

COMPLAINT

COMPLAINANT : Korean Council for the
Women Drafted for Sexual
Slavery by Japan

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DEFENDANTS : Names Unknown

'The Korean Council for the Women Drafted for Sexual Slavery by Japan' brings charges against the defendants for committing **War Crimes** and **Crimes Against Humanity** and firmly requests the Public Prosecutor of Tokyo District in Japan to investigate the charges and punish them accordingly.

1. THE STATUS OF THE COMPLAINANT AND THE DEFENDANTS

(1) The Complainant: 'The Korean Council for the Women Drafted for Sexual Slavery by Japan' (hereafter 'The Korean Council')

'The Korean Council' was established in November 16, 1990 by 18 groups of social organizations and women's organizations in order to help the victims of the military sexual slavery committed by the Japanese army during the World War II. The so-called "Military Comfort Women" are victims of the atrocious War Crimes and the Crime Against Humanity and the surviving victims are still suffering from mental and physical pains. The mandates of 'the Korean Council' have been accomplished through the following activities.

1. Factfindings on the "Military Comfort Women" issue
2. Participation in the UN and other international organizations and the joint effort with other international human right NGOs for the purpose of the resolution of the "Military Comfort Women" issue
3. Public Education and Publication on the "Military Comfort Women" issue
4. Support the surviving victims of the "Military Comfort Women"
5. Funds-raising for the financial assistance to the surviving victims for their maintenance and activities

These efforts of 'The Korean Council' have been acknowledged by and are given strong support from many international human right

organizations, such as 'World Council of Churches' and 'The International Commission of Jurists'.

'The Korean Council' has also led to the establishment of the similar organizations in other countries like Philippine, Taiwan, North Korea where many surviving victims of the 'Military Comfort Women' are still residing. In addition, 'the Korean Council' has been affiliated with local support groups in the United States and Canada. These groups provide support and aid the activities of 'The Korean Council' in Washington D.C. New York, Los Angeles and Toronto.

As shown above, the Complainant, 'The Korean Council', is an organization which speaks for the victims of 'the Military Comfort Women', working for the best interests of those victims both in the national and the international levels.

(2) THE DEFENDANTS

Unfortunately, the complainant is unable to identify individual defendants at this time. Because the crime had been committed more than half a century ago, it is probable that many of defendants already have been dead. Criminals without face, defendants without names - this symbolizes the tragic nature of the case. Had the case been brought to the court immediately after the end of the war in 1945, we could have found hundreds and thousands of the criminals who were responsible for such a horrible atrocity the "military sexual slavery". After many years of indifference and willful oblivion by the government and the public, the individual victims have little means to identify the names and the whereabouts of those criminals.

Notwithstanding this difficulty, however, it is not impossible to identify the criminals. As shown below, the crimes of the defendants have been uncovered vividly by the testimonies of the victims and many other official documents. The individual defendant could be easily identified by careful investigation of the military documents and the official documents of the Imperial Japanese government at the time of the crime. These documents contain all the necessary information, including the names of the high ranking military officers, government officials, the military regimes who were in charge of the recruitment, trafficking and managements of the "Comfort Women" system, as well as the private parties who carried out their orders from the military.

For the purpose of this criminal investigation, the complaint intends to focus on the people who were directly accountable for the crime against humanity. The scope of the criminal charges should be limited to those who were in charge of the crime; the high rank military officers who had planned, deliberated and executed the "Comfort Women" system as part of the "sexual slavery" to the Japanese soldiers; local officers and private parties, who recruited the "Comfort Women" by force, threat and deception; and those responsible for the management of the "military brothel".

Many of these criminals would have been dead by now. The surviving criminals would be mostly in the age of seventies and eighties. Although old age and the passage of time could provide mitigating circumstances for the criminal culpability, we firmly believe that these could not eliminate the criminal liability all together.

2. CRIMINAL CONDUCTS BY THE DEFENDANTS

(1) Introduction to the Crime against the "Military Comfort Women"

Following the opening of the Port of Korea in 1876, the Japanese imperialism had encroached into the Korean independence. In 1905, the Japanese concluded "the Protectorate Treaty between Korea and Japan" by threatening and enticing the Korean King and his cabinet. Japanese annexation of Korea has continued from 1910 until 1945. During this period, Japan engaged in a large scale of economic exploitation, prohibited the use of Korean language, forced Korean people to change their name into Japanese, degrading them into the slavery status.

During its occupation of Korea, Japan has committed the most horrible atrocity in the human history. As many as 200,000 women and girls were forcefully taken abroad to satisfy the sexual needs of Japanese soldiers. These women forced into military sexual slavery were called "Comfort Women" euphemistically. Of these so-called "Comfort Women", 80-90 % were taken from Korea. Starting as early as 1932, the evidence shows, the Japanese Imperial Army established "Comfort Station" in China. Following the break of the War around the Pacific in 1941, these "Comfort Women" had been transported to each military locations throughout the war zone. They had gone to places like Thailand, Burma, Malaysia, Indonesia and various islands in the South Pacific wherever the Imperial Army were located.

Following the Manchurian Incident and the invasion of the Shanghai in the early 1930, the Japanese has decided to establish the "Comfort Station" within the military regimes. The initial justification was to promote the spirit of the soldiers, to prevent rapes in the occupational territories and to prevent the venereal disease among the soldiers. Under these justification, the "Comfort Women" system had spread to all over the front lines and continued until the Japan surrendered in August, 1945.

Most of the victims of the "Comfort Women" had been identified as under the age of 20. Some of the victims were married women in their twenties. They were taken by the Japanese soldiers, officials and other private parties by force, threat and enticement to the tragic life as "Comfort Women".

Once taken by the "recruiters", these women were located to the military "Comfort Stations". The management of these military brothels varied slightly. Some of them were established by the Army and managed by the private parties, while some of them were solely run by private

sectors. Regardless of their management structure, all of the "Comfort Station" followed the regulations set by the Imperial Army. The Imperial Army directly performed sanitary examination of these military brothel and regular medical check-ups on the "Comfort Women". Documentary evidence clearly linked the Japanese military with the operation of the "Comfort Station".

The daily life at the "Comfort Station" was unbearable to these women. Each of them was forced to have sex with the soldiers, ranging from 10 to 50 per day. Under the tight surveillance by the soldiers, these women could not escape and their mobility was strictly restricted or completely prohibited. Physical abuse and harassment were daily routine. Deprived of medical treatment and adequate nutrition, they were exposed to physical illness, including venereal diseases.

During the course of war, many of the "Comfort Women" were killed by the military attack, air-strike, accident and illness at the front lines. When the Japan ordered withdrawal of the Imperial Army from abroad, these women were not notified such withdrawal. Especially in the area of the South Pacific and the countries like Burma, Philippine, Indonesia, most of these women were left behind by the Japanese Army or killed during the long journey of the withdrawal by fatigue and famine. Few of the "Comfort Women", who survived the Japanese withdrawal, were saved by the American Allies. Some of these women were taken by the Allies military ship to Korea. Many of them stayed abroad voluntarily because the humiliation and the pain were too deep to overcome.

(2) "Military Comfort Women" System as a For of "Sexual Slavery"

Based on the evidences regarding the operation of the "Comfort Station" within the Army, it is evident that these women were "Sexual Slavery" to the Japanese soldiers. The victims were forced into prostitution to gratify the Japanese soldiers against their own will. The testimonies of the comfort women and Japanese military personnel clearly demonstrated the 'deceit', 'use of force', 'threat' and 'abuse of authority' all of which amounted to "Coercion". Considering the facts that most of these women were minors and virgins from the rural area, there is no doubt that they were forced to prostitution against their will. Moreover, the daily life at "Comfort Station" constituted repeated forcible rape. Without possibility of escape, their confinement at the "Comfort Station" in foreign countries was virtually torture to them.

(3) Evidence of Defendants' Involvement

It has been proven that the Japanese military officers of the Imperial Army were directly involved in the operation of the military "Comfort Station" system. The proof of governmental involvement could be found both from the testimonies of the former comfort women and the documents regarding the military operation.

Despite these evidence, it is difficult to identify the parties who were in charge of the planning and authorization of the establishment of the "Comfort Station" and the recruitment of the comfort women. However, the correspondences between the Army Headquarters and the Imperial Army Abroad provides sufficient evidence that the officers at the Army Headquarters and the Imperial Army Abroad during the period between 1937 and 1945 have been directly involved in the establishment of the "Comfort Station" and its operation.

These evidence includes official order form which required the establishment of the "Comfort Station" in the front line in order to prevent the spread of the VD among the soldiers. In addition, there are evidences of military telegram requesting the establishment of the "Comfort Station" at the front line and the responses to them. These documents discuss the methods of the recruitment, transportation of the comfort women, the establishment and the management of the Comfort Station. Since these correspondences contain the information regarding the sender and the receiver, it is possible to identify the persons in charge of the projects. Among these information, the following is the lists of the military stations and the names of the persons in charge of the establishment of the "Comfort Station".

**** The Establishment of the "Comfort Station" by the Troops Abroad.**

March, 1932 : Shanghai station :

December, 1937 : Eastern China District Army -- Shanghai Army

December, 1937 : The 10th Army

June, 1938 : Northern China District Army

July, 1941 : Kwantung Province Army -- Taiwan Army

March, 1942 : Southern Region Army -- Taiwan Army

**** Army Headquarter Regulation and Policy on the "Comfort Station"**

March 4, 1938 : Notification by the Deputy Minister of the Department of War, "Re: Recruitment of the Military Comfort Women"

September 19, 1940 : Notification by the Deputy Minister of the Department of War, "Re: Measures for the Promotion of the Military Spirit based on the Experience from the China Incident"

July 26, 1941 : The Department of War, Foreign Affair, --- "Re: The Draft Plan in Indonesia"

January 14, 1942 : Notification by the Foreign Minister, "Re: Transportation of the "Comfort Women" to the Occupied Territories in Southern Region"

March, 1942 : Southern Region Army-- Taiwan Army

June, 18, 1942 : Notification by the Deputy Minister of the Department of War, "Re: Remedial Measures for the Venereal Diseases among the Soldiers in the Great Asian War"

3. CRIMINAL LIABILITY OF THE DEFENDANTS

(1) "Crimes Against Humanity" Under the International Law

The establishment of the military brothel, recruitment and trafficking of the comfort women and forcible prostitution clearly constitute crimes of 'capture, enticement, confinement of women and girls' and rape even under the Japanese domestic criminal law. But, the statute of limitation under the Japanese domestic law precludes criminal liability of the defendants.

On the other hand, these crimes can be defined as "War Crime" or "Crimes Against Humanity" under the international law regardless of the time passage. The Nuremberg Military Tribunal was established in Nuremberg, Germany after the World War II. The Charter of the Nuremberg Tribunal codified the "Crime Against Humanity" as follows:

"Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".

(Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan. Art. 6 of the Charter. "The Tribunal held those individuals responsible for the codified crimes criminally liable. However, in the present case, since the persons in command who were actually responsible for the acts are no longer alive, only civil liability against the State remains". Yvonne Park Hsu, "Comfort Women" from Korea: Japan's World War II Sex Slaves and the Legitimacy of their Claims for Reparations, Pacific Rim Law & Policy Journal, Vol 2 No. 1 Winter 1993, at p.109)

The International Military Tribunal for the Far East codified the same provision in Article 5 of its Charter. "The Crimes Against Humanity" are therefore prohibited under the international law by these codification in the multilateral treaties. But, these treaties are no more than codification of the existing customary international

law concerning the fundamental human rights. For example, the slavery was prohibited under the customary norm in the late 19th century and the early 20th century. In 1926, the "Slavery Convention" codified this customary norm against the slavery. Forced labor is prohibited under the "The Forced Labor Convention", adopted by the International Labor Organization in 1930. Japan has become a party to the Convention by the accession in 1932.

Prohibition against traffic in women and children for prostitution, first codified in the "International Convention for the Suppression of the White Slave Traffic" in 1910, was reaffirmed in 1921 under the "Convention for the Suppression of Traffic in Women and Children". The Article 1 of the "International Convention for the Suppression of the White Slave Traffic" stated that "whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a women or girl under age, for immoral purposes, shall be punished". In addition, the article 2 of the same convention codified that "whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, entice, or led away a woman or girl over age, for immoral purposes, shall be punished". State party to the convention is required not only to punish these offence, but also to take the necessary steps to prevent and punish these offence accordingly.

These international conventions lead to the conclusion that "Sexual Slavery", like the "Comfort Women" case, is prohibited under the international law as norms of "Jus Cogens", a peremptory norm from which no derogation is permitted. The Charter of the Nuremberg Military Tribunal and the Charter of the Military Tribunal for the Far East illustrated the codification and the application of such peremptory customary norms.

(2) "Comfort Station System" and the "Crimes Against Humanity"

Under the "Comfort Station System", the "Comfort Women" were forcibly taken to the military brothel as sexual slavery to the soldiers. The forcible prostitution against their will and their status as a virtual slavery clearly constitute the "Crimes Against Humanity" under the definition by the Nuremberg Charter. It was also a form of genocide.

Since Japan was aware of the criminal responsibility under the "International Convention Against White Slave Traffic", Japan specifically had chosen Korean women and girls for the purpose of "Comfort Women". As a colony of Japan, Korean women and girls had no protection under the international convention which allowed exclusion of the colonies. Therefore, the systematic recruitment of Korean women and girls by force and enticement was a persecution based on the racial discrimination and an evidence of the genocide policy by Japan against Korea.

Moreover, the life of the "Comfort Women" at the military brothel is worse than a form of "enslavement", which alone can satisfy the definition of the "Crime Against Humanity". The forcible prostitution against their will in foreign military bases was the most degrading form of "inhumane treatment" committed to the civilian women and girls in the human history.

After the World War II, the International Military Tribunal punished those who committed crimes against humanity. Among many other charges related to the atrocities committed by the troops, the widespread rape of civilian women was condemned as crimes against humanity. Since the "Comfort Women" were the victims of the systematic rape by the troops within the "Comfort Station", the establishment of the "Comfort Station" should also be condemned as crime against humanity. The Military Tribunal at Batavia could be a good example. The Batavia Tribunal convicted Japanese military officers who were responsible for the establishment of the "Comfort Station" at Subaran City(?) in the Island of Java. They were charged with the crimes of forcible prostitution of the Dutch women who were prisoners of the war. (See The Reality of the Military Tribunal, Sugabo)

4. LEGAL JUSTIFICATIONS FOR THE INVESTIGATION AND THE PROSECUTION

(1) Inapplicability of The Statute of Limitation

Under the Japanese criminal law, the criminal liabilities can be exempted by the expiration of the statute of limitation. The statute of limitations for various crimes are as follows:

"Statute of limitations are; (1) 15 years for the crimes punishable by the capital sentence ; (2) 10 years for the crimes punishable by life imprisonment ; (3) 7 years for crimes punishable by imprisonment of at least 10 years : (4) 5 years for crimes punishable by imprisonment of less than 10 year.

The passage of 15 years, therefore, can exonerate the most heinous criminals from criminal liability punishable by capital sentence. Since the criminal activities related to the "Comfort Women" had been committed during the period of 1930' and the 1940', this time passage of more than 50 years is sufficient to exempt any criminal liability. Thus, it is not possible to prosecute these criminal activities under the Japanese domestic law.

However, the rule of the statute of limitation only applies to the domestic law. At the international level, there are certain exceptions to the applicability of statutory limitation. Under the international law, the principle of the non-applicability of statutory limitation to "Crime Against Humanity" has been developed through the customary norms. This norm led to the several international instruments, including the **Declaration of the International Conference of Jurists** in 1964. Paragraphs from that Declaration read as follows:

"The Conference notes... that the crimes committed by the Nazis are crimes against humanity and that the nature of those crimes is entirely different from the legal nature of ordinary crimes. the former are subject to public international law, the latter to the municipal law of States. Where such municipal law provides for a period of limitation in respect to ordinary crimes, it does so by an express provision to that effect. This does not apply to crimes against humanity, which are subject to international law, as has just been stated.

"In international law, there is no principle establishing periods of limitation in general and a period of limitation for the prosecution of war crimes and Nazi crimes in particular. The rules of international law permit the prosecution of such crimes before the courts and their punishment, so that mankind may be forever safe from a recrudescence of Nazi tyranny and cruelty.

"In accordance with this legitimate wish of the peoples as recognized by international law, the prosecution and punishment of these crimes should not be considered to fall exclusively within the domestic jurisdiction of States but should be regarded as an international and universal obligation imposed on States by international law." (U.N. Doc. E/CN.4/906, p.106-107)

["States may discharge this international obligation in various legal ways, according to their principles of law, their national traditions and their constitutions. However, it would be a violation of international law if a State refused to discharge these obligations on the ground that such action would be at variance with a provision of its municipal law such as statutory limitation".]

The norm of the non-applicability of statutory limitation to crimes against humanity has been developed throughout the years, leading to the drafting of many international instrument. The Consultative Assembly of the Council of Europe decided to adopt a 'Recommendation 415' in the 23th session on January 28, 1965. The Recommendation of the Council was an attempt to make an exception to the principle of 'nullum crimen' codified in "The Convention for the Protection of Human Rights and Fundamental Freedom". The Recommendation stated that "the Council recommend establishment of an Experts Committee for the drafting of the convention to affirm the principle that crimes against humanity should not be restricted by the domestic law".

Considering these efforts by the international law experts and noting the need for the affirmation of the principle, the General Assembly of the United Nations adopted "The Convention on Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity" on November 26, 1968. In the preamble, the Convention declared that the States Parties recognized that "it is necessary and timely to affirm in international law, through this Convention, the

principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application".

We should also emphasize that the 'Convention on Non-Application of Statutory Limitation to War Crimes and Crimes against Humanity' is just an effort by the U.N. to reaffirm the customary international norm through codification of the multilateral treaties. The war crimes and crimes against humanity have been punished by many countries regardless of the statutory limitation. Whether or not they ratified the 'Convention on Non-Applicability of Statutory Limitation', most of the nations have maintained a legislative mechanism which allows non-application of the statutory limitation to war crimes and crimes against humanity.

The cold-war between the western countries and the eastern countries caused many western nations not to ratify the 'Convention'. Notwithstanding this, many countries including USA, Australia, and Canada have allowed deportation and prosecution of the Nazi crimes under the domestic legislation regardless of the statutory limitation. In addition, there has never been a dispute among the western countries regarding this customary norm to prosecute Nazi war crimes long after the crime. Based on this domestic legal mechanism and the customary norm, the investigation and the prosecution of the Nazi-related crimes and its participants have been continuing throughout the world.

Therefore, even if Japan is not a party to and thus is not bound by the "Convention on the Non-Applicability of the Statutory Limitation", Japan is bound by the customary international norm which requires the non-applicability of the statutory limitation to crimes against humanity. It should also be noted that Japan never opposed to the contents of the "Convention" during the process of negotiation and has affirmatively supported the purpose and the structure of the "Convention". [Thus, there is no evidence that Japan rejected the customary norm of the non-applicability of the statutory limitation to war crimes and crimes against humanity.]

(2) International Customary Norm and the Domestic Law of Japan

The establishment of the "Comfort Station" and the forcible recruitment of the comfort women for "military sexual slavery" clearly constitute the crimes against humanity to which the statutory limitation should not be applied under the customary international norm. The remaining issue then is how the Japanese domestic law treats the international customary norm within their judicial system.

The Constitution of Japan recognizes the obligation under the international law. The section 2 of Article 98 states that "The treaties concluded by Japan and established laws of nations shall be faithfully observed". The "established laws of nations" can be interpreted as "customary norm generally accepted and practiced by the nations". In general, the source of the "laws of nations" includes the

treaties law and the customary law. Since the provision recognizes the treaties as a separate source, the "law of nations" in this provision indicates specifically the "international customary norm".

The provision, by the terms of "shall be faithfully observed", also requires Japan to carry out its obligations under the international treaties and the customary norms at the domestic system. In addition to the obligation at the international level, therefore, the Constitution of Japan incorporates the obligation under the customary international norm into the domestic judicial system.

Once the customary norm is incorporated into the domestic legal system, there is another issue of whether this customary norm is "self-executing". If the obligation under the customary norm can be carried out without any further implementation by legislation, it is "self-executing". In Japan, treaties and customary norms are generally considered "self-executing" so as to bind the citizens and its government as domestic legal obligation. Furthermore, the majority of the international law experts have agreed that the principles of fundamental human rights, dealing with individual rights based upon the universal principles accepted by the nations, should be deemed "self-executing" in any nations. Most of all, most of the constitutional scholars in Japan have interpreted their constitution as giving higher priority to the international treaties and customs over the domestic law.

Under the Constitution of Japan, the obligation to prosecute the crimes against humanity and the principle of non-applicability of the statutory limitation to the crimes against humanity has higher authority over the domestic criminal law. Therefore, Japan has a duty under the customary international law to investigate and prosecute criminals who committed the crimes against humanity regardless of the statutory limitation of its domestic criminal law.

(3) Legal Obligation of Japan to Punish War Crimes and Crimes against Humanity

It is our conclusion that the defendants committed the "war crimes" and "crimes against humanity" by their involvement in the "Military Sexual Slavery" of the "comfort women" during the World War II. These crimes are still punishable under the international customary norm and the domestic law. In addition, Japan is also obliged to punish these crimes under many other international instruments.

First, Japan became a party to the "International Convention for the Suppression of the White Slave Traffic" in 1925. The Article 1 of the Convention proclaimed that "whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished". The Article 2 also stated that "whoever, in order to gratify the passions of another person, has by fraud, or by means

of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away an woman or girl over age, for immoral purposes, **shall also be punished**". Under Article 3, the Contracting Parties are obliged to take the **"necessary steps to punish these offences according to their gravity"**.

There is no doubt that the victims of the "Military Comfort Women" were "procured, enticed, or led away" to gratify the passions of the Japanese soldiers. Since Japan was already party state to the Convention when these crimes committed, Japan had an obligation to comply with the provisions requiring the criminal prosecutions of such crimes. Japan is still bound by the obligation under the Convention.

Second, "the Forced Labour Convention of 1930", which was adopted by the International Labour Organisation, provides another legal obligation to Japan who ratified the Convention in 1932. The Article 25 of the Convention procures that **"the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member to ensure that the penalties by law are really adequate and are strictly enforced"**. It should be noted that this Convention was binding to the Japan when the Imperial Japanese Army and the Government of Japan planned and executed the massive mobilization of the forced labour including "Comfort Women" from Korea. The obligation of the Japan to punish such an illegal exaction of forced labour still exists under the Article 25.

Third, paragraph 10 of "The Declaration of Potsdam" of July 26, 1945 declared that **"... stem justice shall be meted out to all war criminals including those who have visited cruelties upon prisoners"**. The **'Instrument of Surrender'**, which formally ended the World War II, provides that the Declaration of Potsdam as well as other conditions set by the Allied Powers will be accepted by the Japanese government with full effect. By its complete surrender to the Allied Powers, Japan has agreed to the Allied Powers' policy to punish all war criminals and to cooperate with the Allied Powers for the realization of such policy. Japan is still obliged to punish war criminals under **'The Declaration of Potsdam'** regardless of the withdrawal of the Allied Powers.

Fourth, the judgments of the International Military Tribunals for the Far East (IMTFE) and other Allied War Crimes Courts are still binding to Japan. In addition to the IMTFE at Tokyo, there were many Allied War Crimes Courts throughout Asia. These Allied War Crimes Courts convicted many Japanese military officers, soldiers and other private accomplices for the charges of the **"War Crimes"** and **"Crimes against Humanity"**. One notable example is the judgments by the Netherlands Temporary Court-Martial at Batavia. Several Japanese defendants were found guilty of the "war crimes of enforced prostitution" by the court. These crimes were directly related to the "Comfort Station" and other forcible prostitution of the Netherlands women by the Japanese Army.

The judgments of these Military Tribunals became dispositive to Japan by the **"San Francisco Peace Treaty"** signed by the respective Plenipotentiaries of the United States of America and 47 other Allied Powers, and Japan in 1951. The Article 11 of the Treaty proclaims that **"Japan accepts the judgments of the International Military Tribunal for the Far East and of other Allied War Crimes Courts both within and outside Japan"**. Japan indicated that the judgments of the Military Tribunals are dispositive as legal precedents under this article. Based on this undisputable evidence, it should be concluded that the Japan accepted the judgment of the Batavia Courts, which condemned the **"forcible prostitution of Netherlands Women"** as **War Crime**. Had the making of Netherlands women as **"military sexual slavery"** constituted **"War Crime"**, the same crime committed to the **"Comfort Women"** from other countries like Korea, Philippine and China should also be punished as **"War Crime"**. The law should not discriminate the victims based on their race.

5. CONCERNING THE NEED AND URGENCY OF PUNISHING THE ACCUSED

1) Lingering Pain

As for the victims who returned to the homeland luckily after the end of the War, there was no room for them to begin a new life. There was no way for these women to form a stable family life once their purity had been violated so many times, even though it was forced on them by the Japanese military. Look at the following research report:

"For those comfort women who returned, they could not have a normal married life due to their own shame, diseases they carried, and the suspicious look of their neighbors. Out of nineteen women we studied, six got married; however, five married men who were previously married and all six failed in their marriage. Eight had experience in living as a common-law wife or as a second wife, but almost all of them failed. Five never married. At present, only two women are living with their sons: one is living with an adopted son, and another is living with a grandson. The remaining fifteen women are living alone. They are leading a difficult life economic-wise or health-wise."

(Testimony of Korean Military Comfort Women Forced into Sexual Slavery, Edited by Research Association on the Military Comfort Women of the Korean Council for Women Drafted for Sexual Slavery by Japan, Hanul Publishing Co., p. 28)

Their pain is something that will not get lighter or disappear as time passes away. On the contrary, their pain will grow anew and get heavier everyday. As shown above, they have neither husband nor children upon whom they can depend on in their old age since they cannot form a normal family. They end up in poverty eventually. More serious problem they have is their diseases. Their body is riddled with all kinds of scars they received while serving as comfort women. There is a woman whose uterus is connected to anus. Some had knife wounds on their chest and breasts. Their terrible suffering resulted in bladder disorder, uterus disease, stomachache, anaemia, and other diseases from which they are still suffering. Almost all of these victims are suffering from these kinds of physical pains as well as mental disorders. Perhaps, it would be strange if they were normal after going through such inhuman treatment and experience. The following story of an old comfort woman is very common to all the victims:

"And then I started to experience symptoms of anxiety disorder and mental confusion as I turned over 30 years old. Suddenly, I became disgusted with my husband and acted like a mad woman--shouting at my husband to

get away. I prevented anyone from coming into my room by locking in the door because I was so afraid and anxious whenever I heard any sound of man or TV. I lost consciousness several times even after hearing sound of gun shot from the TV. I have been inside my room, crawling on my knees, for the last 30 years because I am so scared of any person or sound. Even now I use Anasin if I don't have any tranquilizers." (Testimony of Myung Soon Choi, Edited by Research Asso. on the Military Comfort Women, Supra, p. 268)

Furthermore, their story is more tragic since their suffering do not end in their own generation. Those women who didn't have children are regarded more lucky. Unfortunately, those who happened to have children or family are undergoing the same terrible pains and experiences of the victims again. The following is a continuing story of the above testifier:

"...And then my son suddenly suffered a mental breakdown when he was more than 40 years old. He was taken to Chongryang-ri Psychiatric Hospital, and I had to go there because they asked to bring the mother. The doctor asked all other family members to go outside and then asked me whether I had carried syphilis when my son was born. I had to leave the room after dropping my head and crying. I was the sinner since I was responsible for my son's illness. Who could have dreamed that he would suffer such a breakdown some forty years after being born without any signs of troubles? My oldest son still undergoes mental breakdown once a month--shouting at me that he is crazy because he was born out of a sewer. I don't think the doctor told him the full story, but he threatened to kill me last year--throwing all kinds of household goods at me. I was so afraid that I had to leave my son's house and go to my youngest daughter's house. When my oldest son was in the psychiatric hospital, his wife left the home." (Myung Soon Choi's Testimony, Supra, p. 269)

From the above testimony, we can learn the true depth of their suffering which is being transmitted generation after generation. It shows that their suffering is something that cannot end in one generation but that will continue to bother and terrify for a long time. It is obvious that the need to punish the accused is ever present so long as these pains and sufferings continue. We cannot call it justice so long as the perpetrators who had caused such unspeakable suffering to these people are walking around without any signs of regret. It may lessen their terrible suffering even if we can show to these tragic victims, by putting the perpetrators on trial, that justice is still alive.

2) The Abandoned Victims' Fate and the Legal Remedy

Many people have volunteered to help out the comfort women after hearing about their story. Those who have knowledge are contributing by writing and those who have money are helping by donating their money. Many students are writing research papers on the topic, and many forums and seminars are being organized all over the world. Many countries' media have been covering the story on occasion with much interest on the issue. Many international organizations including the UN and other well-known human rights organizations have adopted this issue on their agenda--investigating the facts as well as searching for solutions. These actions and efforts are certainly helpful in lifting and consoling the victims' spirit.

However, all these efforts are not enough to realize what the comfort women victims want. Thorough investigation, appropriate reparation, and punishment of those responsible for the crimes--these are what they desire and what the international law provides. Nevertheless, there are too many obstacles in realizing these hopes and demands.

The biggest obstacle is, of course, the Japanese government itself. As already pointed out above, the Japanese government had no intention of uncovering the truth and taking appropriate legal actions in this matter from the beginning. As international public opinion was aroused, Japan had to express an apology and acknowledge the Japanese military's involvement; but, that was not to say that Japan was ready to resolve this issue humanely or legally. The Japanese government's attitude, which is in conflict with truth and justice, is clearly shown in the fact that Japan is not disclosing even those pertinent documents kept by the Japanese government agencies. If the Japanese government discloses these documents and embark upon a serious fact-finding by forming an official team of investigators on their own, the hidden criminal conspiracy and the actual practices and processes could be thoroughly revealed under the sun.

Another problem is the hands-off attitude of the victims' own countries such as S.Korea. It is not likely that these countries are not sympathetic to the victims, but it is apparent that these countries are not in a position to negotiate with or put pressure on the Japanese government to resolve the issue because of the already existing economic and other dependent relationships with Japan. A good example of this is in the Korean government's attitude shown in the last visit to Korea by Prime Minister Hosokawa. Once Prime Minister Hosokawa expressed his regret and apology, S.Korean government made it clear that the comfort women issue will no longer be part of the current diplomatic issues between the two countries. The only thing that was emphasized at this meeting was the establishment of future relationship between the two countries--this was nothing more than burying the past and forgetting about the military comfort

women issue.

It is well-known that the United Nations whose membership include Japan, Korea and other Asian victim countries has been discussing this issue. Especially, the Subcommittee or the Working Group of the UN Commission on Human Rights has been debating this issue as an official agenda and is in the process of investigating the issue. However, it is worrisome that Japan, which has emerged as a strong player in the international political arena to the extent of becoming a candidate for a permanent seat on the UN Security Council, may exert great pressure to prevent any concrete resolutions developing on the comfort women issue. Who can deny Japan's influence in the UN when she is paying for about 10% of the UN bills? This kind of influence is more apparent in view of the UN Secretary General Boutros Boutros-Ghali's high opinion on Japan. He already asked for Japan's further involvement and intervention in the world affairs on the occasion of his visit to Japan. It is very ironic that the UN, which was born out of the lesson learned from WW II's calamity and destruction inflicted on mankind, has not been paying much attention on the comfort women issue even though it arose out of WW II, but that is the reality. Moreover, the UN's deliberation procedure is so loose and time-consuming that, even if any resolution is reached, it is highly likely that there would be no surviving victims by that time.

The remaining option now is legal resolution rather than political resolution which is dependent on the whims of political and economic considerations. We believe in legal justice. As the old legal saying goes, "Justice will prevail even if heaven falls out," because we believe lawyers will not ignore the painful voices of the comfort women as well as the clear, serious criminal offenses committed against them. Now there remains one task: that is to start the investigation immediately and declare what is law and justice prior to the expiration of these victims' lives.

3) Humanity and Justice that can not be Differentiated between East and West

There is not much difference between East and West, ancient and modern, as to the horror and cruelties arising from war. The numerous cases of terrible criminal acts committed during WW II are already well reported and documented. This kind of terrible criminal acts were committed all over the battlefields: there were not much differences between Europe and Asia where the main battles were fought.

Unlike the past, however, there began a trial on these terrible criminal acts when the War ended. That is because mankind's reason and intelligence reached the level of realization that such barbarous and inhumane criminal acts can no longer be tolerated. In accordance with the general consensus and public opinion arrived at naturally, war crime tribunals were established in Nuremberg

and Tokyo of defeated Germany and Japan; scores of important military leaders and hundreds of those responsible for the crime against humanity were tried, executed and imprisoned. Thereafter, thousands of war criminals were also punished by Allied Powers which set up war crime tribunals all over the world.

The problem arose only after the end of the trials by Allied Powers. In the case of W.Germany, from May 8, 1945 to January 1, 1968, investigation was conducted on 77,044 suspects of war crimes or crimes against humanity: 6,192 persons were indicted and put on trial. Among them, twelve were sentenced to death, 90 received life terms, 5,975 received limited sentences, and 114 received light fines. In East Germany too, competitive trials took place. From May 8, 1945 to the end of 1964, 16,572 suspects of war crimes or crimes against humanity were indicted: 118 received death sentences, 231 received life sentences, and 5,088 received limited sentences. These Nazi war criminals were all prosecuted by Germans themselves. Moreover, Nazi war criminals have been pursued relentlessly all over the world; expulsion of Nazi war criminals or punishment of Nazi collaborators have been continuing in many countries. Only several months ago, a man named Demjanjuk was tried in Israel Supreme Court; and a French, who helped in the Nazi deportation of Jews in France, happened to be killed by a Jew while waiting trial for crimes against humanity. Thus, the pursuit and trial of Nazi war criminals and criminals against humanity is still going on without an end.

Nevertheless, how many war criminals or criminals against humanity were brought to justice in the Japanese court by Japanese themselves after the departure of Allied Powers? We can't find even one person or one case. Instead of trying to investigate war criminals, Japan has been busy not only in rehabilitating and giving pension benefits to those military leaders who had been prosecuted as war criminals by Allied Powers but also in exerting all efforts in attacking the injustice and illegality of the so-called "Tokyo Trial" which had tried them.

Meantime, the suffering of the victims who were drafted by these war criminals has been continuing. There can be no difference between the East and West as to the war victims' suffering. By no means, the act of forcing frail and young girls to serve as sexual slaves for the military can be regarded as a crime in the West but not so in the East. There is also no basis to regard that the war crimes committed in the West must be prosecuted to the end of this world without any statute of limitations but the crimes against humanity committed in the Pacific are all extinguished due to the expiration of the statute of limitations soon after the War. Regardless of the distinction between the East and West, same punishment must be meted out so long as it's an atrocious crime.

result it will arrive at. And it is certain that the decision will be recorded permanently in mankind's history--depending upon the direction and content--as a victory for human reason or a failure for mankind's conscience.

2) The Complaint's Historic Meaning: Our Question to Japan's Conscience

Although there have been many occasions up to now in which the military comfort women brought civil lawsuits in the Japanese court--demanding monetary compensations--this is the first time that they brought a criminal complaint and information, asking prosecution of the perpetrators. It is our judgment that the postwar reparation movement is entering a new stage. This complaint and information is intended for more than just to prove the fact that it's not true that the war victims are only seeking money and festering Japan which became rich. And it is not something that originated from any feeling of revenge or grudge. The reason why the comfort women victims and we are coming forward now is because of our one desire to regain justice. That's right. What we really desire and seek is neither settlement reached in the backyard of international politics nor favors granted from the Japanese government's sympathy. It is a matter of natural contention and demand that this issue must be tried in accordance with the morality and justice mankind has been developing. And it also stems from our desire to leave a lesson that this kind of horrendous tragedy and suffering should not be repeated again in the history of mankind. Thereby, real reconciliation and spirit of peace will prevail among people of this Asian land.

Simon Wiesenthal, who had set up a center maintaining Nazi officers' files from early on, soon after the end of WW II, and who spent his whole life pursuing these men's traces relentlessly, when asked by reporters about the motive for this tenacious chase, uttered only one comment: "Not revenge, but justice."

Yes. This complaint of ours is not revenge but a cry for justice. It's not to release the wrath of the suffering people who were forced to send hundreds of thousands of young girls and women to the hell-like military comfort stations; rather, it's a voice for peace and reconciliation of Asian people as well as the whole mankind that no nationals, no one, should experience this kind of suffering again. It's also our question, plea to Japan's conscience and morality. Now it's the turn of the Japanese Prosecutor's Office, Japan's conscience, to answer.

Dated: December 8, 1993

The Korean Council for the Women Drafted
for Military Sexual Slavery by Japan

To: Chief Prosecutor
Tokyo District Prosecutor's Office
Japan