

25 May 1997

Korean Council for the Women drafted for MSS by Japan

Fax: 02 356 4017

Dear Prof Yun ChO, Prof Shin HS, Ms Yun MH and Ms Seong,
First: Our preparation for the ILC has been finished and it will be taken care of by FKTU and Ms Seoung. But I am afraid that the KC are not prepared for the WGCFS, which will be held 2-11 June. It is very important, however, as its recommendations were basically endorsed by the Sub-Commission in August for the past 5 years. We could not obtain at the Sub-Commission much more than what we got at the WGCFS. (Ms Linda Chavez could not finish her final report and recently requested Ms Gay McDougal to take it over. We have to endure without her final report in August. Then, what the WGCFS recommends to the Sub-Commission is vital. Unless the KC requests, the WG may not recommend anything on the issue of "comfort women". We have one week. And I should advise the KC to prepare for the WGCFS.

1. --- Did you secure the credential for Ms Seoung at UN WGCFS?

The WCC may give it to her, if the KNCC approaches Mr Clement John. Or do you want to ask about it to other NGOs?

2. Did you update the newsletter? If not, the April one can be used. 100-200 copies for the UN and the ILO maybe enough.

3. Did you prepare a 10 minutes statement from the KC at the UN WGCFS? If not, I think you had better prepare one so that Ms Seoung can read it. It may include at least the followings:

- (1) What the KC should ask to the WG (conclusion);
- (2) What Prof Shin said at the UN CHR (5 minutes);
- (3) KC's position and the attitudes of the overwhelming majority of the victims, who are refusing to accept the AWF's money even in the Philippines and Taiwan; How many received it?;
- (4) Demands of the legislative solution by the Japanese Diet, namely the KC's supporting and welcoming statement of the legislative proposals made by Mr Tanaka and Mr Motooka and the proposals on 27 May by many Japanese civil group leaders.

Second: This is a good news. Finally, we decided to make our draft bill for state compensation public. It will be launched at 1:00-6:00 p.m. on 27 May at the Japanese Diet Bldg. by the leaders of civil groups in cooperation with some Diet Members.

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At that time, I would like to request the Korean Council to express strong support for the draft bill and campaign and demand the Japanese government to cooperate with the Diet for the legislation of the draft bills.

We originally thought that the Democratic Party should launch this kind of legislative proposals. But a few persons from the AWF heavily lobbied them and stopped them publicizing the draft bill, which some of the AWF must have feared, I suspect, that once it is made public, then no victims would receive the money from the AWF. Instead, we decided that a group of influential citizens should make it public and start a campaign towards all of the Diet Members for legislation.

We suspect that some from the AWF are spreading a rumor that there is no possibility of any bill for state compensation and that the victims should receive the money from the AWF. Everywhere the victims will be pushed to receive it harshly by the AWF. We need an alternative approach for real reconciliation.

I gave the Japanese version of this draft bill to Prof Yun and asked her opinion. She raised some vitally important questions, which were orally answered before she agreed with the proposals. The Korean translation is not ready yet, but I am sending its English translation, which were sent to Taiwan, the Philippines and Holland. For better understanding I am answering in written form to the basic three questions:

1. Why state responsibility cannot be included in the draft bill?

My answer: The Diet does not have legal capacity to override the Cabinet view that the treaties resolved all the legal claims by the victims, as the Constitution gives the Cabinet the power for diplomacy that include the primary power to interpret international treaties. The issue of legal responsibilities should be settled by the Supreme Court, of which judgment may not be given for 10 - 20 years. The interpretation, however, of the legal advisors to the both Houses of the Diet has changed since the recommendations made by Ms Coomaraswamy and the ILO Committee of Experts. And they confidentially told me that legislative measures such as I drafted below might be legally admissible, although they had originally argued even this kind of state interim payment with the humanitarian spirit was unconstitutional in violation of international treaties. Without consent of the legal advisors, no bill may be formally accepted as lawful by the

Secretary Generals of the both Houses under the current Japanese Diet system, even if all of the Diet Members agree with the bill. Now we know that the ICJ recommendations for the interim payment of 4 million US dollars is possible, if the bill is successfully submitted and passed by the Diet Members with 20 Members' support at the Upper House or 50 Members' support at the Lower House. This is maximum for the moment.

However, we may argue the legal responsibilities of the State further, even after the legislative measures and payments are finished. We may continue arguments at the courts, the Diet, and international forums as well as academic fields. We should pursue them for a long time. But we should not say that the old victims should not receive any money from the State, if the State is forced to pay the interim payment recommended by the ICJ by the Diet legislation.

2. Is "the humanitarian spirit" contradict with state legal - responsibility?

My answer: No, it does not contradict with state legal responsibility, although moral responsibility, which was acknowledged by the Japanese government and the AWF may contradict with state legal responsibility. The humanitarian spirit explains the reason why the state interim payment should be done now, even before the Supreme Court decision. This bill does not settle the issue of the State responsibility. It does not say anything decisive as moral or legal responsibility, which is pending before the civil court procedures and international forums. As a result, the whole issue should be settled in two steps, namely at the first stage, the state interim payment should be made by this interim legislation and at the second stage, state legal responsibilities should be settled in future. In this second step, we should push the fact-finding report, which should be made by a state committee for investigation of the facts on the atrocities committed by Japan during WWII including the issue of military sexual slavery. This committee should be established by a separate legislation. This interim payment should be made by the State of Japan. The Japanese government cannot reject payment, if the legislation is made by the Diet.

3. Is 4 million yen payment from the state different from the AWF's medical and welfare payment?

My answer: Yes, it is different from any of the money from the

AWF. It should be strictly separated from the AWF, as the AWF makes payment as a private body and the state interim payment of 4 million yen is made by the State of Japan.

Originally in last year, I argued that the budget for the medical and welfare project through the AWF should not be given as the AWF planned and that it should be paid by the legislation to the victims directly from the State. However, the most (80%) of the budget for this purpose was already approved by the Diet in last March. And the AWF now has the money. As a result, we had to modify our demands. We should not touch the money that the AWF already obtained. Then, the resistance from the AWF will reduce. Actually, some of Prof Soji Takasaki, Chairperson of the Advisory Council of the AWF told me that they would not oppose any state compensation bill, if the AWF money is not touched. On top of that, the AWF money can be accepted by any victims so wish later, if the state compensation through legislation becomes true and 4 million yen is paid to the victims. Then, the victims will be able to get state interim compensation of 4 million yen as well as the atonement money (2 million yen) and medical and welfare project assistance by the AWF altogether.

Yours Sincerely,

Etsuro Totsuka (Attorney at law, Japan)

(TRANSLATION OF A DRAFT BILL FOR THE INTERIM MEASURE PAYMENT FOR THE VICTIMS OF FORMER "COMFORT WOMEN" VICTIMS)

1. The interim measure payment

(1) The Government pays the interim measure payment for the former "comfort women" victims on the basis of humanitarian spirit.

(2) The amount of the interim measure payment is JPY 4 million for each of the former "comfort women" victims and it should be paid in the form of National Bond with name.

2. Decisions for payment

(1) The decision as for the right to the payment of the interim measure payment is to be made by Prime Minister responding to the application from those who claim it.

(2) The power for the decision mentioned in (1) above may be delegated to the Japanese Red Cross Society, if it is necessary. The delegation of the power to the said organization would be done, provided that the said organization agrees with it.

3. The method of the payment

(1) The interim payment should be made under the consent of the administrative authorities of countries or areas, which represents the interest of the person who is entitled to the payment.

(2) In case of 2.(2) above, the Japanese Red Cross Society should pay the payment to the victims through a corresponding humanitarian organization, which is operating in the concerned countries or areas. (END OF TRANSLATION)