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HUMAN RIGHTS  
AND  
JAPANESE WAR RESPONSIBILITY

COUNTER REPORT  
TO  
THE HUMAN RIGHTS COMMITTEE  
ON THE JAPANESE GOVERNMENT'S THIRD PERIODIC REPORT  
SUBMITTED UNDER ARTICLE 40 OF  
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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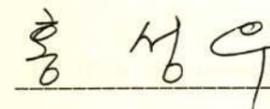
MINBYUN (LAWYERS FOR A DEMOCRATIC SOCIETY)  
JUNGDAEHYUP (KOREA COUNCIL FOR THE WOMEN  
DRAFTED FOR MILITARY SEXUAL  
SLAVERY BY JAPAN)

## PREFACE

We, the MINBYUN and the Korea Council for the Women Drafted for Sexual Slavery by Japan, respectfully submit this report to the Human Rights Committee and its members. It is our hope that this report provides useful information to help the Committee's examination of the third periodic report of the Japanese government under article 40 of the International Covenant on Civil and Political Rights.

During World War II, the people in Asia and the Pacific underwent a gross and systematic violations of human rights incurred by the Imperial Japan's colonization and occupation. Contrary to their European counterparts, war victims in this region have been abandoned by all relevant authorities, including their home countries, Allied Forces, United Nations and Japan. For near a half of the century since the end of the War, non-Japanese war victims have been discriminated by Japan. Among them many have already died and the days for those who alive do not remain many.

In this report, we have made our sincere efforts to sketch important aspects of Japanese war responsibilities and reparation issue for non-Japanese victims arising therefrom. Keeping in mind that solution of these issues is not only for the human rights of the victims themselves, but also for the restoration of mutual trust and belief between Japan and its neighbouring countries and their peoples, we do hope this report will be seriously considered by the Committee and help in contributing to the mutual understanding and peaceful and friendly relationship among all the countries through constructive dialogues between the Committee and Japanese government.



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Purpose of This Report and General Critique of the Japanese Government Report

1. We, hereby, would like to raise an issue of the past, which had occurred long before, to the Human Rights Committee, which will review the third periodic report of the Japanese government submitted under the International Covenant on Civil and Political Rights. The issue, however, is not simply that of the past but of present, which has been going on up until the present, and will continue in the future unless there is any sincere relief measures taken by the Japanese government. The issue is about war victims by Japan, whose human rights had been infringed directly by occupation and invasion of Imperial Japan, have been discriminated by Japanese government, which succeeded Imperial Japan. Relief measures for those victims have been rejected by the Japanese government.

2. Despite excluding the issue of those who died during the World War II, a lot of war victims by Japan have already been died due to aftereffect of the war or aged to death. It seems that days for those who are surviving are not even remained long enough. Those victims were from China, Taiwan, Philippines, Thailand, Malaysia, Vietnam, Indonesia, and other parts of southeast Asia including the Pacific Islands, although most of them were from Korean Peninsula, which had been under Japanese colonial rule for 36 years(1910-1945). As will be mentioned later on, issue of those victims, which had not been raised until recently due to various reasons is not only their own issue but also related to the issue of whether or not the peaceful order around southeast Asia and Japan will be settled based upon mutual confidence and reconciliation among nations and peoples of the region.

3. Most of the victims under the Japanese aggression policy are residing their own countries. Many Korean victims, however, could not return home and are still remained in such regions as Japan, Sakhalin, southeast Asia and South Pacific islands where they had been forcibly mobilized. Issue of those Korean victims is the one that Japanese government has to resolve, no matter where they live, either outside or inside Japan. It is because they were victimized under the Japanese aggression policy and war, have been discriminated, and thus their human rights infringed, by the Japanese government in the matter of receiving proper reparations. In fact, few of them received any compensation comparing those Japanese. Through this Human Rights Committee meeting, we expect that the Committee clearly defines

legal responsibility of Japanese government for those victims so as for the Japanese government to take sincere measures, and thus that truthful confidence and peace among the nations start to bloom.

4. It raises many issues in respect of responsibility of Japan and doers concerning the crimes conducted by the Imperial Japan during World War II and treatment of them, Japan's fulfillment of responsibility of compensation for nations and their peoples in Asia, including Korea, and Pacific region. We will roughly go over those issues in this report.

5. This report is specially prepared for the purpose of providing information for the committee, which will examine the third periodic report of Japanese government. The report raises issues based on a standpoint of state responsibility for infringement of human rights defined in Article 2 of the Covenant, and that of equal treatment for both domestic and foreign people defined in Article 26. Category of issues also contains whether or not Japanese government has fulfilled its responsibility of reparation for those victims of the war and their families, and Japanese government's discriminatory treatment, in terms of its reparation measure, between for those similarly or less damaged Japanese victims and for non-Japanese ones. The issue of discrimination in relation with thousands of Koreans living in Japan is also related to the war responsibility issue of Japanese government, since they were all forcibly brought to Japan during the period of 36 years' Japanese colony. This issue, however, is beyond the scope of this report.

6. Confirming its aim of engaging in a constructive dialogue with reporting state, the Committee has requested, in its reporting guidelines in preparing periodic reports (CCPR/C20), the contents of the reports should concentrate on *inter alia* information on changes made or proposed to be made in the laws and practices relevant to the Covenant; factors affecting and difficulties experienced in the implementation of the Covenant; and the progress made since the last report in the enjoyment of rights recognized in the Covenant.

7. Without referring to the rights of those victims of Japanese war activities and war crimes before and during the World War II, concerning Article 2 of the Covenant, the Japanese government report says "the rights of foreigners are guaranteed in line with the spirit of the

Constitution which is based on respect for fundamental human rights and international cooperation, with the exception of the rights which are applicable, by definition, only to nationals such as the right to vote, and foreigners are treated as in the same way as Japanese within Japan."

8. In relation with Article 26 of the Covenant, the Japanese government report further explains that, in spite of discrimination against foreigners still remains among people in daily life, Japanese Constitution and laws provide equal rights and treatment of all people regardless of their race, creed, sex, social status or family origin.

9. From recently, the issue of Japan's war responsibility and its obligation to redress war victims, especially that of 'comfort women' has been raised by the victims themselves and human rights NGOs around the world within Japan as well as in the international forum like the United Nations Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities and several Working Groups thereunder. Even though one of the essential points of this issue is discrimination of non-Japanese victims against Japanese nationals by the Japanese government, the Japanese government report totally keeps silence on this point.

10. In this respect, it is our opinion that the Japanese government's report fails to achieve the purpose of the reporting obligation of the State party as set in the Covenant concerning its duty for the non-Japanese war victims, and that silence of the Japanese government on this issue shows its attitude of, so to speak, total ignorance of its obligation to foreigners and its war responsibility.

#### Factors and Difficulties Related with This Issue

11. It should be noted that there were significant misconducts in the process of post war treatment by the Allied Forces after the World War II. When the Allied Forces held a series of military tribunals regarding crimes and responsibilities of the war, it called the defeated Japanese government to its responsibility only for the allied nations and their peoples. In fact

the Allied Forces has never treated Japan's criminal conducts on other victimized nations in Asia and the Pacific region, including Korea, and their peoples.

12. Since the end of the War, for the last post war period of nearly 50 years, Japanese government has systematically destroyed evidences and materials on its war atrocities, covered up the truth, insisted not to reveal the massive amount of documents related to the war, and denied its war responsibilities.

13. Most of Asian victim countries such as Korea have experienced dictatorial regimes, under the circumstances of cold war. Those regimes are characterized as strict anti-communistic and they put the first priority of their policy onto economic development. For the case of south Korean regime of Park Jung-Hee, the government itself was composed mostly of former pro-Japanese personnels and thus was very reluctant to the issue of Japan's war responsibility and compensation for Korean victims. After the war, Japan has achieved dramatic development economically, tried to take its leading role in Asia once again politically and economically, and tried to settle down post war issues with weak or dictatorial governments of Asia by providing some economic aid. Under such circumstances, there was no room for even raising Japan's war responsibility and compensation issue for millions of individual war victims. For instance, in 1965, when the 'Agreement on the Settlement of Problems Concerning Property and Claims and on the Economic Cooperation Between the Republic of Korea and Japan'(hereinafter, 'Claims Agreement') was signed, Park Jung-Hee regime needed economic aid from Japan badly, could not state even a word concerning Japan's illegal conducts during and after the war and its responsibility therefor, and came to the agreement with the level of compensation in general. In the process of such settlement by governments, rights of Korean war victims were totally ignored. Ever since the 'Claims Agreement' was signed, although there have been raised the issue of Japan's post war responsibility and reparation for many times politically, it has been just repeated the political bargainings and superficial apologies at the government level. As a result, it has been recognized by experience that any political bargainings, without inspecting and revealing the whole truth and without true and sincere standpoints, will just make the matter worse.

14. Under the abovementioned situation, the victimized people in Asia and the Pacific

countries could not have been able to raise the issue of their rights to reparations against Japanese government. Especially, misfortunes of the victims in the Korean Peninsula have been much more miserable, in that they had to undergo the division of their fatherland into south and north Korea, the three years' Korean War(1950-1953) and the most oppressive regime resulting from harsh ideological and military confrontation between the two Koreaes. This situation coupled with the government's ideological drive to economic development deprived the people of the chance to seek redress from Japan.

15. Japanese government is now taking its responsibilities of a member of the world community to contribute to the peace and democracy in the world. It is sending its troops to its former occupied areas under the flag of the United Nations Peace Keeping Operations. It is openly avowing its commitment to become the permanent member of the United Nations Security Council. However, without sincere efforts to restore confidence and trust with its neighboring nations, Japanese government's measures to 'contribute' to the world will only bring about apprehensions among them that Japan is preparing itself to dominate Asia and the Pacific region based on its huge economic power. This kind of attitude of Japanese government lacking sincere re-examination of its past war responsibilities will eventually not succeed in building peace and friendship in this region.

16. Increasingly, more and more people in this region as well as in the world are paying attention to this issue of Japan's war crimes and crimes against humanity during and before the War. On 28 March 1993, many Asian and Pacific NGOs resolved that, in their Bangkok NGO Declaration on Human Rights, "Crimes against women, including rape, sexual slavery and trafficking, and domestic violence are rampant. Crimes against women are crimes against humanity, and the failure of governments to prosecute those responsible for such crimes implies complicity." They called on all governments of the region to accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The establishment of a War Crimes Tribunal in addition to the Permanent International Criminal Court, was requested to the United Nations to adjudicate on military atrocities, including sexual slavery. More concretely, they called on the United Nations that membership of the Security Council should be denied to any State responsible for war crimes and crimes against humanity, such as military sexual slavery, before it accepts its state

responsibility. This issue became one of the keen issues in the World Conference on Human Rights held in Vienna during 14-25 June this year. In its official resolution adopted by unanimous votes, Vienna Declaration and Programme of Action, all governments agreed that "Violations of the human rights of women in situation of armed conflicts are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response."

17. As will be pointed out in relevant parts of this report, a series of civil lawsuits have been filed with the Japanese Courts by non-Japanese victims seeking compensation, apology, other measures of reparations or the same treatment as Japanese victims. However, in no case, Japanese Court ordered its government to take measures of reparations to non-Japanese victims based on the principle of equality between its national and foreigners. According to the decision of the Tokyo High Court, which rejected Taiwanese war victims' claims for equality treatment of them with Japanese victims, stated in 1985 in its decision ;

*"...as, by virtue of the Japan - Republic of China Peace Pact, it was intended that the problem of restitution be disposed by the bilateral special arrangement, the nationality provisions are not violating the principle of equality of all of the people under the law as set forth in the Constitution..."*

Many other cases are still pending with spending so long time and expenses of the victims who are already too elderly and weak. Some of the plaintiffs have died during the pending of the case. What is making those victims more hopeless is the expectation that Japanese Court will not change its abovementioned attitude and eventually dismiss the cases in that all the claims of the non-Japanese victims (especially of Koreans) have been settled by the Treaty between Japan and their Nation, their claims have been already terminated by the Statute of Limitation or the exclusion of the non-Japanese victims in various 'Post War Compensation

1) However, the Tokyo High Court recommended Japanese government to make necessary efforts to remove the Taiwanese victims disadvantages and thereby enhance its nation's international credibility on the precondition that Japanese government is responsible, in term of moral justice, for the delay caused in making restitution or giving relief to the victims.

Laws' do not violate the equality protection of foreigners with Japanese.

#### Historical Background: Japanese Invasion and Progress of War in Asia and the Pacific

18. Japan began to invade Korea by opening several Korean ports in 1887. In 1905, Japan coerced Korean bureaucrats to conclude a treaty through which Korea was deprived of its diplomatic rights and thereby made a Protectorate of Japan, and in 1910, Japan fully colonized Korea by the Treaty of Annexation<sup>2)</sup>.

19. During the colonial period Japan had made Korea a part of an economic bloc centering Japan. Japan oppressed all attempts for industrial development of Koreans, made them import Japanese industrial products, and pushed them to cultivate only rice, which satisfied Japanese needs for rice.

20. Rural area of Korea became devastated by an inflow of Japanese industrial products and were plundered its lands by Japanese. A large number of Korean farmers evicted from their cultivating lands turned to Manchuria and Japan for living. Japan had tried to advance into Manchuria, and Koreans were effectively used in this attempt. The Japanese government made Koreans to cultivate new conflict between Chinese and Koreans. On the other hand, Koreans going to Japan were absorbed into the lowest working class. They became to work for dirty and dangerous jobs, which Japanese workers tried to escape, for less than half of Japanese wages.

21. In the 1930s, Japan began to invade Asian Continent with the purpose of establishing so

2) Many Korean scholars have argued that the Treaty of Annexation between Japan and Korea were null and void in that the Korean Emperor was forced to resign and cede all sovereign power to Japan by Japanese army. Recently, Korean scholars found out the fact that the Korean Emperor's seal on the original copy of the Treaty was forged and sealed by Japanese consular. However, for the purpose of this report, we assume that Korea had been Japan's colony in that Japanese colonial government in Korea effectively dominated Korea and Korean people until the end of World War II.

called "A Great Asian Co-prosperity Sphere". In 1931, Japan occupied Manchuria and in 1937, it won Japan-China War. In December of 1937, Japan occupied Nanking, China, when it killed over 300,000 Chinese residents. Japan continuously occupied French Indochina in 1940. In 1941, Pacific War occurred with the surprise attack by Japan on Pearl Harbour. In 1942, Japan occupied Manila, Rabaul, Singapore and Rangoon, but was finally defeated by the Allied Forces in August 1945.

22. In the process of expanding war, Japan enforced integration policy between Korea and Japan, and during the whole period of colonization, Japan tried to eliminate the distinctive culture and national spirit of Korean People. The Japanese colonial government abolished Korean language classes in all levels of education system, and also forced Koreans to use Japanese language at all places including at homes. In 1940, Koreans had to change their names into Japanese style, and bow to the shrine of Japanese emperor. The Japanese government attempted to encourage marriages between Koreans and Japanese, which aimed at weakening of Korean spirit.

23. In this process, Japan had requisitioned all materials from Korea needed for war preparation, which reached to spoons of every family.

#### Some Typical Issues of Japan's Unsettled War Responsibilities

##### Military Sexual Slavery; Comfort Women (Jungshindae)

24. Japanese Military authority introduced the military sexual slavery system around the year 1932, when it invaded China and established comfort houses in or around almost all compounds where Japanese troops stationed. At the beginning, comfort women consisted mainly of Japanese prostitutes, geisha and similar type of women. Later on, however, the number of women other than Japanese origin to the military comfort service had been gradually increased. It is said that the total number of comfort women from Asian countries, including Korea, reached some 200,000. Among them, Korean women took the largest portion of the number, and according to a report by a former military doctor, Tetsuo Aso,

comfort women in Shanghai in 1938 were at the ratio of 80 Korean origin per 20 Japanese women. After the World War II was ended with the defeat of Japan, most of them were massacred or forced to commit suicide by Japanese troops for the purpose of destroying evidences of their crimes and lessening the burden to return them home. In fact, the military comfort women had been treated like expendables after use and deemed merely as drags on the soldiers<sup>3)</sup>

25. Among all the damages incurred by Japanese colonialism and militarism, the case of the military sexual slavery must be the first and most severe. The reality of it, however, had been concealed until very recently because the military comfort house system was made and enforced under top secret policy of Japan, and after the war, all written materials were destroyed by the Japanese government's order.

26. Since last 2-3 years, some military documents have been found in Japan and in the United States, and the victims began to open themselves to the public. These attracted the world's conscience, and many began to devote themselves to dig out the evidences of military comfort women. Over 100 victims came forwards to the public and revealed their

3) Recently scholars have found that there existed another form of comfort women called the "firm comfort women" who were forced to give 'comfort services' to the workers in order to raise productivity. The existence of firm comfort women is found early in the 1920s when Hokkaido was cultivated. Many Koreans were transferred for the forced labour and women were also transferred with them for sex services for these workers. The system of firm comfort women were expanded all over Japan in late 1930s when the forced labor was enforced in a large scale. It is not possible to estimate the exact number of the firm comfort women now, but there are records showing that only in Hokkaido over 3000 Korean women were exploited as sexual slaves. The firm comfort house system was established with the aim to raise the labor productivity by satisfying sexual desires of the workers. In order to open the comfort houses they needed to get permission from the Provincial Office, and in the process of establishment and management of the comfort houses the police deeply intervened. The Police doctors made regular check-up and provided condoms and hygiene instructions. The comfort women were mostly aged 11-24 who were transferred to Japan with the false appointment of offering good jobs. Thus, the intervention of Provincial Office and police into the establishment and management of the comfort houses, and the mobilization process of Korean girls show that the system of firm comfort women was not merely the product of the firms themselves, but gives strong hints that it was established under government policy. The fact that a large number of comfort houses began to be established at the same time in 1939 also supports this supposition.

horrible experiences of miseries. Thus, the overall picture of the military comfort houses appears nowadays.

27. Military comfort houses were firstly established in Manchuria and Sanghai in the early 1930s. Since 1937, when China-Japan War occurred, the comfort houses were expanded all over the areas where Japanese troops stationed. Japanese government confirmed that comfort houses were established and existed in Japan, China, the Philippines, Indonesia, the then Malaya, Thailand, the then Burma, the then New Guinea, Hong Kong, Macao, and the then French Indochina. Following the expansion of the occupied areas of Japan, the number of comfort houses was increased too. One military record of the United States reported that the comfort houses were found wherever Japanese troops were located. There found an military record saying that in an Island, Sunwava, located at the south tip of Indonesia, 50 Korean comfort women and the related persons woked for the Japanese army. This shows how far and wide areas the Korean comfort women were sent to. Within Japan and Taiwan, also in Korea there were a large number of Korean women conscripted in Japanese army camps.

28. The exact number of comfort women is not yet estimated. But on the basis of various evidences, many agree to the fact that one comfort women was provided to 29 soldiers. If we agree to this assumption, we could estimate some 150,000 women were used as sexual slaves for the Japanese soldiers.

29. Many materials and testimonies of the victims show that some 80-90% of the comfort women were Koreans aged 11-24. There were a few Japanese, but they were mostly former prostitutes who were older than Koreans. Those Japanese women usually treated officers. Besides those Koreans and Japanese, a considerable number of women of the occupied areas, Chian, the Philippines, Indonesia and Malaysia, etc. were forcibly mobilized.

30. The aim of establishing comfort houses was to raise soldiers' morale who were trembled with the fear from the war, to prevent venereal diseases which had seriously weakened the power of Japanese troops at the time of expedition to Siberia during 1918-1922, and to prevent Japanese soldier's rapes of the women of the occupied areas which exploded the antagonistic feeling against Japan. Besides these manifest aims, we should think of the reason

people in the 1930s and 1940s. Extinguishing Korean lanuage, Korean names, Korean spirit and culture, they seemed to have tried to extinguish the abilities of production of Korean women.

31. Recently many military materials show that the policy on the establishment and management of the comfort houses and the mobilization of comfort women were planned and enforced at the top of the army. The Minister of Defense and the Chief of the General Staff ordered the Chief of each Dispatched Army (in Korea, Taiwan, Kwandong(Manchuria), China, South Sea Islands) to establish comfort houses. Since the supreme commander of the military over Defense Minister and the Chief of the General Staff was the Emperor, the top responsible person could be defined as the Japanese Emperor<sup>4</sup>.

32. Mobilization of comfort women was performed by Japanese military or policemen and officers of the colonial government or even shool teachers. But in many cases civilian traders mobilized them under the contract with the military. Mostly the soldiers, policemen and government officers kidnapped the women by using force or threats, but civilians deceived the woman to offer good jobs in Japan. There were also some cases in which the women mobilized as "Work Corps" members was used as comfort women. Even when the civilians transferred the women, the military provided transportations.

33. There was no limitation on age or marriage status to recruit comfort women. Married women as well as even very young girls aged 11 were often kidnapped. There was no formal contract procedure either. Thus, the recruitment of comfort women was done under the vacuum of law.

34. All the women recruited in the way mentioned above could never be able to dream of becoming comfort women for Japanese soldiers. They were systematically raped by soldiers

4) The Japanese Emperor Hirohito, exercising his emergency power under then Japanese Constitution, promulgated Imperial Ordinance No. 519 (Women's volunteer labour corp. ordinance) which established legal grounds for the recruitment of comfort women on 23 August 1944. Article 6 of this Ordinance empowered the govenors, mayors and even school presidents to order recruitment of comfort women whenever needed. Article 4 of it stated that the women should be employed for a year "with an exception for those who agreed to stay longer."

vacuum of law.

34. All the women recruited in the way mentioned above could never be able to dream of becoming comfort women for Japanese soldiers. They were systematically raped by soldiers on the way to the comfort houses or at the time when they reached comfort facilities. The 'comfort service to soldiers' of those women began by force as such.

35. The military comfort houses were to be used exclusively by the soldiers, and strictly distinguished from civilian brothels which were prohibited to be used by soldiers. The military comfort houses were consisted of those established by the army itself, those by civilians who were entrusted and supervised by the army, and the former civilian brothels which were included as military comfort houses. Those comfort houses were often directly managed by the army, but in many cases management was entrusted to the civilians under strict control of the army. As such there were various types of comfort houses, but the strict control by the army was imposed to all comfort houses. Thus, all comfort houses were, in reality, under the total administration of the army.

36. The soldiers or military police strictly guarded the comfort houses. The comfort women could not go outside the comfort houses without close guard by soldiers in very exceptional cases. Many victims testify that those who got caught while escaping were killed or severely assaulted.

37. Comfort women were transported by the army, following the movement of the troops. The army provided transportation means such as truck, train or ship.

38. Comfort women had to serve over 30 soldiers everyday, and countless men during weekends. Sometimes they were ordered to go to the troops located in deep mountain where there was no comfort house. In those cases they had to serve as many soldiers as far beyond our imagination. Many were fainted or severely sick by such abuse.

39. Whenever the comfort women denied to serve soldiers, they were severely beaten by managers or soldiers. Sometimes soldiers stuck the long sword in the floor to threaten

while they were served. There were managers who drew graphs to express how many soldiers each woman served everyday. The women who served a small number were punished. Thus, the irresistible and unavoidable force was imposed all the time on the comfort women.

40. Clothes, food and other necessities were provided by managers or the army. However, no wage was paid to them, though there found written army records on the fare to use for comfort service. Most of the managers deceived the women to give all the money at the same time after the war.

41. The comfort women were taken regular check-up every week or once or twice a month by military doctors. The women having venereal diseases were not to serve soldiers while they were treated. The soldiers were to take condoms when they went to the comfort houses. The army also provided condoms to the managers of the comfort houses. In many places, condoms were used several times with cleaning each time. Some comfort women confessed that they felt so miserable when they cleaned the condoms. There found an army record that the Japanese army prepared 32,100,000 condoms in the year of 1942.

42. In spite of such sanitary control and check-up, most of the women had taken venereal diseases. While being treated with strong injections or medicines, their conditions were severely weakened. Besides venereal diseases, those women were troubled by other diseases, such as Malaria, Jaundice, mental disease, etc. These diseases have been annoying the women until now. When the diseases of the women became serious, they were mostly abandoned or killed with a few exception who were returned home.

43. Formally as well as in reality comfort women were treated as not human beings but merely as military supplies. When the army transferred the women, they were recorded as munitions, and taken by freight trains or ships. The army tried to deprive the women of their identity feeling; they were called by numbers or Japanese names ended with 'Ko' (usually the names of Japanese women were ended with 'Ko'). One Japanese army doctor wrote that the comfort women were functioned as public toilets which were necessary wherever the Japanese soldiers existed.

44. The fact that the Japanese army treated the women as military supplies was shown in the way they treated the women after the war. In most cases when the Japanese army retreated, they abandoned or massacred the women together with destroyed munitions. Very fortunate women of the comfort houses became to know the end of the war after a few days, since no one came to the facility. They should come back home by themselves with unspeakable hardships. Many stayed at the United States army camps and were sent home there. A considerable number of them could not return home and have stayed at the places where they worked. Several Korean former comfort women staying in the Pillippines, Japan, Thailand, etc. are identified now.

45. After return home, those women could not say the reality; they had to choose either to say that they had worked at the Japanese factories or to completely isolate themselves from their families. Most of them have been annoyed with physical and mental diseases, and could not carry out normal marriage lives. There are few who got married and bore babies. Naturally they have been under terrible economic situation. Sufferings made by the Japanese army during the war are continuing until today.

46. The military comfort women issue in Korea had not been unveiled up until 1980's when some scholars began to put their attention to it. There were some reasons to it. First of all, after the War, Japanese government had destroyed massive amount of documents and material related to the issue, and has kept complete silence on the issue for nearly half century of post war period. Secondly, pro-Japanese military dictatorship regime of south Korea had never urged Japanese responsibilities for illegal treatment during the colonial period. And thirdly, victims of comfort women themselves had not wanted their issue to be unveiled into public mainly due to the strong traditional sense of chastity of Korean women.

47. Post-war Japan has maintained indifferent attitude toward comfort women issue. In June 1990, the government, for the first time, upon the investigation request of Socialist Democratic Party, stated that comfort women were taken to the military by civilian traders without any involvement of the Japanese forces what so ever.

48. In January 1992, in the library of the Defense Agency, three official documents were

found, by a Japanese professor Yoshimi Yoshiaki, to show that the military had supervised and controlled facilities for comfort services and involved in the recruitment of comfort women. Due to these unveiled documents, Japances government changed its attitude and stated, "it is true that Japanese military had been involved in gathering comfort women and controlling comfort service facilities". On January 16 of the same year, at the occasion of visit to Korea, Prime Minister Miyazawa said, "I should express my sincere apology and regret for the miliary comfort women issue, and will take proper measures."

49. Upon the request of south Korean government, on July 6, 1992, Japanese government released the first relevant documents that had been held by the government agencies. The material was consisted of 127 documents about constructing comfort houses, managing and controlling such houses, sanitary control of comfort women, and issuing identification papers for comfort house officials, which just showed 'involvement of the Japanese government in such business'. The documents, however, were not enough to reveal all the details of military comfort women. In other words, with the documents, Japanese government did not admit the fact that it had forcibly recruited those women. There were strong protests against such attitude of Japanese government from victims of military comfort women and affiliated organizations from victimized nations.

50. On August 5, 1993, Japanese government released the second relevant material and stated,

*"The then Japanese military was, directly or indirectly, involoved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military. The government study has revealed that in many cases they were recruited against their own will, through coaxing, coercion, etc., and that, at times, administrative/ military personnel directly took part in the recruitments. They lived in misery at comfort stations under a coercive atmosphere."*

This second release, however, was not enough to reveal the details of the truth either,

since there are still massive amount of documents remained undisclosed within Japanese government. Japanese government did not even release documents containing investigation notes on personal records of some 179,000 Japanese prisoners-of-war (POW), which had been returned from the US government in 1954, and which is believed to contain crucial information regarding military comfort women.

51. On December 6, 1991, ex-military comfort women living in Korea filed a lawsuit against Japanese government for 20 million Japanese yen of compensation per each victim. Victims of Pacific War have filed three different lawsuits for compensation. Korean ex-military comfort women living in Japan also filed another one for apology and compensation on April 5, 1993. Not only Koreans but also philippine ex-military comfort women filed a lawsuit against Japanese government for compensation, and all of legal actions are now pending.

52. Japanese government has tried to draw a veil over the military comfort women issue, distorted the truth, conducted investigations on relevant documents very superficially, denied its legal responsibilities, and tried to settle down the issue early by providing just a remuneration funds on humanitarian grounds. Japanese government seems to be indifferent on accepting its legal responsibilities for comfort women. What is really worth mentioning to Japanese government is neither the miseries of the victims of its war crimes nor its responsibility, but silencing the world public opinion which may raise an obstacle to its way to dispatch military troops again to Asian countries and to become the permanent member of the Security Council of the United Nations.

53. It is the established international law that at the time of the war the systematic persecution by a government of a race or group of people constitutes crimes against humanity. The conduct by the Japanese military and its government to force not only Korean but also other Asian women to serve as the military comfort women should be considered as such crimes against humanity. The government officers and other persons involved in the military comfort service system should have been brought to justice by the International Tribunal for the Far East and the full reparation for the victims should have been provided.

54. Regarding the Japanese government's current attitude on the issue and its facts of crime

of the past, the United Nations should also cooperate to reveal the truth of military comfort women issue, to retrieve honour of the victims and their families and humanity, and should urge the Japanese government to take strong measures. It is urgent that the measures should be taken while the victims are remaining alive.

#### Class B or C Korean War Criminals

55. In 1942, Japanese government forcibly mobilized 3,000 Koreans and some other Taiwanese, trained them like military forces, and arranged them to guard position for prisoners of the Allied Forces. Those guards were nothing but under the same condition as the prisoners since they never had any right to decision making and had to follow orders from the Japanese higher ranks. After the War was over, the Allied Forces held the Military Tribunals for Class B or C war criminals, judged 148 Korean guards as the same Class B or C war criminals as Japanese, and sentenced 23 of them to death penalty. They were all charged with the abuse of POWs. Execution of the other imprisoned Japanese war criminals was handed over to Japanese government after the San Francisco Peace Treaty. At that time, there were 927 war criminals imprisoned at Zhammo detention center, and among them, 29 were Koreans and 1 was Taiwanese. As long as the legal ground for their detention is concerned, they should have never been imprisoned after the Treaty, since they lost their Japanese nationality and thus were no longer Japanese. In June 1952, while in prison, those Koreans requested Japanese court their release, and the highest court dismissed their requests based on the reason saying, "they were Japanese when they were sentenced as war criminals, Japan has duty of executing penalties of the imprisoned, and loss or change of nationality after the Treaty does not affect such duty."

56. Korean war criminals could not go back to their fatherland even after they had been released from the Zhammo detention center because they were labelled as 'Japanese collaborators', remained in Japan, and made miserable lives. They requested Japanese government to compensate or secure their living and to return the ashes of the executed. The government had provided small amount of money for consolation before the Claims Agreement between Korea and Japan of 1965, but have rejected all their requests after the Agreement by saying, "everything was settled by the Agreement". In November 1991, 6

Korean Class B or C war criminals filed a lawsuit against Japanese government for compensation and apology to Tokyo District Court, which is still pending.

57. Class B or C Korean war criminals were mobilized, forced to work as guards for the Japanese military against their will, and punished as war criminals by the Allied Forces. Therefore, Japanese government is responsible for their damages. It will be something like, "let them commit crimes but can not compensate for them", if the Japanese government looks the issue away.

#### Koreans Remained in Sakhalin

58. In 1905, as a result of war between Russia and Japan, southern part of Sakhalin had become the territory of Japan, and a lot of Koreans were forcibly mobilized and sent there for working at mines or military facilities. After the end of the War, Sakhalin was returned to Soviet Union, and there were 380,000 Japanese and 43,000 Koreans remained. Japanese government strongly requested GHQ to return those Japanese remained in Sakhalin, and started the returning procedure from December 1946. Consequently, 292,590 Japanese were returned by July 1949. All the Koreans, however, were left there remained. Since then, Japanese government had tried its diplomatic efforts to return the remained, and brought 2,307 more Japanese back by 'Japan-Soviet Union Communiqué' of October 1953. Again, Koreans were excluded from this returning process except those who had married Japanese women. As a result, there were only 200 Japanese remained in Sakhalin, while only 700 Koreans with Japanese wives returned among 43,000. Most of Koreans there were from south Korea, and they had refused to be naturalized in Soviet Union simply because they wanted to go back to their fatherland. While treating them as stateless, Soviet Union clarified its policy several times that it was willing to allow them to leave for Japan, if Japanese government accept, since it could not allow them to leave directly for south Korea with which it had no diplomatic relationship. Japanese government, however, refused to issue passports for those who wanted to return home in that they had already lost their Japanese nationality. Later in August 1975, Japanese government changed its position and agreed to issue a port arrival certificate but with complicated procedures and strict conditions. Meanwhile, the Soviet Union also changed its position so as not to allow those Koreans to leave for Japan any

longer even though Japanese government agreed to accept them. Thus most of them were deprived of the chance and rights to realize their dream to return home and reunite their families. In fact, only 400 Koreans could leave Sakhalin for Japan. Many of those remained in Sakhalin have died for those days, and today there were approximately 36,000 Koreans left.

59. In December 1975, 4 Koreans in Sakhalin filed a lawsuit against Japanese government to Tokyo District Court, and requested to certify their rights to return to Japan. The trial had lasted until June 1989 with about 60 times of hearings, but was withdrawn after three of those four plaintiffs died. In August 1990, a group of 21 Korean plaintiffs, consisting 7 returned to Korea, 7 remained in Sakhalin and 7 family members living in Korea, filed a lawsuit against Japanese government for demanding compensation of 10 million yen per person.

#### Korean Atomic Bomb victims

60. August 1945, when atomic bombs were dropped onto the Japanese cities of Hiroshima and Nagasaki, there were Koreans, forcibly mobilized by the Japanese government, whose number reached approximately 70,000 in Hiroshima and 30,000 in Nagasaki. Among them, about 45,000 Koreans were killed by the bomb instantly. The rest of 43,000 survivors, who had been exposed to radioactive substances, returned home, but received neither treatment nor compensation from the Japanese government, and have lived miserable lives under atomic disease, poverty and social prejudice.

61. Japanese government enacted two special laws of the 'Law Concerning Medical Care for the Atomic Bomb Victims, Etc.' and the 'Law Concerning Special Measure on Atomic Bomb Victims', and provided A-bomb victims in Japan, regardless of nationality, with health cards, diagnosis, medical expenses and other monetary compensations. Those victims living in Korea, however, had never been provided with such redress. Their issue itself was totally excluded from the Claims Agreement in 1965.

62. In 1970, an A-Bomb victim Jin-du Sohn, living in Korea, took an secret passage to

Japan and requested the government for his treatment. The government, however, refused his request with an excuse that compensation issue regarding those victims living in Korea had been totally settled by the 1965 Agreement. In 1972, Mr. Sohn filed a lawsuit against Japanese government requesting an A-Bomb Victims' Health Card. In 1978, the highest court delivered the decision that Japanese government is also responsible for Korean A-Bomb victims. Despite of the court decision, Japanese government induced a system of 'treatment within Japan' in 1980. The system restricted the number of being treated to 50 per year, excluded the elderly patients, and limited the treatment period upto 6 months. Due to such unreasonable restrictions, total number of being treated in Japan reached only 300 among more than 30,000 A-Bomb victims in Korea. And the system was even abolished later on. In 1987, A-Bomb victims in Korea requested Japanese government for compensation of 345 billion yen (the amount is equivalent to that Japanese victims have received for the last 42 years). In 1990, when then president of Korea, Roh Tae-Woo, visited Japan, the government provided 4 billion yen in the name of 'medical support for A-Bomb victims in Korea'. One can easily notice how ridiculous the amount is by comparing the Japanese budget of 136.5 billion yen for A-Bomb victims in Japan in the year of 1992 alone.

63. A-Bomb victims in Korea are those who were forcibly brought to Japan and worked like slaves at mines or military facilities, and thus are war victims. Most of them are now in very old ages, suffering radioactive disease, and even their children are living under painful lives with unknown disease.

#### Treatment of Korean Disabled Veterans and Military Personnels in Japan

64. According to an official statement of the Japanese government, some 364,186 Koreans were mobilized during World War II as soldiers or military personnels, and 22,182 died among them in combat. They have been totally excluded from Aid program simply because they lost Japanese nationality by Japanese government upon the effectuation of San Francisco Peace Treaty.

65. Korean disabled veterans and military personnels in Japan had requested equal treatment as Japanese since 1952, but Japanese government had required their naturalization until 1965,

and finally refused to provide aid in that all compensation issues for Koreans was totally settled by the Claims Agreement of 1965.

66. In January 1991, two Koreans in Japan, Sung-kee Suk and Suk-il Jin, claimed pension for damages based on the 'Aid Law', but the Ministry of Welfare rejected it with an excuse of supplementary provision of this law which contains nationality clause<sup>5)</sup>. Another Korean, Sang-keun Chung, also filed a lawsuit against Japanese government for compensation in the same year.

67. Section 2 (a) of Article 2 of the 1965 Claims Agreement between Korea and Japan stipulates that rights of Koreans in Japan with Korean nationality shall be beyond the effectiveness of the Agreement. Therefore, Japanese government's claim that compensation issue regarding Koreans in Japan had been totally settled by the Agreement of 1965 is not right.

#### Forcible Mobilization for Military Service and Labour

68. Japan mobilized a large number of Korean young men as soldiers. In April 1938, Japan enforced a 'volunteer' system by promulgation of the "Special Law for Volunteer Army". This system had a legal form of volunteering, but in reality the number of volunteers was so small that the colonial government allotted the number of each Province, Gun and Myun (Gun and Myun are regional units of public administration.). The regional offices of the colonial government forcibly mobilized young men by threats, detention of the family members, or other violent means.

69. In October 1943, the Japanese government promulgated the "Rule for the Temporary Employment of Special Army Volunteers" to the university students, and the Governor General of the colonial government declared that every university student had to volunteer for the military service. As such this had also a legal form of volunteering but was a very strict coercion system. The colonial government mobilized respectable persons to encourage the

5) See paragraph 78 and its following note of this report.

students to volunteer, and decided to send the students who did not volunteer to mines for the forced labor. As a result only in the year 1943, 73% of the students had to 'volunteer' for the military service. In May 1942, Japanese government decided to officially introduce the conscription system in Korea. At last in April 1944, the first examination for conscription was enforced in Korea.

70. The mobilization of man power was developed more seriously. In 1938, Japanese government enforced the "National General Mobilization Law" in Korea. Based on this law, in July 1939, the Ministers of Home Affairs and Welfare promulgated the "Order on the Transfer of Korean Workers into Japan", which allowed Japanese companies to mobilize Korean workers in the form of free recruitment. In this 'free' recruitment, Japanese government and the colonial government in Korea actively participated.

71. Expanding battle fields, Japan needed more effective mobilization method. In February 1942, based on Japanese Cabinet decision, "the Means of Utilization of Korean Workers", the colonial government made the "Arrangement Principle for Transferring Koreans into Japan". So called government arrangement method began to be used for mobilizing workers. The Japanese government and the colonial government became to play more direct roles for mobilization; upon a Japanese company's application for the mobilization of Korean workers to Japanese government, the colonial government directly mobilized and sent Korean workers to Japan.

72. For such effective mobilization of workers, Japanese government established "Korean League for National Aggregated Power" in Korea in October 1940, and "Korean Labour Council" in February 1941. The smallest unit of "Korean League", "The Patriotic Group" covered 10 households each, and organized all families in Korea. As such almost all Korean people were strictly screened and watched through the government organs, and forcibly transferred into the work fields.

73. In 1944 the Japanese Cabinet decision, "the Transfer of Korean Workers" made it possible to draft all Koreans by Japanese government's order. The officers of colonial government drafted Koreans and sent them to the work fields.

government's insincere efforts. Korean scholars estimate that number of those mobilized as soldiers reached to 360 thousands, military personnels to 240 thousands, labourers to 1.4 million, and military comfort women to 100 to 200 thousands. Among them about 53 thousands soldiers, 75 military personnels, 300 labours and 80 comfort womens are estimated to have died during the War. The number of missing people is beyond estimation<sup>6)</sup>.

76. Family members of the missing during the War have not been able to perform funeral service for them because no one has confirmed their deaths. In spite of repeated requests of the families and related organizations, it was not until Japanese government revealed the list of only 90,000 mobilized Koreans in 1991, without identifying the details of them and their fates.

#### Unpaid Salaries and Savings in the Military Post Offices (Postal Savings)

77. During the War, it was imperative for all soldiers and civilian employees of the Japanese Armed Forces to deposit their salaries in military post offices. After the end of the war, however, the Japanese government did not permit any non-Japanese depositors to withdraw their savings. Because of this, non-Japanese depositors could not use their own savings, or their remunerations for their military services offered, when they desperately needed it. In 1965, Japanese government enacted the 'Law concerning Measures on Property Rights of the Republic of Korea, Etc.', which stated that Korean's right of savings in military post offices was terminated except for those who lived in Japan. Japanese government has been refusing to reveal information on the depositors and the saved monies.

6) Some figures announced by Japanese government vary a lot and thus are not reliable. According to those figures, total number of mobilized Koreans for the period 1939-1945 was at least 750,000 (materials of the Japanese Imperial Diet), or 2 million (Materials of the Special High Police of Japan).

### Japanese Government's Policy on the Reparation of War Responsibilities

#### Racism : Only Japanese Policy

78. After the end of the War, the General Headquarters of the Allied Forces (GHQ) reformed the monetary aid system for victims of war such as Soldier's Pension so that it was not agreeable to have a system which treated ex-soldiers or their families more favorably than those in need for aid in general. In February 1946, Soldier's Pension was repealed, except the pension for those serious invalids. In April 1952, however, when San Francisco Peace Treaty was signed and thereby Japan regained its sovereignty, Japanese government resumed the aid system for the war victims, but excluded foreigners from the provision of such aid. Right before the Treaty was signed, Japanese government announced the 'Cabinet Order' saying "As of the effective date of the Treaty, Korea and Taiwan shall be separated from the territory of Japan, and thus Koreans and Taiwanese including those stationed in Japan shall all lose their Japanese nationality." The announcement was used as legal ground to treat Koreans, Taiwanese and people from other countries as foreigners, and to discriminate them in aid system. As a result, in the case of non-Japanese war victims who were residents of the former Japanese colonies, no compensation was provided or even if there was, the amount was much less than that for the Japanese victims. In the wartime, they were forced to have Japanese nationality, combat as Japanese soldiers, work as civilian employees, get injured and killed just like their Japanese colleagues, forced to sacrifice themselves in an unspeakably cruel way and conditions. They were massacred or abandoned in Sakhalin or south Asia or Pacific islands.

79. Two days after the San Francisco Peace Treaty was signed, Japanese government enacted the 'Law Aiding the War Invalids, the Bereaved Families of the War Dead, Etc'(hereinafter, 'Aid Law'). In 1953, the military pension which was suspended by the order of the GHQ, was also resumed. There have been a total number of 13 laws enacted concerning aid and relief for the war victims since 1952. The purpose of such laws was said to "aid the wounded or the family of the dead soldiers or civilians in the light of the spirit of national redress". All these laws, however, instituted, directly or indirectly, nationality clause, and excluded non-Japanese victims from such aid<sup>7)</sup>.

80. The loss of foreigners' Japanese nationality as a result of the Peace Treaty has been argued despite the lack of express provision in the Treaty which stipulates only the territorial separation of Korean peninsula and Taiwan from Japan and the lack of enactment of a new law to said effect. According to the Japanese Constitution, Article 10 defines, "essentials of Japanese people shall be decided by law". Therefore, loss of Koreans' Japanese nationality just by 'Cabinet Order' mentioned above may be considered as unconstitutional. Article 15 of the Universal Declaration of Human Rights reads, "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". Therefore, Japanese government's measure, which unilaterally deprived Koreans and Taiwanese of their Japanese nationality which had been forcibly imposed by its own unilateral measure, seems to violate not only its own constitution but also international human rights norms.

#### Neither Reflection Nor Apology

81. The reality of Japan concerning the post war reparation and compensation reflects not only the systematic violation of the human rights but also the distorted historical sense of overcoming the past. It can be said that, even nowadays, the Japanese government maintain a deep-rooted unreasonable sense of discrimination against the peoples of Asia and of the former Japanese colonies including south and north Korea, just as they did before and during the wartime. One could easily view that such distinctive feature of the post war compensation system of Japan consists in the contrasts that the bigger domestic payment to individuals and the smaller foreign payment to the society in general. For instance, in

7) Paragraph 2 of Supplementary Provisions of the Aid Law stipulates "this law shall not apply, for the time being, to those whom the Family Registration Law does not apply." The Family Registration Law is applicable to only the Japanese nationals, therefore non-Japanese victims are not eligible to receive aid provided under this law. Article 9 of the Pension Law, for example, stipulates that "a pensioner's right to receive pensions hereunder shall cease to exist when he has lost his Japanese nationality". Approximately 2 trillion yen has been expended out of the Japanese national budget each year, under such aid laws. Exceptionally, victims of the atomic bombs have been provided with regular aid under two special laws of 'Law Concerning Medical Care for the Atomic Bomb Victims, Etc.' and 'Law Concerning Special Measure on Atomic Bomb Victims'. Since these A-Bomb laws did not institute the nationality clause, the aid has been provided to foreigners, but only to those within Japan. Victims in Korea have been also excluded even under these two special laws.

accordance with the 'Agreement on the Settlement of Problems Concerning Property and Claims and on the Economic Cooperation Between the Republic of Korea and Japan'(hereinafter, 'Claims Agreement') USD 300,000,000 were paid by Japan to Korea as free economic aid not as compensation. Further, nobody could find expression of Japanese government's apology and reflection for the past in any mutual agreements executed between Japan and other Asian countries.

82. As contrast to Germany which has been searching and prosecuting Nazi war criminals until now and giving the fullest reparations to the victims, Japanese government rather built cemetery for seven Class A war criminals in 1960, started "Commemorating Ceremony for War Invalids" sponsored by the government since 1963, and revived conferring decoration for war invalids since 1964. Furthermore, in 1985, Japanese prime minister Nakasone even made the official worship at the Yasukuni Shrine for Class A war criminals, for the first time in the capacity of the prime minister. That raised strong anger among Asian people. Japanese government also distorted the history to reduce and conceal the fact of its past invasion<sup>8)</sup>.

83. There are two other facts which confirm how seriously the Japanese government is centered by *jus sanguinis*; The one is, when those who remained in Sakhalin were returned by Japanese government, Koreans were excluded. Japanese government, however, brought back Japanese women who had married to Koreans and thereby lost their Japanese nationality. The other is, Japanese government provided Soldiers' Pension equally even for those Japanese soldiers and military personnels who had stationed in Okinawa where there was no Japanese sovereignty under the U.S. military government. Again, Koreans and Taiwanese were totally excluded from the pension.

8) Under the Education Law of Japan, the screening system is imposed on all textbooks prior to their use in schools. The Ministry of Education is empowered to screen and examine the textbook manuscripts by private authors and give guidelines for the manuscripts to be approved to be used as textbooks. In case the author did not conform the contents of the manuscripts in line with the guidelines, it can not be used as textbooks in schools. In the *Ienaga* Textbook lawsuits, Professor *Ienaga* requested the court, with failure, cancellation and declaration of unlawfulness of the guidelines imposed by the Ministry of Education. In the guidelines, the Ministry of Education ordered the author not to realistically describe the Japanese army's brutal acts during World War II and not to depict the war in a negative way.

#### Grounds of Japanese Government's Denial of War Responsibilities

84. On June 22, 1965, Republic of Korea and Japan signed the 'Basic Relations Treaty Between the Republic of Korea and Japan' which normalized diplomatic relations between the two countries and the 'Claims Agreement'. Japanese government has claimed that all its responsibilities of compensation for its illegal conducts on Korea and Korean people had been settled finally and comprehensively by the 'Claims Agreement', and denied any of its responsibilities in relations with the war.

85. The Section of the 'Claims Agreement' between Korea and Japan by which Japanese government contends that its legal obligation arising from its war atrocities has been settled and absolved is as follows;

*"The Contracting Parties confirm that problems concerning property, rights and interest of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) of the Peace Treaty with Japan signed at the city of San Francisco on September 8, 1951, is settled completely and finally."*

86. Contents of the 'Claims Agreement' says that Japan provides Korea, as free economic aid, with its products and labor services equivalent to the value of USD 300 million for the period of 10 years, and another USD 200 million as loan. And that it confirms both contracting parties' and their nationals' property, rights and benefits, and any issue concerning claims between the two contracting parties and their nationals are all settled completely and finally. After the 'Claims Agreement' and with the aid, South Korean government enacted the 'Law Concerning Report of Civil Claims Toward Japan' and 'Law Concerning Compensation of Civil Claims Toward Japan'. Based on said laws, Korean government paid 300 thousand Won (equivalent to USD 180) to each of those Korean bereaved families of the war dead who served Japanese Army as soldiers or dead civilian employees before 15 August 1945. The total amount paid reached 256.56 million Won for the total of 8,500 persons. No payment, however, was provided for the wounded, survived

and remained in Japan. Military comfort women, Koreans remained in Sakhalin, Class B or C war criminals, and those who were forcibly taken by the Japanese government were all excluded from the payment. One of major reasons that the number of people received the payment is very small is because the subjected receivers did not accept the payment due to the ridiculous amount to be paid.

87. However, the main purpose of the 'Claims Agreement' between Korea and Japan, as Japan's other agreements with its former occupied countries like Malaysia, Indonesia and Singapore, was not the recognition of Japan's war responsibilities and reparations but the economic cooperation. While expressing formal apology for its wartime conducts and offering compensation in the agreements with Allied Forces, Japan did neither expressed a word of apology nor offered a cent of compensation for its war activities to its former colony or occupied countries. The Preamble of the Claims Agreement between Korea and Japan shows the characteristics of it;

*"The Republic of Korea and Japan, desiring to settle problems concerning property of the two countries and their nationals and problems concerning claims between the two countries and their nationals, and desiring to promote the economic co-operation between them, have agreed as follows..."*

It is our opinion that the 'Claims Agreement' between Japan and its former colony or occupied countries, whose main purpose was economic cooperation, are not adequate to determine Japan's responsibilities to individual victims of its wartime atrocities.

88. Although Japanese government insists that its responsibility of compensation for Korea and Korean people was settled completely, issues of military comfort women, compensation of Koreans in Japan, Koreans remained in Sakhalin, Atomic Bomb victims in Korea and Korean B and C Class war criminals were not able to be even considered at the time of 'Claims Agreement' of 1965. In fact, most of those issues were recently raised. Therefore, it can not be said any claims of compensation regarding those issues were included in the 'Claims Agreement'. For the case of Koreans remained in Sakhalin, a Japanese government official from Treaty Bureau of Foreign Affairs Ministry once accepted that claims of

compensation regarding the issue had not been included in the 'Claims Agreement'. Situation for A-Bomb victims in Korea is not different at all. The issues described above are all still remaining unsettled.

89. In addition, claims of compensation was not the subject of the Agreement, when the 'Claims Agreement' was signed. The Agreement was signed as the Japanese government accepted the list of 8 items of claims' main principle, which was proposed by south Korean government. At the table of the Korea-Japan talk to sign the Agreement, Korean delegates did not mean the 'Korean's right toward Japan was claim of reparation for damages due to Japan's illegal actions', but meant 'claims at the level of compensation'. Moreover, when Japan signed the Claims Agreement, it did not acknowledge that it had inflicted crimes against humanity on the Korean people. Therefore, it should be said that Japan's responsibility of reparation for damages due to its illegal actions was not included in the 'Claims Agreement', although clause of the Agreement stated, "claims of Koreans toward Japan is settled completely and finally".

90. What a State is entitled to settle by a treaty is basically limited to the rights of the State itself and the State's right to protect its nationals. Thus the individual victims' right to reparations for their individual damages against the State which committed wrongful activities can not be settled by their State acts<sup>9)</sup>. Therefore the rights to reparation of individual victims of Japan's war crimes and atrocities could not be settled by the 'Claims Agreement' between Korean and Japan. This is actually the Japanese government's consistent position taken concerning its own nationals. Regarding the Section 3 Article 2 of the 'Claims Agreement', which is provision of "forfeiting Japanese people's claims toward Korea", Foreign Affairs Ministry of Japan stated, throughout a booklet titled as 『Resolution of Japan-Korea Treaty and Domestic Laws』, "it is just abandoning the nation's diplomatic right to protect its nationals secured by the international laws". On March 26 1991, at the Cabinet Committee of the Upper House and upon the question about 'un-returned soldiers who were detained in Siveria', chief of the Treaty bureau of Foreign Affairs Ministry stated, "forfeiting of claims as defined in the Article 6 of Japan-Soviet Union Communique is

<sup>9)</sup> Article 8 of the Universal Declaration of Human Rights states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him, by the constitution or be the law."

forfeiting of the nation's own claims and that of diplomatic rights, which a nation automatically obtained, but not that of our individual nationals' claims toward the Soviet Union or its nationals". On August 1991, at the Finance Committee of the Upper House, chief of the Treaty Bureau of Foreign Affairs Ministry also stated, "in the Claims Agreement, the problem concerning claims between the contracting parties is settled completely and finally means mutual forfeiting of diplomatic rights of both Japan and Korea, which does not mean that any individual claim is nullified."

91. Japanese Government contends that the rights to compensation of individual victims have already been extinguished by the Statutes of Limitations because about 50 years have passed since the end of the War. However, as Special Rapporteur Mr. Theo van Boven noted in his Final Report to the Human Rights Committee (E/CN.4/Sub.2/1993/8, 2 July 1993), "Statutes of Limitations shall not apply in respect to periods during which no effective remedies exist for human rights violations. Claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitation." The individual victims who are now requesting Japanese government compensation for its wartime atrocities have not had any means of effective remedies because of Japanese government's intentional concealment of evidences and denial of its responsibilities, let alone many obstacles arising from their miseries. Moreover, torts and crimes from which the victims suffered and for which they seek compensation were the grossest form of human rights violations and thus a statute of limitation shall not be applied.

#### Special Issue : Comfort Women (Military Sexual Slavery)

92. We would like to make a short sketch of legal evaluation of Japan's practice of 'comfort women', which is the typical and the most serious violation of human rights of Korean and other people who had been subjugated to Japan's invasion. This may be safely said to be a total enslavement of whole Korean nation to Japan. Many aspects of these evaluations may apply *mutatis mutandis* to other area of human rights violations mentioned above.

93. The fact that Japan had forcibly abducted young girls and women from its colonies and

occupied areas including Korea and the Philippines, deceived them to take to the war front and labour fields, and used them as a tool to satisfy Japanese soldiers' sexual desire seems to be serious criminal actions which go far beyond the degree of collective rape on victimized women. For the case of Korea, specifically, scholars consider the incident as a part of Japan's policy of eliminating Korean nation, since those 100,000 to 200,000 victimized women at marriageable ages took large proportion of overall population.

94. During wartimes, there have been cruel conducts such as rapes of soldiers of occupying forces upon women of the occupied areas, throughout the history. Conduct of Japan during World War II (military comfort women), however, can not be even compared to the above historical facts, and contains very serious problems in itself.

First of all, military comfort women system is not an accidental nor temporary crime of an individual soldier's rape on a women of the occupied area. But it was a systematic crime of Japanese government and the supreme command of its military which planned, drafted and executed such system to satisfy its mercenaries' sexual desires.

Secondly, Japan not only legislated such system but also massively abducted and seduced women of its colony by utilizing all sorts of administrative organs, military, police and other forces.

Thirdly, Japan sent those women very far away, such as South Pacific Islands, so that they could never escape. It used military transportations to take them to the war fronts, move them with the military, and raped them for a long period.

Fourthly, Japanese military, directly or indirectly, established, operated and controlled comfort service facilities, and arranged, detained and watched comfort women.

Fifthly, the degree of cruelty of what Japan did on those comfort women is unparalleled in history in terms of continuity and number of rapes, and of cruel treatment on them.<sup>10</sup> Such cruel treatment was planned and organized systematically by the military.

Sixthly, Japanese military, through its line of commanding orders, directly ordered and

10) In this respect, the following sentence in the Preliminary Report of a Mission of the International Commission of Jurists in June 1993 is quoteworthy;

*"There is no way to describe what it must have been like for a women to be sitting in a cubicle five feet by three feet with knowledge that outside her room was a queue of soldiers who one after another would come in and rape her."*  
(Ustina Dolgopol & Snehal Paranjape, Comfort Women - The Unfinished Ordeal, June 1993, Geneva, p.2)

forced to rape those women. Any woman resisted such order or tried to escape was severely tortured or massacred.

Seventhly, after the war was over, Japanese military abandoned them in such war fronts as South Pacific or even massacred them collectively to destroy evidences in relation to military comfort women. The military also destroyed documents and materials regarding the matter.

Eighthly, until very recently since the end of War, Japanese government has never conducted thorough investigations on the issue nor provided compensations for those victims. The government had said there found no evidences to the involvement of Japanese government or military in such business, and denied its responsibility for it, inspite of investigations of non-governmental organizations and testimonies of victims themselves.

With the specific characters mentioned above, it becomes clear to define that military comfort women issue is systematic war crime and crimes against humanity directly committed by Japanese empire itself.

95. Japanese engagement in the comfort women system in all levels of planning, establishment, recruitment, management, operation, supervision, control, mistreatment, abandonment or massacre, etc. may constitute war crimes and crimes against humanity under various sources of international laws. The Charters of the Nüremberg Tribunal and the International Military Tribunal for the Far East(Tokyo War Crimes Tribunal), which were the expression of pre-existing international customary law, codified crimes against humanity as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war...". The Tokyo War Crimes Tribunal found those acts related with wide spread rapes in Nanking guilty for war crimes and the Batavia Trial established in Indonesia as one of various international tribunals to punish Class B and C war criminals found forcible recruitment of Dutch women to military comfort stations guilty for war crimes.

96. The practice of comfort women violates the Convention Respecting the Laws and Customs of War on Land (the Fourth Hague Convention of 1907), and falls under the international crimes under the International Agreement for the Suppression of the 'White Slave Traffic' and the International Convention for the Suppression of the Traffic in Women

and Children. Japan was the member of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties after the first World War and the Commission prepared the list of punishable war crimes, including rape, as "abduction of girls and women for the purpose of enforced prostitution," "deportation of civilians," "internment of civilians under inhuman conditions," and "forced labour of civilians in connection with the military operations of the enemy." Japan committed all of these criminal acts against comfort women.

97. The systematic rapes of Bosnian women by Serbian troops had shocked the whole world and this lead to the United Nations Security Council to resolve to establish the War Crimes Tribunal to punish those war crimes and crimes against humanity committed in former Yugoslavia. Welcoming these resolutions of the Security Council, many countries and almost all NGOs from all over the world, during the World Conference on Human Rights in June 1993 and its preparatory process, strongly requested the United Nations, to establish a Permanent International Criminal Court which has jurisdiction over war crimes and crimes against humanity including systematic rapes and sexual slavery. The World Conference finally recommended the International Law Commission to study continuously the possibility of the International Criminal Court. The comfort women during World War II is the Asian version of such massive and gross violation of human rights committed in former Yugoslavia. In this context, we would like to request full justice should be done relating to comfort women in that, without sincere reflection and bringing justice, the crimes in the past will eventually be repeated somewhere else in the future.

#### Conclusion and Recommendation

98. As shown above, people in Japan's former colonies or occupied territories underwent all forms of human rights violations and many of those problems remain unsolved until now. Historical facts were concealed. The victims themselves were too weak and ignorant of their rights to request Japanese government adequate reparations. Most of their governments established after the War have not paid attention to the rights of their people suffered from Japanese war atrocities and been concerned about gaining political and economic support

from Japanese government. Different from their European counterparts suffered from Nazi regime for whom the Allied Forces and even the United Nations requested competent German authorities to take fullest reparation for the victims and the Federal Republic of Germany accepted its war responsibilities, victims of Japan's war atrocities have been abandoned by all relevant authorities.

99. Among all kinds of desertions of obligations of relevant authorities, the portion of Japanese government may be first deserved to be discussed. It has never accepted its responsibilities. Sometimes instigating the victims emotions by insisting that Japanese invasion or occupation has been the basis of economic development of this region or it had educated those people modern culture, it has destroyed or concealed all materials and information on its war responsibilities and even distorted contents of historical truth in textbooks. It has abandoned victims of its war activities who had been killed, injured, conscripted to battle fields, or even subjected to military sexual slavery without a glance of humane sympathy while giving fullest reparation and compensation to its own nationals based on its huge economic power. This practice of Japanese government falls under the discrimination of foreigners who had been similarly or much more harshly suffered from its war activities.

100. The Committee has repeatedly expressed its views in many cases raised under the Optional Protocol to the Covenant as to the obligations of the State party responsible for human rights violations that the State party is obliged to;

- (a) investigate the facts;
- (b) take action thereon as appropriate;
- (c) bring to justice those found to be responsible;
- (d) extend to the victims treatment in accordance with the provisions and the guarantees of the Covenant;
- (e) provide medical care to the victims;
- (f) pay compensation to the victims or their families;
- (g) take necessary measures to guarantee non-repetition of the same violation.

101. For the victims of the comfort women, which was the most cruel form of women's human rights violations, paragraphs of the draft Declaration on the Elimination of Violation

Against Women, adopted by the United Nations Commission on the Status of Women are worthy of being emphasized for the purpose of this report. Calling upon States to pursue, by all appropriate means and without delay, a policy of eliminating violence against women, the draft Declaration emphasizes that States should take following measures as the remedial and reparational measures;

- (a) refraining from engaging in violence against women;
- (b) the exercise of due diligence to prevent, investigate and punish acts of violence against women;
- (c) the provision of access to the mechanisms of justice and to just and effective remedies for the harm suffered;
- (d) development of preventive approaches and ensuring that the revictimization of women does not occur because of gender-sensitive laws, enforcement practices and other interventions;
- (e) ensuring specialized assistance, such as rehabilitation, assistance in childcare and maintenance, treatment, counselling, health and social services, facilities and programmes, as well as support structures and all other measures to promote the safety and physical and psychological rehabilitation of the victimized women and their children.

102. The Drafting Committee on the topic of State responsibility of the International Law Commission included in its draft articles as the obligations of the State as cessation of wrongful conduct, reparation, restitution in kind, compensation, satisfaction, and assurances and guarantees of non-repetition. According to this draft articles, the state is obliged to provide full reparation. And the full reparation can take the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition. It should be highlighted that the State which has committed the internationally wrongful act may not invoke the provisions of its internal law as justification for the failure to provide full reparation. The restitution in kind is the re-establishment of the situation that existed before the wrongful act was committed and, in so far as the damage is not made good by restitution in kind, compensation is to be provided which covers any economically assessable damage sustained by the injured party. Satisfaction for damage, in particular moral damage, is to be obtained if and to the extent necessary to provide full reparation and may take the form of

- (a) apology, (b) nominal damages, (c) in case of gross infringement of rights, damages

reflecting the gravity of the infringement, (d) in case of serious misconduct or criminal conduct, disciplinary action, or punishment of, those responsible.

103. These above mentioned views of the Committee and other sources of international law may apply to Japanese government's responsibilities for its war atrocities to the victims. We are of the opinion that the full justice should be done for the victims and for Japan's war crimes and crimes against humanity under international laws. Additionally, we would like to insist that, besides all the direct wrongful acts committed by Japan and its obligation to full reparation to the victims, the Japanese government's abandonment and discrimination of foreign victims again constitute another serious human rights violation under international law including the Covenant.

104. As pointed out by the Committee in its General Comments No. 18 (37) b/,c/ (non-discrimination), the principle of non-discrimination is so basic that the Covenant guarantees this right to equality and equal protection of the law without any discrimination in various provisions. Defining the term "discrimination" that it implies any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms, the Committee has emphasized that "article 26 of the Covenant provides in itself an autonomous right and thereby prohibits discrimination in law or in fact in any field regulated and protected by public authorities." "Article 26 is therefore concerned with the obligation imposed on State parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its contents should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant."

105. We would like to draw Japanese government's attention to the Committee's comments in case No. 196/1985 (Gueye et al. v. France), where the Committee found a violation of article 26 for the retired Senegalese members of the French Army complained that they had

not received pensions equal to those given to retired members of the French Army having French nationality:

*"In determining whether the treatment of the authors is based on reasonable and objective criteria, the Committee notes that it was not the question of nationality which determined the granting of pensions to the authors but the services rendered by them in the past. They had served in the French Armed Forces under the same conditions as French citizens; for 14 years subsequent to the independence of Senegal they were treated in the same way as their French counterparts for the purpose of pension rights, although their nationality was not French but Senegalese. A subsequent change in nationality cannot by itself be considered as a sufficient justification for different treatment, since the basis for the grant of the pension was the same service which both they and the soldiers who remained French had received. ... In the Committee's opinion, mere administrative inconvenience or the possibility of some abuse of pension rights cannot be invoked to justify unequal treatment."*

106. Considering the contents of article 26 of the Covenant as interpreted by the Committee, we are of the opinion that both the legislation and practices of Japan in the field of compensation of war victims has severely discriminated foreign victims and violated article 26 of the Covenant. We would like to recommend the Committee to define legal principles in this field and persuade Japanese government to implement article 26 of the Covenant.

107. For the reference, we attach hereto voice of victims of Japanese war activities in Korea as well as in other victimized countries and their demands for Japanese government regarding its post war responsibility and reparation issue;

1). Japan should recognize and take full responsibility for their violation of human rights and dignity of those victims in Korea and other countries which it had invaded before and during World War II and should make full, sincere, complete and public apology for their activities to the victims and the invaded countries.

2). Japan should make a thorough and complete investigation and disclose all the related

information, without delay, in its possession concerning all aspects and process of its war activities and crimes which have affected those victims in Korea, Asian and Pacific countries. The organizations and experts who have investigated and raised these issues, representing the victims, should be allowed full access to such information and participation in the investigation process. The Japanese government should encourage and assist its nationals who want to testify on its war activities.

3). Japan should abolish any and all its measures, administrative, legislative or judicial, which have effect of discriminating non-Japanese against the Japanese. It should make sincere apology for the violation of human rights of non-Japanese by its discrimination of them.

4). Japan should take all necessary measures without delay to provide medical treatment to those victims still suffering from aftereffects of war regardless of the place of their locations. Proper rehabilitation service to those in need of it should be urgently provided.

5). Japanese government should extend every possible effort to help and guarantee those who remained in Sakhalin or other places and want to return their home.

6). Japanese government should return all postal savings deposited by the victims of its war activities to the depositors or their families and should start, without delay, dialogues with relevant governments or NGOs to deal with the matters concerned. Japanese government should take all measures to return all monetary savings deposited to the relevant companies which employed the conscripted people to the victims or their families.

7). The individual victims and their families should be given full monetary compensation. This compensation should be equivalent to which have been given to Japanese victims. With regard to the compensation, Japanese government should invite the organizations representing the victims to discuss and resolve the problems concerned.

8). Considering the age and health of the victims who are alive, the process of compensation to the individual victims should be proceeded very urgently and immediately. The judicial procedures should not be excluded, however, administrative and legislative measures should

be taken first. Japanese Judiciary should directly apply all relevant international human rights standards, articles 2 and 26 of the Covenant in particular, in the lawsuits seeking equal treatment of non-Japanese victims with the Japanese victims.

9). Japanese government should introduce the screening guidelines to revise all textbooks to include true historical facts of its war activities and invasion on Korean peninsula and other countries. It should stop putting pressure on the authors of textbooks not to mention its war responsibilities or not to describe war activities in detail.

10). Japanese government should build an appropriate monument in Japan to honour and commemorate all the war victims including 'comfort women', and to educate the future generations about its past and importance of human rights of all people.

11). Japanese government should, in consultation with governments of Allied Forces and victimized countries, establish a Special Tribunal to try and punish those mainly responsible for war crimes and crimes against humanity during World War II.