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Japan:

Alternate report:

Submitted by Japan Fellowship of Reconciliation (JFOR),
a non-governmental organization in special consultative status with ECOSOC
--A way towards legislative solution:
the issue of "Comfort Women", namely military sexual slavery by Japan—

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JFOR welcomes the list of the issues sent to Japan by the CERD. and wishes to focus on its paras. 7 and 8. They raised the issue of violence against women, which, we believe, include violence against the women victims of military sexual slavery by Japan.

The sixth Japanese government's report (CEDAW/C/JPN/6), which only mentions about the AWF in paras from 91 through 97, does not report that Japan is now legally capable to settle the issue of "Comfort Women", namely military sexual slavery by Japan through legislative measures by the National Diet of Japan, although this must be a matter of concerns of the CEDAW in relation to Articles 2 and 5 of the CEDAW. Many victims are passing away year by year and the time for Japan to start reconciliation is becoming shorter and shorter. The government of Japan regrettably seems to be waiting for the dying out of all victims.

1. The information on the issue of "comfort women" and the UN

The author representing International Educational Development (IED) made the first oral intervention before the UN Commission on Human Rights on 17 February 1992, in which Japan was condemned for its crimes against humanity onto the Korean and other Asian "sex slaves" (UN doc. E/CN.4/1992/SR.30/Add.1.).

This was followed by consistent and persistent activities made by more influential UN NGOs such as the International Commission of Jurists, the World Council of Churches, the International Fellowship of Reconciliation, the International Association of Democratic Lawyers, Liberation, World Alliance of Reformed Churches, Amnesty International and JFOR as well as many local civil groups outside of and inside Japan for 16 years. They attended nearly all of the UN human rights meetings, in particular the Working Group on Contemporary Forms of Slavery, the Sub-Commission on Promotion and Protection of Human Rights, and the Commission on Human Rights as well as Human Rights Council UPR, the CEDAW, the CESC, the CAT and the CCPR. Thus, they succeeded in proving the capacity of the UN over the issue of "military sexual slavery" by Japan and secured some resolutions, reports, recommendations from the UN and ILO bodies against Japan as well as treaty bodies.

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Good evidence might make forces of persuasiveness, even if it was presented by only one person (Y. Yoshimi, *Jugun ianhu shiryousyu*, Otsuki shoten (1992)). Testimonies of the victims were well researched by Korean scholars (K. Howard (ed.), *True stories of Korean comfort women*, Cassell (1995)). Japanese historians' researches (Center for Research and Documentation on Japan's War Responsibility, *The Report on the Issue of Japan's Military "Comfort Women"* (1994)) were submitted to the UN WGCFS. Sound and well developed legal arguments could have also strong forces. A mission report by the International Commission of Jurists (U. Dolgopol & S. Paranjape, *Comfort Women an Unfinished Ordeal* (1994), ICJ, p. 205.) gave a strong impact to the UN and world public opinion. The International Fellowship of Reconciliation (IFOR) and the Japan Fellowship of Reconciliation (JFOR) submitted some new legal aspects in their written statements to the UN (UN Doc. E/CN.4./1993/NGO/36; E/CN.4./1994/NGO/19; E/CN.4./Sub.2/1994/NGO/30; E/CN.4./1995/NGO/37; E/CN.4./1995/NGO/40; & E/CN.4./Sub.2/2000/NGO/12; E/CN.4./Sub.2/2002/NGO/23; E/CN.4./Sub.2/2001/NGO/24; E/CN.4./Sub.2/2003/NGO/46; E/CN.4./Sub.2/2004/NGO/28; & E/CN.4./Sub.2/2005/NGO/35). The Japan Federation of Bar Associations clarified some vital legal issues including treaty defense of the Japanese government in their two legal opinions (*Recommendations on the Issue of "Comfort Women"* (January 1995) & *Supplementary Explanation of the Recommendations on the Issue of "Comfort Women"* (June 1995)). The Federation of Korean Trade Unions submitted a few communications including a detailed legal analysis (*"Comfort Women" Military Sexual Slavery by Japan* (1997).) concerning Japan's violations of the Forced Labour Convention to the ILO Committee of Experts.

2. The response made by Japan

The Japanese government led by then P.M. Mr. Ryutaro Hashimoto, who had been the top leader of the Japanese ex-soldier's bereaved family's association before he became Prime Minister, argued that the issue of reparation was settled by peace treaties and that the Government would never pay compensation to the victims. Other Japanese government's leaders have been maintaining the same position.

The Asian Women Fund, a private fund created by the Japanese civilians being assisted by the Japanese government did not resolve the legal state responsibilities of Japan of this issue and finished its operation in March 2007. The government has been refusing to take any other policy than the AWF.

The Special Rapporteur on violence against women of the CHR, Ms. Radhika Coomaraswamy in her report (E/CN.4./1996/53/Add.1) rejected the Japanese government's argument as regards the AWF policy.

3. Breaking the treaty defense

As for the JFOR's argument² against the Japanese government treaty defense prepared by this author was submitted by JFOR to the UN HRC UPR in February 2008. As it is available at the UN Website³, it is omitted herewith.

The victims are still entitled to demand individual reparation against the Japanese government.

² Postwar responsibilities of Japan: "Comfort Women", military sexual slavery — Non-fulfillment of obligations for apology, compensation, and punishment and the criticism of the treaty defense by Japan —

³UNOHCHR Website: Visited on 30 August 2008 at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/JP/JFOR_JPN_UPR_S2_2008_JapanFellowshipofReconciliation_uprsubmission.pdf

4. A way towards legislative solution

Firstly, the proposals made by the Diet Members of the opposition parties for a state apology by legislation of the Japanese National Diet for state payment were successfully submitted to the House of Councilors and proved that such legislation would not violate any international law or the Constitution. They have been, however, blocked by the conservative Diet Members supporting the government⁴.

Being encouraged by the resolutions addressed to Japan for its state apologies to the victims made the legislatures of the USA, EU, the Netherlands and Canada in 2007, the same bill was submitted to the Diet on 12 June 2008. It was, however, was aborted at the end of the Diet Session because of non-cooperation from the ruling parties. No report was made by the government to the HRC on such Diet Members' efforts.

There exists a way out towards legislative solution. It is the lack of political will in the government for apology to the victims that blocks the hope for the solution.

The translation of the Bill is attached at the end of this paper. All supporting groups of the victims in the victimized countries such as the ROK are welcoming this Bill. As a result, there is a strong hope that this issue is voluntarily settled by the National Diet of Japan.

Secondly, the legislative proposals submitted by the Diet Members of the opposition parties to the House of Representatives for state investigation of the sufferings during war time have been also blocked by the conservative Diet Members supporting the government⁵.

4 The author, on behalf of Japan Fellowship of Reconciliation, has been reporting to the UN on the slow but steady development of the legislative movement as follows. In 2001: See: E/CN.4/Sub.2/2001/NGO/24, 24 July 2001, Written statement submitted by Japan Fellowship of Reconciliation (JFOR), a non-governmental organization in consultative status (Special)"Comfort women": Current negative reactions and positive developments, to Sub-Commission on the Promotion and Protection of Human Rights, Fifty-third session, which stated "Three opposition parties succeeded, for the first time, in submitting to the House of Councilors a united Bill for "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act" below." In 2002: See: E/CN.4/Sub.2/2002/NGO/23, 25 July 2002, Written statement submitted by Japan Fellowship of Reconciliation, a non-governmental organization in special consultative status to Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fourth session, which stated "For the first time in history, on 18 July 2002, the Committee on Cabinet Affairs of the House of Councilors of the Diet of Japan started its substantial deliberation on a Bill, "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act"." In 2003: See: E/CN.4/Sub.2/2003/NGO/46, 30 July 2003, Written statement submitted by Japan Fellowship of Reconciliation, non-governmental organizations in special consultative status "Comfort Women": Systematic rape, sexual slavery and slavery-like practices, to the Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fifth session, which stated "Members of the House of Councilors of the Japanese National Diet, Ms. OKAZAKI, Tomiko; Ms. MADOKA, Yoriko; Ms. CHIBA, Keiko; Ms. KAWAHASHI, Yukiko; Ms. YOSHIKAWA, Haruko; Ms. HATTA, Hiroko; Mr. YOSHIOKA, Yoshinori; Ms. OWAKI, Masako; Ms. FUKUSHIMA, Mizuho; Mr. KUROIWA Takahiro; Mr. SHIMABUKURO Soko; Ms. TAJIMA, Yoko; and Ms. TAKAHASHI, Kiseko with support of other 73 Members of the House, on 31 January 2003, re-introduced a Bill, "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act" to the House at the 2003 Ordinary Diet Session. The Bill is the same as the previous bill See: E/CN.4/Sub.2/2001/NGO/24 and E/CN.4/Sub.2/2002/NGO/23, which was abolished at the end of the last Diet session in December 2002. ...The National Diet of the Republic of Korea, a major victimized nation, made the following significant resolution that guaranteed success of the Bill mentioned above on 26 February 2003 at the opening of President ROH Moo-hyn's Era."

5 The information of the movement to actualize the legislation for the fact-finding is available in Japanese at the following web site of "Senso-Higai-Chosakai-Ho wo Jitsugensuru Shimin-Kaigi", hit on 10 February 2004. <http://www.geocities.co.jp/HeartLand/Keyaki/5481>.

The people in Japan chose the oppositions in the 2007 election of the House of Councilors and the people are to decide the policies of Japan in the next general election of the House of Representative.

JFOR requests the HRC to encourage not only the Government but also the National Diet as well as the people in Japan to work for the solution of this issue.

Promotion of Resolution for Issues concerning Victims of
Wartime Sexual Coercion Act (Bill)

(Objectives)

Article 1:

In view of the fact that prior to and during World War II, with the involvement of the Imperial Japanese Army and Navy, organized and prolonged coercion of sexual acts were carried out against women and, because of such coercion, the dignity and honor of the women were severely violated and considering that it is the imperative task for the nation of Japan, under its responsibility to take quick steps to restore the honor of the women, the objectives of this Act lie in providing the necessary fundamental grounds for the resolution of the issues concerning the victims of wartime sexual coercion and, by doing so, in improving the trustworthy relationship between the peoples of the concerned nations and our people and in making it possible for our country to occupy an honored place in international society.

(Definitions)

Article 2:

In this act, "wartime sexual coercion" means the act of organized and prolonged sexual coercion of women, who were recruited against their will with direct or indirect involvement of the imperial army and navy before and during the past World War, as well as a series of military actions including incidents prior to it.

2 In this Act, "victims of wartime sexual coercion" are the women who have suffered from sexual coercion during the wartime and are not those who had a permanent domicile, registered under Koseki-ho (Act no. 26 of the 3rd year of Taisho),

(Measures to Restore Honor)

Article 3:

The government must singularly express an apology for the violation of the honor and dignity of the victims of wartime sexual coercion and implement necessary measures to restore their honor as soon as possible.

2 The measures in the preceding paragraph shall include monetary payment to the victims of wartime sexual coercion.

(Fundamental Policies)

Article 4:

The government must establish fundamental policies on measures for the resolution of the issues concerning the victims of wartime sexual coercion ("the fundamental policies" hereafter).

2 The fundamental policies shall prescribe the following terms.

- (1) The terms concerning the contents of the measures and the methods of their implementation as stated in the previous Article.
- (2) The terms concerning the matters such as negotiations with the concerned states that would be necessary to implement the measures as stated in the previous Article.
- (3) The terms concerning the investigation of yet to be uncovered circumstances of wartime sexual coercion and the damages caused by them.
- (4) Other than the terms as stated in these three paragraphs, the terms that are

necessary for acceleration of a resolution with regard to the victims of wartime sexual coercion.

3 Whenever the government establishes fundamental policies or implements changes in existing fundamental policies, it shall report them to the Diet and make them public.

(Care for Relationship with the Governments of the Concerned States)

Article 5:

In implementation of the measures as stated in Article 3, bearing in mind the relationship with the international treaties and other international agreements that our country has concluded, the government shall exercise special care for its process, in discussing the matters with the governments and other authorities of the concerned states, and securing their understanding and cooperation.

(Care for Human Rights of Victims of Wartime Sexual coercion)

Article 6:

In implementation of the measures as stated in Article 3, the government, bearing in mind the intention of the victims of wartime sexual coercion, shall fully exercise care for their human rights.

2 In carrying out the investigation as stated in Article 4, Paragraph 2, (3), the government shall exercise care not to violate the honor of the victims of wartime sexual coercion and of other concerned individuals.

(People's Recognition and Understanding)

Article 7:

In implementation of the measures as stated in Article 3, the government shall try to secure recognition of and understanding for the measures among the general public

(Measures including Budget)

Article 8:

The government shall secure the budgetary, legal or other measures that are necessary for the promotion of a resolution of the issues concerning the victims of wartime sexual coercion.

(Report to the Diet)

Article 9:

Every year, the government shall report to the Diet on the measures that it has implemented for the resolution of the issues concerning the victims of wartime sexual coercion and on the findings produced by the investigation as stated in Article 4, Paragraph 2, (3) and it shall also publicly announce the summary of the report.

(Council for Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion)

Article 10:

The Council for Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion (the "Council", hereafter) shall be established at Naikakuhu (the Ministry of the Cabinet).

2 The Council has the following administrative functions.

- (1) To outline the draft fundamental policies.
 - (2) To arrange the necessary coordination of the pertinent administrative institutions regarding measures to resolve issues concerning the victims of wartime sexual coercion.
 - (3) To promote the investigation in accordance with Article 4, Paragraph 2, (3).
 - (4) Other than stated in the previous three sub-paragraphs, to examine important matters regarding the promotion of the resolution of issues concerning the victims of wartime sexual coercion and to promote the implementation of pertinent measures relative to them.
- 3 The Council, when it considers it necessary to carry out the business within its mandate, may ask the heads of concerned administrative authorities and concerned local authorities to cooperate in the submission of documents, clarification of materials and so on.
- 4 The Council, when it considers it necessary to carry out business within its mandate, may request the necessary cooperation of any persons other than those stated in the previous paragraph.

(Organization of the Council)

Article 11:

The Council consists of a President and Council Members.

2 The Prime Minister shall appoint the President.

3 The Prime Minister shall appoint the Council Members from among the Chief Cabinet Minister, the heads of the pertinent administrative authorities and Ministers with the special mandate stipulated in Article 9, 1 of the Establishment of Cabinet Act.

(Committee for Promotion of the Investigation)

Article 12:

The Committee for Promotion of the Investigation shall be set up under the Council in order to authorize it to carry out the tasks stated in Article 10, 2 (3).

2 The Committee for Promotion of the Investigation, regularly or whenever necessary, shall formulate the progress of the investigation as well as its results in accordance with Article 4, Paragraph 2, (3) and report them to the President.

3 The Prime Minister shall appoint the Members of the Committee for Promotion of the Investigation from among those staff of the pertinent administrative authorities with the appropriate knowledge, expertise, and experience.

(Delegated Legislation by Ordinances)

Article 13:

In addition to what has been stated in the three previous articles, necessary mechanisms concerning the organization and management of the Council shall be legislated by ordinances.

Additional Clauses

(Omitted)

(Tentative Translation by Sen.Shoji Motooka's Office, Mar.2001)