, particularly in the Japanese context. The goal of an apology is to restore dignity and thereby facilitate healing and potential reconciliation. For example, a "basic assumption in Japanese society is that apology is an integral part of every resolution of conflict".(93) For a victim, an apology is often considered to be the key that will unlock the door to healing.(94) An apology that the recipient finds insincere can be a huge blow to an emotionally scarred survivor and re-open wounds. Basic elements that go into making a successful apology are:

- acknowledgement of the wrong done - naming the offence and describing the impact
- accepting responsibility for the wrong
- expressing sincere regret and profound remorse
- assurance or promise that the wrong done will not recur
- making reparation via concrete measures.(95)

"Full acceptance of responsibility by the wrongdoer is the hallmark of an apology."(96) For example, the Japanese "view an apology without an acceptance of fault as being insincere".(97) Vague generalities or "dancing around the truth"(98) may lead the recipient to conclude that those apologizing do not understand or accept the immorality of the actions.(99) "To apologise is to declare voluntarily that one has no excuse, defense, justification, or explanation for an action (or inaction)."(100)

##### **4.4.2 Japanese Government Apologies to the "Comfort Women"**

The first official apology to "comfort women" was made in January 1992, a few days after Japanese historian Yoshimi revealed irrefutable proof of official involvement in the operation of wartime "comfort stations". Prime Minister Miyazawa apologized to the Korean people during a state visit to South Korea.

Individual members of different governments of Japan, including Prime Ministers, have since issued apologies for the "comfort women" system.(101) Japanese commentators have pointed to the number of apologies made for conduct during World War II and talk of "apology fatigue".(102) However many of these apologies have been "damage limitation" triggered by inflammatory statements by Japanese officials. Closer examination of their substance reveals their inadequacy.

There has also been uncertainty over whether such statements are made in a personal or official capacity. Survivors still call for an apology from the Japanese National Assembly – the Diet, as the highest organ of state power, representing the Japanese people, and the emperor.

Many apologies for crimes committed during World War II have generally expressed remorse for the past, not mentioning the specific violation against the "comfort women".(103) Where "comfort women" have been mentioned in apologies the focus has been on damage to the 'honour' and 'dignity' of the women. In a letter of apology to the former "comfort women" in 2001, on the occasion of the Asian Women Fund offering "atonement from the Japanese people" Prime Minister Koizumi, followed a formula used by every Prime Minister since 1995, stating:

*"The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women. As Prime Minister of Japan, I thus extend anew my most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women. We must not evade the weight of the past, nor should we evade our responsibilities for the future. I believe that our country, painfully aware of its moral responsibilities, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations. Furthermore Japan also should take an active part in dealing with violence and other forms of injustice to the honor and dignity of women.(104) Finally, I pray from the bottom of my heart that each of you will find peace for the rest of your lives."(105)*

Such apologies, whilst a welcome expression of remorse, do not articulate the precise nature of harms done, clearly sidestepping issues of legal obligations arising from violations of international law. Reference only to "military involvement" can be viewed as an attempt to distance the government of Japan from the wrong done. As such these apologies continue to be perceived by some survivors as insincere, at best expressions of general remorse(106) that do not provide the assurances of 'never again' that survivors have called for. For example, Filipina survivor, Lola Ammonita told Amnesty International "they should admit that these atrocities happened and we want a promise that they will never be involved in the abuse of women".(107)

The apologies issued so far have also consistently been undermined by counter claims, including outright denial that sexual slavery was practiced, contradictory statements and provocative actions by government officials including senior cabinet members. Survivors and representatives of affected states view such apologies as meaningless whilst senior Japanese officials continue to visit the Yasukuni Shrine(108) or officially approve history textbooks that downplay or are silent on the sexual slavery and other atrocities committed by the Japanese military during World War II. Survivors call on the Japanese government to issue a full and frank apology from the highest level that backs up statements of remorse with actual practice.

#### **4.4.3 Japan's Answer to Compensation – the Asian Women's Fund**

In 1995, after much criticism and pressure, the Japanese government established the Asian Women's Fund (AWF) "in order to extend atonement from Japanese people to the former 'wartime comfort women'".(109) The government maintained the AWF was a predominantly private-sector humanitarian response. Survivors view this as not amounting to official recognition of the government's legal obligation to provide full reparations, including compensation.

Echoing the assessment of many survivors, the Special Rapporteur on violence against women stated that the AWF is a: "clear statement denying any legal responsibility" and that "although the Special Rapporteur welcomes the initiative from a moral perspective, it must be understood that it does not vindicate the legal claims of "comfort women" under public international law."(110)

The AWF, which will be dissolved in March 2007, distributed "atonement money", (111) financed by donations from the Japanese public, to individual former "comfort women" together with a letter of apology from the Prime Minister. Applications were sought from women in South Korea, Philippines and Taiwan from 1996 to 2002 and 285 women came forward.(112) The AWF also

coordinated medical and welfare support projects financed by disbursements from the Japanese government including a project proposed by the Indonesian government on social welfare service provision for the elderly. The AWF also gave medical and welfare assistance to 79 Dutch women who had been forced into sexual slavery by Japanese troops in Indonesia.(113)

Many women in the Philippines interviewed by Amnesty International who accepted money from the Fund did so due to severe financial hardship. They accepted it on the basis that it would not affect their right to claim compensation directly from the government of Japan. Some also returned the letter of apology to the Prime Minister. A number of survivors in the Philippines missed the deadline for applications, so have received no compensation. For those that did receive money, the funds did not last long and most survivors were living in poverty. Some survivors questioned the application and identification procedure employed by the AWF, angry that other people had been able to take money from the AWF on their behalf.

Amnesty International acknowledges the positive contribution a fund such as the AWF can make to assisting survivors. However, for a victim-centered approach a range of reparations may be needed including symbolic reparations (such as erecting memorials) and legal and administrative interventions (such as disclosing all information held) linking reparation and truth recovery. (114) Survivors want compensation but many want it from the government of Japan, for them this establishes a clear acceptance of responsibility. This in turn may prove more effective in preventing recurrence of the crime of sexual slavery, impunity for perpetrators and denial of reparations for victims. For survivors the issue is more than just money, as one survivor told Amnesty International, "I wouldn't exchange my dignity for all the money in the world."(115)

#### **4.4.4 Fact Finding and Truth Telling**

The Japanese government initiated a fact-finding exercise in December 1991; the results were published in July 1992 in a report entitled *Results of Investigation into the Question of 'Military Comfort Women' Originating from the Korean Peninsula*, initially involving investigation of Japanese official records mainly from the Self-Defence Agency and the Foreign Ministry. This report was heavily criticised for its limited scope(116) and scant attention paid to existing testimonies and academic research findings. A supplementary investigation was initiated including hearings of victims and former officials in Korea and some examination of evidence collected by regional NGOs. These NGOs, who by then had considerable experience in collecting evidence, characterised the second report issued in August 1993 as cleverly skirting accusations of war crimes and the associated legal responsibilities. Other affected governments have since also conducted or funded investigations and research but this is far outweighed by the efforts of numerous NGOs across the Asia region and internationally.(117) In 1996 the Chief Cabinet Secretary stressed "As actions have been brought to court in Japan and interests have been shown in this issue outside Japan, the Government of Japan shall continue to pay full attention to this matter, including private researches related thereto".(118)

There are, however, major gaps in documentation(119) and much of the official records in affected states, particularly detailing treaty negotiation, remain classified. Letters relevant to Dutch negotiations around the San Francisco Peace Treaty were de-classified in 2000; survivors in Korea in 2005 secured the release of significant documentation of reparation negotiations between Korea and Japan relevant to their ongoing litigation. Elsewhere, however, survivors continue to be denied access to these official records, which impacts heavily on their ability to secure remedy particularly where statutes of limitation operate. In the US, the Japanese Imperial Government Disclosure Act was enacted in December 2000 but "the State Department has refused to comply with the American government's own instructions" to declassify American archives on the San Francisco Peace Treaty. (120)

For survivors the issue of the 'truth' is linked to justice and an apology is "empty" without recognition:

*"We want our experience to be written in history so that the next generation and people in other countries will know what happened to us and for us to be given justice. The Japanese*

*government has to admit to what the Japanese soldiers did, we need an apology and compensation from the Japanese government".(121)*

Amnesty International believes that truth is integral to justice. As highlighted in a report addressing the impunity of perpetrators of human rights, UN Special Rapporteur Louis Joinet claimed that the right to know:

*"[I]s not only the right of an individual victim...[it is] a collective right, drawing upon history to prevent violations from recurring in future. Its corollary is a 'duty to remember', which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism".(122)*

The government of Japan should respect the right to know, by doing so it honours the memory of all victims. Moreover, the "[f]ull and effective exercise of the right to the truth is essential to avoid any recurrence of violations in the future".(123)

This applies equally to governments of all the affected states Amnesty International urges governments to declassify wartime documents, effectively, independently and impartially investigate and publish findings promptly.

The Japanese Prime Minister's apology stresses the importance of accurately conveying history to future generations. In 1996 the Japanese government reported to the UN that as a result of curriculum developments, about 70 per cent of high school history textbooks described the "comfort women" issue (124) and between 1997 and 2001 it reached 100 per cent.(125) However, reports indicate that only one of the updated textbooks approved in April 2005 makes any mention of comfort women and that only in a footnote. (126)

The Minister of Education, Nakayama in 2004 and 2005 expressed approval of this trend and endorsed arguments that the term "wartime comfort woman" (*jugun-ianfu*) is a post-war invention that has no place in textbooks and leads to a masochistic view of history.(127) Focus on such semantics has been used to divert public attention from the real issue of the existence of military sexual enslavement. Through repeated highlighting of minor inconsistencies in the testimony of elderly survivors and problems of verification revisionists have also attempted to discredit survivors and maintain controversy even around harms the Japanese government has already acknowledged. (128)

## **5 The Failure of Japanese Courts to Provide Reparations to Survivors of Sexual Slavery**

In light of the government's failure to provide full reparations by establishing effective administrative mechanisms, survivors have sought reparations in a number of cases before Japanese courts, including by survivors from China, the Republic of Korea, Netherlands, Philippines and Taiwan. In one of the first decisions on the issue, the Yamaguchi District Court awarded reparations for Korean survivors, ruling that the government's failure to enact legislation providing for reparation was unlawful under the Constitution.(129) The decision was, however, overturned by the Hiroshima High Court on the basis that the Japanese Constitution did not oblige the state to legislate laws concerning compensation.(130)

All other claims have also been dismissed by Japanese courts. In a number of cases, survivors and advocates have complained that judgments have not even bothered to establish the facts before ruling on the matter.(131) In each of these cases, survivors have encountered common obstacles to obtaining reparations.

Firstly, Japanese courts have failed to recognize the individual right to reparation for survivors of war crimes and crimes against humanity. In particular, the courts have taken a very restrictive interpretation of Article 3 of the Hague Regulations of 1907, which international experts confirm provides for an individual right to reparation (see, section 7.1.1).

Secondly, in some cases, Japanese courts have applied the doctrine of *Kokka-Mutoseki* (non-responsibility of the state), a national law concept which is contrary to international law, including Article 2 of the International Covenant on Civil and Political Rights. Japanese courts have interpreted *Kokka-Mutoseki* to mean that the state cannot be held responsible, under the law prevailing at the time of the offence, for action taken in the exercise of official authority during the War.(132) The doctrine of *Kokka-Mutoseki* has been rejected in a recent case concerning forced labour by the Niigata District Court stating: "it is utterly incompatible with justice and fairness to interpret and apply the law to the effect that it is impossible to press the State to incur civil responsibility in cases where the exercise of public authority is conducted in a manner that disregards humanity (for example, slave-like treatment)..."(133) The ruling has yet to be considered by higher courts.

Thirdly, Japanese courts have in a number of instances applied statutes of limitations against cases brought by survivors of sexual slavery.(134) The Japanese Civil Code provides for statutes of limitations of 20 years from the date of the incident which caused the damage. Statutes of limitations, however, do not apply to crimes under international law.(135) It is disturbing that Japanese courts have not taken this into account. Furthermore, rulings fail to consider the efforts by Japan until the early 1990's to conceal evidence of the military sexual slavery system in considering whether statutes of limitation should apply.

A final and significant barrier is the length of time it can take for cases to be considered and then to be appealed to higher courts in Japan. This can regularly take more than ten years.

Significant changes are required to the national law in Japan, if Japanese courts are to become an adequate forum for survivors of sexual violence to obtain reparations. In particular, legislation should be adopted expressly providing that the doctrine of *Kokka-Mutoseki* and statutes of limitations shall not be applied to crimes under international law. The right of individuals to claim reparations against the government should be expressly recognized in national law and cases for reparation by survivors of sexual slavery should be prioritized taking into account the delay in allowing these claims to be brought and the ages of the survivors.

**Phot caption: Kampanyera Lolos, Arayat, Philippines.© Paula Allen**

## **6 The Failure of the International Community to Ensure Reparations for Survivors of Sexual Slavery**

It is a well established principle of international law that a state which commits an "internationally wrongful act," including, slavery, war crimes and crimes against humanity has an obligation "to make full reparations for the injury caused."(136) Although traditionally such reparation has been paid directly to the government of the affected state (the state where the violation was committed or against whose nationals the violation was committed), it is increasingly recognized that reparations received by the affected states for violations of international human rights law and international humanitarian law should be used for the direct benefit of the individual victims and survivors."(137)

History, however, demonstrates that affected states have failed to seek or obtain full reparations on behalf of victims, in many cases by negotiating away the rights of victims to reparations in peace treaties or other agreements. In other cases, where states obtained reparations they failed to use them for the direct benefit of victims. Unfortunately, the case of reparations for survivors of Japan's sexual slavery system is a prime example of this practice.

According to available information, Japan has failed to provide any reparations for the sexual slavery system to affected states, arguing that any obligation to provide reparations has been settled in treaties and agreements entered into after World War II (at a time when it did not even accept that such a system existed) with states where Japan operated "comfort stations" and states whose nationals were forced into sexual slavery. There is no evidence, however, that any of these treaties or agreements considered the suffering and needs of survivors of sexual slavery.

Indeed, the ability of states to enforce fully Japan's obligation to provide reparations for survivors of sexual slavery has been significantly frustrated by the Allies who entered into the San Francisco Peace Treaty (138) and by a number of affected governments who entered into bilateral peace treaties and agreements with Japan which seek to preclude reparations for crimes committed by Japan in World War II for political reasons.

### **6.1 The San Francisco Peace Treaty**

At the end of World War II, Allied states were reluctant to impose upon Japan heavy reparations which arose from its conduct in the war.(139) Japan's obligation to provide reparations extends far beyond sexual slavery of "comfort women", to include other large-scale violations of international humanitarian law, including the appalling treatment of prisoners of war and other civilians.

Article 14 of the San Francisco Peace Treaty:

*"recognized that Japan should pay reparations to the Allied powers for the damage and suffering caused by it during the war. Nevertheless it is also recognized that the resources of Japan are not presently sufficient, if it is to maintain a viable economy, to make complete reparations for all such damage and suffering and at the same time meet its other obligations.*

*(b) the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war..."*

The treaty provided for limited seizure and liquidation of Japanese property on Allied territory and compensation for damage done during Japan's occupation. Although specific reference is made in Article 16 to indemnifying prisoners of war, no mention was made of the survivors of Japan's sexual slavery system. In fact, to Amnesty International's knowledge, there is no public record available that the right to reparation for victims of sexual slavery was considered during the negotiations.

Beyond these provisions, the Allies which ratified the San Francisco Peace Treaty sought to preclude themselves, and their colonized territories including those where "comfort stations" had operated, from pursuing reparations claims on behalf of survivors.(140)

Although there is a basis under international law not to impose reparations that would cripple the national economy of a responsible state with devastating effects on the national population, Amnesty International believes that, in such circumstances, it is contrary to states obligations to preclude permanently the possibility of reparations being paid to victims. As demonstrated by Japan's economic recovery since 1945, it has been capable for many years to provide full reparations to survivors of sexual slavery and to all victims of Japan during World War II. No effort appears to have been made in the negotiations of the San Francisco Peace Treaty to devise a realistic schedule for the payment of reparations over several decades, including based on a flexible formula keyed to the strength of Japan's economy.

During the drafting of the treaty, Indonesia and the Philippines challenged the position that Japan was incapable of providing full reparations in the long term.(141) In fact, Japan's economic recovery, industrial recovery to above pre-war levels (142) and expected surplus of 100 billion Yen for 1951(143) was evident and noted before and during treaty negotiations. Nevertheless, with the exception of Article 26 (see below), the approach taken by the Allies was to seek to waive subsequent claims by states to obtain full reparations.(144)

## 6.2 Bilateral Peace Treaties and Agreements Signed with Affected States

Under Article 26 of the San Francisco Peace Treaty, Japan committed itself to conclude bilateral treaties of peace with other Allied nations, including states that were territories of Allies. Resulting treaties were entered into with then Burma(145) and Indonesia(146) both of which provide for reparations in the form of compensation. Japan also negotiated other agreements with some states purporting to provide reparations in the form of compensation for Japan's conduct in the Second World War, including Viet Nam(147) and the Philippines.(148) Japan entered into a specific protocol with the Netherlands having committed to their delegation during negotiations of the San Francisco Peace Treaty to deal separately with reparations claims of Dutch nationals.(149) The term "reparations" is not used though it was clearly the purpose of the protocol.

Japan also entered into agreements with Malaysia(150) establishing friendly relations between the two states and with the Republic of Korea(151) on economic cooperation. Japan claims these fully address both states reparations claims, however, this is strongly disputed as both treaties fail to mention reparations and are more focussed on establishing "friendly relations" and "economic cooperation".(152)

In some cases Japan entered into agreements with other countries which seek to exclude reparations altogether. For example, in 1972, China made a joint communiqué with Japan renouncing its claims for war reparations. The communiqué was affirmed by a Treaty of Peace and Friendship between the two countries in 1978.(153) Similarly, the Democratic People's Republic of Korea made a declaration in 2002 indicating that subject to normalization talks it may waive claims of its nationals for acts by Japan before and during World War II. The process has, however, yet to be completed.

Japan contends that the San Francisco Peace Treaty and the bilateral agreements and treaties have fully settled reparations claims for sexual slavery. Indeed, some of the treaties and agreements include language which seeks to prevent further claims by the states. In many cases, the documents detailing the negotiation and intentions of the treaties and agreements have not been made public by Japan or the affected states, making it difficult to interpret the true meaning of provisions.

Amnesty International has analysed these treaties and agreements in light of information currently available and concludes that Japan's position that all claims are settled by such treaties may be flawed on a number of grounds. Firstly, the San Francisco Peace Treaty, bilateral treaties and agreements do not cover acts of sexual slavery. They make no specific reference to the system of sexual slavery, nor is there any evidence currently publicly available to show that the suffering of survivors of sexual slavery or resources necessary to address it was taken into account in the calculation of compensation paid by Japan.

Secondly, the San Francisco Peace Treaty expressly allows for further claims, article 26 provides: *"Should Japan enter into a peace settlement or war compensation settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty."* As Japan has entered into a number of bilateral treaties and agreements granting significant amounts in compensation for its conduct in the Second World War, states that ratified the San Francisco Peace Treaty should be

extended the same advantages, (regardless of whether or not they have entered into bilateral agreements or treaties waiving reparations).

Thirdly, in many cases, bilateral treaties and agreements do not appear to preclude further reparations. Bilateral treaties and agreements Japan made with Burma (now Myanmar) and Viet Nam do not preclude further claims. Agreements Japan concluded with Malaysia establishing friendly relations and with the Republic of Korea on economic cooperation do not cover reparations for sexual slavery, war crimes and crimes against humanity.(154) Japan has also yet to address the issue of reparations with the Democratic People's Republic of Korea.

Fourthly, in the absence of a comprehensive report of the sexual slavery system, including where each "comfort station" was located, it is not clear whether treaties and agreements have been concluded with all affected states. States where the existence or extent of sexual slavery has yet to be revealed could also be entitled to seek reparations.

Finally, Japan has only dealt with one form of reparations in these treaties and agreements: compensation. As outlined in section 4.2 full reparations involves more than monetary compensation.(155) It should involve a comprehensive victim-focussed approach to addressing the legacy of the system of sexual slavery. There is no evidence that Japan has endeavoured to take such a comprehensive approach. Indeed it would have been impossible as it had attempted to conceal the sexual slavery system at the time it entered into the treaties and agreements. There is nothing to prevent all states – regardless of whether they are precluded from seeking further compensation from Japan - from calling on Japan to take a comprehensive approach to addressing the system of sexual slavery which has only come to light in recent years, including all the measures recommended by the Women's International War-Crimes Tribunal on Japan's Military Sexual Slavery (see section 4.3).

As highlighted in this section, state to state initiatives have failed to provide reparations to survivors not only because Japan denies responsibility but because the international community and, in most cases, affected states have not demanded full reparations from Japan in the 60 years since the end of World War II. In this regard, the international community and affected states have failed survivors of sexual slavery. Although a renewed commitment by affected states, such as that recently demonstrated by the Republic of Korea, would be welcomed, the process for individual states to obtain reparations through renewed political negotiations or, if that is not possible, through a case at the International Court of Justice, would no doubt take a significant time. The length of time since the violations and the age of the survivors require more immediate steps. Instead, a collective effort by the whole of the international community is required to call on the Japanese government to address this issue immediately, through the establishment of administrative systems and changes to Japanese law (see section 7.2), that will remove the existing obstacles survivors have faced in bringing claims before Japanese courts (see section 5). At the same time, as set out below in section 7, affected states and other states should enable survivors to bring claims before their national courts against the government of Japan.

## **7 The Right of Survivors to Claim Reparations Directly against Japan**

Separate from the right of states to apply for reparations on behalf of survivors is the independent right of victims themselves to seek reparations directly from the government of Japan under international human rights law and international humanitarian law. Japan contends that no such right existed at the time the crimes were committed. Accordingly, it has refused to provide for individual reparation and has maintained barriers to enforcing the individual right before Japanese courts.(156) This position has been convincingly refuted by leading academics on international humanitarian law and in cases before Japanese and US courts. In addition, the most recent statements approved by states defining the right of individuals and their families under international law to reparations do not limit that right to crimes taking place today or in the future.(157)

In this section, Amnesty International analyses whether there is an individual right to reparations for crimes committed between 1932-1945. The section then examines and makes recommendations on other barriers survivors have encountered in seeking reparations through national courts including, inadequate national legislation to claim reparations from their own state or another responsible state, statutes of limitations and state immunity.

## **7.1 The Individual Right to Reparations for Victims of Crimes under International Law**

It has long been recognized that individual victims suffer personal damage independently from the damage inflicted on the state.<sup>(158)</sup> The independent right of victims to claim reparations against the responsible state is an important mechanism to address their suffering, especially taking into account the disturbing history of governments failing adequately to pursue claims against the responsible state. Since the end of World War II a solid framework of international human rights law has been established. A central element of the system is a right to reparations for individuals.<sup>(159)</sup> Furthermore, it has become increasingly accepted and applied that there is an individual right to reparations for violations of international humanitarian law.<sup>(160)</sup> As explained in section 7.1.1 below, there is strong evidence that the right existed from the entry into force of the Hague Regulations in 1907.

This issue of whether survivors of crimes committed in World War II have an individual right to reparation has been strongly disputed between the government of Japan and leading academics and other experts. Japan claims that no individual right to reparations exists for crimes under international law committed between 1932 and 1945 and its responsibility is only to provide reparations to other states. International experts argue that the individual right to reparations existed from 1907 onwards. The debate focuses firstly, on whether Article 3 of the Hague Regulations of 1907 provides for individuals to claim reparations; secondly, whether the San Francisco Peace Treaty and other treaties and agreements precluded such claims and; thirdly, whether it is actually possible for a state to waive the rights of its nationals to reparations for crimes under international law.

### **7.1.1 Article 3 of the Hague Regulations Provides for Individual Reparations**

As established in section 4.1, the system of sexual slavery conducted by Japan between 1932-1945 amounted to war crimes set out in the 1907 Hague Regulations. Article 3 of the Hague Regulations expressly provides that war crimes give rise to an obligation to provide reparations, without limiting the obligation to states:

*"A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."*

In the quest for reparations for both prisoners of war and survivors of sexual slavery against Japan, the interpretation of this article has become paramount. In particular, debate has arisen because the article does not limit the obligation to provide reparations to states alone, but also to individuals in their own capacity. The implementation of the provision by national courts has been inconsistent and requires some analysis.

The Japanese government has asserted that "it is the established rule that an individual cannot be subject to the rights or duties in international law unless his or her right is expressly provided in a treaty."<sup>(161)</sup> Japanese courts in a number of cases have rejected arguments that Article 3 provides for individual reparations. For example, in one case brought by Dutch prisoners of war and a victim of sexual slavery, the Tokyo District Court ruled:

*"Article 3 of the Hague Convention is nothing more than a provision which clarifies a state's international liability to compensate a victim nation for violations of the Hague Regulations committed by the assailant nation, and in the courts of Japan, individuals suffering injury from the conduct of members of the armed forces who violate international humanitarian law may not seek compensation from the country of the violator."* (162)

The ruling reflects the position taken by Japanese courts in rejecting other cases on the same grounds, including a case by Filipino "comfort women" (163) and Dutch prisoners of war and a victim of sexual slavery. In the latter case, Judge Asao of the Tokyo District Court departed from the legal interpretation of the individual right to reparations to state a clearly political viewpoint that it "would not only place the losing country at greater disadvantage but also serve as an obstacle to the restoration of peace and reconstruction." (164)

The Japanese interpretation of Article 3, however, avoids the clear and obvious meaning of the provision that it provides for both reparations to the state and to individuals. Indeed, it appears that Japanese courts have sought to introduce ambiguity where there clearly is none.

The following statements in the *travaux préparatoires* demonstrate the acceptance by states of the right of individuals to reparations for violations of the Regulations. Germany, which proposed the article, stated:

*"if (...) individuals injured by breach of the Regulations, could not ask for compensation from the Government, and instead they had to turn against the officer or soldier responsible, they would, in the majority of cases be denied their right to obtain compensation";* (165)

Switzerland stated: *"with regards to the German proposal... [t]he principle that it lays down is applicable to each injured individual, whether nationals of neutral states or nationals of enemy states";* (166)

Great Britain stated: *"I do not contest the obligation which exists for a belligerent Power to compensate those who have been the victims of violations of the laws of war and Great Britain does not wish in any way to avoid its obligations."* (167)

In addition a number of experts on international law (168) have concluded after a review of the text of Article 3 and its drafting history that the interpretation of Japanese courts is without any foundation. Professors Fritz Kalshoven, Eric David and Christopher Greenwood, Q.C. have analysed Article 3 and the *travaux préparatoires* and concluded that in addition to providing that states can claim reparations, it provides for individuals directly to claim reparations against the responsible state. (169) Professor Kalshoven concludes:

*"although the first sentence of Article 3 does not state in so many words that individual persons, including persons resident in occupied territory, have a right to claim the compensation due under the Article, the drafting history of the Article leaves no room for doubt that this was precisely its purpose..."* (170)

*Both on the basis of its drafting history and on systematic grounds of treaty interpretation it is therefore submitted that Article 3 must be recognized as having the implicit character of a self-executory rule and hence must be applied as such on the domestic level."* (171)

Japanese courts - which have either only restrictively reviewed the drafting history of the article or have refused to consider it - in rejecting the right to individual reparations have relied heavily on decisions by US courts on the scope of Article 3, in particular: *Hugo Princz v. Federal Republic of Germany* (172) and *Tel Oren v. Libyan Arab Republic* which ruled: "nothing in the Hague Convention even impliedly grants individuals the right to seek damages for violation of [its] provisions." (173)

This position has been heavily criticized, not only by Professor Kalshoven but also by other leading experts in international humanitarian law. For example, Professor David notes:

*"Such affirmations are wrong in law: we have seen how the preparatory work to the 1907 Convention proved that the authors intended to confer a direct right to compensation on victims of violations of the Regulations of 1907, this is nothing other than a specific expression of a right generally recognised in respect of other violations of international law affecting individuals...If one had truly wanted to avoid, during armed conflict, that which is the normal rule in all other circumstances, this would amount to a major exception to the general law of international responsibility and would have to be expressed somewhere. But no rule provides for this."*(174)

Agreeing with Professor David, Professor Greenwood notes that *"for the most part, decisions in cases such as *Princz and Tel-Oren* are not really about international law at all. They are rather concerned with the question of whether, as a matter of United States law, a particular treaty is to be regarded as self-executing in a sense of creating rights of action under United States law. This is a question which depends not so much upon international law as upon the law of the forum State..."*(175)

Japanese courts have considered and rejected the expert opinions of Professors Kalshoven, David and Greenwood on Article 3 in a number of cases.(176) The judgments illustrate that the courts gave little weight to the overwhelming evidence submitted by the leading international experts on the intention of the drafters(177) and in at least one case, the Tokyo District Court refused to consider the intention of the drafters, asserting that the well established method of supplementary treaty interpretation set out in Article 32 of the Convention on the Law of Treaties adopted in 1982(178) could not be applied retroactively.(179) The ruling fails to recognize the International Law Commission's confirmation that Article 32 was not a progressive element of the Treaty but reflected state practice(180) and other legal expert's conclusions that it reflected existing customary international law.(181)

Cases decided by other national courts rejecting the individual right to reparations also illustrate the failure of courts to consider fully the drafting history of Article 3. For example, in the *Distomo* case, interpreting Article 3, the judgment of the German courts instead relied on the "traditional concept of international law as a law between states [that] did not see the individual as a subject of international law."(182)

There are, however, a number of important cases, which uphold the individual right to reparations, supporting the conclusions of the experts. Germany's Constitutional Court held in *obiter dicta* that a rule of general international law preventing the payment of compensation to individuals for violations of international law did not exist. The Court added that it was, therefore, not prohibited for a state that has violated international law to allow individuals to bring claims for compensation for events during World War II through its national courts.(183) In another German case, the Administrative Court of Appeal of Munster ruled:

*"Within this framework of this absolute liability for which international law provides [referring to Article 3 of the Hague Regulations], a State is under a duty – according to the views of writers on international law which have, however, not yet been universally accepted – to pay compensation for "incorporeal" damage."*(184)

In a Greek case, the Court of First Instance of Leivadia ruled that the suit brought by individuals against the German government was lawful under Article 3 and 46 of the Hague Regulations. It also considered that in the absence of a rule of international law prohibiting this, claims could be made by the plaintiffs in their individual capacity and not necessarily by their State of nationality.(185)

As demonstrated in the next section, the validity of individual claims for reparations was even accepted by Japan in the negotiations of the San Francisco Peace Treaty.

Amnesty International has analysed the drafting history of Article 3, the expert opinions and cases on the issue and agrees with the conclusion of the international humanitarian law experts that, although not expressly stated in Article 3 of the Hague Regulations, the drafters clearly intended the provision to allow individuals to bring claims directly against states. The obvious reading of Article 3 is that it provides for both states and individuals to claim reparations for violations of the Regulations. It is of great concern that Japanese courts have chosen to ignore this strong evidence by adopting the most restrictive methods of treaty interpretation to reject the existence of an individual right to reparations. It means that the search of survivors of sexual slavery for justice has been thwarted in clear contradiction to international legal expertise and the express intention of the treaty drafters as well as the interpretations of key national courts.

### **7.1.2 Claims by Individuals Were Not Prohibited by Article 14 of the San Francisco Peace Treaty**

Japan contends that any individual right to claim reparations against the Japanese government are precluded by Article 14(b) of the San Francisco Peace Treaty. As demonstrated below, however, this assertion is not correct.

Article 14 (b) which states:

*"the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war..."*

A number of rulings by Japanese courts have adopted the same position to dismiss claims, including, by Dutch prisoners of war and a victim of sexual slavery.(186)

Article 14(b) has also proved a barrier to survivors of sexual violence seeking reparations through US courts. In the case of *Hwang Geum Joo v. Japan*, the US District Court for the District of Columbia Circuit ruled that the application for reparations represented a "non-justiciable political question" largely based on a submission from the US government that during the negotiations of the San Francisco Peace Treaty, the executive had made a political decision to resolve all war-related claims through government-to-government negotiations rather than through private tort suits. On this basis it decided that the judiciary should defer to the "judgment of the Executive on [this] particular question of foreign policy"(187) and to dismiss the case. The decision may be challenged in the US Supreme Court.

Despite submissions by the United States and Japanese governments that states included Article 14(b) to waive individual claims for reparations, the records of the negotiations demonstrate that there was in fact no such agreement. In particular, records show that the Netherlands firmly believed that there was a right of their individuals to seek reparations and that the San Francisco Peace Treaty should not seek to waive those rights. Documents of the negotiations show that in order to address these concerns Japan pledged to the Netherlands, in an exchange of letters, that:

*"the government of Japan does not consider that the Government of the Netherlands by signing the Treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the Treaty comes into force these claims would be non-existent."(188)*

In doing so, Japan not only accepted that there is an individual right to reparations but also accepted that the San Francisco Peace Treaty could not waive those rights with respect to the nationals of other countries. In a subsequent treaty with the Netherlands, the two states sought to address individual claims through reparations to the government of the Netherlands and expressly agreed – apparently without consulting the victims themselves - that the individual claims were

settled.(189) If this is not evidence enough that the Treaty did not waive individual rights to reparations, it could strongly be argued that the agreement to settle individual Dutch claims separately from the San Francisco Peace Treaty must also be granted to all other states parties to the Treaty and their nationals, pursuant to Article 26 of the San Francisco Peace Treaty.

### **7.1.3 Other Bilateral Treaties and Agreements Do Not Waive the Individual Right to Reparations**

In respect to other bilateral treaties and agreements entered into between Japan and other states affected by the sexual slavery system, with the exception of the Protocol with the Netherlands, there is no mention of individual claims in clauses seeking to exempt further claims. This, however, has not prevented the Japanese courts and the Japanese and US government from claiming that individual claims are covered by exemption clauses of the agreements. For example, Japan and the USA in their interventions in the case of *Hwang Geum Joo v. Japan* contended that the agreements would waive individual rights as those governments chose to resolve such claims through international agreements with Japan. The US court decided not to rule on this issue.

On 29 November 2004, the Japanese Supreme Court rejected compensation claims brought by Korean survivors of sexual slavery on the basis that the right to claim redress expired under an agreement between Japan and South Korea in 1965.(190) The Republic of Korea, has, however, supported the right of individuals to seek claims directly against Japan and has stated "it is the government's position that the [Treaty of 1965] does not have any effect on individual rights to bring claims or lawsuits."(191)

China has claimed since 1995 that the 1972 China-Japan Communiqué had renounced only reparations claims between the states; claims for compensation by individuals had not been included in the renunciation.(192) In a number of rulings on cases brought by Chinese victims, including survivors of sexual slavery, Japanese courts have, recognized that individual claims by Chinese victims were not precluded by the 1972 China-Japan Communiqué.(193) The decision, however, has not been applied to other treaties and agreements. A subsequent ruling in March 2005, proved controversial when the Tokyo High Court applied a 1952 Peace Treaty between Japan and the Republic of China to dismiss individual claims. The Treaty had apparently only been signed by the Taiwan Authority. In response a spokesperson for the Chinese Foreign Ministry stated:

*"Sex slavery is one of the serious crimes the Japanese militarists committed during the World War II. The Japanese Government should shoulder their due responsibility with an honest attitude and handle the issue properly and sincerely."*(194)

On 25 February 2005, the Japanese Supreme Court rejected compensation claims brought by seven Taiwanese survivors of sexual slavery on the grounds that their claims had been settled by bilateral treaties since the end of World War II.(195)

The conclusions drawn by Japanese courts, the government of Japan and the USA in many cases have no basis and as demonstrated are strongly rejected by many of the affected states that entered into bilateral treaties and agreements.

### **7.1.4 A Government Cannot Waive the Individual Right of Its Citizens to Claim Reparations.**

Even if it could be shown that the San Francisco Peace Treaty and other bilateral treaties and agreements sought to exclude individual claims for reparations, states have no authority to waive the individual right to reparations for their nationals through such treaties or agreements.

As Professor Kalshoven explains: "*Taking into consideration developments in international law, which emerged with force after the Second World War and which came to light both in areas of human rights and in humanitarian law as codified in the Geneva Conventions for the Protection of War Victims of 1949, a strong argument can be made that such a practice, however, valid on the international plane as an agreement obliging one state to pay a sum of money to another state, cannot have the effect of depriving individual victims of the right to press their own claims for damage suffered at the hands of the enemy.*"(196)

In particular, provisions common in all four Geneva Conventions prohibit such measures. Firstly, while the Geneva Conventions leave contracting states to conclude "special agreements for all matters concerning which they deem it suitable to make separate provisions" it emphatically adds that:

*"No special agreement shall adversely affect the situation of protected persons, as defined in the present Convention, nor restrict the rights it confers on them."*(197)

Secondly, the Conventions expressly provide that: "*No High Contracting Party shall be allowed to absolve itself, or any other High Contracting Party of any liability incurred by itself or another High Contracting Party in respect of breaches referred to in the preceding Article [grave breaches].*"(198)

The provisions in the Geneva Conventions were drawn up at the end of World War II and they would have been present in the minds of those who negotiated the San Francisco Peace Treaty. They can be seen as casting light on what was intended by Article 14(b), suggesting that it was not intended to absolve Japan of liability towards the individual victims.(199)

Article 91 of the Additional Protocol to the Geneva Conventions is substantially the same as Article 3 of the Hague Regulations. The International Committee of the Red Cross's commentary notes:

*"On the conclusion of a peace treaty, the Parties can in principle deal with the problems relating to war damage in general and those relating to the responsibility for starting the war as they see fit. On the other hand, they are not free to forego the prosecution of war criminals, nor to deny compensation to which the victims of violations of the rules of the Conventions and the Protocol are entitled."*(200)

Professor David concludes that Article 3 of the Hague Regulations, the above articles of the Geneva Conventions and Article 91 of the Additional Protocol:

*"record the intangibility of recognised fundamental rights of victims of armed conflict by international law. An intangibility such that it is not possible to renounce by special agreement between States at war. This confirms the rights of victims of violations of humanitarian law to obtain compensation for these violations even where an agreement concluded between two belligerent parties pretends to avoid or lessen the impact of this right."*(201)

Although it could be argued that some states which ratified the San Francisco Peace Treaty sought to waive their own rights as states to bring any further claims, they were prohibited from waiving the rights vested directly in the individual survivors. In respect of the individuals, the San Francisco Peace Treaty or other bilateral treaties or agreements do not affect their rights, although it may preclude them from relying upon the states of which they are nationals to take up their cases by way of a formal claim.(202)

## **7.2 Important Measures Required to Implement the Individual Right to Reparations**

As demonstrated in section 7.1, survivors of sexual slavery have an individual right to reparations. Furthermore, international treaties seeking to waive reparations have no effect on the individual right to pursue claims. Unfortunately, the issue does not end there. There exists a number of other major obstacles that must be addressed before survivors can enforce their right to reparations, including, lack of an effective forum to bring a claim, state immunity, statutes of limitations and barriers to implementing reparations orders.

### **7.2.1 Lack of a Forum to Bring a Claim**

In order to exercise the individual right to reparation, survivors must have a forum. In the absence of effective administrative mechanisms that Japan has failed to establish, survivors must look to the courts to order reparations against Japan. In section 5, this report sets out cases in which survivors have sought reparation before Japanese courts and the obstacles that have precluded them from obtaining reparations to date. Some survivors have sought justice through the US courts under the Alien Torts Claims Act and have also run into serious difficulties with US courts deferring to the US Executive. Although there remain some cases pending before both Japanese and US courts and it is hoped that previous decisions rejecting claims will be overturned, survivors should not be limited only to the complex effort of filing complaints in only these two countries. The laws of their own countries (which, in many cases, are where the crimes of sexual slavery took place) should provide for survivors to file complaints in their national courts directly against the Japanese government, officials, individuals and other entities. Where such laws do not exist, they should be enacted<sup>(203)</sup> and applied retrospectively<sup>(204)</sup> to cover the period when "comfort stations were in operation."

### **7.2.2 State Immunity**

Survivors bringing claims for reparations against another government for violations of international human rights law and international humanitarian law have traditionally been frustrated by national laws on state immunity. While many national laws contain exemptions for individuals to bring claims against foreign states, including for claims arising from commercial activity, few states have adopted exemptions to state immunity for violations of international human rights law and international humanitarian law. In a 2001 case, the European Court of Human Rights failed to recognize the non-applicability of state immunities for violation of international human rights law, holding by a slim majority (9 votes to 8) that international human rights law does not override traditional state immunities.<sup>(205)</sup> However, the same Court has indicated that there may be developments in customary international law which affect this position. Indeed, important developments have in fact taken place in this area since 2001. In particular, in a landmark case, the Italian Supreme Court affirmed that Germany was not entitled to state immunity for serious violations of human rights carried out by German occupying forces during World War II.<sup>(206)</sup> In 2005, there are strong grounds to argue that state immunity must not be applied to violations of international human rights law and international humanitarian law, including claims by survivors of sexual slavery against the government of Japan. To enable survivors to pursue claims against the Japanese government, affected states should enact legislation providing for a national exemption of state immunity for violations of international human rights law and international humanitarian law.

### **7.2.3 Statutes of Limitations**

Statutes of limitations can be a major obstacle to survivors seeking reparations for war crimes and crimes against humanity (see section 5 for details of Japan's statutes of limitations). Statutes of

limitations are not unique to Japan and similar barriers may exist in other forum states. Statutes of limitations for crimes under international law are not in accordance with international law. States should ensure that any statutes of limitations under national law will not interfere with claims for reparations from survivors, especially as the crimes committed against them amount to crimes under international law. Where statutes of limitations exist, the law should be revised to ensure victims' access to justice, including full reparations.

#### **7.2.4 Implementing Reparations Orders**

In some cases, even when reparations awards have been made against another government, the implementation of such orders have been obstructed by the government of the affected state using political discretion not to fulfil the reparations order.(207) It is important that states ensure that national laws prohibit the exercise of executive discretion over the execution of court orders for reparations for survivors of sexual slavery.

### **7.3 Conclusions**

The quest for survivors of sexual slavery to exercise their individual right to reparations has been frustrated by actions and decisions by the Japanese courts that have:

Given restrictive interpretations of the right to individual reparations.

Used incorrect application of international and bilateral treaties and agreements as waiving individual rights.

Employed application of the irresponsibility of state doctrine and statutes of limitations which should have no effect in relation to crimes under international law.

Although cases are still pending before Japanese courts, in the absence of legal reform to address these issues, it would take a substantial change in position of the courts on these issues for survivors to succeed in this forum. Time is also of the essence as over 60 years has passed since the end of World War II and survivors are elderly, many have died without obtaining full reparations. Japan should resolve the issue immediately by enacting legislation expressly providing that survivors can claim reparations against the government and by establishing appropriate administrative system to provide reparations to them in a prompt and effective manner.

Survivors who have sought reparations through US courts have faced other obstacles, in particular, the US courts' willingness to accept the endeavours of the US government to waive its right to claim reparations during the negotiations of the San Francisco Peace Treaty and its attempts to waive the rights of its own and other nationals to obtain individual reparations from Japan. One case may still be challenged at the US Supreme Court. However, for survivors to succeed, the Supreme Court would need to decide that the matter was not a "non-justiciable political question" and additionally override a previous ruling that sexual slavery did not amount to commercial activity for which there is no state immunity.

If survivors are to be able to realise their right to reparations, it is important that in addition to the initiatives in Japan and the US, they are able to bring their claims before their own national courts claiming reparations against the Japanese government. To achieve this, governments in countries where comfort stations operated or whose nationals were forced into sexual slavery will need to:

- (1) ensure national laws provide for victims to seek reparations against a foreign state;
- (2) ensure that such laws prohibit state immunity for violations of international human rights law and international humanitarian law;
- (3) ensure that statutes of limitations do not apply to such proceedings and;

(4) ensure that survivors are able to implement reparations orders without political interference by prohibiting any political discretion.

## **8 Recommendations**

The "comfort women" endured horrific and debilitating sexual abuse, have bravely spoken out about the crimes they suffered. The survivors are now elderly; some have died. Their wait and search for justice has been long and painful. The moral and legal basis for their claims is strong, as this report has demonstrated.

There is an imperative to ensure that their claims are adequately heard and that justice is served in their lifetime. Amnesty International recommends that the following actions are implemented with a sense of urgency, in order that justice for the "comfort women" is delivered. The Japanese government must take effective measures to provide full reparations to survivors without further delay.

### **To the Government of Japan and the Japanese Diet:**

Japan should immediately implement effective administrative mechanisms to provide full reparations to all survivors of sexual slavery, including, all forms of reparations listed in the recommendations of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery.

In particular, the Diet should make a full apology to survivors, including, accepting Japan's full responsibility for the crimes, acknowledging that the crimes amount to crimes under international law, acknowledging the harm suffered by survivors, denouncing all forms of sexual violence against women and expressing sincere remorse to survivors for the crimes.

Japan should review its national laws to remove existing obstacles to obtaining full reparations before Japanese courts. In particular, the right of individuals to claim reparations against the government should be expressly recognized in national law and cases for reparation should be prioritized taking into account the delay in allowing these claims to be brought and the ages of the survivors. Legislation should be adopted expressly providing that the doctrine of *Kokka-Mutoseki* and statutes of limitations shall not be applied to claims by survivors of sexual slavery, as a crime under international law.

In order to reveal the truth and the full extent of the sexual slavery system, Japan should issue a comprehensive factual report setting out the full scale of the "comfort station" system, including, the location of each "comfort station," the number of women subject to sexual slavery at each station and their nationality, the ages of the women and girls and any other factual information available.

As an important guarantee of non-repetition of these crimes, Japan should ratify immediately the Rome Statute of the International Criminal Court.

### **To Affected States Where "Comfort Stations" Operated or Whose Nationals Were Subjected to Sexual Slavery:**

Affected states should ensure that survivors are able to bring claims directly against the government of Japan in their national courts by enacting national legislation:

- a) providing for victims to seek all forms of reparations against a foreign state for crimes under international law;
- b) ensure that such laws prohibit any state immunity for violations of international human rights law and international humanitarian law;
- c) ensure that statutes of limitations do not apply to claims for reparations and;
- d) ensure that survivors are able to implement reparations orders without political interference by the government through political discretion.

**To All Other States, Inter-governmental Organizations, National Parliaments and Inter-parliamentary Organizations:**

Governments, both individually and collectively (including through inter-governmental organizations) and national parliaments and inter-parliamentary organizations should publicly call on Japan and the Japanese Diet to take immediate steps to provide full reparations to survivors of sexual slavery, including all measures recommended above.

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(1) McDougall, Gay J., UN Special Rapporteur Contemporary Forms of Slavery, Final Report on Systematic Rape, Sexual Slavery and Slave-like Practices During Armed Conflict. E/CN.4/Sub.2/1998/13, 22 June 1998, para 7. (Hereafter, Contemporary Forms of Slavery Report).

(2) See, Askin, Kelly D., The Quest for Post-Conflict Gender Justice, Colum J. Transnat'l L., 509, 2002-2003.

(3) The Term "comfort woman" is a euphemism for sexual enslavement - it is a translation of the Japanese "jugun ianfu". Throughout this report, for consistency with the vast work of other organisations and individuals, the term "comfort women" is used to refer to survivors of the Japanese military's system of sexual enslavement. Amnesty International finds the term and its use objectionable, in that the Japanese government has used it in an attempt to minimise the nature of the violations committed against the victims of this system. The term does not reflect the suffering of the women who had to endure repeated rapes and other sexual violence on a daily basis.

(4) Chinkin, Christine, Women's International Tribunal on Japanese Military Sexual Slavery, Am. J. Int'l L. 335, 2001, p. 335.

(5) Hicks, George, The Comfort Women: Sex Slaves of the Japanese Imperial Army, Souvenir Press, 1995, p. xv – Introduction.

(6) Yoshimi, Yoshiaki, Comfort Women: Sexual Slavery in the Japanese Military During World War II, (Suzanne O'Brien trans.), Columbia University Press, 2000.

(7) It is estimated that hundreds of thousands of Chinese civilians were killed. The Chinese government puts the figure at 300,000 but this has been disputed by some Japanese sources.

(8) The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Judgement, Case No. PT-2000-1-T, Corrected: 31 January 2002, Delivered on 4 December 2001, The Hague, The Netherlands, p. 42, para.153. Available at: <http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/Judgement.pdf> .(Hereafter, WIWCT Judgement). Also, see, Dolgopol, Ustinia and Paranjape, Snehal, Comfort Women an

Unfinished Ordeal, Report of a Mission, International Commission of Jurists, 1994, p. 25.  
(Hereafter, ICJ Report)

(9) Ibid.

(10) Boling, David, Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility? Colum. J. Transnat'l L. 533, 1994-1995, p. 542.

(11) Hicks, supra note 5, p. 7.

(12) WIWCT Judgement, supra note 8, p. 46, para 166.

(13) Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1994/45. Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of Military Sexual Slavery in Wartime. E/CN.4/1996/53/Add.1,4 January 1996, para.18. (Hereafter, Coomaraswamy Report).

(14) WIWCT Judgement, supra note 8, pp. 43–69.

(15) ICJ Report, supra note 8, p. 45.

(16) Coomaraswamy Report, supra note 13, para. 11.

(17) See, ICJ Report, supra note 8, pp. 32-40.

(18) Coomaraswamy Report, supra note 13, paras. 19-20.

(19) WIWCT Judgement, supra note 8, para. 254.

(20) Systematic Rape, Sexual Slavery and Slave-like Practices during Armed Conflict, Update to final report submitted by Ms. Gay McDougall, UN Doc.E/CN.4/Sub.2/2000/21, para.8.

(21) Ibid., para. 167.

(22) Ibid., para. 268.

(23) Ibid., para. 289.

(24) Ibid., para. 263.

(25) Ibid., paras. 269-284.

(26) Coomaraswamy Report, supra note 13, para. 27.

(27) WIWCT Judgement, Supra note 8, para. 279.

(28) Interview in Taegu, South Korea, March 2005.

(29) Coomaraswamy Report, supra note 13, para. 33.

(30) Interview with Lee Ki-sun, 83, Tongyong, South Korea, March 2005.

(31) Interview with Chang Jeum-dol, 82, Seoul, Korea, March 2005.

(32) This was due to the military's fear of the spread of sexually transmitted diseases.

- (33) Interview with Elizabeth M. Asistin, 73, Arayat, Pampanga, Philippines, March 2005.
- (34) Interview with Fedencia David, (Lola Piding), 77, Philippines, March 2005.
- (35) Interview with Choi Gap-soon, 86, Seoul, South Korea, March 2005.
- (36) Watanabe, Kazuko, Militarism, Colonialism, and the Trafficking of Women: 'Comfort Women' Forced into Sexual Labor for Japanese Soldiers, *Bulletin of Concerned Asian Scholars*, Vol. 26, No. 4, Oct.-Dec. 1994, p. 5.
- (37) Coomaraswamy Report, *supra* note 13, para. 37.
- (38) Coomaraswamy Report, *supra* note 13, para. 35.
- (39) Quoted in Yoshimi, *supra* note 6, p.199. In similar vein, Nakayama, Nariaki, Minister of Education, in July 2005 publicised suggestions that survivors could be proud that "their existence soothed distraught feelings of men in the battlefield and provided a certain respite and order", See: Nakayama won't drop 'comfort women' issue, *The Asahi Shinbun*, 12 July 2005, available at: <http://www.asahi.com/english/Herald-asahi/TKY200507120252.html>
- (40) Interview with Kim Soon-ak, Taegu, South Korea, March 2005. Hicks states that sources indicate that visiting a "comfort station" was a ritualised practice prior to a unit leaving for the front. The rationale was that men without previous sexual experience should have intercourse at least once before death. A man who showed reluctance to engage in this 'recreation' became an odd man out – a serious matter in military psychology. See Hicks, *supra* note 5, p.7.
- (41) Hicks, *supra* note 5, p.123.
- (42) *Ibid.*, p.125.
- (43) Duggan, Colleen and Abusharaf, Adila, *Reparation of Sexual Violence and Democratic Transition: In Search of Gender Justice*, p.15, International Center for Transitional Justice, (currently unpublished).
- (44) Askin, Kelly D., *Comfort Women – Shifting the Stigma from Victims to Victimisers*, *International Criminal Law Review*, 1: 5-32, 2001, p. 19.
- (45) The House of Sharing is a communal home built by a Buddhist charity for former Korean "comfort women".
- (46) Interview with Sim Dal-yun, 78, Taegu, South Korea, March 2005.
- (47) Interview with Belen Sagum, 74, Philippines, March 2005.
- (48) A derogatory term used to refer to Filipino women who go to Japan to work as 'entertainers'.
- (49) Interview with Jan Ruff O'Herne, Adelaide, Australia, June 2005.
- (50) Information provided by the War and Women's Human Rights Center – The Korean Council for the Women Drafted for Military Sexual Slavery by Japan. In the last 10 years the Center has discovered 33 "comfort women" in China, 10 have died, 14 managed to return to South Korea, four of whom have died. Nine remain in China. In August 2005 the South Korean authorities announced that six women living in China would regain their South Korean citizenship in September. Three held Chinese citizenship and three North Korean citizenship. This recognition

will entitle them to government subsidy if they wish to settle in South Korea or a monthly payment in China.

(51) Interview with Lee, OK-sun, House of Sharing, Seoul, South Korea, March 2005.

(52) See ICJ report, *supra* note 8, an Allied Intelligence officer in Burma who interrogated a number of "comfort women" claimed: "Taken forcibly for the most part from their families farms and homes in far-off Korea, they were turned over to British custody in India. The Allied press made big thing of the comfort girls in sensational releases. But I felt only sorrow for them." – ICJ rpt. p. 53.

(53) Senda, Kako, wrote one of the first in 1973. Sources included recollections of Japanese veterans. The term Senda used to describe the women who were sexually enslaved, *jugun-ianfu* - "comfort women", came to be used widely and later became the source of much debate.

(54) They included Wada, Haruki, see, Soh, Sarah C. Japan's national/Asian women's fund for "comfort women", *Pacific Affairs*, Summer 2003.

(55) *Asahi Shinbun* published an article by Matsui Yayori, including an interview with an unnamed former "comfort women", a Korean living in Thailand.

(56) Interview with Lola Estelita Dy, 75, Manila, Philippines, March 2005.

(57) Chinkin, *supra* note 4, p.339.

(58) Interviews with Amnesty International, Philippines, March 2005.

(59) See *Contemporary Forms of Slavery Report*, *supra* note 1, paras. 25-26.

(60) The Preamble to the Agreement states that the contracting states "desirous of securing to women of full age who have suffered abuse or compulsion, as also to women and girls under age, effective protection against the criminal traffic known as the "White Slave Traffic", have decided to conclude an Agreement with a view to concerting measures calculated to attain this object."

(61) Article 1 states: "Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries."

(62) Article 7 states: "The High Contracting Parties undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children."

(63) Article 14 states: "Any Member or State signing the present Convention may declare that the signature does not include any or all of its colonies, overseas possessions, protectorates or territories under its sovereignty or authority, and may subsequently adhere separately on behalf of any such colony, overseas possession, protectorate or territory so excluded in its declaration. Denunciation may also be made separately in respect of any such colony, overseas possession, protectorate or territory under its sovereignty or authority, and the provisions of Article 12 shall apply to any such denunciation."

(64) Tong Yu, *Reparations for former comfort women of World War II*, 36 *Harv. Int'l L. J.*, p.531.

(65) *Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907

(66) Judgment of the International Military Tribunal for the Trial of the German Major War Criminals, Nuremberg, 1946., (Hereafter Nuremberg Judgment), CMD 6964, at 64 states that the Hague Regulations were "recognized by all civilized nations and... recognized as being declaratory of the laws and customs of war."

(67) Report of the International Law Commission to the General Assembly, U.N. Doc. A/CN.4/Ser.A/Add.1 (1963). described the prohibition against slavery as "one of the oldest and best settled rules of jus cogens."

(68) Barcelona Traction, Light and Power Co. (Belg. v. Spain), 1970 I.C.J. 3, 32 (Feb. 5), the International Court of Justice has stated that the prohibition of slavery was an obligation erga omnes.

(69) Article 1(1) of the Slavery Convention (1926).

(70) Contemporary Forms of Slavery Report, supra, note 1, at para. 22.

(71) Report of the Committee of Experts on the Application of Conventions and Recommendations, Forced Labour Convention, 1930 (no.29), Observation 2000.

(72) Korean 'Comfort Women' v. Japan, Shimonoseki Branch, Yamaguchi District Court, 27 April 1998, reported on in Shin Hae Bong, Compensation for Victims of Wartime Atrocities, JICJ 3 (2005), p.194.

(73) Lieber Code (General Orders 100), War Dept. Classification No.1.12, Oct. 8, 1863, reprinted in 1 The Law of War: A Documentary History (L. Friedman ed., 1971) Art. XLIV states: "All wanton violence...all rape, wounding, maiming or killing...[is] prohibited under penalty of death, or other such severe punishment as may be seen adequate."

(74) Declaration of Brussels of 1874, reprinted in 1 The Law of War: A Documentary History (L. Friedman ed., 1971), Art. XXXVII.

(75) Parker, Karen, & Chew, Jennifer F., 17 Hastings Int'l & Comp. L. Rev. at p. 515. The International Committee of the Red Cross in its commentary on the use of the same phrase in Article 27 of the Fourth Geneva Convention states: "Respect for family life is also covered by the clause prohibiting rape and other attacks on women's honour."

(76) The Martens Clause contained in the preamble of the Hague Regulations states: "Until a more complete code of laws of war has been issued...in cases not included in the Regulations...the inhabitants and belligerents remain under the protection and the rule of principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience."

(77) Nuremberg Judgment, supra, note 66.

(78) Report of the Commission on the Responsibilities of the Authors of War and the Enforcement of Penalties, reprinted in 14 Am. J. Int'l L. (1920), p. 113.

(79) Jean Pictet, Development and Principles of International Humanitarian Law (1985), pp. 89-90, "Although the Geneva Conventions were drafted after the end of World War II, it was "to a great extent, merely declaratory of international customary legal principles which were applicable to all states."

(80) See: International Military Tribunal for the Far East, Judgment, Chapter VIII: Conventional War Crimes.

(81) Chinese victims of sexual violence v. Japan; reported on in Shin Hae Bong, Compensation for Victims of Wartime Atrocities, JICJ 3 (2005), p.201.

(82) Report of the Commission on the Responsibilities of the Authors of War and the Enforcement of Penalties, reprinted in 14 Am. J. Int'l L. (1920), p.114.

(83) Charter of the International Military Tribunal, Art. 6(c); Charter of the International Military Tribunal for the Far East, Art. 5 (c).

(84) Council Control Law No. 10, Official Gazette of the Control Council for Germany, No. 3, January 1946.

(85) Chinkin, supra, note 4, p. 338. Oral judgment delivered on 4 December 2001, para. 74, <http://www.iccwomen.org/tokyo/summary.htm> : "In terms of the principle of *nullum crimen sine lege*, it is beyond dispute that acts constituting crimes against humanity listed in the Nuremberg and Tokyo Tribunal Charters -murder, extermination, enslavement, deportation, and other inhumane acts -were established crimes during the Asia-Pacific Wars. Thus, the concept of crimes against humanity did not create crimes, but rather applied to conduct, which was already unquestionably criminal, a term which underscored the egregiousness of the crimes. In addition, crimes against humanity embraced crimes parallel to war crimes and extended them to persons, here the women of Korea and Taiwan, presumably "under the protection" of the offending state".

(86) Prosecutor v. Akayesu, Case No. ICTR-96-4-T (ICTR Chamber I, 2 September 1998), para 597; Prosecutor v. Delalic, Case No IT-96-21 (ICTY Trial Chamber II, 16 November 1998), paras. 943, 965; Prosecutor v. Furundžija, Case No IT-95-17/1-T (ICTY Trial Chamber, 10 December 1998), paras. 264 -269.

(87) Factory at Chorzow Case (Germany v. Poland)(Merits), 1928 P.C.I.J. (ser.A) No. 17 at 47: "reparations must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability have existed of that act had not been committed."

(88) Such sexual violence also robs women of perceived purity, youth, the ability to have children and social standing, none of which can be returned. A reparations programme that attempts to offer compensation alone is likely to be seen by victims as an attempt to buy silence.

(89) See, Shelton Dinah, Righting Wrongs: Reparations in the Articles on State Responsibility – Symposium: The ILC's State Responsibility Articles. The American Journal of International Law, Vol 96:833.p.844

(90) See Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law, U.N. Doc. E/CN.4/2005/L.48, adopted by the Commission on Human Rights on 19 April 2005.(Hereafter, U.N. Principles on Reparations).

(91) For example, in Resolution 687(1991), the UN Security Council decided to create a fund to compensate for claims resulting from Iraq's liability under international law for injury caused in by the unlawful invasion and occupation of Kuwait and the UN Compensation Commission to administer the fund.

(92) For example organisations such as, Violence Against Women in War - Network Japan (VAWW-NET) <http://www1.jca.apc.org/vaww-net-japan/english/index.html> The Korean Council for the Women Drafted for Military Sexual Slavery by Japan <http://www.womenandwar.net/english/index.php> Philippines: Lila Filipina, Lola Kampanyeras, Kaisa Ka!; Taipei Women's Rescue Foundation <http://www.twrf.org.tw/> Asian Centre for Women's Human Rights (ASCENT).

(93) Wagatsuma, H. and Rosett, A., *The Implications of Apology: Law and Culture in Japan and the United States*, *Law & Society Review*, Volume 20, Number 4 (1986) p.462.

(94) Alter, S., *Apologizing for Serious Wrongdoing: Social, Psychological and Legal Considerations*, Final Report for the Law Commission of Canada" May 1999. p.3. Available at: <http://www.lcc.gc.ca/en/themes/mr/ica/2000/html/apology.asp>

(95) *Ibid.*, p.12.

(96) Minow, M., *Between Vengeance and Forgiveness*, Beacon Press, 1998, p. 115.

(97) Wagatsuma and Rosett, *supra*, note 93, p.473.

(98) Alter, *supra* note 94, p.27.

(99) *Ibid.*, p.13, quoting Lazare.

(100) Tavuchis, N., *Mea Culpa: A Sociology of Apology and Reconciliation*, Stanford University Press, 1991, p.17.

(101) See those listed at:

[http://en.wikipedia.org/wiki/List\\_of\\_War\\_Apology\\_Statements\\_Issued\\_by\\_Japan](http://en.wikipedia.org/wiki/List_of_War_Apology_Statements_Issued_by_Japan)

(102) See, Onuma, Yasuaki, *Japanese War Guilt and Postwar Responsibilities of Japan*, Paper Presented following the Stephen A. Riesenfel Symposium 2001. *Berkeley Journal of International Law*, 2002. p.2

(103) See the latest apology made by Prime Minister Koizumi, on 15 August 2005 – the 60th anniversary of the end of World War II in the Pacific: "I once again express my feelings of deep remorse and heartfelt apology, and also express the feelings of mourning for all victims, both at home and abroad, in the war". At: <http://www.mofa.go.jp/announce/announce/2005/8/0815.html>

(104) The Japanese government also characterises its wider coordination and cooperation with the international community including a commitment to resolving all matters without recourse to the use of force as part of the guarantee of non-repetition.

(105) At: <http://www.mofa.go.jp/policy/women/fund/pmletter.html>

(106) Following controversy there has reportedly been a strengthening since 1998 in the terminology for "apology" used in Japanese and the Korean translations of letters sent to survivors by the Prime Minister of Japan along with money from the AWF. In Korean, the change has reportedly been from *sagwa*, an apology which is used in situations when a person commits a mistake to *sajwe*, an apology which implies admission of a very serious wrongdoing and is perceived as being from the "bottom of the heart". See, Soh *supra*, note 54. Korean survivors demand a *sajwe* from the government of Japan which includes an acknowledgment of the violation, apology and compensation and guarantees that the crimes will never be repeated.

(107) Interview with Lola Ammonita, Manila, Philippines, March 2005.

(108) The Yasukuni Shrine is dedicated to the spirits of Japan's war dead and where 'Class A' war criminals convicted at the IMTFE are enshrined. Cabinet members and a number of Prime Ministers, including Prime Minister Koizumi, have visited the Shrine annually. Some, to minimize controversy insist they visit as 'private individuals'. In a ruling in September 2005, the Osaka High Court ruled that visits by the Prime Minister to Yasukuni Shrine were "official" acts and "religious activities" that violated the separation of state and religion under Article 20 of the Constitution.

See, The Japan Times online, Koizumi's Yasukuni trips are ruled unconstitutional, 1 October 2005, available at: <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051001a1.htm>

(109) Ministry of Foreign Affairs of Japan – Recent Policy of the Government of Japan on the Issue Known as "Wartime Comfort Women", January 2003. Available at: <http://www.mofa.go.jp/policy/women/fund/policy.html>

(110) Coomaraswamy Report, supra note 13, para.134.

(111) According to Soh, Supra note 54, p 8. terminology here has also changed following criticism, from comfort money (irokin) or "sympathy money (mimaikin) to atonement money (tsugunaikin)

(112) Information available at: <http://www.awf.or.jp/english/moneyfund.html>

(113) Ibid.

(114) See, Hamber, B., Repairing the Irreparable: Dealing with the double-binds of making reparations for crimes of the past, Paper presented at the African Studies Association of the UK Biennial Conference - Comparisons and Transitions at SOAS, University of London, 14-16 September 1998.

(115) Interview with Lola Ammonita, Manila, Philippines, March 2005.

(116) It made no reference to archives of the Labour Ministry, and Police Agency, the two agencies most implicated in the forced recruitment of women, Soh, supra note 54, p. 5.

(117) See "Report of a study of Dutch government documents on the forced prostitution of Dutch women in the Dutch East Indies during the Japanese Occupation" The Hague 2004. Similar initiatives were undertaken in South Korea and Taiwan.

(118) Ibid., p.11. A Peace Friendship and Exchange Initiative begun in 1994 allocated (US Dollars) 1billion over 10 years for collecting historical documents, supporting research and "future-oriented" dialogue and exchange.

(119) The Japan Centre for Asian Historical Records, funded by the Initiative states for example that "A part of records requisitioned by the U.S. armed forces and seized as materials for the Military Tribunal for the Far East were lost after the war."

(120) Clemons, Steve, C. Bush as Japan's Arthur Andersen, Taipei Times, 1 March 2002.

(121) Interview with Lola Pilar, Manila, Philippines, March 2005.

(122) Joinet, Louis, Questions of the Impunity of Perpetrators of Human Rights Violations (Civil and Political). E/CN.4/Sub.2/1997/0/Rev.1, 2 October 1997, p. 4, para 17. (Hereafter, Impunity Report).

(123) Ibid., p. 16, A. General principles: principle 1.

(124) Note Verbale dated 26 March 1996 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Centre for Human Rights, E/CN.4/1996/137, 27 March 1996, p. 6.

(125) <http://www1.jca.apc.org/vaww-net-japan/english/backlash/whitewashing.html>

(126) Rarely read book inspires Japan- China rift, AP, April 14 2005. A controversial textbook which glosses over the historical facts was published by Fuso-sha and authorised by the Japanese government, yet only 0.4 per cent of Japanese junior high schools have opted to use the text book. See, Japanese nationalist textbook misses authors' target for school use, AFP, 31 August 2005.

(127) See: Japanese minister "should not have made" text book comments, BBC, 30 November 2004. The Chief Cabinet Secretary quickly insisted this did not represent any change in government policy.

(128) See, Nozaki, Yoshiko, The "Comfort Women" Controversy: History and Testimony, available at: <http://www.japanfocus.org/article.asp?id=348>

(129) Korean 'comfort women' v. Japan, Shimonoseki Branch, Yamaguchi District Court, 27 April 1998.

(130) Korean 'comfort women' v. Japan, Hiroshima High Court, 29 March 2001.

(131) Shin Hae Bong, *supra* note 81, p.200.

(132) Shin Hae Bong, *supra* note 81, p.191; Philippine Comfort Women v. Japan, Tokyo District Court, 9 October 1998.

(133) Chinese victims of forced labour v. Japan and Rinko Corporation, Niigata District Court, 26 March 2004, at 88. See also, Shin Hae Bong, *supra* note 81, p.196.

(134) Tokyo High Court ruling on claims brought by two Chinese "comfort women" (18 March 2005); Japanese Supreme Court ruling on claims brought by nine Taiwanese "comfort women" (25 February 2005); Tokyo High Court ruling on claims brought by four Chinese "comfort women" (16 December 2004); Japanese Supreme Court ruling on claims by 35 Korean "comfort women"; Tokyo District Court ruling on claims brought by 46 Filipino "comfort women" (6 December 2000).

(135) The principle is recognized in the following instruments: On 26 November 1968, the UN General Assembly adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, G.A. Res. 2391 (XXIII). On 25 January 1974 the Council of Europe adopted the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes. Principle 7 of the U.N. Principles on Reparations, *supra* note 90, states "time limitations applicable to civil claims and other procedures, should not be unduly restrictive"; Principle 23 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N, Doc, E/CN.4/2005/102/Add.1, 8 February 2005, adopted by the Commission on Human Rights in April 2005, states: "When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparations for their injuries"; The Human Rights Committee's General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant provides: "Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable."

(136) Article 31 of the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts. The Article is largely based on the 1927 Permanent Court of International Justice's ruling in the Factory at Chorzow case, *supra* note 87, p. 21, which states: "[i]t is a principle of international law that the breach of an engagement involves an obligation to make reparations in an adequate form. Reparations therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself."

(137) James Crawford, *The International Law Commission's Articles on State Responsibility* (Cambridge University Press 2002), page 209. This commentary on the Articles on State Responsibility notes:

"When an obligation of reparations exists towards a State, reparations does not necessarily accrue to that State's benefit. For instance, a State's responsibility for the breach of an obligation under a treaty concerning the protection of human rights may exist towards all the other parties to the treaty, but the individuals concerned should be regarded as the ultimate beneficiaries..."

(138) Signed on 8 September 1951.

(139) As noted in a decision in a case for reparations brought by prisoners of war in the US: "Potential Allied claims against Japan amounted to more than \$100 billion in 1952 dollars... According to the U.S. Senate Foreign Relations Committee reviewing the 1951 Treaty, "Obviously insistence upon the payment of reparations in any proportion commensurate with the claims of the injured countries and their nationals would wreck Japan's economy, dissipate any credit that it may possess at present, destroy the initiative of its people, create misery and chaos in which the seeds of discontent and communism would flourish." *Mitsubishi Materials Corp. v. Superior Court* 113 Cal.App.4th (2003) p.68.

(140) As of 1 January 2000, 46 states had ratified the San Francisco Peace Treaty: Argentina, Australia, Belgium, Bolivia, Brazil, Cambodia, Canada, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iran, Iraq, Japan, Laos, Lebanon, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Saudi Arabia, South Africa, Sri Lanka, Syria, Turkey, United Kingdom, United States of America, Uruguay, Venezuela and Viet Nam.

(141) Records of the Conference for the conclusion and signature of the Treaty of Peace with Japan: San Francisco, California, September 4-8 1951, "Japan will regain its viability and will be able properly to discharge its responsibility" (Indonesia) at 221; "[w]hile the present resources of Japan now permit only partial reparations, there is the possibility that those resources might increase in the future to an extent that would allow for the payment of complete or as nearly complete reparations as possible" (Philippines) at 104.

(142) *Ibid.*, at 229.

(143) *Foreign Relations of the United States*, 1951, Volume VI, p. 1323.

(144) This approach is in stark contrast to that taken by the Allies against Germany, which at the end of World War II was also in a state of financial collapse. The Potsdam Protocol and subsequent treaties contained no clause attempting to waive Germany's obligations to states or individuals. Rather they set out plans for Germany to provide reparations to the UK, USA, Russia and other states under the standard "Payment of Reparations should leave enough resources to enable the German people to subsist without external assistance." (Protocol, article 19).

(145) Treaty of Peace, signed at Rangoon on 5 November 1954, U.N.T.S. 1954 (Reg. No. 3542).

(146) Treaty of Peace, signed at Djakarta on 20 January 1958, U.N.T.S. 1958 (Reg. No. 4688).

(147) Reparations Agreement, signed at Saigon on 13 May 1959, U.N.T.S. 1959 (Reg. No. 5317)

(148) Reparations Agreement, signed at Manila on 9 May 1956, U.N.T.S. 1956 (Reg. No. 4148).

(149) Protocol relating to settlement of the problem concerning certain types of private claims of Netherlands nationals, signed at Tokyo on 13 March 1956, U.N.T.S. 1956 (Reg. No. 3554).

(150) Agreement, signed at Kuala Lumpur on 21 September 1967, U.N.T.S. 1967 (Reg. No. 9719).

(151) Agreement on the settlement of problems concerning property and claims and on economic co-operation, Signed at Tokyo on 22 June 1965, U.N.T.S. 1965 (Reg. 8473).

(152) See: Oda, Shigeru, The normalization of relations between Japan and the Republic of Korea, 61 Am. J. Int'l. L. (1967), p. 46-47; ICJ Report, supra note 8, p. 164-5.

(153) Treaty of peace and friendship. Signed at Beijing on 12 August 1978, U.N.T.S. 1978 (reg. no. 19784).

(154) The Japan Times, Seoul ups ante on war crimes, 27 August 2005, reports that the Republic of Korea called on Japan to fulfil its legal responsibility to provide reparations to victims of sexual slavery. In doing so, it released 35350 pages of documents from the 1965 treaty negotiations which it states supports its position that the treaty does not cover acts of sexual slavery. One spokesperson is reported to have stated: "We cannot see that the normalization treaty resolved such inhumane crimes as comfort women, in which Japan's state power, such as the government and military, was involved...Japan's legal responsibility remains."

(155) The International Law Commission's Articles of State Responsibility state: (article 34): "full reparations for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination..." This article addresses only state responsibility to other states and should not be considered either as an exhaustive list of the obligations to states or to individuals.

(156) In one Japanese case, Ko Otsu Hei Incidents case, the Yamaguchi Lower Court in its judgment dated 17 April 1998, ordered the Japanese government to pay 300,000 yen each to three South Korean "comfort women" for their enforced prostitution during the Second World War. It considered that the acts in question constituted severe violations of human rights and human dignity on the basis of the sex and race of the plaintiffs. As the Japanese government had been aware of the violations but had not adopted legislation to compensate the plaintiffs, it was at fault and in violation of the Constitution. However, on 29 March 2001, the Hiroshima High Court reversed the judgment and dismissed the claims for the reasons that the Japanese Constitution did not oblige the State to apologize or to legislate on compensation.

(157) UN Principles on Reparations, supra note 90.

(158) See: Permanent Court of International Justice ruling in Mavrommatis Palestine Concessions (Jurisdiction) (1924), Ser. A, No.2, p.12: "Rights or interests of an individual the violation of which rights cause damage are always in a different plane to rights belonging to the State, which rights may also be infringed by the same act. The damage suffered by an individual is never therefore identical with that which will be suffered by a State; it can only afford a convenient scale for the calculation of the reparations due to the State."

(159) In particular, the right to reparations is enshrined in human rights law treaties, including: Article 2 of the International Covenant on Civil and Political Rights; Article 2 of the Convention on the Elimination of Racial Discrimination; Article 2 of the Convention on the Elimination of Discrimination Against Women; Article 2 of the Convention on the Rights of the Child, Article 1 of the African Charter on Human and People's Rights; Article 1 of the American Convention on the Prevention and Punishment of Torture, and Article 1 of the European Convention of Human Rights.

(160) The International Committee for the Red Cross, Customary International Humanitarian Law, Volume I Rules (Cambridge University Press 2005), Rule 150 states: "A state responsible for violations of international humanitarian law is required to make full reparations for the loss or

injury caused." Security Council Resolution 687 (1991) reaffirmed that "Iraq is liable under international law for any direct loss, damage...or injury to foreign governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait." The United Nations Claims Commission established to achieve this mandate provided for individual reparations for victims of international humanitarian law. The Rome Statute of the International Criminal Court in article 75 provides for orders of reparations for individuals against the convicted person. The International Court of Justice in its Advisory Opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, General List 131, 9 July 2004, recognizes the right to individual reparations and makes recommendations for Israel to make reparations directly to victims. The U.N. Commission of Inquiry on Darfur, 25 January 2005, recommended reparations for individuals. The U.N. Principles on Reparations, supra note 90, provide for the right of individuals to obtain reparations from the state without limiting the right to crimes taking place now or in the future.

(161) Note verbal dated 26 March 1996 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Centre for Human Rights, UN Doc. E/CN.4/1996/137.

(162) Tokyo District Court, Claims for compensation from Japan arising from injuries suffered by former POWs and civilian internees of the Netherlands, Decision rendered by the Civil Division No.6, 30 November 1998.

(163) Japan Court rejects Philippine Sex Slave Case, Reuters, 6 December 2000: "In handing down the ruling, Tokyo High Court Judge Masato Niimura said: In light of international law individuals are not granted the right to demand reparations from the country that did them harm."

(164) Dutch former POWs lose appeal, The Japan Times, 12 October 2001.

(165) Hisakazu Fujita, Isomi Suzuki and Kantaro Nagano, War and the Rights of Individuals, Renaissance of Individual Compensation, Nippon Hyoron-sha Co. Ltd. Publishers (1999), expert Opinion by David, Eric, p.51.

(166) Ibid.

(167) Ibid.

(168) Professor Frits Kalshoven, Professor emeritus of International and Humanitarian Law at the University of Leiden; Professor Eric David, Professor of International Law, International Criminal Law and Law of Armed Conflict, University Libre de Bruxelles and; Professor Christopher Greenwood, Professor of International Law, London School of Economics. See also, Contemporary Forms of Slavery Report, supra, note 1, para. 46.

(169) See: Fujita, Suzuki and Nagano supra note 165.

(170) Ibid., Expert Opinion of Frits Kalshoven, p.38.

(171) Ibid., p.44.

(172) *Princz v. federal Republic of Germany*, 26 F3rd 66 (D.C. Cir, 1994).

(173) *Tel Oren v. Libyan Arab Republic*, 726 F2d 774, 810. D.C.Cir 1984).

(174) Fujita, Suzuki and Nagano supra note 165, Expert Opinion by Eric David, p. 55.

(175) Ibid., Expert Opinion of Christopher Greenwood, p.68.

(176) Tokyo District Court, Ex-Allied Nationals Claims case, 26 November 1998; Dutch Nationals Claims case, Judgement 30 November 1998; Filipino "Comfort Women" Claims case, Judgement, 9 October 1998.

(177) In Sjoerd Lapre and others v. The Government of Japan, Claims for compensation from Japan arising from injuries suffered by former POWs and civilian internees of the Netherlands, Decision rendered by the Civil Division No.6 of the Tokyo District Court (30 November 1998), the court found: "if we consider the fact that reference to the preparatory work of a treaty is nothing more than a supplementary means of treaty interpretation, in the interpretation of Article 3, the drafting process of Article 3 of the Hague Convention is construed as having nearly no influence on the interpretation based on the language of the treaty itself."

(178) Article 32 states: "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable;"

(179) Arthur Titherington and others v. The Government of Japan, Claims for compensation from Japan arising from injuries suffered by former POWs and civilian internees of the ex-allied powers, Decision rendered by the Civil Division No. 31 of the Tokyo District Court (26 November 1998).

(180) I.M. Sinclair, Vienna Conference on the Law of Treaties, 19 Int'l & Comp.L.Q. (1970) at page 65.

(181) Ibid., at page 49.

(182) German Federal Supreme Court: The Distomo Massacre Case (Greek citizens v. Federal Republic of Germany), Judgment, 26 June 2003, 42 ILM, p. 1037.

(183) Germany, Second Chamber of the Constitutional Court, Forced Labour Case, Judgement, 13 May 1996.

(184) Germany Administrative Court of Appeal of Munster, Personal Injuries case, Judgment, 9 April 1952.

(185) Greece, Court of First Instance of Leivadia, Prefecture of Voiotia case, Judgement, 30 October 1997.

(186) Dutch former POWs lose appeal, The Japan Times, 12 October 2001: "In handing down his ruling, presiding Judge Shigeki Asao said "All rights by the Allied Powers and their citizens to demand compensation from Japan were relinquished with the signing of the San Francisco Peace Treaty."

(187) Hwang Geum Joo v. Japan, United States Court of Appeals for the District of Columbia Circuit, No. 01-7169, 28 June 2005.

(188) Bijlagen Handelingen TK2377, nr.8 [annex to parliamentary proceedings] 1951-52; See also Steven C Clemens, America's Complicity in Japan's Historical Amnesia, JPRI Critique Vol VIII No 7, October 2001.

(189) Article 3 of the 1956 Protocol states: "The Government of the Kingdom of the Netherlands confirms that neither itself nor any Netherlands nationals will raise against the Government of

Japan any claim concerning the sufferings inflicted during the Second World War by agencies of the Government of Japan upon Netherlands nationals."

(190) Top court nixes sex slave, Korean vet suit, *The Japan Times*, 30 November 2004.

(191) Statement of Korean Foreign Minister quoted in judgment of US Court of Appeals for the District of Columbia Circuit in *Hwang Geum Joo v. Japan*, 28 June 2005, p.13.

(192) Shin Hae Bong, *supra* note 81, p.201.

(193) *Ibid.*, pp.201-203; *Chinese victims of forced labour v. Mitsui Mining Inc.*, Fukuoka District Court, 26 April 2002, p.84-85: the Court held that it " could not admit that the rights of the plaintiffs to claim compensation had been decisively waived by the 1972 Japan-China Joint Declaration and the 1978 Japan-China Peace Treaty"; *Chinese victims of forced labour v. Japan and Rinko Corporation*, Niigata District Court, 26 March 2004, p. 104; High court convenes, snubs sex slave appeal, calls it a day, *The Japan Times*, 16 December 2004.

(194) Foreign Ministry Spokesperson Liu Jianchao's remarks on the Japanese Court rejecting the appeal of Chinese "Comfort Women", 25 March 2005.

(195) See: No compensation for "comfort women", AFP, 25 February 2005.

(196) Fujita, Suzuki and Nagano *supra* note 165, Expert opinion of Professor Kalshoven, p.47.

(197) Article 6 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949; Article 6 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949; Article 6 Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949; Article 7 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

(198) Article 51 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949; Article 52 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949; Article 131 Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949; Article 148 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

(199) Fujita, Suzuki and Nagano *supra* note 165, Expert opinion of Christopher Greenwood, p. 70.

(200) Commentary on the Additional Protocols of 8 June 1977 (ICRC, 1987, para. 3651).

(201) Fujita, Suzuki and Nagano *supra* note 165, Expert opinion of Eric David, p. 57

(202) *Ibid.*, Expert opinion of Christopher Greenwood, p. 70.

(203) Such measures are consistent with states obligations under Article 2 (3) (b) of the International Covenant on Civil and Political Rights "To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."

(204) As the acts of sexual slavery amount to war crimes and crimes against humanity which were crimes under international law at the time the sexual slavery system was in operation, it is consistent with the principle of legality to apply retrospective laws providing for compensation to address the crimes.

(205) Al-Adsani v. United Kingdom, Eur. Ct. H.R., judgement of 21 Nov. 2001.

(206) Ferrini v. Federal Republic of Germany, Corte di Cassazione (Sezioni Unite), judgment No 5044 of 6 November 2003. See: State immunity and human rights: The Italian Supreme Court Decision on the Ferrini Case, 16 EJIL (2005), 89-112.

(207) For example, in the Prefecture of Voiotia case, the Greek Supreme Court in its judgment of 4 May 2000 awarded reparations against the Federal Republic of Germany, however, victims were unable to execute the order against assets of the Federal Republic of Germany located in Greece without the permission of the Greek government, required under national law, which was denied on political grounds.

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