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SPECIFIC HUMAN RIGHTS ISSUES

Written statement* submitted by Asian-Japan Women's Resource Centre,
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.

[24 July 2003]

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

“Comfort women”: Systematic rape, sexual slavery and slavery-like practices

The need for guidelines concerning remedy to victims of sexual violence
in conflict situations

The Asia-Japan Women's Resource Center (AJWRC), in cooperation with Violence Against Women in War Network Japan (VAWW-NET Japan), wishes to draw the attention of the Sub-Commission on the Promotion and Protection of Human Rights and the High Commissioner for Human Rights to the necessity of guidelines for remedy to the victims of sexual violence in conflict situations.

Violence against women in war and conflict situations continues today in many parts of the world¹. VAWW-NET Japan, supported by AJWRC, has been working on the issue of Japan's military sexual slavery, the so-called "comfort women" issue and has conducted many interviews with survivors throughout the Asia-Pacific region. These women, who have struggled to survive for these 60 years, are still suffering.

In December 2000, international community, including VAWW-NET Japan and other Asian and international NGOs, held the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (the Women's Tribunal), with 64 survivors from 8 countries and regions taking part. The Tribunal was global civil society's response to the failure of states to fully redress the crimes committed against the "comfort women". Internationally renowned experts in international law, such as Presiding Judge Gabrielle Kirk McDonald, who is the former president of the International Criminal Tribunal for the Former Yugoslavia, served as judges and prosecutors. The Judgment, delivered in The Hague, The Netherlands, in December 2001, contains exhaustive factual findings on the rape camps run by the Japanese military, as well as a full legal analysis. The Judgment acknowledges the damage that women survivors suffer even today as a direct result of both initial and continuing violations of human rights committed by the state of Japan.

Working with lawyers and experts who participated in the Women's Tribunal, VAWW-NET Japan has extracted important elements from the Judgment in order to draft some guiding principles for providing remedy to victims of sexual violence in conflict situations. The Sixth Asian Solidarity Conference, held in Seoul, in April 2003, approved these draft principles to be submitted to the UN.

After analyzing the Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni², we have found it insufficient for gender-specific crimes, and for addressing continuing violations. Special guidelines are necessary for victims of sexual violence in conflict situations. We believe that a UN human rights body must urgently look into this issue and make recommendations for adequate remedial measures in order both to prevent further gross violations of human rights, and to promote the welfare of victims who are still suffering today.

Recommendation to the present Sub-Commission

The Sub-Commission should appoint a Special Rapporteur to study gender-specific crimes and continuing violations, and to make guidelines concerning remedy for victims of sexual violence in conflict situations.

Annex

Draft Principles and Guidelines Concerning Remedy and Reparations for Victims of Grave
Sexual Violence in Armed Conflicts

(extract)

Chapter 1 General Remarks

Article 1: The Gender Perspective in International Human Rights and Humanitarian Law

Article 2: Sexual Violence as War Crimes and Crimes Against Humanity

Article 3: The Position of Survivors

Article 4: The Gender Viewpoint in Determining the Content of Remedy

Article 5: The Individual's Right of Claim Under International Law

Article 6: The Invalidity of the Waiver of Claims of the Individual by Treaties

Article 7: Those Eligible to Raise Remedy Issues

Article 8: The Duty to Change the Culture of Militarism and Gender-Inequality

Chapter 2 Illegal Acts

Article 9: Sexual Slavery as a Crime Against Humanity

Article 10: "Consent" and "Payment" in Sexual Slavery

In determining state responsibility for sexual slavery, the consent of the victims (the fact of positive involvement) and the presence of payment are not grounds to negate a finding of sexual slavery. Concerning "consent" and "payment" in sexual slavery, the following points must be taken into consideration:

- a) Survivors need not feel shame in having consented or submitted to sexual aggression. Such a reaction is rather an entirely reasonable and often inevitable response to sexual aggression.
- b) Since payment is no more than a "specious legal and economic term" used to disguise the reality of slavery, giving victims compensation often causes them additional harm by attempting to obscure the wrong done to them.
- c) Payment, even of prevailing wages, does not and cannot negate the crime of rape or slavery.

Article 11: Continuing Violations and the Resulting Damage in Sexual Violence

1. Continuing violations inflicted by the state upon the victims (survivors) of sexual violence include, but are not limited to, the following:
 - a) Denial, concealment, and distortion of the facts
 - b) Concealment and destruction of documents, and continuing concealment
 - c) Continuing denial, and failure to fully disclose the facts
 - d) Failure to prosecute those criminally responsible
 - e) Failure to provide reparations, including continuing failure to make a full and genuine apology, continuing failure to make official and fair compensation, continuing opposition to formal claims for reparations initiated by survivors (including opposition to court cases and to the reports of UN Special Rapporteurs, and others).
 - f) Failure to take measures to protect the integrity, well-being, and dignity of the human person, including continuing failure to repudiate denials of coercion by high-ranking government officials
 - g) Continuing discrimination, including failure to fulfill the continuing obligation of the state to take strong measures to address the discriminatory roots of sexual and gender-based violence, which persist in the culture of militarism and gender inequality.
 - h) Failure to take necessary measures to prevent recurrence such as education
2. Such harm as additional and continuing suffering in the nature of shame, social ostracism, anger, sorrow, despair, loneliness, the inability to find peace, economic hardship and impoverishment, loss of companionship, and unredressed health problems, that arise out of continuing violations, are also subject to reparations.

Article 12: Continuing Violations and the Scope of State Responsibility

In sexual violence, the scope of state responsibility that the state in question bears is not limited to the original crimes, but is extended by the "continuing violations" as described in Article 11, 1; the state is additionally liable under the international norms of state responsibility for continuing violations. Furthermore, the state's responsibility under international law also applies to subsequent actions of its organs and private agents who have obstructed and failed to make full reparations to the victims (survivors) and, in doing so, have perpetrated new and continuing violations against them.

Chapter 3: Access to Justice

Article 13: Pursuing responsibility of the State and a statute of limitations

Article 14: Law applied to continuing violations

Law applied to continuing violations is not limited to the law applicable at the time of the commission of the original act of violation, but contemporary law can also be applied.

Article 15: Redress (reparation)

1. When the reason for the failure to exhaust domestic remedies is that the pending proceeding has been unreasonably prolonged, a victim may bring claims to international law organs even if s/he has not yet exhausted local remedies.
2. The victim (survivor) of a continuing violation has the right to seek reparations for two kinds of harm: harm that flows from the original violations and the continuing harm incurred from the failure of the due party to meet the obligation to provide full and adequate reparations.
3. The reparations and other remedies must be proportionate to the gravity of the violations and the harm suffered. In particular, when a continuing violation is suffered by the victim, a broad scope of applicable remedies, including reparation, covering the period of continuation of the additional violation, is necessary.

Article 16: Prosecution of sexual slavery

Article 17: Elements of responsibility of the superior

Article 18: Treatment of victims' testimonies

Once a finding is made that rape or sexual slavery was committed systematically and on a large scale, any discrepancies in minor details between the testimonies (oral evidence) of the victim (survivor) and the documentation, or of the testimonies themselves, do not affect the findings as to the criminal responsibility of the accused concerning crimes against humanity.

Article 19: Protection of victims (survivors)

Chapter 4: The Content of Remedy and Reparations

Article 20 The Right of Victims to Reparations

Victims have the right to receive the following forms of remedy (reparations). Providing them with these reparations is the obligation of the state and civil society as a whole. The content of remedy includes, but is not limited to, the following. The specific content of reparations must be determined in consultation with the victims (survivors) themselves.

1. Satisfaction
2. Official and Full Acknowledgement (Apology)
3. Preservation of Memory

4. Gender Education, Empowerment, Equality
5. Access to Judicial Redress
6. Restitution
7. Compensation
8. Rehabilitation

¹ E/CN.4/Sub.2/2002/28

² E/CN.4/2000/62