COMMITTEE FOR REFERRAL OF THE "COMFORT WOMEN" ISSUE TO THE ICJ

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About Contributing Organizations:

Comfort Women Action for Redress and Education (**CARE**, formerly known as the KAFC) is a non-profit, community organization based in Los Angeles and Seoul that focuses on advocacy and education regarding the "comfort women" issue - the girls and women coerced into institutionalized sexual slavery and human trafficking perpetrated by the Japanese military during the first half of the twentieth century. CARE is responsible for establishment of the Girl Statue in Glendale, CA, and helped civil groups in other regions to establish their own "comfort women" statues. CARE's educational efforts include the creation of the interactive video testimony program in collaboration with Sogang University, and the online "comfort women" archive at UCLA's Center for Korean Studies. CARE is currently working with one of the last surviving victims, Yong-Soo Lee, in her campaign to refer the issue to UN's International Court of Justice.

Daegu Citizen's Forum for Halmuni, a non-profit association based in Daegu, South Korea, was established in December 1997 with several volunteers and the survivors of the Japanese military sexual slavery ('comfort women') in Deagu and Gyeongbuk Province in South Korea. Since then, the organization has taken care of 28 survivors. It has supported their daily lives, legal actions for problem-solving, and publication of their testimonies. Among the 28 survivors, now there are only two survivors remaining, and they are in their mid-90s. With the passing away of many survivors, the organization felt the need to build a place to preserve artworks by the survivors, relevant documents, recordings of their testimonies, and other articles left by the deceased. In 2015, therefore, we built the 'Heeum' Museum of Military Sexual Slavery by Japan financed by the survivor's donations as well as nationwide fundraising. At this museum, various topics on the 'comfort women' have been introduced to preserve the memory of its unresolved tragedy and work toward a victim-centered resolution. With various relics and recordings, the organization continues to publish books, make films, etc. Now, we are campaigning with Ms. Yong-soo Lee, the 'comfort women' survivor, to refer the 'comfort women' issue to the International Court of Justice and/or the Committee Against Torture.

Introduction

Nearly eight decades after the end of the Second World War, the last survivors of one of its notable atrocities are still awaiting justice. It is an established historical fact that Imperial Japan, through state organs including the Imperial Japanese Army, committed the sexual enslavement and mass rape of women and girls (and, in some cases, men and boys) throughout the Asia-Pacific, among other innumerable war crimes and crimes against humanity, in furtherance of a war of aggression and dominance with Nazi Germany.

This imperial wartime institution of sexual slavery, the victims of which were labeled by Japanese authorities with the troubling diminutive of "comfort women", is one of the largest known cases of state-sponsored human trafficking in the twentieth century. Victims from throughout East Asia, Southeast Asia, the Pacific Islands, and colonial European nations were forcibly taken and held in "comfort stations" organized by Japan's imperial military during its campaign for territorial invasion, occupation, and control.

This submission concerns the unresolved issue of World War II-era Japanese military sexual slavery, namely (1) the South Korean government's failure to effectively counter the Japanese government's official distortion of historical facts by creating a permanent investigative mechanism to systematically and continuously research and publicize newly discovered documents or evidence of the wartime atrocities; and (2) the South Korean government's failure to fulfil the victims' right to justice and reparation by initiating inter-state proceedings under articles 21 and 30 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. The South Korean government's failure to effectively counter the Japanese government's official distortion of historical facts by creating a permanent investigative mechanism to systematically and continuously research and publicize newly discovered documents or evidence of the wartime atrocities

Following the "Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion" on December 28, 2015 (the so-called "12.28 Joint Announcement")[1], the Japanese government has become even more brazen in its distortion of historical facts concerning wartime military sexual slavery. Currently, the Japanese government publicly denies coercion in the recruitment process ("forceful taking away" or "coercion in the narrow sense") and rejects the characterization of "comfort women" as "sex

[1] Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion (December 28, 2015), https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html For the Japanese original, see 日韓両外相共同記者発表 (平成27年12月28日), https://www.mofa.go.jp/mofaj/a_o/na/kr/page4_001664.html

slaves", as stated in the foreign ministry's website.[2] What was once the fringe opinion held by reactionary elected politicians and considered a national embarrassment has gone mainstream as the official position of the Japanese government.

The South Korean government has created *ad hoc* working groups and commissions to investigate victims of Japan's atrocities during the colonial era, but there is no permanent institution comparable to those in other countries dedicated to the research of World War II-era atrocities.[3]

In 2004, the Truth Commission on Forced Mobilization under Japanese Imperialism (일제강점하강제동원피해진상규명위원회) was created by the Special Act on Finding the Truth regarding Damage from Forced Mobilization under the Japanese Imperialism.[4] It was reorganized in 2010 as the Commission on Verification and Support for the Victims of Forced Mobilization under Japanese Colonialism in Korea (대일항쟁기강제동원피해조사및국외강제동원희생자등지원위원회) by the Special Act on Verification and Support for the Victims of Forced Mobilization under Japanese Colonialism in Korea, which lasted until 31 December 2015.[5]

During its existence from 2004 to 2015, the forced mobilization commission, the first and only national institution in the Asia-Pacific region dedicated to probing the wartime atrocities of Imperial Japan, had a mandate to investigate "damage from forced mobilization under Japanese colonialism in Korea", defined as "damage to the lives, bodies, property, etc. of the persons who were forcibly mobilized by imperial Japan and were coerced into serving as soldiers, civilian personnel in the military service, laborers, or comfort women, etc. during the period from the Manchurian Incident to around the end of the Pacific War" which encompassed the wartime military sexual slavery.

However, the commission's work was obstructed by budgetary and bureaucratic challenges. The original law established the commission for a 2-year period, as was usual for other truth commissions created in South Korea during the same period, but its scope of investigation covering a 15-year war that was waged six decades ago across the entire Asia-Pacific, dwarfed the geographical scope and time period addressed by other commissions. Although the South Korean National Assembly repeatedly extended the commission's mandate, the extended terms were only for 1- or 2-year periods. The uncertainty caused the commission to

[2] Japan's Efforts on the Issue of Comfort Women (December 27, 2021), https://www.mofa.go.jp/policy/postwar/page22e_000883.html. For the Japanese original, see 慰安婦問題についての我が国の取組 (令和3年12月27日), https://www.mofa.go.jp/mofaj/a_o/rp/page25_001910.html.

[3] For example: the NIOD Institute for War, Holocaust and Genocide Studies, created by the merger of the Netherlands Institute for War Documentation (NIOD) and the Centre for Holocaust and Genocide Studies in 2010; the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation; and the International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania.

[4] https://www.law.go.kr/lsInfoP.do?lsiSeq=61474 [in Korean]

[5] https://www.law.go.kr/lsInfoP.do?lsiSeq=103771 [in Korean]

devote significant attention to persuading the government and the National Assembly to grant additional extensions and made it difficult to retain able investigators or secure resources necessary for long-term plans.

The 2010 reorganization also tasked investigators with making consolation payments to the overseas forced laborers and their families and making administrative assessments of whether individual claimants, largely forced labor victims, qualified for the payments. This redirected their attention from their actual assignment of in-depth research into issues of historical significance, such as newly discovered lists of women of taken to Palembang, Indonesia, most likely as "comfort women"[6] or "company comfort stations" for forced laborers in wartime mainland Japan, in particular Hokkaido and Kyushu.[7]

When the commission terminated its operations in 2015, it had completed investigations on only 21 of the 304 research topics that it had deemed essential as of 2014, according to its final report.[8] There were 238 outstanding research topics, including:[9]

- Coercion in the comfort women system [위안부 제도의 강제성]
- Investigation of military comfort women victims who were previously "guest entertainers", as described in oral statements from military comfort women [군위안부 구술에 나타난 '접객업부' 출신 군위안부 피해자에 대한 진상조사]
- Scale of Korean women taken as military comfort women [군위안부로 끌려간 조선 여성의 규모]
- Control and supervision by the Government-General of Korea and Korean Army Command [Japan's administrative and military arms during colonial rule] of drafting, transport, etc. under the military comfort station system [군위안소 제도하의 징집 이송 등에 대한, 조선총독부・조선군사령부의 통제 감독 실태]
- Mobilization of company (laborers) comfort women through documentary records [문헌 기록을 통한 기업(노무)위안부 동원 실태]
- Military comfort women victims as seen through their records [군인 피해자 기록을 통해 본 군위안부 피해자 실태]

[6] http://dl.nanet.go.kr/law/SearchDetailView.do?cn=MONO1201017168 [accessible online in Korean at the website of the National Assembly Library of Korea].

[7] http://dl.nanet.go.kr/law/SearchDetailView.do?cn=MONO1201125610 [accessible online in Korean at the website of the National Assembly Library of Korea].

[8] http://dl.nanet.go.kr/law/SearchDetailView.do?cn=MONO1201625424 [accessible online in Korean at the website of the National Assembly Library of Korea], pp. 208-209.

[9] Id., p. 212, 217, 218, 219, 223 and 225.

- Military comfort women as seen through documentary records [문헌 기록을 통해 본 군위안부]
- Drafting, transport, etc. of military comfort women by Korean police and local bottom-tier officials [조선경찰・지역말단행정 등의 군위안부 징집 및 이송에 관련한 업무 실태]
- Investigation of transport means (ships, trucks, railroad, etc.) and companies for military comfort women within the Korean peninsula [한반도 내 군위안부 이송 수단(선박 트럭 철도 등) 및 회사에 대한 조사]
- Comfort women mobilization by locality [위안부 동원 지역별 동원 실태]
- Company (laborers) comfort women mobilization [기업(노무) 위안부 동원 실태]
- Military comfort women as seen through lists related to troop mobilization [병력 동원 관련 명부를 통해 본 군 위안부 실태]
- Repatriation of military comfort women by locality [동원 지역별 군위안부의 귀환 실태]
- Investigation of Allied Powers' materials related to military comfort women at the Tokyo Trial and the lists of internment camps of each Allied Power [동경재판에서 군위안부 관련 연합국의 자료 조사・각 연합국의 수용소 명단 조사]
- Repatriation and death of military comfort women in the immediate aftermath of the liberation in 1945 [1945년 해방 직후 군위안부의 귀국 및 사망]
- Investigation of the physical and mental aftereffects of military comfort women victims [군위안부 피해자들의 육체적 정신적 후유증 조사]
- Actual conditions of comfort station buildings, etc., where military comfort stations were established within Korea and territories/states abroad [군위안소가 설치되었던 국내 및 국외 지역・국에 남겨진 위안소 건물 등 현지 실태]

If the South Korean government is serious about countering the distortion of historical facts concerning Japan's World War II-era military sexual slavery by the Japanese government, it should create a permanent investigative mechanism to systematically and continuously research and publicize newly discovered documents or evidence of the wartime atrocities and urge Japan as well as other victim states to do the same.

2. The South Korean government's failure to fulfil the victims' right to justice and reparation by initiating inter-state proceedings under articles 21 and 30 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Since the early 1990s, the South Korean victims of Japan's wartime military sexual slavery system have consistently urged the Japanese government to implement seven demands that embody principles of reparative justice, as subsequently codified in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 (2005 Basic Principles and Guidelines.

These seven demands urge the Japanese government to:

(1) Admit the Japanese military sexual slavery system as war crimes, crimes against humanity, and grave violations of human rights

(2) Fact-finding including disclosure of official documents

(3) Deliver an official apology

(4) Pay reparations to the victims

(5) Punish those responsible

(6) Record the sexual slavery system in history textbooks

(7) Erect a memorial monument and build an archive

However, successive Japanese governments have failed to implement these minimum demands in good faith. Starting from the 2000s, the once-fringe ultranationalist politicians and public figures, who organized in reaction to Japan's belated efforts during the 1990s to reckon with its past colonial rule, war of aggression, and attendant atrocities, have come to dominate Japanese politics, particularly under the prolonged leadership and influence of former Prime Minister Abe Shinzo (2006-2007 and 2012-2020). The organized far-right faction in Japan has made it both official and *de facto* government policy to deny, negate, and obfuscate the history of wartime military sexual slavery.

To date, the Japanese government has never recognized its responsibility under international law for its wartime military sexual slavery amounting to war crimes, crimes against humanity, and other grave violations of human rights. The statement issued on August 4, 1993 by Chief Cabinet Secretary Kono Yohei (the 1993 Kono Statement) is arguably the strongest declaration by a Japanese official regarding wartime sexual slavery to the extent that it admits coercion, but it is entirely silent regarding the violation of international law and the criminality of the system, instead acknowledging only "an act … that severely injured the honor and dignity of many women".

This is a marked contrast to Germany, which openly and publicly admits to its Nazi war crimes and crimes against humanity, even while maintaining that individual monetary claims against Germany have been waived by post-war treaties and barred from civil lawsuits in foreign domestic courts by sovereign immunity. In fact, with respect to wartime acts, Japan has officially recognized in writing its responsibility under international law in connection with lump-sum settlements of claims under post-war treaties with Switzerland, Spain, Denmark, Austria, the United Kingdom, Canada, India and Greece; but Japan has pointedly failed to do so with respect to its wartime military sexual slavery.

After decades of waiting for justice, Lee Yong-Soo, Kang Il-Chul, Park Ok-Seon, Lee Ok-Seon (born in 1928) and Lee Ok-Seo (born in 1930) and Park Pil-Geun) (six of the eleven remaining South Korean survivors), Peng Zhuying [彭竹英] (a Chinese survivor), Carol Ruff and Ruby Challenger (respectively the daughter and granddaughter of the late Dutch survivor Jan Ruff-O'Herne) as well as the groups supporting the survivors in the Philippines, Indonesia and East Timor have jointly called for the South Korean government to initiate inter-state proceedings against Japan under articles 21 and 30 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[10]

The pain and suffering inflicted by Japan's Imperial Armed Forces upon "comfort women" in "comfort stations" qualify as "torture" and "other acts of cruel, inhuman or degrading treatment or punishment" under articles 1 and 16 of the UN Convention against Torture. As the Committee against Torture observed in *Mrs. A v. Bosnia* (Communication No. 854/2017) with respect to the Bosnian War, rape and other acts of sexual violence and ill-treatment by a Serb soldier amounted to "torture". Furthermore, in its concluding observations on periodic reports submitted by Japan and South Korea, the Committee considered the abuses suffered by the survivors of Japan's military sexual slavery practices to be torture and ill-treatment under the Convention.

As a State Party to the Convention, Japan is obligated under articles 2, 4, 12, 13, 14 (1) and 16 (1) thereof to undertake and to ensure the prohibition, examination and investigation, and enforcement of victims' rights to compensation, redress, and rehabilitation for acts of torture. In its concluding observations (May 29, 2013) on the second periodic report of Japan, the Committee expressed deep concern at Japan's failure to meet those treaty obligations with respect to "comfort women" and urged Japan to take "immediate and effective legislative and administrative measures to find [a] victim-centered resolution" through public acknowledgement of the crimes, refuting denials by government authorities, disclosure and investigation, the full and effective redress, reparation, and rehabilitation of the victims, and public education through history textbooks, in order to prevent further violations of the Convention.

Japan's non-implementation of the survivors' seven demands violate its obligations under articles 2, 4, 12, 13, 14 (1) and 16 (1) of the Convention because those demands are substantively encompassed by all of the measures that the Committee has already urged

[10] Kim Tong-Hyung, "S. Korean slavery victim seeks UN justice as time runs out", AP, March 21, 2022, https://apnews.com/article/japan-asia-seoul-united-nations-south-korea-f2df28d5ca1a09b112d5ff5da25f2b0c.

Japan to implement in order for it to cure its violations under the Convention with respect to "comfort women". In particular, the Committee observed that the survivors were continuing to experience abuse and re-traumatization through Japan's official denial of the facts and its failure to prosecute those criminally responsible in violation of the Convention.

The South Korean "comfort women" survivors, as victims of Japan's violations of articles 2, 4, 12, 13, 14 (1) and 16 (1) of the Convention, cannot communicate directly with the Committee because Japan has not made a declaration under article 22 of the Convention. However, because both Japan and South Korea have made declarations under article 21 of the Convention on 29 June 1999 and 9 November 2007, respectively, South Korea can communicate with the Committee with claims that Japan, through its non-implementation of the survivors' seven demands and its ongoing efforts to deny, conceal, and obfuscate the history of military sexual slavery, is violating articles 2, 4, 12, 13, 14 (1) and 16 (1) of the Convention.

While the Committee against Torture has never received an inter-state communication under article 21 of the Convention, there is analogous precedent through CERD (Committee on the Elimination of Racial Discrimination), which also administers a UN convention concerning a jus cogens norm and received inter-state communications submitted by Qatar on 8 March 2018 and by the State of Palestine on 23 April 2018. For purposes of article 21 (1) (c) of the Convention, the survivors have invoked and exhausted all domestic remedies, in conformity with the generally recognized principles of international law, by filing a total of 10 civil lawsuits against the Japanese government in Japanese courts, all of which were dismissed by the Supreme Court of Japan, as well as criminal complaints at the Tokyo District Public Prosecutors Office on February 7, 1994 that were promptly dismissed.

Under article 30 (1) of the Convention, South Korea has the ability to submit to arbitration disputes with Japan concerning the interpretation or application of the Convention – namely, whether Japan's non-fulfilment of the seven demands and ongoing efforts to deny, conceal, and obfuscate the history violates Japan's obligations under articles 2, 4, 12, 13, 14 (1) and 16 (1). Because South Korea and Japan did not declare reservations to article 30 (1) when they acceded to the Convention on 9 January 1995 and 29 June 1999, respectively, under article 30 (2), if the states are unable to agree on the organization of the arbitration proceeding within six months from the date of the arbitration request, then they may refer the dispute to the ICJ.

This procedure was invoked on 19 February 2009, when Belgium instituted proceedings against Senegal on the grounds that Senegal's failure to prosecute Hissène Habré, the former President of Chad and a resident of Senegal since being granted political asylum by the Senegalese Government in 1990, for acts of torture or failure to extradite Habré to Belgium violated the obligation aut dedere aut judicare ("to prosecute or extradite") under article 7 of the Convention against Torture. In its judgment of 20 July 2012 in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, the ICJ held that Senegal had violated that obligation.

The historical (temporal) posture of Japan's military sexual slavery is also suitable for the Committee's consideration because the prohibition of torture is a jus cogens norm. The

Committee has previously considered the application of the Convention to acts prior to its entry into force for a State Party. According to the Committee's general comment No. 3 (2012) on the implementation of article 14, given the continuous nature of the effects of torture, "States Parties . . . shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress" (para. 40). In 2002, the Committee in *Bouabdallah Ltaief v. Tunisia* (Communication No. 189/2001) found violations of the Convention for acts of torture that had occurred in 1987, although Tunisia had ratified the Convention in 1988. In 2006, the Committee in *Suleymane Guengueng et al. v. Senegal* (Communication No. 181/2001) found violations of the Convention for acts of torture that had occurred prior to its entry into force for Senegal in 1987.

Also significant is the Committee against Torture's views in *Mrs. A v. Bosnia and Herzegovina* (Communication No. 854/2017), adopted on 22 August 2019, that the failure to provide the victim with redress and an enforceable right to fair and adequate compensation, as ordered by a court decision for acts of torture committed before Bosnia and Herzegovina became a State Party to the Convention and made a declaration under article 22, constitutes a new violation of article 14 of the Convention. In the instant matter, Japan has violated its obligations under the Convention to provide "comfort women" victims with redress and an enforceable right to fair and adequate compensation, as adjudged by the Seoul Central District Court on January 8, 2021, in a ruling made after the Convention's entry into force for Japan and after Japan's declaration under article 21, but regarding acts committed by Japan prior to then.

In 2012, the ICJ in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* determined that the temporal scope of a State Party's obligation to prosecute under article 7 (1) of the Convention is limited to offenses committed after the Convention's entry into force, although neither state in the dispute raised the issue (paras. 96-105). However, in his separate opinion, Judge Cançado Trindade pointed out that the Convention against Torture, unlike other human rights treaties, is silent regarding non-retroactivity and that the majority opinion did not consider Committee against Torture's more recent jurisprudence in *Bouabdallah Ltaief v. Tunisia* and *Suleymane Guengueng et al. v. Senegal*. He agreed with Belgium's contention that the obligation to prosecute under article 7 (1) is procedural in nature and that holding Senegal responsible for the continued failure to prosecute after the Convention's entry into force for Senegal is not a retroactive application. With respect to the majority opinion, its conclusion that the obligation to prosecute under article 7 (1) did not apply to acts prior to the Convention's entry into force for a State Party relied upon an interpretation that "nothing in the Convention against Torture reveals an intention" to require a State party to criminalize such prior acts of torture under Article 4 or to establish its jurisdiction over such acts in accordance with Article 5.

As the ICJ has not yet decided the question of whether the obligation under article 14 (1) to provide the victim with redress and an enforceable right to fair and adequate compensation, which includes "the means for as full rehabilitation as possible", applies to acts prior to the Convention's entry into force for a State Party, it can still be argued that "as full rehabilitation as possible" reveals an intention to apply the obligation to such prior acts of

torture.

The Committee, in its concluding observations on the sixth and seventh periodic reports of Canada in 2012 and 2018, respectively, has also expressed the view that the application of the jurisdictional immunities of a foreign state and its property in domestic courts (sovereign immunity) in suits brought by victims of torture may violate the obligation to provide the victim with redress and an enforceable right to fair and adequate compensation under article 14 (1) of the Convention.

In her 1996 report, Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy recommended that:[11]

> 138. Non-governmental organizations working at the international level should continue to raise these issues within the United Nations system. There should also be an attempt to seek an advisory opinion of the International Court of Justice or the Permanent Court of Arbitration.
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> 139. The Governments of the Democratic People's Republic of Korea and the Republic of Korea may consider requesting the International Court of Justice to help resolve the legal issues concerning Japanese responsibility and payment of compensation for the "comfort women".

In 1996, there were no legal means for Japan and South Korea to initiate inter-state proceedings without joint agreement. However, as discussed above, the two states have since made declarations recognizing the competence of the Committee against Torture to receive and consider communications by a State Party claiming that another State Party is not fulfilling its obligations thereunder. Both states have acceded to the Convention without declaring reservations to the ICJ's jurisdiction to hear disputes under article 30 (1) thereof.

The South Korean government must fulfil the victims' right to justice and reparation by initiating inter-state proceedings under articles 21 and 30 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[11] Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45: Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime, UN Doc. E/CN.4/1996/53/Add.1 (4 January 1996)