

**Proposal for Reparation and Compensation
for World War II Victims**

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I. BASIC CONCEPTS

A. There should be full and complete compensation for violations, including three types of remedy.

1. Financial compensation.

Actual victims of grave violations should receive full and adequate financial compensation. Financial compensation should be awarded thorough an impartial claims tribunal.

2. Full disclosure of all the facts.

The victims, their families, the people of Japan and the people of the world are entitled to know all the facts obtainable from due diligence on the part of the Japanese government and close collaboration and cooperation with national and international researchers. The government of Japan should seek to facilitate all inquiry into facts, and should make available each and every document relevant to the issue. The government should also request other governments having access to or custody of relevant documents to produce them in a timely fashion to researchers and the Japanese government.

3. Acknowledgement and apology.

The government of Japan should make meaningful, sincere and timely acknowledgement of the facts and make such public and personal apologies to victims as dictated by the gravity of the violations and the wishes of the victims.

B. Compensation should be carried out with dignity and respect for the victims, Japan and the principles of international law.

1. The dignity of the victims.

All processes to compensate victims should respect their past sufferings and should avoid present-time humiliation. Victims should not have to recount publicly or privately of their ordeals except to the degree necessary to validate their claims. Victims should not be made compete with each other regarding the level of suffering. It is to be assumed that respect for victims includes a good faith effort to honor all reasonably credible claims.

2. The dignity of Japan.

Compensation plans should be carried out with honor and dignity for the government of Japan and the Japanese people.

3. The dignity of international law.

All activities undertaken to compensate past victims should reflect respect for and compliance with the principles of international law.

C. All victims should be compensated.

All victims, living or dead, should receive compensation in an appropriate form and amount. The government of Japan should make a serious effort to locate potential claimants. The government of Japan should support efforts of non-governmental organizations, bar associations and other citizens groups to locate living victims. Similar efforts should be made to identify victims who have died.

D. All procedures, including the claims tribunal, should seek to avoid diplomatic entanglements.

The government of Japan should make all compensation plans for individual claimants a private matter between it and the claimants. To that end, the government of Japan will not invoke treaties or other diplomatic agreements in any way so as to deny liability

or to create diplomatic problems between it and the governments of claimants.

Contact between the government of Japan and other governments should be limited, to the degree possible, to requests for assistance in compiling the facts and for permission to set up compensation programs for claimants outside of Japan.

The government of Japan should seek the good offices of the United Nations Secretary-General or the assistance of United Nations bodies if needed to resolve diplomatic difficulties arising out of Japan's compensation schemes.

E. There should be provision for personal donations for victims.

The total compensation arrangement should include some mechanism for private persons and corporations in Japan to make donations for the war victims. This is because many actual perpetrators and their families need to atone for these acts, and have had no way to do so.

F. Monetary compensation should be fair to all.

1. Monetary compensation amounts.

Monetary compensation should reflect the level of gravity of the violations, the value of human life, the value of fifty years of profound suffering and the impossibility of a normal life for the victims. The amounts should be neither trivial nor token, but should by themselves reflect an understanding of the gravity of the violations and the sincere remorse Japanese government. The amount should "hurt" the government and the people of Japan.

2. Established amounts for claims.

To better promote and protect the dignity of claimants, the government of Japan should

agree to set amounts per claim prior to any claims procedure.

3. Equal payment for equal violations.

The compensation plans should, whenever possible, pay the same amount to actual victims for violations constituting war crimes or crimes against humanity regardless of the type of victim: sex slave, forced laborer, prisoner of war or civilian detainees. For violations not considered war crimes or crimes against humanity but which are nonetheless serious violations, compensation can be on an established sliding scale, depending on the individual case.

In a similar fashion, compensation amounts to relatives of non-surviving victims should be set prior to the establishment of the claims tribunals.

4. Arbitration to establish monetary claim amounts.

If there is disagreement between the government of Japan and the victims or representatives of victims regarding amounts for compensation, the government of Japan should agree to a binding arbitration process to establish suitable amounts. The United Nations Secretary General could be asked to appoint the arbitration body. The arbitration body could also be under the auspices of a relevant body such as the International Court of Justice.

5. Style of payments.

Payments may be made as a lump sum award or in periodic (i.e. monthly, annual) payments, depending on wishes of claimants and recommendations of, inter alia, any arbitration process or the claims tribunal.

H. Claimants.

To the degree possible, monetary compensation should be paid to surviving victims. Monetary compensation to relatives of non-surviving

victims should be limited to parents or children (i.e. direct lineage). In exceptional circumstances, monetary compensation may be awarded to other family members.

Non-monetary compensation should be directed at all victims and family members, as well to the international community as a whole.

II. THE CLAIMS TRIBUNAL

A. Mandate.

The claims tribunal should verify claimants.

The claims tribunal should also determine the gravity of the violations against each claimant and award the predetermined amount accordingly. The claims tribunal should be granted authority to make exception awards in certain circumstances, either in addition to or instead of the predetermined awards. The claims tribunal should also be granted authority to make recommendations regarding style of payment: lump sum or periodic payments, depending on their evaluation of the individual circumstances.

The claims tribunal should notify the government of Japan on a periodic basis of the approximate number of claimants under review and the estimated financial compensation.

B. Composition.

The claims tribunal should be composed of individuals acting in their individual capacity, unless the Tribunal is composed of a pre-existing international or national forum.

The members should be noted for their expertise (judicial or legal experience), impartiality.

Members could be Japanese or non-Japanese as long as the criteria of experience and impartiality are met.

If the tribunal is to be composed of only Japanese, appointment could come from several branches of government as well as from the private sector. For example, an all-Japanese panel of five (5) could be composed of persons appointed by (one each):

- (1) The House of Representatives;
- (2) The Senate;
- (3) The executive;
- (4) The Supreme Court;
- (5) the Japan Federation of Bar Associations.

An expanded tribunal could include appointments made by other appropriate groups.

The nominators should seek proposals from as wide a range of sources as possible, including historians, law professors, citizens groups (including victim groups and victims themselves), human rights attorneys, etc.

If the tribunal is to be composed of non-Japanese, the appointments could be made by the bodies indicated above or could be made by the United Nations Secretary-General, by the International Court of Justice, the Commission of Human Rights, the Working Group on Contemporary Forms of Slavery of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities or other relevant body. The tribunal could also be made up of an existing body, such as the International Court of Justice, a panel of that Court, or the Working Group.

Approved
Gushy
SG
or
ICJ

C. Procedure of the Claims Tribunal.

The Tribunal itself should formulate its own procedures, keeping in mind the age and situation of the surviving victims.

The Tribunal should be granted authority to establish claims centers in countries known to have victims.

D. Funds for the Claims Tribunal.

The Japanese government should provide all funds for the Tribunal. The appropriation should be flexible enough to allow for mechanisms to hear claims in other countries, if desired by the Tribunal. The Japanese government will provide provisional funds to enable the Tribunal to begin its work. The Tribunal will present an operating budget for one year (renewable as needed) within one month of its seating.

The government of Japan may request the assistance of the United Nations, through the Secretary General, to oversee the budget, whether the Tribunal is Japanese or non-Japanese. Funds for this assistance will also be provided by Japan.

In addition or in the alternative to United Nations assistance with the budget, the Diet of Japan should establish a special committee to oversee the budget of the Tribunal and to make the necessary fiscal appropriations based on the information provided by the Tribunal in its periodic reports to Japan.

III. PROPOSED COMPENSATION AMOUNTS

SURVIVORS

A. Acts considered war crimes or crimes against humanity. US \$1,000,000

1. Sex slaves should be considered per se victims of war crimes and crimes against humanity in conformity with then-existing and present international standards.

2. Laborers should be considered victims of war crimes and crimes against humanity for:

a. Forced (involuntary) labor of over six months duration;

b. Voluntary labor of over one year duration while involuntarily confined and compensated at less

than 50% of the average wage for similar work in Japan;

c. Confinement in particularly harsh physical conditions, taking into account food, all aspects of shelter, clothing, medical care, and personal freedom;

d. Inhumane treatment, including beatings and other forms of torture;

e. Any other treatment analogous to treatment indicated in article 147 of Geneva Convention IV of 1949.

3. Prisoners of war should be considered victims of war crimes and crimes against humanity for:

a. Inhumane treatment, including beatings and other forms of torture;

b. Confinement in particularly harsh physical conditions, taking into account food, all aspects of shelter, clothing, medical care, and personal belongings;

c. Forced labor or any other act incompatible with the Regulations Respecting the Laws and Customs of War, Annex to the Hague Convention of 1907;

d. Any acts equal or analogous to acts condemned as war crimes in the Geneva Convention III of 1949.

4. Civilian detainees should be considered victims of war crimes and crimes against humanity for:

a. Inhumane treatment, including beatings and other forms of torture;

- b. Confinement in particularly harsh physical conditions, taking into account food, all aspects of shelter, clothing, medical care, and personal belongings;
- c. Forced (involuntary) labor of over six months duration;
- d. Voluntary labor of over one year duration compensated at less than 50% of the average wage for similar work in Japan;
- e. Any acts equal to or analogous to acts condemned in the Regulations Respecting the Laws and Customs of War on Land, Annex to the Hague Convention of 1907 and the Geneva Convention IV of 1949.

B. Acts condemned as gross violations of human rights.....US \$20,000 - US \$1,000,000.

1. Laborers should be considered victims of gross violations of human rights for:

- a. Forced labor of one to six months duration, payable at \$US 200,000 per month of forced labor;
- b. Voluntary labor of one month to one year at less than 50% of the normal wage for similar work, while involuntarily confined, payable at US \$100,000 per month of voluntary labor;
- c. Confinement in difficult physical conditions, taking into account food, all aspects of shelter, clothing, medical care, and degree of personal freedom payable at US \$20,000 per month of confinement.

2. Prisoners of war should be considered victims of gross violations of human rights and compensated at US \$20,000 per month of confinement or treatment for:

a. Confinement in difficult physical conditions, taking into account food, all aspects of shelter, clothing, medical care, and personal belongings;

b. Unduly harsh treatment.

3. Civilian detainees should be considered victims of gross violations of human rights for:

a. Confinement in difficult physical conditions, taking into account food, all aspects of shelter, clothing, medical care, and personal belongings payable at \$ US 20,000 per month of confinement;

b. Unduly harsh treatment, payable at \$ US 20,000 per month of treatment;

c. Forced (involuntary) labor of less than six months duration, payable at \$ US 200,000 per month of involuntary labor;

d. Voluntary labor while confined of less than one year duration compensated at less than 50% of the average wage for similar work in Japan, payable at \$ US 100,000 per month of labor.

FAMILY OF DECEASED VICTIMS

The parents or children of deceased victims of war crimes or crimes against humanity should receive a family compensation of US \$50,000.

IV. PROPOSED MECHANISM FOR PERSONAL DONATIONS TO VICTIMS

THE FUND FOR VICTIMS OF JAPAN IN WORLD WAR II

A. The Fund should be a Japanese, private, not-for-profit fund.

B. The Fund should be governed by a board composed of victims, victims-rights advocates, historians and researchers familiar with the issues, members of the Japan Federation of Bar Associations, members of the Diet, and a representative of the Prime Minister. The non-governmental members of the Fund should be in the majority. The board should appoint an executive director and a fiscal manager. The executive director should appoint other staff as needed.

C. The Fund should have a multiple mandate:

1. Research and study.

In fulfilling this aspect of its mandate, the Fund will assist and support recognized scholars in the field, and will sponsor educational missions as needed to obtain as complete a record as possible of all facts. The Fund may enter into cooperative relationships with educational institutions.

2. Emergency monies for victims, pending settlement of individual claims.

In fulfilling this aspect of its mandate, the fund will not provide substitute funds to those to be provided by Japan as a result of its compensation scheme, but will provide financial assistance to victims and victims rights groups based on individual and urgent needed of persons reasonably appearing to meet compensation criteria as well as to organizations working with victims.

3. Support for the claims process, including assisting victims file claims and prove their cases.

In fulfilling this aspect of its mandate, the Fund will contract with lawyers with expertise in the area, other lawyers and organizations to provide direct aid to victims for the claims process.

4. Support for the Claims Tribunal.

In fulfilling this aspect of its mandate, the Fund will provide the Claims Tribunal with

information as requested, will provide expert witnesses and testimony as requested and carry out, to the best of its abilities any requests for assistance from the Tribunal.

5. Service in an advisory capacity to any arbitration body.

In fulfilling this aspect of its mandate, the Fund will provide an arbitration body with any information and recommendations asked regarding amounts that should be made to individual claimants or to claimant groups.

6. Service in an advisory capacity to the Diet of Japan and the Prime Minister.

In fulfilling this aspect of its mandate, the Fund will consult regularly with any Diet committee set up on this regards or with any office under the Prime Minister.

✓ D. The Fund should seek donations from the general public for its work. In that light, the government of Japan should make an initial US \$20,000,000 donation to establish the Fund and should continue to support the Fund in a substantial fashion for the life of the Fund. The government of Japan should itself make an appeal to the Japanese public, including to corporations, for donations. The government of Japan should set in place mechanisms for tax-deductions for persons and corporations making donations to this Fund.