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JAPAN

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The Foundation of Japanese Honorary Debts requests the Human Rights Council, during the forthcoming review of the present human rights situation in Japan, to point out that the Government of Japan must clear its past honorably and directly with the victims of the Japanese Imperial Army during World War II, in accordance with the Third Geneva Convention.

1. In understanding the Human Rights situation in Japan today the Human Rights Council must take into consideration how Japan deals at present with its obligations resulting from its negligence of Human Rights during World War II, in particular to Dutch nationals in the Dutch East Indies (now Indonesia) during 1941-1945.
2. Japan remains tainted and cursed for its past military atrocities secretly ordered or willfully permitted by the Japanese government and by the leaders of the armed forces. All war crimes.
3. Despite many verbal apologies by successive Japanese Prime Ministers, Japan dismisses its obligations referring to the 1951 San Francisco Peace Treaty in which it illegally absolved itself of its war crimes in Article 14(b) violating recognized principles of international humanitarian law including Articles 6 and 131 of the Third Geneva Prisoner of War Convention of 1949.
4. Japan's arrogantly waiving of the possibility to claim individually is hypocritical. To apologize for war crimes and not to redress the loss of health and property to the individual victims is rubbing salt in the still open wounds caused by the Japanese military terror and brutality.
5. The United Nations recognizes that war crimes and crimes against humanity are the greatest crimes in International Law and has placed no time limitations on claims regarding war crimes. The Japanese war crimes committed during the occupation of Dutch East Indies from 1941-1945 grossly violated United Nations' instituted international law and cannot be absolved in the San Francisco Peace Treaty nor the Stikker-Yoshida Protocol.

We refer to our previous submissions at the UPR 2nd session of May 2008 and the UPR 14th session of November 2012, country under review Japan. Our statements in our submissions still hold.

The in The Netherlands based Foundation of Japanese Honorary Debts, established in 1990, continues to submit its grievances on behalf of its members (100,000 registered) as individual stakeholders in the forthcoming Review of Human Rights in Japan. The Foundation is registered as a non-governmental organization (NGO) with roster status with the United Nations Economic and Social Council on Human Rights, representing Dutch prisoners of war, civilian internees (men and boys 12 years and older, women and children; families were separated) and those Dutch nationals who were on racial grounds left outside the Japanese concentration camps in the Dutch East Indies. All Dutch nationals, that were present in the Dutch East Indies, are victims of the Japanese military occupation of the Dutch East Indies during World War II, now 72 years ago. Much of the cruelties committed by the Japanese Military and their enforced "allies" have been subject to study, publication and condemnation. The acknowledgements and apologies by respective Japanese governments to the victims have been political, protecting commercial interests. They have never been accepted by the individual Dutch victims.

- At the start of the Japanese invasion about 300,000 Dutch nationals lived in the Dutch East Indies, 46,000 POW's and 120,000 civilians (elderly men and boys 12 years and older, women and children; families were separated) were interned in concentration camps, 140,000 were left outside the camps on racial grounds;
- 45,000 Dutch nationals died due to the Japanese cruelties and hostilities;
- 75,000 of the surviving Dutch nationals suffered incurable disorders;
- 95% of the Dutch nationals lost their households and private property;
- 15% of the Dutch who survived are still alive, they cannot forget their ordeal and continue to live with traumas and other health problems.

Referring to the 1951 San Francisco Peace Treaty as well as to the The Hague convention of 1907, the Japanese High Court concluded that individual victims cannot claim reparations from the government of Japan. In the opinion of the High Court only a government can commence legal proceedings for such claims.

The High Court in its verdict pointed out that despite the “waiving of individual claims” by the Allies under the 1951 Peace Treaty, the Prime Minister of Japan, at the time Mr. Shigeru Yoshida, concluded, together with the Dutch Foreign Minister Mr. Stikker “that certain types of private claims by Allied nationals which the Japanese Government might wish voluntarily to deal with.” This wish was further elaborated in a protocol between the governments of Japan and The Netherlands dated 13 March 1956. In article I of this protocol it is made clear that Japan acknowledges the wrongdoings of its military, violating Human Rights:

Quote *“For the purpose of expressing sympathy and regret for the sufferings inflicted during the Second World War by agencies of the Government of Japan upon Netherlands nationals, the Government of Japan shall voluntary tender as a solatium US \$10,000,000 to the Government of The Kingdom of The Netherlands on behalf of those nationals.”* unquote.

At the time of signing this protocol it was known that the amount payable would have to be shared by 110,000 concentration camp victims only. On average \$ 100 per person was paid via the Dutch Government (less than 10 cents per day of detention).

Those Dutch nationals who were left outside the camps on racial grounds were not mentioned!

On numerous occasions the Foundation of Japanese Honorary Debts advised both the Dutch as well as the Japanese government that the Stikker-Yoshida protocol was “illegal” and in violation with international humanitarian law.

Article 6 of the Third Geneva Convention of 1949 restricts High Contracting Parties - Japan and the Netherlands - from entering “special agreements” such as the Peace Treaty and the Stikker-Yoshida protocol diminishing the rights of Dutch victims granted under humanitarian law. There is no statute of limitations for war crimes and crimes against humanity.

Article 14(b) of the San Francisco Peace Treaty and article III of the Stikker-Yoshida protocol provide that the Japanese government waived all individual claims of the Dutch from Dutch East Indies against Japan. As a matter of International Law – Third Geneva Convention of 1949 - the individual Human Rights of the Dutch victims cannot be waived by the Japanese government being one of the “High Contracting Parties” to the Peace Treaty.

Article 131 of the Third Geneva Convention provides that no High Contracting Party can absolve itself or any other High Contracting Party, i.e. Japan, in respect of breaches in article 130. These breaches include “willful killing, torture, or inhumane treatment, including biological experiments, willfully causing great sufferings or serious injury to body or health.” Japan committed these breaches systematically and frequently. Therefore Japan could not absolve itself of liability in the Peace Treaty and the Stikker-Yoshida protocol.

The United Nations, thus the Human Rights Council, must in its review take in consideration, even though the Human Rights abuses by Japan’s military were committed prior to the formation of the United Nations, that:

- a. War crimes have no statute of limitations, including those committed during World War II,
- b. Japan illegally absolved itself of its war crimes after the formation of the United Nations and has set forth a continuing human rights violation.

Another aspect which should be considered in the status of Japan’s Human Rights situation in the past is that Japanese authorities intended to commit genocide at the end of the war.

Members of the Foundation of Japanese Honorary Debts recall that in the early days of August 1945 they had to dig trenches and that the Japanese installed machine guns directed at these trenches and inside the camps. The obvious intention was to kill them all and leave no traces; an attempt to commit genocide.

Although the attempt to commit genocide is an incomplete crime, the Whitaker Report states: “Other attacks and killings do, of course, remain heinous crimes, even if they fall outside the definition of genocide.” The Japanese Government and its people must be ashamed of the brutalities, war crimes and intentions to commit genocide on the Dutch nationals of the Dutch East Indies by their Imperial Army and Navy in the name of Hirohito, Emperor Showa.

The gross violation of Human Rights committed – in the name of the Emperor of Japan – is a matter of International Law to which Japan as a member of the United Nations is obliged. There is no statute of limitations to these violations. Japan can only absolve its responsibility with the individual victims. Japan's claim that the 1951 San Francisco Peace Treaty and Stikker-Yoshida agreement dealt with the reparation issue discard International Law and United Nations conventions. The Japanese government ignored International Law and UN Conventions in ratifying the San Francisco Peace Treaty in 1952. The Japanese government as High Contracting party has still to come to terms with the individual Dutch victims, and not with the Dutch government.

Since 1994 the Foundation of Japanese Honorary Debts has submitted 268 (March 2017) petitions to the Prime Ministers of Japan seeking a response from the Japanese government to admit the facts and to come forward with an acceptable acknowledgement and reparation. For the sake of long lasting relationships they must accept that in matters of integrity and custom, mores must sustain and receipt of those petitions should have been acknowledged.

Japan will benefit globally in publishing the real truth about the misconduct of the Japanese military during World War II and accepting responsibility for it in accordance with the Third Geneva Convention!

Conclusion.

The Foundation of Japanese Honorary Debts requests the Human Rights Council:

1. to review Japan's human rights violations committed by its military against the Dutch during the military occupation of Dutch East Indies during 1941 - 1945;
2. to establish that Japan, with the 1951 San Francisco Peace Treaty and 1956 Stikker- Yoshida Protocol, illegally absolved its responsibility to redress individual Dutch victims directly violating recognized principles of international Humanitarian law, the Third Geneva Convention of 1949;
3. to request the International Court of Justice to give an advisory opinion on the legality of Japan absolving its responsibility to the individual Dutch victims thus violating the Third Geneva Convention.

The Foundation of Japanese Honorary Debts submits this appeal in good faith and trust to the Human Rights Council. It urges that the Human Rights Council recommend the Government of Japan to resolve this long lasting issue in ignoring the Third Geneva Convention.