

**A Shadow Report
to
CEDAW
29th Session 2003**

**Japan's Continuing Liability
Regarding the
Former "Comfort Women"**

Prepared by:

**International
Criminal
Justice
Institute (ICJI)**

VAWW Net Japan

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Executive Summary:

During the Second World War, tens of thousands of women and girls from the Asia-Pacific region were illicitly recruited or outright forced or abducted to serve as sex slaves to the Japanese military. Euphemistically referred to as “comfort women”, in the early 1990s, survivors broke 50 years of silence to report the rape and sexual slavery committed against them by the Japanese government.

Japan ratified the Women’s Convention in 1985. Despite its obligations under the Convention to condemn and redress all forms of discrimination against women, including sexual violence:

- a.) the Government of Japan refuses to admit its leading role in establishing, filling, and maintaining the “comfort stations,”
- b.) it refuses to take responsibility for the crimes and to provide an official and genuine apology to the “comfort women”,
- c.) it refuses to address the systemic discrimination, prejudices, and disparate treatment faced by survivors of rape and sexual slavery,
- d.) it refuses to take appropriate measures to ensure that the former “comfort women” have adequate access to medical or social services,
- e.) it refuses to educate the public about the crimes committed against the women during the war,
- f.) it refuses to provide legal, quasi judicial, social, legislative, or economic redress to the survivors, and it refuses to take all appropriate steps to ensure that the survivors are able to exercise and enjoy their rights on a basis of equality with men.

These continuing failures exacerbate the harms caused at the time they were committed and in the intervening years, and result in additional harms and discriminatory treatment and impact being inflicted on the “comfort women.”

Hence, the Government of Japan is in violation of the Women’s Convention.

This Shadow Report respectfully requests the CEDAW Committee to require the Government of Japan to implement the remedial measures enumerated in the Judgement of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery.

Introduction:

During the Second World War, as many as 200,000 so-called "comfort women" were raped and forced into sexual slavery by the Japanese military. For five long and painful decades, silence surrounded these crimes. The silence was broken in the 1990s when surviving "comfort women" began to come forward and speak out about the crimes committed against them. For more than a decade now, the surviving "comfort women" repeatedly demand war-time responsibility and reparations from the Government of Japan. Nonetheless, despite its legal liabilities and responsibilities under international law, Japan continues to deny accountability for mass rape, sexual slavery and other forms of sexual violence committed by its Imperial Army during the war. In July 2003, the 29th session of the Committee for the Elimination of Discrimination against Women (CEDAW or the Committee) considers the country report of the Government of Japan, including its obligations to the former "comfort women."

Addressing the issue of Japan's military sexual slavery, in CEDAW's final comment to the 1994 report of the Government of Japan, the Committee "expressed its disappointment that the Japanese report contained no serious reflection on issues concerning the sexual exploitation of women from other countries in Asia and during the Second World War."¹ The Committee also encouraged Japan to take specific and effective measures to address war-related crimes in its next report to CEDAW.²

UN bodies have repeatedly made recommendations to Japan in regards to the "comfort women" issue. For instance, the UN Committee on Economic, Social and Cultural Rights (ICESCR) has expressed "its concern that the compensation offered to war-time "comfort women" by the Asian Women's Fund, which is primarily financed through private funding, has not been deemed an acceptable measure by the women

concerned,"³ and "strongly recommend[ed] that the State party find an appropriate arrangement, in consultation with the organizations representing the 'comfort women,' on the ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so."⁴

Recently, two of the ten "comfort women" claims made against the Government of Japan in Japanese courts, seeking an apology and state compensation, were dismissed by the Supreme Court of Japan. Eight other cases have been dismissed by the lower courts. Thus, domestic remedies have been denied and the claims exhausted.

The Government of Japan is not fulfilling its international obligations including its duties under the Convention on the Elimination of Discrimination against Women (the Women's Convention). As discussed below, because Japan has a continuing obligation to prevent discrimination and provide a remedy to the "comfort women," Japan remains in violation of the Women's Convention, and the harm suffered by those victimized remains unredressed.

This Shadow Report was drafted by advocates, historians, lawyers, and activists, in order to set the record straight on crucial issues concerning the evasiveness and discriminatory treatment and impact of the Government of Japan in regards to the former "comfort women." This Report will present the facts, examine Japan's legal obligations, and provide additional information regarding the "comfort system" for the use of the experts present at the 29th CEDAW session.

Japan asserts in its 5th periodic report to CEDAW that it has fulfilled its obligations, if any exist, regarding the former "comfort women". In fact, Japan has taken only superficial and token measures to provide any forms of accountability to the survivors or their heirs and to prevent discriminatory treatment and attitudes towards these women. As this Shadow Report demonstrates, through its continuing failure to appropriately remedy and redress the crimes committed against the women and girls subjected to systematic sexual slavery, Japan continues to discriminate against the

former “comfort women” in multiple ways. The discrimination is at all levels and the discriminatory acts and omissions toward the “comfort women” have been intentional, political, overt, implicit, and symbolic. Japan’s denial of its role, failure to provide redress, failure to accept responsibility, and failure to reveal the truth, reinforces harmful gendered stereotypes and perpetuates injustice, discrimination, and inequality against the “comfort women”.

In the past 10 years, approximately 800 former “comfort women” from the victimized countries have given their testimonies to women’s organizations, government offices tasked to hear their cases, human rights organizations, and international mechanisms, such as the Commission on Human Rights in Geneva. Many of these courageous women have since died, with their dreams for justice buried with them. Nonetheless, the few remaining survivors continue their struggle for justice and accountability on behalf of themselves and the other women who have died.

The Government of Japan should take full responsibility to redress the discriminatory treatment afforded to the “comfort women” and implement the remedial measures stipulated in the “Comfort Women” Judgement. Justice delayed is justice denied and with the survivors now primarily in their 80s, time is of the essence.

Japan’s Obligations Under the Women’s Convention:

Under the Women’s Convention, Article 2 requires states parties to “condemn discrimination against women in all its forms” and to “pursue by all appropriate means and without delay a policy of eliminating discriminating against women.” Toward these goals, Article 2 requires Japan:

...

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal

basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

As demonstrated below, by its continuing failure to acknowledge the truth, accept responsibility, and remedy the crimes, Japan is in violation of these provisions.

Article 3 of the Women's Convention requires Japan to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." Despite these obligations, the former "comfort women" have not received the full exercise and enjoyment of their rights.

Article 5(a) of the Women's Convention requires Japan to take all appropriate measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which

are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Japan’s continuing denial of its responsibilities toward the “comfort women” violates this provision.

Article 6 of the Women’s Convention requires Japan to “suppress all forms of traffic in women and exploitation of prostitution of women.” Japan’s continuing denial of its responsibilities toward the “comfort women” suppresses and exploits all women, particularly the “comfort women.”

Article 10 of the Women’s Convention requires Japan to eliminate discrimination against women in the field of education. Japan’s continuing denial of its responsibilities toward the “comfort women” and its failure to acknowledge and report the truth violate this provision.

Article 12 of the Women’s Convention requires Japan to eliminate discrimination against women in the field of health care. Japan’s continuing denial of its responsibilities toward the “comfort women” denies them adequate treatment in regards to receiving appropriate health care.

CEDAW General Recommendation No. 19

It is important to emphasize that General Recommendation No. 19 of CEDAW determined that “Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”

Paragraph 7 of this Recommendation insisted:

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

The crimes committed against the former “comfort women” and the patriarchal practices prevailing in Japan and throughout Asia, which inflict disparaging terms and stereotypes on women who have had sex outside a marital context, regardless of lack of consent or ability to refuse, impact each and every right and freedom listed above. The continuing violations caused by Japan’s refusal to acknowledge responsibility and afford redress for the crimes reinforces and perpetuates the harms.

Paragraph 11 of General Recommendation 19 also noted that “Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.” It emphasized that “[t]he effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” Finally, paragraph 16 emphasized that “Wars, armed conflicts and the occupation of territories often lead to

increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.”

In light of these comments, the CEDAW Committee recommended, in paragraph 24:

(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;

(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;

...

(e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;

(i) Effective complaints procedures and remedies, including compensation, should be provided;

...

(k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;

...

(t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:

(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;

(ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

(iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

(u) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;

(v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

None of these provisions has been fully implemented for the former “comfort women”, despite the fact that Japan is under a continuing obligation to ensure that these women do not receive discriminatory treatment or impact and it is under an obligation to remedy the violations.

As demonstrated below, Japan is in violation of Articles 2, 3, 5, 6, 10, and 12 of the Women’s Convention.

Background on the “Comfort Women” System:

Women have always been victimized by sexual violence during periods of armed conflict. Historically, it was considered irrelevant or inevitable that women were raped or enslaved to provide sexual services to the military. For centuries, customary laws prohibiting war-time rape treated rape as a violation of the honor of the group to which the victimized women belonged.⁵ In addition, in patriarchal societies which value female virginity and chastity above all else, women and young girls who were victimized by sexual violence were blamed and stigmatized, resulting in overwhelming silence surrounding the crime. As a result of these discriminatory views and practices, perpetrators who committed sexual violence against women during armed conflict were seldom prosecuted or punished.

By the twentieth century, customary international law of warfare prohibited war-time sexual violence, thus when the Allied victors of World War I were considering whether to prosecute their vanquished foes for war crimes, “rape” and “enforced prostitution” were two of the enumerated crimes listed as prosecutable if a trial ensued.⁶

Violence against women in war has confirmed the treatment of women as sexual objects in a terrible way. The world has come to speak of rape as an inevitable consequence of war, as part of the reality of the behavior of the armed forces. But it is not inevitable and not unpreventable. Indeed, the origins of the systematic practice of rape and sexual slavery, its pervasiveness in war, and its universal and at the same time violent nature, is due in large part to deeply entrenched discriminatory norms devaluing women and girls and accepting and privileging the desires and actions of men and boys, who act as if they have an entitlement to use and abuse women’s bodies for their own misogynistic and unlawful military goals.

The manifestations, causes, and consequences of gender-related violence, such as rape, sexual slavery, and other forms of sexual violence, cannot be deconstructed without giving thought to the patriarchal practices of society in general and the exerted domination of men over women in all spheres of public and private life.

Evidence repeatedly demonstrates that rape and sexual servitude have been practiced by armed forces in both large-scale and small-scale military operations. Analysis of the phenomenon of war-time mass rape has rarely been undertaken, despite the extensive evidence which exists of the practice. This evidence includes the systematic rapes that took place during the Nanjing Massacre in the Sino-Japan war (1931-37) and the mass rape of the women in the villages of Mapanique, Candaba, and Pampanga in the Philippines during the attack by Japanese troops in November 1944.

The deafening 50-year silence surrounding the “comfort women” system was finally broken in the early 1990s. As systematic rape was being reported in the Yugoslav conflict, Korean survivors began to come forward and speak of their sexual slavery during the Second World War. These proclamations were followed by survivors from other Asian countries, including China, the Philippines, North Korea, Taiwan, Indonesia, Malaysia, East Timor, the Netherlands (from Dutch Indonesia) and the Pacific Islands, all telling similarly chilling stories of their illicit procurement and sexual slavery.

The survivors have demanded the Japanese government officially recognize the crimes committed against them, and provide an official apology, state reparation and prosecution of perpetrators. The Japanese government, however, still refuses to admit its legal responsibility. Initially, it denied any involvement of the state and the military in the system of sexual slavery; however, confronted with the evidence in 1993, Japan reluctantly admitted only moral responsibility.⁷

Historical records have proven that there was systematic conscription, coercion, abduction, and trafficking of these women and girls from the colonized countries, who were then forced into sexual slavery by the Japanese military. These strong and courageous women who have come forward “have awakened the world to the horror of the Japanese military’s institutionalization of rape, sexual slavery, trafficking, torture, and other forms of sexual violence inflicted upon girls and women. Robbed of their youth and their future, they were conscripted and trafficked through force, coercion, and deception and confined to ‘comfort stations’ or, more accurately, sexual slavery facilities wherever Japanese troops were situated, including on the front lines.”⁸

The establishment, staffing, operation and control of the “comfort stations” was part of Japan’s planned and organized logistics of the war. The enormity of this tragedy, its unprecedented nature, the vastness of its scale, as well as the sheer ruthlessness of those perpetrators, and the devastating impact on the women and their families, cannot be overstated.

The voices of the former “comfort women” have mobilized a global movement to end impunity and establish accountability and other forms of redress for crimes of sexual and gender violence. It is imperative to hold the Government of Japan responsible for its leading role in establishing and maintaining “comfort stations” during the war and forcing women into sexual slavery in these stations.

The “Comfort Women” International War Crimes Tribunal:

The Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery (“Comfort Women” Tribunal) was convened in Tokyo in December 2000. It represented a culmination of more than a decade of work and sacrifices by the victimized survivors and others attempting to secure redress for the “comfort women” survivors and those who have not survived. The Tribunal was established because of the failure of the Government of Japan to discharge its responsibility to ensure justice for the former “comfort women”. Thirty-five surviving “comfort women” from nine victimized countries, including Japan, testified before the Tribunal, as did a number of experts and even perpetrators. Prosecutors from across the Asia-Pacific region presented evidence depicting how Japan and its agents conceived, developed, established, and supported the “comfort stations” wherever Japanese troops were present, and systematically and unlawfully forced women and young girls to provide sexual services to Japanese troops when enslaved in these stations.

The “Comfort Women” Tribunal was established out of the conviction that the failure of the Government of Japan to own up to its legal and moral responsibilities,

must not be allowed to silence the voices of survivors nor allow the state of Japan to escape accountability for these crimes against humanity. It was established to redress the historic tendency to trivialize, excuse, marginalize, and obfuscate

crimes against women, particularly sex crimes, and even more so when they are committed against women of subordinated ethnicities. This Tribunal was established out of the belief, expressed repeatedly by the brave yet tormented survivors now in the latter stages of their lives, that acknowledging and assigning responsibility for the crimes will help to ensure that they live out their remaining years with greater peace and security; and further, that the state of Japan will come to recognise its responsibility to seek the forgiveness of survivors and to provide them with reparations. This Tribunal is the product of an uncompromising hope that justice is still possible and that such atrocities will never be repeated.⁹

Due to Japan's continual denial – through courts, legislation, politics, policy, and practices – of its past and continuing role and responsibility in regards to the “comfort women,” civil society established this peoples’ international war crimes tribunal to determine state and individual criminal responsibility for the crimes.

The Judges of the “Comfort Women” Tribunal were made up of four eminent international law experts from around the world, namely the former President of the International Criminal Tribunal for the former Yugoslavia, a current *ad litem* Judge of the International Criminal Tribunal for the former Yugoslavia, a Professor and renowned scholar in international law, and the head of an international non-governmental organization.

On December 4, 2001, the “Comfort Women” Tribunal delivered its Judgement in The Hague, The Netherlands. Ten accused were found guilty of individual and superior criminal responsibility for rape and sexual slavery of the former “comfort women” for the role they played in establishing, maintaining, and facilitating the “comfort stations”. In addition, the Tribunal found that the Government of Japan had violated, and continues to violate, its state responsibility for its role in establishing and maintaining the “comfort system” and forcing women into sexual slavery therein.

The greatest power of the Tribunal, like so many human rights initiatives, was in its capacity to examine the evidence, create an accurate historical record, and apply principles of international law to the facts of the case. While not legally binding, the Tribunal carried significant moral authority and called upon the Government of Japan “to

realize that the greatest shame lies not in this recording of the truth about these crimes, but in its failure to accept full legal and moral responsibility for them.”¹⁰

The “Comfort Women” Tribunal stressed that “the cornerstone of the international and domestic rule of law is legal accountability – the calling to account of individuals and states for policies and activities that grossly violate established norms of international law. To ignore such conduct is to invite its repetition and sustain a culture of impunity. . . . This principle applies with particular force with respect to fostering accountability for crimes of sexual and gender violence.”¹¹

The Tribunal found that “the institutionalization of sexual slavery of girls and women was an integral part of the Japanese military aggression.”¹² The “comfort system” was established as part of its war effort: to have women and girls readily available to safely and conveniently provide sexual services to Japanese troops.

The Judgement emphasized that the crimes that were committed during the war have been intensified today because of Japan’s failure to accept its responsibility and provide redress for the survivors. It stressed:

Throughout the testimony, it was clear that the pain of women who were the victims of sexual violence was exacerbated by the denial of recognition and healing that justice can bring and by the community or familial rejection they were forced to endure purely as a result of the sexual nature of the crimes committed against them. The survivors were forced to suffer physically and mentally in shame and silence as a consequence of sexist attitudes treating them as responsible for the very atrocities they suffered. The findings of the Tribunal are intended to contribute to the proper attribution of responsibility for the crimes, placing it upon the perpetrators and not the victims of the crimes of sexual violence, and, thereby, to assist in changing worldwide patterns of sexual stereotyping which continue to subjugate women in contemporary society.¹³

As discussed below, the “Comfort Women” Tribunal made a number of recommendations that should be followed in order to bring Japan in compliance with its responsibilities under international law. The Government of Japan should respect and implement the measures required by the Judgement of the Tribunal.

Japan's Non-Compliance with Its International Obligations:

The Government of Japan has failed to comply with its international obligations in a number of ways. In its Fifth periodic report to CEDAW, Japan cites a number of initiatives Japan has undertaken to provide redress to the "comfort women." Japan's statements, and the reality, will be discussed below.

A. Government Fact-Finding Measures

The Government of Japan, in its Fifth periodic report to CEDAW, states:

(1) Government Measures

The issue known as "war-time comfort women" has no direct bearing on this Convention, and the Government of Japan has faithfully executed its duties concerning reparations and claims after WWII, stipulated in the San Francisco Peace Treaty, bilateral peace treaties and other related treaties. However, paying attention to the concluding comments of the Committee on the Elimination of Discrimination against Women on the combined second and third periodic reports of Japan, as well as the consideration at the thirteenth session of the Committee held in January 1994, a description of the measures taken by the Government of Japan concerning this issue shall be given herein.

The Government of Japan has been conducting a thorough fact-finding study on the issue known as "war-time comfort women" since December 1991 and announced its results in July 1992 and in August 1993. The Government of Japan has also expressed its apologies and remorse to the former "war-time comfort women" on many occasions.

The Reality:

Although the Women's Convention was not adopted until decades after the Second World War, the continuing failure of the Government of Japan to redress the horrific crimes of rape and sexual slavery committed during the war has a major and devastating impact on the treatment of women and reinforces discriminatory and

disparaging stereotypes suffered by victims of sex crimes. This violates Articles 2, 3, 5, 6, 10, and 12 of the Women's Convention. As discussed in detail below, the Government of Japan is under a continuing obligation to fulfill its obligations under international law.

Contrary to its contention, the Government of Japan has never conducted "a thorough fact-finding study on the "comfort women system." The research, conducted, which was concluded in August 1993, is grossly insufficient, and there have been no public reports by the government since 1993. Moreover, the government's "fact-finding study" was merely a preliminary study, not an extensive analysis or report. Worse, the first report, made in 1992, denied the government's involvement wholesale.

The second report, concluded in August 1993, finally admitted the government's involvement in the "comfort stations", but still lacked crucial information, including in content and research methods. For example, many important aspects necessary to obtain a full picture of the "comfort system" were left unresolved, including the total number of "comfort women" victimized, and the roles different governmental bodies played in recruiting and transporting the women. Also, most of the documents referred to in the 1993 report had already been located by the efforts of independent scholars and others.

While voluminous documents stored in various governmental bodies exist, the government did not take the opportunity to discover their relevance to the issue of "comfort women." In addition, interviews of the women survivors and other people who had been amongst the government personnel and private agents at the time of the war were also very limited, and the results of these interviews have not been disclosed to date. The Government of Japan reported the second research results, and essentially ended its research efforts.

Since then, important documents have been located by independent scholars or by accident out of the materials of the Police and the Ministry of Health and Welfare, which the government had claimed would not have relevant information.

According to the “Comfort Women” Judgement, Japan has “repeatedly acted to obstruct the disclosure of the truth of the ‘comfort station’ system, including up to the present day. . . . In addition, Japan has failed to conduct and publicise a full investigation into the system.”¹⁴

In addition to its own failure to make efforts for full fact-finding, the Government of Japan has also obstructed fact-finding efforts made by civil society. While many documents concerning the “comfort system” were intentionally destroyed by Japan, the government still has a number of documents that could provide important information, such as police records, documents of the Department of Overseas Affairs and Home Ministry relating to the colonies, the huge collection of diaries of officials and personnel accompanying the military held by the Defense Agency, materials relating to the war crimes trials held by the Justice Ministry, and Welfare Ministry documents relating to repatriation and war victims' relief.

However, the government has disclosed to the public only a small portion of these documents, and most of them are still sealed by the government despite the many and repeated requests for disclosure made by scholars, lawyers, historians, and others.

As a result of the governments attempt to prevent discovery and disclosure, in 1999 several supra-partisan Diet members proposed a bill to partially amend the Diet Library Code, to include provisions necessary for setting up a new section in the Diet Library with a mandate of fact-finding and its disclosure. The bill, however, has not been discussed in the Diet.

To conduct a full and complete fact-finding mission into Japan's military sexual slavery, efforts by Japan must include the following:

- **A full field research initiative to locate and identify the sites of "comfort stations" and other sites of perpetration.** Materials of the US military, testimony of women survivors and local residents, memoirs of Japanese soldiers and other materials show that "comfort stations" existed throughout the Asia-Pacific region wherever the Japanese troops were stationed.

- **A professional interview of women survivors, their families and neighbors, and any other related parties including Japanese veterans and officials, must be conducted throughout the Asia-Pacific region to determine the full scope of the “comfort system”.** Survivors and other parties are now in their 70s or older, so time is of the essence. Research covering the countries and regions where no or few survivors have been located is particularly urgent. This includes all the countries of Southeast Asia except the Philippines and Indonesia (e.g. Burma, Malaysia, Thailand, and Vietnam); it also includes the Pacific islands (e.g. Guam and Saipan).
- **A full research of the materials stored in archives and other facilities outside Japan.** These materials include the materials of the Allied forces stored in US, UK, Australia and others, in particular the materials at many different archives in China, and the materials of the time under Japanese control in the countries and regions which used to be Japanese colonies or under Japanese military occupation.

It should also be noted that the Government of Japan has failed to conduct in-depth research that may assist the rehabilitation of, or remedy, the various harms inflicted on the “comfort women.” For instance, quite a few women had been taken from Korea and Taiwan to places far away from their home countries, such as China and Southeast Asia. But the government has never studied whether or not such women had been able to repatriate, or whether or not, or how many of, such women still remain in those places unable to return to their home countries. The Government of Japan has taken a callous and indifferent approach to the numerous issues concerning redress.

For these acts and omissions, Japan is in violation of Articles 2, 3, and 10 of the Women’s Convention.

B. The Japanese Government's "Apology":

The Government of Japan has failed to issue a full and sincere apology to the “comfort women.” Even today, most survivors want a public apology from the Government of Japan; some have gone even further by pursuing the issue in court.

A primary reason why the “comfort women” survivors do not accept the Japanese government's purported "apology" as genuine is because the government has never accepted nor admitted its own legal responsibility for the matter. In original Japanese text, expressions of the government which are translated in English as "apology and remorse" artfully avoid the use of words attaching any hint of guilt.

The Government of Japan has expressed its purported “apologies” and remorse to the former war-time “comfort women” primarily in two forms. One form is characterized by statements made to the public at political or diplomatic occasions. These statements are not made to the individual victims or their close associates directly; the only expression made directly to the individual survivors is to recipients of the Asian Women’s Fund (AWF or Fund). This indicates that the Japanese government is turning the opportunity for meaningful justice for “comfort women” into a superficial public relations stunt in order to appease other governments and the international community.

The second form is characterized by the letters of apology from the Prime Minister of Japan. These were sent only to women who accepted “atonement money” from the AWF. Thus, the survivors who rejected this money, who represent the majority of those women who have come forward, have not received a letter of apology. Furthermore, five Filipino women who accepted “atonement money” sent back their letters of apology from Hashimoto Ryutaro, the then-Prime Minister, on the grounds that the apology “did not constitute an acknowledgement of state responsibility for the abuse they suffered at the hands of the Japanese military.”

There are other factors that lead the survivors to believe the government's "apology" is insincere. For instance, the Government of Japan has never repudiated false statements made publicly by officials regarding the women, for example, claiming that the women were voluntary prostitutes. Nor has the government addressed the stigmatizing accusations against victimized women. It has never taken any action to correct or remedy the falsehoods, such as publicly repudiating them or calling upon the declarants to repudiate them or leave office, even when those statements are made by high-ranking public officials. This omission by the Japanese government clearly indicates it wishes to encourage public ambiguity about the situation of "comfort women" and maintain official denial of any responsibility.

Even after 1993 when the government officially admitted its involvement, certain members of the Cabinet and the Diet have made statements that denied coercion. For instance, on 4 May 1994, Minister of Justice Nagano Shigekado said that "comfort women were licensed prostitutes at the time, so one cannot apply today's standard whether it constituted discrimination against women and/or Koreans." While some of these high-ranking officials chose to resign in the face of criticism and outrage expressed by the victimized Asian countries, the government itself has taken no action against them, virtually condoning these statements.

Further, the Government of Japan has never made any effort whatsoever to identify and prosecute the perpetrators and others who were responsible for the crimes committed against the "comfort women."

The "Comfort Women" Judgement emphasized that "[a]s part of its responsibility to tell the truth, make reparations and prevent recurrence, the state of Japan has an obligation publicly to repudiate statements by government officials purporting to deny that the 'comfort system' was one of sexual slavery. . . . It should also publicly call upon the declarants to repudiate such lies and, if not, to leave office."¹⁵ The Tribunal found that by allowing disparaging statements against the "comfort women" to stand, Japan was in breach of its obligations. The Judgement stated:

We emphasise further that these statements, which implicitly or explicitly label “comfort” women as prostitutes, heap new suffering upon the survivors through stigmatizing them in the eyes of the Japanese society, and the societies in which they live, and through attempting to undermine the legitimacy of their demands for apology and compensation.

The failure to fully disclose the truth and accept responsibility has the further effect of obstructing the physical and mental recovery and social re-integration of many of the survivors of the sexual slavery system.¹⁶

Because Japan insists it has already apologized, it continues the acts and omissions that undermine its own alleged "apology", and keeps promoting its claims both domestically and internationally that it has "apologized" despite the above. This results in continuing mental and emotional violations against the women survivors today. More than anything else, the women want a sincere and full apology from the Government of Japan, a wish that has not yet materialized.

As emphasized by the “Comfort Women” Judgement:

[S]uccessive governments of Japan have continually violated the duty to acknowledge its wrongdoing concerning the “comfort system.” This violation continues until this day. The guarded admissions of the state of Japan continue to minimise the harm inflicted while its failure to countermand the denials continues to exacerbate the survivors’ suffering. Many of the survivor-witnesses underscored their need for a meaningful apology. A sincere apology fully acknowledging the wrongdoing and clearly accepting full legal responsibility is required.¹⁷

By failing to acknowledge the truth and give a full and sincere apology, which results in discrimination against the “comfort women”, Japan is in violation of Articles 2, 3, 5, 6, and 10 of the Women’s Convention.

C. The Asian Women’s Fund and Atonement Projects

According to the Government of Japan, in its Fifth Periodic Report to CEDAW:

To show its sincere apologies and remorse, the Government of Japan in cooperation with the people of Japan created the Asian Women's Fund (AWF) in July 1995. Japan has been providing all possible assistance to the AWF, including bearing the total operational costs of the AWF and money required for its projects, as well as assisting in fund-raising.

Specifically: Fund-Raising for the AWF.

The Government of Japan has been making utmost efforts to raise public awareness and gain a better understanding on the issue known as "wartime comfort women." The Government has provided all possible assistance to the AWF in its fund-raising to express Japanese people's atonement to the former "comfort women."

As a result, a wide range of people including individuals, private enterprises, labor unions, political parties and Cabinet Ministers have shown their support for the AWF in the form of more than ¥560 million contribution (as of the end of April 2002).

The Reality:

In 1995, the Government of Japan publicly promoted their plan to have the Asian Women's Fund (AWF or the Fund) pay compensation to victims of Japanese military sexual slavery. In a press conference in August 1994, Prime Minister Murayama stated that he "would like to find out, together with the Japanese people, an appropriate way which enables a wide participation of people so that we can share such feelings." As a follow up to this statement, on 14 June 1995, Chief Cabinet Secretary Igarashi Kozo announced the projects of the "Asian Peace and Friendship Foundation for Women," later changed to the Asian Women's Fund. The activities of the Foundation were, *inter alia*, to "raise funds in the private sector as a means to enact the Japanese people's atonement [tsugunai] for former war-time comfort women" and "to support those conducting medical and welfare projects and other similar projects which are of service to former war-time comfort women, through the use of government funding and other funds." Prime Minister Murayama asserted that the Fund "is an expression of atonement on the part of the Japanese people" to the "comfort women." The Fund has raised some 483 million yen (approximately US\$4 million), permitting the allocation of 2 million yen (or about \$16,667) to each survivor.¹⁸

The Japanese government has repeatedly emphasized that the Fund is a private foundation. Despite desperately needing the money, many survivors have rejected this monetary gesture from private donations and instead demanded direct state

compensation for the crimes committed against them by the Japanese military. The women insist that Japan pay because they want “honour and dignity, not charity money.” Nonetheless, the Fund began to distribute the “atonement money” in the Philippines in 1996 over “the vigorous and consistent protests and refusals from many victims” in the Republic of Korea, Taiwan and the Philippines. The Fund met with similar bitter protests of governments and the public when it secretly paid seven Korean victims in 1997. In a report to the Committee of Experts of the International Labour Organization, the Japanese government asserted that, as of 1997, some 85-90 “comfort women” had accepted “atonement money” from the Fund. Nonetheless, experts assert that victims in the Philippines, Taiwan, Republic of Korea and Indonesia have overwhelmingly refused to accept Fund monies and that the five Filipino comfort women who accepted the money then returned an apology letter from Prime Minister Hashimoto because it was not “recognition of the government admitting its official accountability for the abuses committed against them by the military.”¹⁹

Considering this issue, the Judgement of the “Comfort Women” Tribunal states:

The Judges find that the Asian Women’s Fund does not constitute an acceptable mechanism for compensating victims for the wrongs inflicted by the state. We agree with Ms. Coomaraswamy: While the initiative from a moral perspective is “a welcome beginning, [the Fund] does not vindicate the legal claims of “comfort women” under public international law. Privately raised funds cannot be used in lieu of official compensation in satisfaction of the state’s obligation, particularly where there has been for decades no financial barrier to the state’s ability to provide the compensation from the public fund. The inadequacy, indeed, discriminatory nature of this privatised “moral” approach to compensation is further underscored by contrasting it with the official diplomatic and legislative attempts Japan has made to respond to the compensation claims of some male victims of the Japanese conscription and forced labour program.²⁰

The Judgement further insists:

To be in compliance with international law, compensation must come from the source of the wrongdoer, the government of Japan and any other responsible party. The compensation must be adequate to the material harm, lost opportunities and emotional suffering of the victims, their families and close

associates for the crimes committed and the ensuing harms resulting from the denial of truth and timely remedial measures. The Tribunal considers that the Asian Women's Fund, vehemently rejected by many of the survivors, is neither appropriate nor adequate.²¹

By its acts and omissions in its treatment of the former "comfort women", Japan is in violation of Article 2 of the Women's Convention.

According to the Government of Japan, in its Fifth periodic report to CEDAW:

a. Project in the Philippines, the Republic of Korea and Taiwan

Since July 1996, the AWF has been providing ¥2 million (atonement money) to each former "wartime comfort woman" in the Republic of Korea, the Philippines and Taiwan from the above-mentioned people's contributions. As of the end of April 2002, a total of 234 people have received atonement money from the AWF.

On behalf of the Government of Japan, the Prime Minister sends a letter expressing apologies and remorse directly to the former "wartime comfort women" together with the atonement money that has been donated by the Japanese people to the AWF. Along with these, messages from the Japanese contributors are also conveyed to each victim.

In order to discharge its moral responsibility, the Government of Japan has, as of the end of April 2002, disbursed about ¥470 million from the national budget for medical and welfare projects of the AWF to the former "wartime comfort women" in the Republic of Korea, the Philippines, and Taiwan over a five-year period (such plans as the improvement of housing, nursing services and assistance in the provision of medical service and medicines are being carried out with the actual circumstances and wishes of each of the former "wartime comfort women" being taken fully into account).

As of 12 August 2001, applications for these projects in the Philippines are no longer accepted. Applications in the Republic of Korea and Taiwan will end on 1 May 2002.

The Reality:

“Atonement projects,” whereby the “Fund” collects donations from private citizens and provides “atonement money” to individual survivors from the private donations collected, have been carried out only in a small fraction of the countries from which former “comfort women” originated. After only 285 women had accepted the money in its seven years of existence, the Fund was terminated in May, 2002. This low rate of acceptance demonstrates that the Fund was not a solution, and that a truly significant solution will never be reached until the Japanese government itself takes measures as a State to provide a remedy to the “comfort women” and their heirs.

Specifically, atonement projects were directed only at the Philippines, Republic of Korea, Taiwan, and, to some extent, the Netherlands. Within these countries, where “atonement money” and/or medical and welfare funds and services were offered to individuals, 40 per cent of the women who had come forward accepted what was offered to them.²² Furthermore, while an amount equivalent to 30,000,000 yen each has been paid to the women of the Republic of Korea and Taiwan, the amount paid to the women of the Philippines is less than half of that amount: only about 12,000,000 yen. This disparate treatment is unfair and unjust.

The atonement projects were not directed at the People’s Republic of China, the Democratic People’s Republic of Korea, Malaysia, and East Timor, where survivors have come forward, nor do they cover Burma, Thailand, and Papua New Guinea, where NGOs have confirmed the existence of survivors. The atonement projects were also not directed at other countries and regions which used to be under Japanese control during the war. Nothing has been done to remedy the harm inflicted upon the women from these areas, or to those who have rejected the Asian Women’s Fund.

Many survivors and their supporters view the Asian Women’s Fund as a serious problem. In addition to not coming from the Japanese government, the Fund did not go through public organizations or private support groups in the survivors’ home countries,

but rather chose to contact individual women directly in an attempt to convince them on the sly to accept the money. This opaque, “behind-closed-doors” method of negotiation planted doubt and suspicion in the minds of survivors and their supporters, which often resulted in serious rifts between them.

Medical and welfare assistance projects are also made available only to survivors who have accepted “atonement money.” In particular, the governments of Taiwan and Republic of Korea, who have not welcomed the Asian Women’s Fund, currently offer survivors in their own countries financial assistance for medical care and living expenses. The Taiwanese government has made it clear that this is advance payment to be distributed until the Japanese government begins to pay compensation.

The inconsistency and disrespect with which these projects have been carried out propagates discrimination against the former “comfort women,” in violation of Articles 2, 3, 5, and 12 of the Women’s Convention.

According to the Government of Japan, in its Fifth periodic report to CEDAW:

b. Project in Indonesia

In 1997, the AWF exchanged a memorandum with the Government of Indonesia and began its project. This project, rather than targeting “wartime comfort women,” individually focuses on advancing social welfare for the elderly (i.e. development of a facility for the elderly who are disabled, sick or without family) as suggested by the Government of Indonesia. With the donation from the Government of Japan, the AWF will spend a total of ¥380 million for support over ten years. Those who claim to be former “wartime comfort women” are given priority for entering the facilities. In addition, these facilities are mainly established in areas where many former “wartime comfort women” are thought to live. So far 16 facilities have been constructed with 152 elderly residing within them.

The Reality:

The Japanese government has refused to disclose the 1997 memorandum exchanged with the Government of Indonesia under the Suharto administration. However, in 2002, the Ministry of Society of Indonesia disclosed it to the delegation of Diet members of Japan who visited Indonesia to conduct field research.

There was no explicit reference in the memorandum to priority given to the former “comfort women.” Additionally, there were apparently no former “comfort women” in the facilities for the elderly funded by the Japanese government. Testimonies of the former “comfort women” verify that they were not informed of “the projects for the elderly” by the government or any local governments.²³

The Indonesian survivors who came forward have thus received neither any form of redress nor the Prime Minister’s “letter expressing apologies and remorse”.

In March 2001, LBH JogJakarta (an Indonesian legal services organization) filed a “complaint for human rights relief” for 200 former “comfort women” of Indonesia, with the Japanese Federation of the Bar Association. The Bar Association in turn conducted its investigations, and subsequently made recommendations to Prime Minister Koizumi Jun’ichiro that an apology be issued and measures be taken to provide the former “comfort women” with reparations for the harms inflicted upon them. For its acts and omissions, Japan is in violation of Article 2 of the Women’s Convention.

According to the Government of Japan, in its Fifth periodic report to CEDAW:*c. Project in the Netherlands*

The AWF exchanged a memorandum with the Project Implementation Committee in the Netherlands (PICN) and began its project in 1998. This project provided medical and welfare goods and services to improve living conditions, while taking into consideration the individual women’s situation and wishes. With the donation from the Government of Japan, the AWF

provided PICN with necessary funds totaling ¥241.5 million (including administrative expenses). This project helped 78 people and was successfully concluded on 14 July 2001.

The Reality:

The Foundation of the Japanese Honorary Debts, based in The Netherlands, supports the lawsuit filed by Dutch civilian internees, first filed in 1994, against the Government of Japan. One of the complainants in the case is a “comfort woman” survivor victimized in the former East Indies,. The suit demands an official apology and compensation from the Government of Japan. The Foundation has had monthly protest demonstrations in front of the Japanese embassy in The Hague, Netherlands since December 7th 1994, which reached its one hundredth demonstration on 11th March 2003.

One of the Dutch “comfort women” survivors, Jan Ruff-O’ Herne, participated in the “Comfort Women” Tribunal and stated that the AWF itself was a humiliation, that they wanted no charity, but demanded compensation from the government of Japan as a legitimate and legal remedy. She and many other survivors have vehemently rejected the AWF.

D. Creating an Accurate Historical Record and Promoting Social Awareness and Assistance Projects:

According to the Government of Japan, in its Fifth periodic report to CEDAW:

Programs Underscoring the Lessons of History

The AWF recognizes that the facts in this issue should be accurately conveyed to the future generations as a lesson of history in order to ensure that such an issue never arises again. As a pillar of its activities, the AWF collects and publish documents and materials relating to the issue of "wartime comfort women."

The Reality:

The AWF made a report on research they conducted only once, in 1999. Even then, their research was far from comprehensive. Their interviews, especially of the survivors, were wholly insufficient. The AWF is also supposed to publish the results of the government's research conducted in 1991 and 1992, and make a database of relevant books. Its scope and impact is too limited to regard them as "a pillar of its activities". Indeed, the "comfort women" system is not well or accurately understood by Japanese society. Regardless, this project is not an act of the Government of Japan, but of the AWF, which is a private body.

The Government of Japan states in its Fifth periodic report to CEDAW:*Programs to Raise Social Awareness*

The Government of Japan is aggressively pursuing solutions to contemporary issues on women, such as violence against women, and is providing financial and other assistance to the AWF for its activities toward the solution of such issues. Examples of these activities include: organizing international fora; supporting the activities of NGOs; and research and fact-finding projects.

The Reality:

The Programs to Raise Social Awareness, pursued by the AWF and merely supported by the Japanese government, involves holding symposiums, issuing leaflets, and providing grants for scholars, mainly about "violence against women" generally. Large amounts of funding goes into this program. This activity of the AWF's, however, has not been successful in educating the general public properly about human rights violations against women. The AWF did not work closely with women's NGOs providing support for the women victims of violence, such as shelters for battered women, and their activity has not been effective in supporting concerted efforts to provide remedy to women victims of violence at large and helping them fully recover from the violence inflicted.

In Japan, there has been an active campaign against the victims of Japan's military sexual slavery and their supporters, a movement promoting false understanding of the issue and denying that part of history. For example, there are now government authorities discriminatorily refusing the use of their halls or spaces for gatherings held on behalf of the "comfort women", despite the fact that these venues are meant for the use of the public. The AWF has made no efforts to counter those movements. The program purportedly intended to raise social awareness is an abysmal failure.

Overall, the Japanese government's initiatives in setting the historical records straight, providing state compensation to the victims, and creating medical and welfare assistance programs directed at "comfort women" survivors are grossly inadequate; thus, Japan violates Articles 2, 3, 5, 10, and 12 of the Women's Convention.

E. Efforts in the Field of Education:

According to the Government of Japan, in its Fifth periodic report to CEDAW:

The Government of Japan attaches great importance to school education, through which young people, who will lead the next generation, correctly understand the facts of modern Japanese history including the issue known as "wartime comfort women." Junior high and high school textbooks now have references to this issue.

The Reality:

As for textbooks used in junior high schools in 2003, of the 8 editions of the 8 publishers approved by the Ministry of Education and Science, only one correctly recorded references to "comfort women". Two of the 8 editions equivocated or trivialized the references and failed to use the term "comfort women". Four of the 8 texts deleted references to "comfort women" altogether. This situation of textbooks is a potent example of the level of the government's "efforts in the field of education" regarding the issue: insufficient and indifferent at best, and at worst, strongly opposed to any change.

It is clear that the Government of Japan has failed to accurately portray the situation of the “comfort women” in educational and historical texts.

Originally, the Ministry of Education and Science (formerly the Ministry of Education) screening system forced texts to delete or rewrite Japan’s role in World War II-especially its invasion of its Asian neighbors and the suffering this caused. However, in 1994, references to the Japanese military’s “comfort women” appeared in high school Japanese history textbooks for the first time (19 editions from 9 publishers out of 20 editions from 10 publishers). By 1997, all junior high school history textbooks (7 editions from 7 publishers) mentioned accounts of the “comfort women.”

However, the mid-to-late 1990s saw a growing conservative backlash against these improvements. MPs who held important government posts laid political pressure on the textbook companies to modify or delete the accounts of “comfort women” and other materials meant to combat discriminatory gender stereotyping. The government, and the Cabinet and the Ministry of Education and Science in particular, has made no efforts to counter any of these pressures.

The “Comfort Women” Tribunal stressed the need for preservation of memory:

Closely related to apology, which facilitates healing and acknowledges responsibility, preservation of memory concerns disclosing fully the factual records and other evidence of the “comfort system” and creating a public historical record for telling, investigating, and retelling the full story. During this process, efforts must be made to ensure that the privacy of victims is respected. Accurately recording and preserving the memory of wrongdoing and the harm to victims serves to rehabilitate the victims in the public eye and ensure the non-recurrence of such horrific behaviour in future generations.²⁴

The Tribunal concluded that the Government of Japan’s efforts to educate Japanese citizens and future generations “are sorely lacking in regard to the formal education through text books, official memorials, and commemorative days devoted to examining the history and engendering respect for the victimised women.”²⁵

Again, the Japanese government's failure to accurately record history and its firm resistance to materials that include progressive ideas of gender in the field of education represent a continuing violation of Articles 2, 3, 5 and 10 of the Women's Convention.

Other Important Issues the Government's Report Did Not Mention

A. Failure to Fulfill UN Recommendations

As discussed below, various UN organs have made one recommendation after another to the Government of Japan regarding the issue of war-time "comfort women." Nevertheless the Government of Japan has taken no measures whatsoever to date in response to these recommendations. As an active member of the United Nations, Japan has a responsibility to follow UN recommendations immediately and sincerely.

Several recommendations were made in 1996 by UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy, and in 1998 by the UN Sub-Commission's Special Rapporteur on slavery-like practices during war-time, Gay J. McDougall. They both recommend that the Government of Japan acknowledge the fact that the "comfort system" of sexual slavery was in violation of its obligations under international law. The report insists that Japan accept its legal responsibility, pay compensation to individual victims, give a genuine full and official apology to individual women, and punish perpetrators involved in the recruitment and institutionalization of the "comfort system." In these reports, various mechanisms to secure redress for the "comfort women" were also recommended.

The UN Committee on Economic, Social and Cultural Rights has expressed "its concern that the compensation offered to war-time "comfort women" by the Asian Women's Fund, which is primarily financed through private funding, has not been deemed an acceptable measure by the women concerned",²⁶ and "strongly recommends that the State party find an appropriate arrangement, in consultation with the organizations representing the 'comfort women,' on ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so."²⁷

The International Labor Organization's Committee of Experts on the Application of Conventions ruled in 1996 that Japan was in breach of the Forced Labor Convention of 1930 concerning its war-time "comfort stations," and stated in 2000 that "in view of the fact that many of the claimants do not consider the AWF compensation to be acceptable, the Committee hopes the Government [of Japan] will find an alternative way, in consultation with them and the organizations which represent them, to compensate the victims before it is too late to do so, in a manner that will meet their expectations."²⁸ In 2001, the Committee expressed its hope that the Government of Japan will supply particulars in 2002, regarding "action taken to respond to the claims of war-time "comfort women"" as well as industrial forced labor.

B. Opposition to Court Cases

There have been ten cases filed against the government of Japan at domestic courts in/of Japan by women survivors of military sexual slavery. The plaintiffs are from five different countries and regions (namely Republic of Korea, the Philippines, the Netherlands, China and Taiwan) all claiming legal state compensation and apology from the government. Eight of them are still pending (one at district court level, five at high court level and two at the Supreme Court level). In two of these cases, including the only one case in which the plaintiffs had enjoyed partial victory at a lower court, the women's claims have been dismissed finally by the Supreme Court, thus exhausting all the domestic remedies. As concluded by the "Comfort Women" Tribunal, a failure to exhaust all local remedies is not a bar to invoking international mechanisms, particularly where "pending proceedings have been unreasonably prolonged. The Tribunal notes the numerous unsuccessful efforts of the applicants to seek redress in the courts of Japan. The fate of these cases compels the conclusion that survivors have no reasonable expectation of achieving an effective resolution of this matter in a timely manner within the courts of Japan."²⁹

In all these court cases, the government of Japan has always contested the plaintiffs' claims on such technical grounds as statute of limitations and the immunity of the State

at the time of the act concerned. In addition to its refusal to accept legal responsibility over the matter, the government of Japan has never tried to take these lawsuits as an opportunity for fact-finding or finding of the truth. This has led the court to stay away even from making factual findings in quite a few decisions, thus resulting in depriving the women of a formal/official recognition of the harm inflicted upon them, an essential aspect for rehabilitation and healing of a victim of sexual violence.

This opposition to effective redress through the domestic court system in Japan constitutes a violation of Article 2(c) of the Women's Convention.

C. Failure to Provide Redress Through Legislation and/or Administration

The Government of Japan has never approached the Diet for a resolution through legislation, a necessary step towards that end. Nor has it ever made efforts to acquire a resolution through administration (As mentioned above, AWF is not a solution through administration.) To this day, the Japanese court has stated at two occasions that the redress of the "comfort women" survivors should be done through legislation. In 1998, the decision of the Shimonoseki Branch, the Yamaguchi District Court, in which the plaintiffs enjoyed partial victory, accepted that the government was responsible for the lack of legislation for a very limited period of the few years after 1993 when the government had officially acknowledged its involvement, and ordered the government to pay compensation to the victimized women plaintiffs for the inaction during the period.

The decision of the Tokyo District Court of April, 2003, though it dismissed the plaintiffs' claims and negated that the inaction of the government for a solution through legislation constitute an illegal act, found facts of damage according to the plaintiffs' allegation and went even as far as stating that redress through legislation and administration is hoped for. The government of Japan, however, instantly made an appeal in 1998 in the former case, and contested exhaustively in court until the Supreme Court finally dismissed the women's claims in March 2003 (see "Opposition to Court

Cases" above). And it has shown no sign whatsoever, to this day, of trying to act upon the direction of the particular Tokyo District Court's decision of 2003 as described above. Generally speaking, in the post-war Japan, it has often been the situation related to various lawsuits filed by citizens against the government for compensation (for the damages of pollution, inappropriate social welfare, etc), where the government contested in court while it passed new laws or altered related administrative measures, so that even though the plaintiffs finally lost their case, those citizens suffering a similar damage were later provided redress somewhat or rather in the way the plaintiffs of the lawsuits had demanded. Regarding the issue of Japan's military sexual slavery, however, the government shows no sign whatsoever of making such a response.

If the Government of Japan truly endeavors to provide victims with redress, measures through legislation or administration are an effective option. The government, however, makes no such effort despite the explicit requests from the judiciary. Generally, about 80% of newly established legal codes are originated by the Cabinet. The Government and LDP (the ruling party), however, far from making positive efforts for a resolution through legislation, have made negative responses to the "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Bill" that the opposition parties proposed (first in March 2001, and again in January 2003). This backward movement is a continuing violation of Article 2(b) of the Women's Convention, which states that states shall adopt appropriate legislative measures prohibiting all discrimination against women.

Japan's State Responsibility:

The "Comfort Women" Tribunal considered the Government of Japan's state responsibility in regards to the "comfort women" and its Judgement set out the legal requirements imposed on Japan by international law.

The "Comfort Women" Tribunal noted that state responsibility may arise from criminal activity committed by or under the authority of military forces, government officials and

those individuals acting in their official capacity, and by acts or omissions by states. In regards to the “comfort women” situation, acts or omissions were said to include:

- (i) concealing, denying, or distorting facts or neglecting a responsibility to find and disclose the truth concerning crimes;
- (ii) failing to prosecute and punish those responsible for crimes against humanity and war crimes;
- (iii) failing to provide reparations to victimised persons;
- (iv) failing to take measures to protect the integrity, well-being and dignity of persons;
- (v) discriminating based on such grounds as gender, nationality, or race; and
- (vi) failing to take necessary measures to prevent recurrence.³⁰

The Judges examined in detail many defenses put forward on Japan’s behalf, and concluded, among other things, that there is no state waiver of immunity for crimes against humanity. After reviewing the evidence and applicable law, the Judges held that “the Japanese government is liable for the harm inflicted by the Japanese military sexual slavery system. With respect to Japan’s reliance on the Peace Treaties, the Tribunal finds that the negotiating parties had no power to waive the claims of individuals for harm suffered as a result of the commission of crimes against humanity and we reject the assertion that these claims were effectively or permanently waived.”³¹

The Tribunal found that by instigating, operating, and facilitating the “comfort women” system, Japan violated both its treaty and customary law obligations under international law.³²

The Judgement stated that Japan violated the 1907 Hague Convention Respecting the Laws and Customs of War on Land. It held that “Japan had an obligation under the

Convention to educate and disseminate information to military personnel regarding the laws of war and to take other measures to prevent and punish violations of the laws.”³³ Among other treaty violations, Japan also breached the 1921 International Convention for the Suppression of the Traffic in Women and Children by “forcibly recruiting, kidnapping, transporting and coercing women and girls into sexual slavery from each of its colonial and occupied territories”.³⁴

The Tribunal found that Japan was liable under the state responsibility doctrine “for the acts and omissions of its officials involved in the military sexual slavery system at every level as well as that of the private recruiters and proprietors and others who assisted the implementation of that system and the sexual abuse and enslavement of women.”³⁵ It stressed that Japan’s responsibility under international law “applies not only to the institutionalization of the system itself, but also to the subsequent actions of its organs and private agents who have obstructed and failed to make full reparations for these horrific crimes and, in doing so, have perpetuated new and continuing violations against the victims and survivors.”³⁶

The Tribunal recognized that in order for Japan to be found responsible under international law for rape and sexual slavery as crimes against humanity, as well as to incur responsibility for continuing obligations, the wrongful acts must be attributable to the state.³⁷ After deliberation, the Judges concluded that Japan incurred responsibility for the rape and enslavement of women and girls as “comfort women” in the military sexual slavery system, regardless of whether “such enslavement was carried out by government agents, army personnel, or civilians acting on its behalf.”³⁸ It reasoned that a state acts through state institutions, agencies, officials and employees, acting collectively as organs of the state and that armed forces are state organs.³⁹ The Judgement explained:

Japan is liable under the international principles of state responsibility for the acts and omissions of its officials involved in the military sexual slavery system at every level as well as that of the private recruiters and proprietors and others who assisted the implementation of that system and the sexual abuse and

enslavement of women. It is important to note that the responsibility of Japan under international law applies not only to the institutionalisation of the system itself, but also to subsequent actions of its organs and private agents who have obstructed and failed to make full reparations for these horrific crimes and, in doing so, have perpetuated new and continuing violations against the victims and survivors.⁴⁰

The Judges also noted that Japan remains under a continuing obligation to acknowledge and disclose the truth of crimes against humanity and war crimes, and that it had not fulfilled this obligation in regards to the ‘comfort women.’⁴¹

Based on the evidence, the Judges found that Japan has “repeatedly acted to obstruct the disclosure of the truth of the ‘comfort station’ system.”⁴² The Judgement stressed that in addition to the documents concerning the “comfort women” that Japan deliberately destroyed, Japan continues to conceal documents, continues to deny and disclose the truth, continues to fail to make a full and genuine apology, continues to fail to make official and fair compensation, and continues to oppose formal claims for reparations initiated by survivors.⁴³ It emphasized that Japan has failed to prosecute and punish those criminally responsible for the crimes,⁴⁴ it has failed to take measures to protect the integrity, well-being and dignity of women, including by abandoning women during the post-war period and continuingly failing to repudiate denials of coercion by high-ranking government officials,⁴⁵ and it has failed to take necessary measures to prevent recurrence.⁴⁶

The Tribunal found that the emerging norms of non-discrimination, especially on the basis of race and sex, developed during the early 20th century and were ‘fully crystallized’ by the time the UN Charter was adopted in 1945.⁴⁷ As to Japan’s obligations to respect non-discrimination norms during the war, the Judgement stated:

The evidence demonstrates multiple violations of both the requirements for the protection of women as well as the prohibitions on race and sex discrimination. Most fundamentally the evidence shows that the Japanese military targeted women and girls primarily of subjugated populations viewed as inferior by Japanese Imperial culture, for the provision of forced sexual services because they were female and thus seen as disposable. As such, the “comfort system”

denied women and girls their right to gender and racial equality and rights to respect for their physical, mental and sexual integrity and human dignity. The creation of the “comfort women” system reflects the intersection of discrimination based on both gender and race/ethnicity.⁴⁸

The Judgement concluded that the “comfort system”, “and its aftermath to this day, has been riddled with discrimination.”⁴⁹

To remedy the multiple violations, the Tribunal made several recommendations for reparations. The “Comfort Women” Judgement stated: “The Tribunal holds that in order to fulfill its responsibility, 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, and allow 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 an historical record of the gender-based crimes committed during the war, transition, occupation, and colonisation.
6. Recognize and honour the victims and survivors through the creation of memorials, museums, and libraries 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. Efforts should be made to educate the population and, particularly, the youth and future generations concerning the violations committed and the harm suffered; research should endeavour to examine the causes of the crimes, societies ignoring of the crimes, and ways to prevent reoccurrence.
8. Support training in the relationship between the military 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.⁵⁰

It is clear that Japan has failed to fulfill its obligations under international law. It is in violation of Articles 2, 3, 5, 6, 10, and 12 of the Women’s Convention.

The Continuing Nature of the Harms Suffered

Japan is obliged to provide reparations not only for the original violations, but also for breaches of continuing obligations that exacerbated the original harm and has resulted in additional harm to the former “comfort women.” The Judgement of the “Comfort Women” Tribunal delineated the continuing harm inflicted upon the women by the acts and omissions of Japan:

These include Japan’s concealment of crimes and denial of wrongdoing; its failure to discharge its responsibility to prosecute the perpetrators and repair the damage through apology and compensation; its assertions, and failure to refute

assertions, that the “comfort women” were voluntary prostitutes; and its failure to ensure the teaching and transmission of the historical truth.⁵¹

Mr. Louis Joinet, the Special Rapporteur on Impunity of Perpetrators of Violations of Civil and Political Rights, states that “[p]rescription is without effect in the cases of serious crimes under international law . . . [and] cannot run in respect of any violation while no effective remedy is available.”⁵² Japan’s failure to repair the original violation constitutes a continuing violation.⁵³

Discrimination on the basis of sex and gender is an insidious scourge that must be tackled rigorously, lest its harms accumulate and ultimately destroy the victims, literally or figuratively, physically or mentally, socially or economically. Its root causes and consequences must be redressed or discrimination will continue to inflict unimaginable suffering on its victims. When the state is the cause of the discriminatory treatment or impact, its harms are multiplied and it sends an untenable message to all of society. As the “Comfort Women” Tribunal states:

The Tribunal notes the egregious nature of this institutionalisation of rape, where the previously rampant rape of women by Japanese military personnel throughout the regions they conquered was deliberately translated into covert, organised, managed rape in the “comfort stations”. This bizarre “privatisation” and systematisation of rape in the “comfort station” system demonstrates the discriminatory purpose of the Japanese military and, by extension, the responsibility of the state of Japan, for gross discrimination. This Tribunal considers that Japan has a continuing obligation to take strong measures to address the discriminatory roots of this atrocity, which persist in the culture of militarism and gender inequality, and that Japan has violated that obligation in failing to make a genuine apology, provide compensation, prosecute wrongdoers, reveal the truth, and take vigorous measures to prevent recurrence.⁵⁴

Japan is in violation of the Women’s Convention in general and Articles 2, 3, 5, 6, 10, and 12 in particular. To bring Japan in compliance with its obligations under international law, the CEDAW Committee must insist that Japan take steps to ensure that the “comfort women,” and the legacies they leave behind, are not subjected to discriminatory treatment or impact because of the sexual and enduring nature of the crimes committed against them.

Implementing the remedial measures specified in the Judgement of the “Comfort Women” Tribunal should be considered minimum first steps to securing redress and non-discrimination for these women.

¹ UN Doc. A/50/38, at para. 633.

² UN Doc. A/50/38, at para. 635.

³ UN Doc. A/50/38, at para. 26.

⁴ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan. 24/09/2001. UN Doc. E/C.12/1/Add.67. at paras. 26 & 53.

⁵ See e.g., Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997).

⁶ The Women’s International War Crimes Tribunal For the Trial of Japan’s Military Sexual Slavery, Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al., Judgement, 4 Dec. 2001, at para 546 (hereinafter, “Comfort Women” Judgement).

⁷ Para 937, “Comfort Women” Judgement.

⁸ Para 1, “Comfort Women” Judgement.

⁹ Para 6, “Comfort Women” Judgement.

¹⁰ Para 8, “Comfort Women” Judgement.

¹¹ Para 9, “Comfort Women” Judgement.

¹² Para 10, “Comfort Women” Judgement.

¹³ Para 11, “Comfort Women” Judgement.

¹⁴ Para 943, “Comfort Women” Judgement.

¹⁵ Para 1002, “Comfort Women” Judgement.

¹⁶ Id.

¹⁷ Para 1066, “Comfort Women” Judgement.

¹⁸ Para 985, “Comfort Women” Judgement.

¹⁹ Para 986, “Comfort Women” Judgement.

²⁰ Para 988, “Comfort Women” Judgement.

²¹ Para 1077, “Comfort Women” Judgement.

²² Statement made to the Cabinet Committee, the House of Councilors, by YOKOTA Yozo, Chairperson of the “Asian Women’s Fund,” on December 12, 2002.

²³ 19 March 2002, Minutes of the Cabinet Committee, the Diet of Japan.

²⁴ Para 1069, “Comfort Women” Judgement.

²⁵ Para 1070, “Comfort Women” Judgement.

²⁶ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan 24/09/2001, UN Doc. E/CN.12/1/Add. 67, para. 26.

²⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Japan 24/09/2001, UN. Doc. E/CN.12/1/Add. 67, para. 53.

²⁸ Report of the Committee of Experts on the Application of Conventions and Recommendations Forced Labor Convention 1930, Observation 2000, para. 10.

²⁹ Para. 892, “Comfort Women” Judgement.

³⁰ Para. 878 (paraphrased), “Comfort Women” Judgement.

³¹ Para. 1053, “Comfort Women” Judgement.

³² Para. 905, “Comfort Women” Judgement.

³³ Para. 920, “Comfort Women” Judgement.

³⁴ Para. 922, “Comfort Women” Judgement.

³⁵ Para. 938, “Comfort Women” Judgement.

³⁶ Para. 938, “Comfort Women” Judgement.

³⁷ Para. 930, “Comfort Women” Judgement.

³⁸ Para. 930, “Comfort Women” Judgement.

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- ³⁹ Para. 931, “Comfort Women” Judgement.
- ⁴⁰ Para. 938, “Comfort Women” Judgement.
- ⁴¹ Para. 942, “Comfort Women” Judgement.
- ⁴² Para. 943, “Comfort Women” Judgement.
- ⁴³ Paras. 942-989, “Comfort Women” Judgement.
- ⁴⁴ Paras. 966-972, “Comfort Women” Judgement.
- ⁴⁵ Paras. 999-1003, “Comfort Women” Judgement.
- ⁴⁶ Paras. 1014-1017, “Comfort Women” Judgement.
- ⁴⁷ Para. 928, “Comfort Women” Judgement.
- ⁴⁸ Para. 929, “Comfort Women” Judgement.
- ⁴⁹ Para. 1004, “Comfort Women” Judgement.
- ⁵⁰ Para. 1086, “Comfort Women” Judgement.
- ⁵¹ Para. 888, “Comfort Women” Judgement.
- ⁵² Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political) submitted by Mr. Joinet pursuant to Sub-Commission decision 1996/119, U.N. Doc E/CN.4/Sub.2/1997/20/Rev.1, para. 31.
- ⁵³ Para. 889, “Comfort Women” Judgement.
- ⁵⁴ Para. 1013, “Comfort Women” Judgement.

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