
COMPLAINT

Complainant:

Korean Council for the Women Drafted for Sexual Slavery by Japan

Address:

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Defendants:

Names Unknown

"The Korean Council for 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 the Tokyo District in Japan to investigate the charges and to punish the defendants accordingly.

1. THE STATUS OF THE COMPLAINANT AND THE DEFENDANTS

- (1) The Complainant: "Korean Council for the Women Drafted for Sexual Slavery by Japan" (hereinafter designated "The Korean Council")

"The Korean Council" was established in November 16, 1990 by eighteen groups of social organizations and women's organizations in order to help the victims of the militarism based sexual slavery instituted by the Japanese Imperial Army during World War II. The so-called "Military Comfort Women" are victims of atrocious War Crimes and Crimes Against Humanity and the surviving victims are still suffering mentally and physically. The mandates of "The Korean Council" have been accomplished through the following activities.

1. Fact finding on "Military Comfort Women" issues
2. Participation in the UN and other international organizations and joint efforts with other international human right NGOs for the purpose of resolving "Military Comfort Women" issues
3. Public education and publication on "Military Comfort Women" issues
4. Support for the surviving victims of the "Military Comfort Women" system
5. Funds-raising for financial assistance to the surviving victims and for their maintenance and activities

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

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

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

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

(2) THE DEFENDANTS

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

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

For purposes of criminal investigation, the complaint intends to focus on the people who were directly accountable for these crimes against humanity. The scope of the criminal charges should be limited to those who were in charge of the crimes; the high ranking military officers who had planned, deliberated and executed the "Comfort Women" system as part of the "sexual slavery" instituted for 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 Brothels".

Many of these criminals are already dead by now. The surviving criminals would be mostly in their seventies or eighties. Although old age and the passage of time could provide mitigating circumstances for criminal culpability, we firmly believe that such does not eliminate criminal liability all together. But we do not seek indictment against those who help us.

2. CRIMINAL CONDUCT OF THE DEFENDANTS

(1) Introduction of the Crimes Against the "Military Comfort Women"

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

During its occupation of Korea, Japan committed some of the most horrible atrocities ever committed within human history. As many as 200 thousand women and girls were forcefully taken abroad to satisfy the sexual cravings of Japanese soldiers. These women were forced into "Military Sex Houses" and were euphemistically called "Comfort Women." Of these so-called "Comfort Women," eighty to ninety percent were abducted from Korea. Starting as early as 1932, the evidence shows, the Japanese Imperial Army established "Comfort Stations" in China. Following the outbreak of the Pacific War in 1941, these "Comfort Women" had been transported to every military convergence throughout the war zone. They had gone to places like Thailand, Burma, Malaysia, Indonesia and various islands in the South Pacific; wherever the Japanese Imperial Army was located.

Following the Manchurian Incident and the invasion of Shanghai in the early 1930s, the Japanese decided to establish "Comfort Stations" within military theaters. The initial justification for such was to promote the fighting spirit among the soldiers, to prevent rape in occupied territories and to prevent venereal diseases from spreading among the soldiers. With these justifications, the "Comfort Women" system spread to all front lines and continued up until the time Japan surrendered in August, 1945.

Most of the "Comfort Women" system victims have been identified as having been under the age of 20 years at the time of their abduction. Some of the victims were married women in their twenties. They were forcefully taken by Japanese soldiers, officials and other private parties; by threat and enticement to the tragic life of the "Comfort Women."

Once taken by the "recruiters," these women were located in military "Comfort Stations." The management of these "Military Brothels" varied slightly. Some of them were established by the

Japanese Imperial Army and managed by private organizations, while some of them were solely run by the private sector. Regardless of their management structure, all of the "comfort stations" followed regulations set out by the Japanese Imperial Army. The Imperial Army directly executed sanitary examinations of these "Military Brothels" and made regular medical check-ups on the "Comfort Women." Documentary evidence clearly links the Japanese military to the operation of the "comfort stations."

Daily life at the "comfort stations" was unbearable for these women. Each of them was forced to have sex with many soldiers, ranging from 10 to 50 such encounters per day. Under tight military surveillance, these women could not escape and their mobility was rigorously restricted or completely prohibited. Physical abuse and harassment were daily routines. Deprived of medical treatment and adequate nutrition, they were exposed to physical illness, including many venereal diseases.

During the course of the war, many of the "Comfort Women" were killed as a result of military attack, air-strikes, accidents and illnesses at the front lines. When the Japanese ordered the withdrawal of the Imperial Army from overseas, these women were not notified of such withdrawals. Especially in the Philippines and Indonesia, most of these women were left behind by the Japanese Imperial Army or died during the long journey of withdrawal as a result of fatigue and famine. A few of the "Comfort Women," who survived the Japanese withdrawal, were saved by Allied forces. Some of these women were taken by Allied military ships to Korea. Many of them stayed abroad voluntarily because of the humiliation and pain which was too deep for them to overcome.

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

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

(3) Evidence of "Defendant" Involvement

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

operations.

Despite this evidence, it is difficult to identify the parties who were in charge of the planning and authorization of the establishment of the "Comfort Stations" and the recruitment of the "Comfort Women." However, the correspondence between the Japanese Imperial Army Headquarters and the Japanese Imperial Army abroad provides sufficient evidence that the officers at Imperial Army Headquarters and the Imperial Army Abroad during the period between 1937 and 1945, were directly involved in the establishment of the "comfort stations" and in their operation.

This evidence includes official order forms which required the establishment of the "comfort stations" in various front line areas in order to prevent the spread of VD among the soldiers. In addition, there is evidence of military telegrams requesting the establishment of "comfort stations" at the front lines and responses to them. These documents discuss the methods of recruitment, transportation of the "Comfort Women" and the establishment and the management of the "Comfort Stations." Since this correspondence contains information regarding the sender and the receiver, it is possible to identify the persons in charge of the projects. Among this information, the following lists of military stations and names of persons in charge of the establishment of the "Comfort Stations," can be found.

* Establishment of "Comfort Stations" by Troops Abroad.

March, 1932:	Shanghai Expeditionary Army: Chief of Staff NAKAMURA Yasuji, OKOBE Naozaburo, NAGAMI Toshinori
December, 1937:	Eastern China Direct Army--Shanghai Expeditionary Army General Staff. 2nd Dept. CHO Isamu
December, 1937	The 10th Army: General Staff TERADA
June, 1938:	Northern China District Army: General Staff OKABE Naosaburo
July, 1941:	Kanto Army: General Staff HARA Zenshiro, Governor-General in Korea
March, 1942:	Southern Region Army--Taiwan Army: Commander ANDO Rikichi, Army Headquarters' Permit HIGUCHI Keishichiro

* Army Headquarter Regulation and Policy on "Comfort Stations"

March 4, 1938:	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 the Southern Region"

March, 1942: Southern Region Army--Taiwan Army: Commander-- Army Headquarters' Permit

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

3. CRIMINAL LIABILITY OF THE DEFENDANTS

(1) "Crimes Against Humanity" Under International Law

The establishment of the "Military Brothels," recruitment and trafficking in "Comfort Women" and forcible prostitution clearly constitute crimes "of capture, enticement, confinement of women and girls and of rape" even under Japanese domestic criminal law. But, the statue of limitations under Japanese domestic law precludes prosecuting the criminal liability of the defendants.

On the other hand, these crimes can be defined as "War Crimes" or "Crimes Against Humanity" under international law regardless of the passage of time. The Nuremberg Military Tribunal was established in Nuremberg, Germany after World War II. The Charter of the Nuremberg Tribunal codified "Crimes 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 plans. In Article 6 of the Charter, "The Tribunal holds those individuals responsible, criminally liable for the codified crimes." However, in the present case, since none are 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, p.109)

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

was prohibited under customary norms in the late nineteenth and the early twentieth centuries. In 1926, the "Slavery Convention" codified this customary norm against slavery. Forced labor is prohibited under the "The Forced Labor Convention," adopted by the International Labor Organization in 1932.

Prohibitions against trafficking 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." 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 woman or girl under age, for immoral purposes, shall be punished." In addition, 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 methods of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, should be punished." State parties to the convention are required not only to punish these offenses, but also to take the necessary steps to prevent and punish these offenses accordingly.

These international conventions lead to the conclusion that "Sexual Slavery," like the "Comfort Women" system cases, is prohibited under 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 "Crimes Against Humanity"

Under the "Comfort Station System", the "Comfort Women" were forcibly taken to "Military Brothels" as sexual slaves to the soldiers. Forcible prostitution against one's will and the status of virtual slavery clearly constitutes "Crimes Against Humanity" under the definition by the Nuremberg Charter. It was also a form of genocide.

Since Japan was aware of its criminal responsibility under the "International Convention Against White Slave Traffic," Japan specifically selected Korean women and girls for "Comfort Women" purposes. With Korea as a colony of Japan, Korean women and girls had no protection under international conventions which allowed exclusion of colonies. Therefore, the systematic recruitment of Korean women and girls by force and enticement was a persecution based on racial discrimination and evidenced a Japanese policy of genocide against Korea.

Moreover, the life of the "Comfort Women" at the "Military Brothels" is worse than a form of "enslavement;" that alone being able to satisfy the definition of "Crimes Against Humanity." Forcible prostitution against a person's will in foreign military bases is the most degrading form of "inhumane treatment" ever committed against civilian women and girls, in the entirety of

human history.

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

4. LEGAL JUSTIFICATIONS FOR INVESTIGATION AND PROSECUTION

(1) Inapplicability of Statutes of Limitation

Under Japanese criminal law, criminal liabilities can be exempted by the expiration of a period of time under statutes of limitation. The statutes of limitation for various crimes are as follows:

Statutes of Limitation:

- (1) 15 years for crimes punishable by capital sentences:
- (2) 10 years for 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 years.

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

However, the rules in the statutes of limitation apply only to domestic laws. At the international level, there are certain exceptions to the applicability of statutory limitations. Under international law, the principle of the non-applicability of statutory limitations relative to "Crime Against Humanity" has been developed through customary norms. This norm led to 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 laws 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 instruments. The Consultative Assembly of the Council of Europe decided to adopt a "Recommendation 415" in the twenty-third session on January 28, 1965. The Recommendation of the Council was an attempt to make an exception to the principle of "hullum crimen" codified in "The Convention for the Protection of Human Rights and Fundamental Freedoms." The Recommendation stated that "The Council recommend the establishment of an Experts Committee for the drafting of the convention to affirm the principle that crimes against humanity should not be restricted by domestic law."

Considering these efforts by 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 multilateral treaties. War crimes and crimes against humanity have been punished by many countries regardless of statutory limitations. Whether or not they ratified the "Convention on Non-Applicability of Statutory Limitations," most of the nations have maintained a legislative mechanism which allows non-application of statutory limitations 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 the USA, Australia, and Canada have allowed deportation and prosecution of Nazi war criminals under domestic legislation regardless of statutory limitations. In addition, there has never been dispute among western countries regarding this customary norm to prosecute Nazi war crimes long after the crimes were committed. Based on this domestic legal mechanism and customary norms, 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 Statutory Limitations," Japan is bound by customary international norms which requires the non- applicability of statutory limitations relative to crimes against humanity. It should also be noted that Japan never opposed the contents of the "Convention" during the processes of negotiations and has affirmatively supported the purpose and the structure of the "Convention." (Thus, there is no evidence that Japan rejected the customary norms of the non-applicability of statutory limitations to war crimes and crimes against humanity.)

(2) International Customary Norms and Domestic Laws of Japan

The establishment of "Comfort Stations" and the forcible recruitment of the "Comfort Women" for "military sexual slavery" clearly constitutes crimes against humanity to which statutory limitations should not be applied under customary international norms. The remaining issue then is how Japanese domestic laws treat international customary norms within national judicial systems.

The Constitution of Japan recognizes obligations under international law. 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 norms generally accepted and practiced by the nations." In general, the source of the "laws of nations" includes treaty laws and customary laws. Since the provision recognizes treaties as a separate source, the "law of nations" includes treaty laws and customary laws. Since the

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

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

Once a customary norm is incorporated into the domestic legal system, there is another issue as to whether or not this customary norm is "self-executing." If the obligation under the customary norm can be carried out without any further implementation through added governmental 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 is the case with domestic legal obligations. Furthermore, the majority of 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 and all nations. Most of all, most of the constitutional scholars in Japan have interpreted their constitution as giving higher priority to international treaties and customs over against those given to domestic law.

Under the Constitution of Japan, the obligation to prosecute "Crimes Against Humanity" and the principle of non-applicability of statutory limitations to the crimes against humanity, retains a higher authority than domestic criminal law. Therefore, Japan has a duty under customary international law to investigate and prosecute criminals who committed crimes against humanity, regardless of statutory limitations in its domestic criminal codes.

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

It is our conclusion that the defendants committed "war crimes" and "crimes against humanity" through their involvement in the "Military Sexual Slavery" of the "Comfort Women" during World War II. These crimes are still punishable under international customary norms and domestic laws. 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. 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." Article 2 also states 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 offenses according to their gravity."

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

Second, "The Forced Labor Convention of 1930," which was adopted by the International Labor Organization, provides another legal obligation to Japan which ratified the Convention in 1932. Article 25 of the Convention designates that "the illegal exaction of forced or compulsory labor 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 upon Japan when the Imperial Japanese Army and the Government of Japan planned and executed the massive mobilization of forced labor including "Comfort Women" from Korea. The obligation of the Japan to punish such an illegal execution of forced labor still exists under Article 25.

The judgments of these Military Tribunals became dispositive for 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. 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 indisputable evidence, it should be concluded that Japan accepted the judgment of the Batavia Courts, which condemned the "forcible prostitution of Netherlands Women" as a War Crime. If the forcing of Netherlands women into "military sexual slavery" constitutes a "War Crime," the same crime committed to the "Comfort Women" from other countries like Korea, the Philippines and China should also be punished as a "War Crime." Laws should not discriminate against victims on the basis of race.

Third, paragraph 10 of "The Declaration of Potsdam" of July 26, 1945 declared that "...stern justice shall be meted out to all war criminals including those who have visited cruelties upon prisoners." The "Instrument of Surrender," which formally ended 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 a 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 (IMTEF) and other Allied War Crimes Courts are still binding upon Japan. In addition to the IMTEF 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 by the courts of the "war crimes of enforced prostitution." These crimes were directly related to "comfort stations" and other forcible prostitution of Netherlands women by the Japanese Army.

5. CONCERNING THE NEED AND URGENCY OF PUNISHING THE ACCUSED

(1) Lingering Pain

As for the victims who luckily returned to their homelands after the end of the World War II, there was no room for them to begin new lives. There was no way for these women to form a stable family life once their purity had been violated so very many times, even though it was forced on them by the Imperial Japanese Military establishment. Note the following research report:

"For those 'Comfort Women' who returned, they could not have a normal married life due to their own shame, the diseases they carried, and the suspicious glances of their neighbors. Out of nineteen women we studied, six got married; however, five married men who were previously married and all six ultimately failed in their marriage attempts. Eight had experiences in living as common-law wives or as second wives, but almost all of the marriages 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 difficult lives in terms of health and economic viability." (Testimony of Korean "Military Comfort Women" Forced into Sexual Slavery, Edited by the Research Association on "Military Comfort Women" of the Korean Council for Women Drafted for Sexual Slavery by Japan, Haul 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 in their old age since they cannot form normal family bonds. They eventually end up in poverty. An even more serious problem they have is disease. Their bodies are riddled with all kinds of scars received while serving as "Comfort Women." There is a woman whose uterus is connected to her anus. Some had knife wounds on their breasts. Their terrible sufferings resulted in bladder disorders, uterine diseases, stomachaches, 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 experiences. The following story of an old comfort woman is very common to all of the victims:

"And then I started to experience symptoms of anxiety disorder and mental confusion as I moved beyond thirty years of age. 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 the door because I was so afraid and anxious whenever I heard any sound of a man or the sound of the TV. I lost consciousness several times even after hearing the sounds of gun shots from the TV. I have been inside my room, crawling on my knees, for the last thirty years because I am so scared of any person or any sound. Even now I use 'Anasin' if I don't have any tranquilizers." (Testimony of Myung Soon Choi, Edited by the Research Association on the "Military Comfort Women," Supra, p. 268)

Furthermore, their story is more tragic since their suffering does not end in their own generation. Those women who didn't have children are regarded as being luckier. Unfortunately, those who happened to have children or family are undergoing the same terrible pains and experiences of the victims over again. The following is the continuing story of the above designated 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 that the mother come to see him. The doctor asked all other family members to go outside and then asked me whether I had had 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 trouble? My oldest son still undergoes a mental breakdown one 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 their home." (Myung Soon Choi's Testimony, Supra, p.269)

From the above testimony, we can learn the true depth of suffering which is being transmitted from generation to generation. It shows that this horrendous suffering is something that cannot end in one generation but that it continues to bother and terrify many for many generations to come. 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 Legal Remedy

Many people have volunteered to help out the "Comfort Women" after hearing about their story. Those who are knowledgeable are contributing by 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 in the issue being generated. 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 counseling the spirits of the victims.

However, all these efforts are not enough to realize what the "Comfort Women" victims want. Investigations, appropriate reparations, and punishment of those responsible for the crimes -- these are what they desire and what 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 has had from the beginning, no intention of uncovering the truth and taking appropriate legal action in regards to this matter. As international public opinion continues to be aroused, Japan has had to express apology and acknowledge the Imperial 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 Japanese government agencies. If the Japanese government on its own discloses those related documents and embarks upon a serious fact-finding effort by forming an official team of investigators, the hidden criminal conspiracy and the actual practices and processes could be thoroughly revealed to the light of day.

Another problem is the hands-off attitude of the victims' own countries such as South Korea. It altogether likely that these countries are 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 this issue because of already existing economic and other dependency relationships with Japan. A good example of this is in the Korean government's attitude shown in the last visit to Korea by Japanese Prime Minister Hosokawa. Once Prime Minister Hosokawa expressed his regret and apology, the South Korean government made it clear that the "Comfort Women" issue will no longer be part of the continuing roster of diplomatic issues being debated between the two countries. The only thing that was emphasized at this meeting was the establishment of future relationship between the two countries; all of this being nothing more than burying the past and forgetting about the "Military Comfort Women" issue.

It is well-known that the United Nations, whose membership includes 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 within its 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 about ten percent of the UN bills? This kind of influence is more apparent in view of UN Secretary General Boutros Boutros-Ghali's high opinion of Japan. He has already asked for Japan's further involvement and intervention in world affairs on the occasion of his visit to Japan. It is very ironic that the UN, which was born out of the lessons learned from the calamity of World War II and the destruction thereby inflicted on humankind, has not been paying much attention to the "Comfort Women" issue even though it arose out of World War II, but that is the reality. Moreover, the UN's deliberation procedures are 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 a legal resolution rather than a 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," because we believe lawyers will not ignore that painful violence suffered by 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 the victims' lives.

(3) Humanity and Justice Cannot be Different Between East and West

There is not much difference between the East and the West, ancient and modern, when it comes to the horrors and cruelties arising from war. The numerous cases of terrible criminal acts committed during World War II are already well reported and documented. These kinds of terrible criminal acts were committed all over the battlefields; there were no differences in this regard between Europe and Asia where the main battles were fought.

Unlike the past, however, trials were instituted relative to these terrible criminal acts when World War II ended. That is because humankind's reason and intelligence reached a level of realization which demanded that such barbarous and inhumane criminal acts no longer be allowed toleration. In accordance with general consensus and public opinion arrived at naturally, war crime tribunals were established in the Nuremberg and Tokyo of defeated Germany and Japan; scores of important military leaders and hundreds of those responsible for crimes against humanity were tried, executed or imprisoned. Thereafter, thousands of war

criminals were also punished by the Allied Powers which set up war crime tribunals all over the world.

The problem arose only after the end of the trials by the Allied Forces. In the case of West Germany, from May 8, 1945 to January 1, 1968, investigations were conducted on 77,044 suspects of war crimes or crimes against humanity with 6,192 persons 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, 230 received life sentences, and 5,088 received limited sentences. These Nazi war criminals were all prosecuted by the 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 an Israeli Supreme Court: and a Frenchman, who helped in the Nazi deportation of Jews in France, happen to be killed by a Jew while waiting trial for crimes against humanity. Thus, the pursuit and trial of Nazi war criminals and criminals perpetrating crimes against humanity is still going on without end.

Nevertheless, how many war criminals or criminals perpetrating crimes against humanity have been brought to justice in Japanese courts by the Japanese themselves after the departure of the 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.

In the 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, can the act of forcing frail young girls to serve as sexual slaves for the military be regarded as a crime in the West but not so in the East. There is also no basis for regarding war crimes committed in the West as being prosecutable to the ends of the earth without any statues of limitations but that crimes against humanity committed in the Pacific are all extinguished due to the expiration of the statues of limitations soon after the end of World War II. Regardless of the distinctions between the East and West, the same punishment must be meted out so long as it is an atrocious crime.

6. Concerning the Opportunity and Implication of Complaint

(1) The Opportunity to Raise Our Complaint and the Honor of Japan's Prosecutors

In spite of the fact that many international lawyers and lawyers in Japan have come to the conclusion that the establishment and operation of the "Military Comfort Station"

system is sufficient ground for a criminal complaint and should be punishable, we have delayed the presentation of our complaint, because we expected that this issue would come to some kind of an agreement between Japan and Korea as well as with victims of other countries, through the acceptance of our basic demands. However, our expectations and hopes were negated. The Japanese government has hidden facts and contorted realities. Sincerity was never shown in the search of solutions. We have come to the conclusion that we cannot expect anything from the Japanese government. As the Japanese government is insincere and completely unable to hear the substance of our complaint, we have no reason to delay our measures in pursuing the acceptance by Japan of its war responsibilities. This is the time for those people who conducted the cruel crimes to face the court and be punished for their crimes.

We have great doubts as to whether the prosecutors in Japan will be any different in this regard from the Japanese Government. We have been disappointed by the Japanese government in that they have rejected the ideas of opening the resource materials related to "comfort stations." The presentation of our complaint will provide a way for some solution to this problem. We are giving a chance to Japan's prosecutors to clear away our doubts.

We know well that the Japanese prosecutors have shown justice and courage in the last fifty years. It is a well known fact that Japan's prosecutors have taken neutral positions and undertaken autonomous operations in that an entire Government cabinet was forced to dissolved as a result of their investigations.

This is the time for Japan's prosecutors to be proud of this tradition and to show their sincerity relative to this issue. Although the victims are non-Japanese nationals and the crime occurred in the past, it is necessary to proceed with courage to discover the reality and seek the will to carry out legal justice in this regard. Criminal investigations should be conducted with sincerity and Japan's prosecutors should be decisive no matter what the outcome.

It is certain a decision which will be recorded permanently in the annals of human history -- depending upon the direction and content -- either as a victory for human reason or a failure of human conscience.

(2) The Complainant's Historic Meaning: Our Questioning of Japan's Conscience

Although there have been many occasions up to this time in which the "Military Comfort Women" brought civil lawsuits in Japanese court -- demanding monetary compensation -- this is the first time that they have brought criminal complaints and information, asking for prosecution of the perpetrators of these crimes. It is our judgment that the postwar reparations movement is entering a new stage. This complaint and the information involved is intended for more than simply proving the fact that the victims of war are only seeking money and are simply

pestering Japan which has become rich. And these actions are not something which have originated out of any feelings of revenge or any rancor. The reasons why the "Comfort Women" victims and we are coming forward now is because of our one desire to regain justice. That is right. What we really desire and seek is neither a settlement reached in the backyards of international politics nor favors granted from Japanese government sympathy. It is a matter of natural contention and demand that this issue must be tried in accordance with the morality and justice that humankind 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 within the history of humankind. Thereby, real reconciliation and a spirit of peace will prevail among the people of Asia.

Simon Wiesenthal, who had set up a center maintaining Nazi officers' files from early on, soon after the end of World War II, and who spent his whole life pursuing these criminal 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 is 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 is a voice for peace and reconciliation of Asian people as well as the whole of humankind that no nationals, no one, should experience this kind of suffering again. It's also our question and plea to Japan's conscience and morality. Now it is the turn of the Japanese Prosecutor's Office, Japan's conscience, to answer.

February 7, 1994

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

To: Chief Prosecutor
Tokyo District Prosecutor's Office, Japan