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Subcommittee

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UNITED NATIONS
COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection of Minorities
Working Group on Contemporary Forms
of Slavery
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Agenda item 5

REVIEW OF DEVELOPMENTS
(a) SLAVERY AND THE SLAVE TRADE

Statement of International Educational Development,
a non-governmental organization on the Roster
(Secretary-General's list)

INTRODUCTION

The IED raised the issue of JUGUN IANFU: KOREAN COMFORT WOMEN in the last Commission on Human Rights (E/CN.4/1992/SR.30/Add.1 page3).

This is about the situataion of Korean girls and women abducted or compulsorily displaced by the Japanese Imperial Forces during World War II for use as SEX SLAVES, who were as many as some 200,000.

On 28 February 1992, two Korean women who were made sex slaves by Japan and had kept silence for some 47 years testified in Fukuoka, Japan in order to protest against the Japanese Government (see a booklet: JUGUN IANFU TSUITO NO TABI - FUKUOKA SHUKAI). Ms Shim Mija, who is now 68 years old was 16 years old student in 1940. She was told to embroider on a Japanese map by her teacher. She embroidered a morning glory, a symbol of Korea, because she thought it was more beautiful than a chrysanthemum, a symbol of Japan. She was taken to a police station for interrogation and raped there by police. She was tortured with a hot iron and electricity. And she fainted. She found herself in a military brothel. She was so severely injured by the torture that she was unable to resist the Japanese soldiers' raping. She had to be a sex slave of 20 to 80 soldiers a day since then in various places. Ms Hwang Kum Ju was 17 years old when she was drafted by Japan for a job. She was, however, transported by a blinded train to a military brothel in Manchuria and had to be a sex slave as Ms Shim.

There were also some 1.5 million Korean men who were

abducted or compulsorily displaced to Japan. They were enslaved there for the hardest works by the Japanese Government during the war. They were detained in 'TAKO-BEYA' a barack which were heavily guarded with no hope for freedom.

Because of the defect of the Japanese domestic legal system and the lack of willingness of the Japanese Government, those victims have received no remedy. In view of the gravity of that type of offence, which have been identified as a crime against humanity, there should be some international forum to which cases should be brought and in which the parties could seek mediation/arbitration and settlement.

LEGAL ISSUES

The legal issues, which were raised and might be raised by the Japanese Government are as follows.

1) Japan has been claiming that the issue was solved by an agreement between Japan and the South Korea and no individual Korean has any legal right to claim any compensation against Japan.

The IED does not think this was the case. First, both the South Korean and Japanese Governments did not have any legal capacity to nullify the human rights of any individuals because the governments and the individual victims were different entity. Furthermore human rights cannot be deprived of by any governments, as they are inalienable. Claims for restitution, compensation and rehabilitation are part of the human rights of the victims of any violation of human rights. As a result, the IED believes that the individual rights of the Koreans against the Japanese Government of the victims of violation of human rights are still existing. Second, this issue mentioned above was not explicitly covered by the agreement. Third, the agreement did not cover anyone in the North Korean Territory and Korean Minorities in Japan.

2) Responding the intervention made by the speaker representing the IED, the Japanese Government representative Mr Katsumi Sezaki at the UN Commission on Human Rights said on 19 February 1992, 'As for compensation, a judicial inquiry is under way for individual cases, therefore the Japanese Government is not in the position to comment on it.' Can a judicial proceeding justify the inaction of the Japanese Government in compensation?

NO! It is not prohibited under the Japanese law for the Government to admit its responsibility for compensation before the court any time prior to the judgment. The some 30 plaintiffs, who are the victims living in South Korea had to go to the Tokyo District Court in December 1991 because of the Japanese Government's refusal in admitting its responsibility for compensation.

The IED fears that the litigation may last for years and many victims who are already old would not be able to see the judgement. Is it fair for the Japanese Government to wait for the death of all of those victims?

NO! The IED would like to remind the Japanese Government of the fact that it was the Japanese Imperial Government, which

ordered to destroy all of the relevant official documents concerned at the end of World War II; and that it was the Japanese Government, which has been denying the responsibility for some 46 years. And these caused all the difficulties for the victims in their claiming compensation.

4) The Japanese Government might argue as some of the Japanese commentators did saying that the victims went to court too late and their claim is not legally valid. Is this too old a claim? Is the claim legally groundless?

NO! Although there is a limitation of time of 20 years in claiming compensation on grounds of wrong doings against the perpetrator under the Japanese Civil Code, the plaintiffs are not invoking the Japanese domestic law as the basis of their claim. What they are arguing in the Tokyo District Court is violation of international customary law, namely a crime against humanity, which was confirmed by the Nuremberg International Military Tribunal.

Furthermore, the IED believes that violation of the human rights which have been protected by the Forced Labour Convention of 1930 ratified by Japan in 1932 and took effect for Japan in 1933 makes another ground for compensation.

* Forced labour of women is prohibited by Article 11.

* War may be a reason for compulsory works by Article 11-2(d). There are, however, a number of Articles which set a set of well defined standards of the labour. For example, children, students or men older than 46 cannot be drafted (Article 11); it should not exceed 60 days in any one period of twelve months including the time spent in going to and from the place of work (Article 12); it should be remunerated in cash at rates not less than those prevailing for similar kinds of work (Article 14); it should not be used for work underground in mines (Article 21); and so on. Most articles were violated by Japan in those cases of enslaved Korean men and women mentioned above.

The Japanese Constitution allows the courts to apply international law without any domestic legislation.

There is no time limitation in those sources of international law.

OTHER SITUATIONS

There are other situations of atrocities ~~other~~ than the Korean people v. Japan case.

1) An NGO, The War Amputations of Canada brought to the latest Commission on Human Rights in February 1992 the case of 200,000 PoWs who were enslaved and harshly ill-treated by the Japanese Imperial Forces during World War II.

2) It was reported by the Japanese mass media (e.g. The Mainichi Shimbun, 12 April 1992) that, according to the documents made by the Japanese Imperial Forces, the comfort women were drafted not only from Korea but also from China, Taiwan and Phillipine.

3) A major British television programme ('Unfortunate Incidents', The BBC 2, 26 April 1992) not only broadcast the testimonies by survivors, two Korean comfort women but also reported other atrocities including the case of genocide of the

Chinese civilians in Nanking committed by Japan.

ROLE OF THE UN

Regrettably, there is, no prospect of swift and effective remedy within the framework of the Japanese domestic legal system for the individual victims of serious violation of human rights mentioned above, in particular plight of enslaved victims by the Japanese Imperial Forces even 47 years after the violation. There seems to be no other alternative than the vigorous intervention by the UN bodies, such as this Working Group, the Sub-Commission on Human Rights, the Commission on Human Rights, the ECOSOC and the General Assembly.

Do these UN bodies have competence and capacity to deal with these cases of atrocities committed by an enemy country of the allied forces during World War II? Does the UN have any precedence?

The IED believes that YES is the right answer for the both questions.

In May 1950, the UN Commission on the Status of Women adopted the resolution: INFORMATION CONCERNING THE SITUATION OF WOMEN WHO WERE SUBJECTED TO SO-CALLED SCIENTIFIC EXPERIMENTS IN THE NAZI CONCENTRATION CAMPS (E/CN.6/154, 31 May 1950). In it, the Commission, 'Considering the plight of women survivors of concentration camps who were subjected, during the Nazi regime, to so-called medical experiments,' and it requested the ECOSOC 'to call the attention of the Social Commission, the World Health Organization, or other appropriate agencies, to the plight of these war victims who were compelled by force to reside in Germany during the war, or at least those who may be unable to obtain compensation from any country; and to keep the Commission on the Status of Women informed of actions taken in respect thereto.'

This resolution resulted in the ECOSOC resolution of 19 March 1951: PLIGHT OF SURVIVORS OF CONCENTRATION CAMPS (ECOSOC officail records, twelfth session, 476th meeting). In it, the ECOSOC appealed 'to the competent German authorities to consider making the fullest possible reparation for the injuries suffered, under the Nazi regime, by persons subjected to so-called scientific experiments in concentration camps.'

As a result, in July 1951, the Federal Republic of Germany decided to give the victims compensation despite ineligibility in domestic law, becuae of some legal reasons such that the time-limit for submission of application had expired (E/2087, 21 August 1951). At the same time, the FRG requested assistance from the UN Division on Human Rights in solving some issues as regards individual cases.

CONCLUSION

Considering this precidence, the nature of the damage and the ages of the victims, the IED requests this Working Group to take a necessary step to solve the cases of PLIGHT OF THE VICTIMS ENSLAVED BY THE JAPANESE IMPERIAL FORCES, IN PARTICULAR COMFORT WEMEN, namely:

- 1) To request the Sub-Commission to adopt a resolution on

this issue.

2) In the resolution, the following measures may be included.

- * To call attention of the proper UN bodies and specialized agencies to this issue.

- * To send a fact-finding mission of experts to the relevant places.

- * To request the governments and NGOs concerned to send the relevant information on this issue.

- * To request the Sub-Commission's Rapporteur on Compensation to study this type of situation and to make recommendations regarding remedies.

- * To request the Commission on Human Rights to consider to set up a mediation/arbitration panel whose mandate could include providing suggested remedies.

- * To request the Secretary General to keep the Sub-Commission on Human Rights informed of any actions taken.

- * To discuss this issue in the next Working Group on contemporary Forms of Slavery.