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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Written statement* submitted by Japan Fellowship of Reconciliation,
non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 July 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organisation(s).

**Gender and *de facto* impunity--Responses of the Japanese legal system
against military sexual slavery by Japan**

Introduction

1. JFOR wishes to draw the attention of the High Commissioner for Human Rights and the Sub-Commission to the following information, a summary of the article¹ in print written by “the author”, Prof. Etsuro TOTSUKA².

The finding of a success story

2. Could the legal system of the Japanese Empire in 1930s have reversed its military's attempt to continue the practice of sexual slavery? In order to answer this question, the author wishes to stress the importance of his recent findings³.

3. The author luckily found and obtained the earliest district court and appeal court judgments of the Japanese criminal court against ten private entrepreneurs, who deceived and trafficked in 15 Japanese women in Nagasaki to a Japanese Naval "comfort station" in Shanghai, China. These lower courts' judgments in 1936 have been possessed by nobody but the Japanese government, which neither submitted them to the Diet nor to the Korean government, although they publicly promised to make a thorough investigation for both of them.

4. It was already known as early as in 1997 that, in 1937, the then Supreme Court⁴ endorsed the judgment of the appeal court. The lower courts' judgments, however, were not yet found.

5. The Nagasaki District Court Judgment⁵ issued on 14th February 1936 by a panel of three judges of the Criminal Division of the Nagasaki District Court clearly shows the following facts.

6. The defendants were ten Japanese, who belonged to a group of eight men and two women living in Nagasaki except for one man, who lived in Shanghai.

7. The judges found that all defendants under a series of conspiracies deceived and trafficked in 15 Japanese women in Nagasaki to a Japanese Naval "comfort station" in Shanghai, China and that they were guilty of committing crimes defined by Art. 226 (1) and (2) of the Penal Code⁶.

8. The judges sternly sentenced them to penal servitude for periods up to three years and six months.

9. It is important to take note of the date, 7th March 1932, when the initial conspiracy was entered into by three male defendants at an inn in Shanghai. They discussed how they could abduct by deception and traffic in women from Nagasaki, Japan to a “comfort station” designated by the Japanese Imperial Navy to be newly set up in Shanghai, China. There, they agreed on the methods to recruit women to a Naval “comfort station”, pretending that the women would be well paid for works in ordinary workplaces such as a restaurant or cafe, without telling them the truth that they were to be forced to give sexual services to the Japanese officers and soldiers.

10. They approached the fifteen women victims during the period from 10th March to the beginning of May. The date of the first shipment of the three women victims from Nagasaki to Shanghai was 14th March 1932.

11. This finding strongly suggests that this Nagasaki District Court judgment was probably made in relation to one of the first cases of abductions of military “comfort women” recruited to the first Naval “comfort stations”.
12. The fifteen women victims were recruited from Nagasaki and seemed to be Japanese home land citizens. As the known former “comfort women” except for a few are not Japanese homeland citizens, this judgment adds a fresh aspect for the researchers in this area.
13. The pattern of recruitment is strikingly similar to the many Korean cases of abductions of women.
14. The legal basis of the judgment was Art. 226 (1) and (2) of the Penal Code. This article could be enough in substance to implement the provisions of international law, namely three instruments against trafficking in adult women for prostitution⁷.
15. The judgment successfully punished the perpetrators of abductions of and trafficking in the women to a Naval “comfort station” by enforcing the Penal Code. This meant that the Japanese domestic judicial system effectively achieved realization of the rule by law and that Japan abided by international obligation as far as these Nagasaki cases were concerned.

Limitations of the judicial system

16. The author, however, should also point out significant limitations in this success story, which could have provided a good chance to prevent recurrences of similar crimes.
17. The contents of this judgment strongly suggest that the Japanese police and prosecutors, namely the Japanese Government already knew that the conduct of defendants conspiring with the military against those fifteen women victims constituted crimes, namely cross border abductions. They failed, however, in punishing any military personnel, who must have initiated a series of actions to abduct the women victims. This must have been the starting point of *de facto* impunity of the enormously large scale military's crimes committed later.
18. The limitations of the judicial actions, which should be examined into by researchers, suggest that legislation of domestic laws and adoption of international treaties are not enough to prevent further occurrences of violations of human rights.
19. If the Japanese law that incorporated international law had been further effectively implemented, it must have been possible for Japan to prevent the further recurrence of violations of women's human rights. Not only the Japanese domestic legal system but also international law system, however, did not have enough mechanisms for effective implementation.
20. The judgment dated 28th September 1936 of the Nagasaki Appeal Court basically supported the Nagasaki District Court Judgment, although it reduced the periods of penal servitude for five of eight appellants.
21. The Supreme Court judgment dated 5th March 1937 turned down the further appeal made by the seven appellants (defendants).
22. No other case of punishment made by the Japanese Administration of Justice of the crimes against the “comfort women” committed by any other person has been known even today. Only one known precedent of the punishment of the perpetrators of crimes against the Dutch victims of military

sexual slavery by Japan is the judgment that was delivered by a military war crime tribunal of the Dutch East Indies in 1946⁸

***De facto* impunity by the administration**

23. Instead of suppressing the trafficking in such women, the Home Ministry, which controlled police decided to tolerate it, as it was regarded as a necessary evil.⁹ It is clear that the Home Ministry knew international law provisions. The note ordered that those, who claimed any involvement of Imperial Forces, had to be suppressed in order to keep honour of the Imperial Forces. It was cunningly formulated, however, so that any persons, who were ordered by military to transport such women to China, could do so insofar as they concealed the facts that they were working for military and that the destination was military “comfort stations”. Thus, all women recruited to military “comfort stations” had necessarily to be deceived. As a result, all cases of trafficking in women to military “comfort stations” inevitably constituted crimes of abduction by way of deception, in violation of Art. 226 of the Penal Code.

24. This was soon followed by one of the key military documents, “a notice entitled “Matters Concerning the Recruitment of Women to Work in Military Comfort Stations,” issued on March 4, 1938 by an adjutant in the Ministry of War.”¹⁰ The Ministry of War ordered that “This task will be performed in close cooperation with the military police or local police force of the area.” This was so ordered “for preserving the honor of the army and avoiding social problems.”

25. Thus, the system for *de facto* impunity was completed.

Notes

¹ TOTSUKA, Etsuro, Could we prevent systematic sexual violence against women during war time?--Learning from the history of the Japanese case of “comfort women”—, in: (In print) The proceedings of the International Law Conference: The Challenge of Conflict International Law Responds, 26-29 February 2004, Adelaide, Australia.

² Professor, Ryukoku University, Kyoto, Japan; and JFOR’s Main Geneva Representative to the UN.

³ Kyodo News Agency, Wartime ‘comfort women’ rulings uncovered, The Japan Times, June 16, 2004.

⁴ A report made by the Mainichi Shimbun (*Osaka*) on 6 August 1997 on the Supreme Court judgment on 5 March 1937, which had been published in the 1937 selected judgments of the Supreme Court of Imperial Japan.

⁵ Nagasaki Chiho Saiban-sho Keiji-bu Hanketsu, Showa 11 nen, 2 gatsu, 14 nichi, Kokugai Iso Jiken, Hikoku-nin F., Minoru hoka 8 mei.

⁶ “A person who kidnaps or abducts another for the purpose of transporting the same to a foreign country shall be punished with penal servitude for a limited period of not less than two years. 2. The same shall apply to a person who buys or sells another for the purpose of transporting the same to a foreign country or who transports a person kidnapped, abducted, or sold to a foreign country.”

⁷ ? The 1904 International Agreement for the Suppression of the White Slave Traffic. ? The 1910 International Convention for the Suppression of the White Slave Traffic. ? The 1921 International Convention for the Suppression of the Traffic in Women and Children.

⁸ UN. Doc. E/CN.4/1995/NGO/40.

⁹ YOSHIMI, Yoshiaki, translated by O’BRIEN, Suzanne, *Comfort Women Sexual Slavery in the Japanese Military During WW ?*, Colombia University Press (2000), p. 63.

¹⁰ YOSHIMI, *op. cit.*, pp. 58-59.