

December 3, 2001

For the Panel of Judges,
Women's International War Crimes Tribunal

Amicus Curie
Higashizawa Yasushi, attorney at law

AMICUS BRIEF

I thank for providing me today with an opportunity to discuss civil litigations for former "comfort women" now pending in Japanese courts. I am presenting here the current status of those litigations, and I would like to address problems that survivors have been faced in Japanese courts.

Up to now, 10 lawsuits has been filed since 1992 by survivors from Japan's military sexual slavery of South Korea, Korean resident in Japan, Philippine, China and Taiwan. 4 cases are still pending at district courts, 2 at high courts and 4 at the Supreme Court of Japan. Most of the cases are collective actions of groups of survivors. In all cases, plaintiffs are seeking legal compensation and official apology from the government of Japan.

10 judgments were rendered from those lawsuits, six from district courts and four from high courts. Surprisingly in all cases but one, courts have rejected any remedies to those survivors in spite that the government of Japan has officially confirmed the involvement of the Japan's former military in setting up and administration of "comfort stations," in other word, rape centers. Only in the Shimonoseki Branch of the Yamaguchi District court, the judgment was rendered for plaintiffs with nominal compensation of \$2,500, which was, however, reversed by the Hiroshima

High Court.

[The decision of Shimonoseki Branch, Yamaguchi Dist. Ct. was exceptional, for it found illegal the failure of Japan's parliament to fulfill its obligation to legislate for the redress for the victims of the jp govt, the obligation that emerged when the jp govt acknowledged the involvement of the jp military, and ruled that the survivors should receive 300,000 yen (about US\$2500) per person as solace compensation. This decision was, however, reversed by Hiroshima High Court as mentioned above.]

Those judgments have rejected the plaintiffs' claims on the following grounds:

That the domestic law of Japan before and during WW2 made the State of Japan immune or unaccountable;

That the plaintiffs do not have the individual right to claim under international law (or international law does not recognize the plaintiffs' individual rights of claim);

That any right that existed at the time under civil law, if any at all, had expired by now due to the statute of limitations; and,

That any individual claims that survivors may have had for compensation were fully satisfied by peace treaties and international agreements between Japan and other Asian States following the end of the Second World War.

Those reasoning which are also adopted by the government of Japan have been completely refuted by international society and prevailing international law. The domestic law which made the State of Japan immune or unaccountable can not be an excuse to obligations under international law. As professor Kalshoven confirmed at this Tribunal, survivors were entitled to the right for compensation under the 1907 Hague Conventions. It is a long established legal principle that responsibilities to crime against humanity shall not be expired due to the statute of limitations. It is a historical fact that no peace treaties or

international agreements between Japan and other Asian States dealt with sufferings from sexual slavery. Survivors have mountful reasons to pursue their claims in courts, which courts in Japan would not admit.

9/9/02
Nevertheless, even after this Women's International War Crime Tribunal in last December, courts in Japan have rejected those claims and reasons which are urged by survivors and international society.

- decision of Tokyo High Court, 30 Nov 2000 ("comfort woman", Korean resident in Japan)
- decision of Tokyo High Court, 6 Dec 2000 (sexual slavery, the Philippines)
- decision of Hiroshima High Court on 29 Mar 2001 ("comfort women", South Korea)
- decision of Tokyo District Court on 30 May 2001 (Chinese "comfort women")
- decision of Tokyo High Court on 11 Oct 2001 (Dutch "comfort women")

I, as a member of legal society of Japan, hate to say that, as far as state responsibilities before and during WWII are concerned, judiciary of Japan has malfunctioned and has no power to repair itself. With such malfunction, those responsible to military sexual slavery are still being unaccountable. I, however, believe that conscience and justice among human society would not allow them to stand any more. Conscience and justice is what this tribunal represents.

Appendix

List of cw lawsuits at jp courts expressed in the official way[N.B. our translation: they are never expressed in English officially in jp cts. But have tried to make it as close to the original official way.]

Pending at district court (4 cases):

The Case of **Hainan Island** "comfort women" claiming written apology etc., The 24th Civil Department of Tokyo District Court, Docket No. (wa) 14808 of Heisei 13 nen (2001).

The Case of **Taiwanese** "comfort women" claiming compensation and written apology, Panel of judges, the 26th Civil Department of Tokyo District Court, Docket No. (wa) 15638 of Heisei 11 nen (1999).

The Case of victims of sexual violence in **Shan-xi Province, China**, claiming compensation etc., The

44th Civil Department of Tokyo District Court, Docket No. (wa) 24987 of Heisei 10 nen (1998).

The Case of Chinese "comfort women" claiming compensation etc. (2nd group), The 10th Civil Department of Tokyo District Court, Docket No. (wa) 3316 of Heisei 8 nen (1996). [women of Shan-xi Province, China]

Pending at high court (2):

The "koso"-appeal Case of **Chinese** "comfort women" claiming compensation etc. (1st group) The 5th Civil Department of Tokyo High Court, Docket No. (ne) 3775 of Heisei 13 nen (2001). [women of Shan-xi Province, China] [original claim dismissed at the 23rd Civil Dpt of Tokyo Dist Ct on 30 May 2001]

The "koso"-appeal case of Korean victims of the Asia-Pacific War claiming reparations, The 16th Civil Department of Tokyo High Court, Docket No. (ne) 2631 of Heisei 13 nen (2001). [including Ms KIM Hak-sun and seven other women][original claim dismissed by Tokyo Dist Ct on 26 Mar 2001]

Appealing to Supreme Court (2) [official case numbers not yet given] :

The case of Pusan "comfort women" and Women's Labour Corps members claiming formal apology etc. [including three "comfort women" victims][claim dismissed on 29 Mar 2001 by Hiroshima High Court (reversing the decision of Shimonoseki Branch, Yamaguchi Dist Ct of 27 Apr 1998)]

The case of Dutch POWs and civilian detainees claiming compensation. [including one "comfort woman" victim][koso-appeal dismissed by Tokyo High Ct on 11 Oct 2001]

Pending at Supreme Court (2):

The "jokoku"-appeal Cases of Filipino "comfort women" claiming compensation, The 1st Petty Bench of the Supreme Court Docket Nos. (o)949, 950 of Heisei 13 nen (2001) - (ju) 930,931 of Heisei 13 nen (2001)[sexual slavery in the Philippines, including "comfort women"][koso-appeal dismissed by Tokyo High Ct on 06 Dec 2000]

The "jokoku"-appeal case of SONG Shin-do claiming apology etc., The 2nd Petty Bench of the Supreme Court Docket Nos. (o)315 of Heisei 13 nen (2001) - (ju)302 of Heisei 13 nen (2001)[Korean resident in Japan][koso-appeal dismissed by Tokyo High Ct on 30 Nov 2000]

N.B. A "koso"appeal is appealing to a high ct against the decision of Dist Ct, and "jokoku" appeal to the Supreme Ct against the High Ct's decision. [end of list: compiled with the help from many of the lawyers representing plaintiffs in the cases listed above.]