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**SPECIFIC HUMAN RIGHTS ISSUES:  
WOMEN AND HUMAN RIGHTS  
CONTEMPORARY FORMS OF SLAVERY**

**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.

[26 July 2005]

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

## **Gender and *de facto* impunity by administration – Death of the Japanese legal system against military sexual slavery**

### **Introduction**

JFOR wishes to draw the attention of the High Commissioner for Human Rights and the Sub-Commission to the following recent findings: The recently unearthed 1936 Nagasaki District Court judgment declared that the abduction of women victims for the initial Japanese military “designated comfort stations” was in violation of then Criminal Code of Japan and this was eventually endorsed by then Supreme Court in 1937. These judgments made by courts, however, followed by *de facto* impunity, which put the Japanese legal system to death by the decisions made behind the closed doors of the Japanese administration. This information was published by an article<sup>1</sup> in print written by “the author”, Prof. Etsuro TOTSUKA<sup>2</sup>, who recently published the above mentioned judgment itself<sup>3</sup>.

### **The recent findings**

The author’s recent findings were received as a significant surprise<sup>4</sup>. He 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. The fact that these judgments in 1936 have been possessed by nobody but the Japanese government, which neither submitted them to the Diet nor to the Korean government and the UN was reported to the UN<sup>5</sup>.

It was already known as early as in 1997 that, in 1937, the then Supreme Court<sup>6</sup> endorsed the judgment of the appeal court. The lower courts' judgments, however, were not yet found.

The Nagasaki District Court Judgment<sup>7</sup> issued on 14<sup>th</sup> February 1936 by a panel of three judges of the Criminal Division of the Nagasaki District Court clearly shows the following facts.

The judges found that all ten 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 Code<sup>8</sup>. The judges sternly sentenced them to penal servitude for periods up to three years and six months.

The Penal Code article and those courts’ judgments could be enough in substance to implement the provisions of international law, namely three instruments against trafficking in adult women for prostitution<sup>9</sup>.

### **Limitations of the judicial system**

Then Japanese Government and courts 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.

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.

Another 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 1946<sup>10</sup>

### **Administrative power and *de facto* impunity**

How did the state of perfect *de facto* impunity arise?

If the Japanese Government had seriously tried to abide by international obligations and to implement the provisions of the Penal Code in order to prevent further recurrence of the crimes against the "comfort women", the cross border trafficking in such women would have been suppressed.

The Supreme Court judgment was followed by a series of administrative measures taken by the government.

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 as follows. It made the first involvement in the issue of "comfort women" in February 1938, issuing "a notice entitled "Matters Regarding the Treatment of Women Sailing to China" (dated February 23, 1938), the Home Ministry gave orders tacitly approving the transport of "women whose purpose {for going abroad} was the 'shameful calling'" (such as comfort women), but only in cases where their destinations were northern and central China."<sup>11</sup> In this note, 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".<sup>12</sup> 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 station" inevitably constituted crimes of abduction by way of deception, in violation of Art. 226 of the Penal Code.

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."<sup>13</sup> The Ministry of War, learning from the lesson of "people who kidnap women and are arrested by the police", also, instead of banning the recruitment of women to "comfort stations", ordered that "In the future, armies in the field will control the recruiting of women and will use scrupulous care in selecting people to carry out this task. This task will be performed in

close cooperation with the military police or local police force of the area.”<sup>14</sup> This was so ordered “for preserving the honor of the army and avoiding social problems.”<sup>15</sup>

This must have been followed by many meetings for “close cooperation”. “According to the records of the Consulate of Nanking, in April 1938 there was a gathering of relevant officials from the army, navy, and Foreign Ministry at the Nanking Consulate. They jointly agreed on matters concerning the authority to license and regulate imperial subjects engaged in various businesses. It was decided in regard to the army’s exclusive “store” (*shuho*) and comfort stations that “consulates will not interfere with establishments managed and supervised directly by the army.”<sup>16</sup>

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

Lastly, it should be asked, if women had been equally included in the judicial system as well as military and other governmental offices, would it have been different?

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<sup>1</sup> 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.

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

<sup>3</sup> Ryukoku Hogaku, Vol.37, No.3, December 2004, pp.312-365.

<sup>4</sup> Kyodo News Agency, Wartime ‘comfort women’ rulings uncovered, The Japan Times, June 16, 2004.

<sup>5</sup> UN Doc. E/CN.4/Sub.2/2004/NGO/28.

<sup>6</sup> 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.

<sup>7</sup> Nagasaki Chiho Saiban-sho Keiji-bu Hanketsu, Showa 11 nen, 2 gatsu, 14 nichi, Kokugai Iso Jiken, Hikoku-nin F., Minoru hoka 9 mei.

<sup>8</sup> “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.”

<sup>9</sup> 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.

<sup>10</sup> UN. Doc. E/CN.4/1995/NGO/40.

<sup>11</sup> YOSHIMI, Yoshiaki, translated by O’BRIEN, Suzanne, *Comfort Women Sexual Slavery in the Japanese Military During WW*, Colombia University Press (2000), p. 63.

<sup>12</sup> (In Japanese) NAGAI, Kazu, A Study of Japanese “Military Sexual Slavery” under the Sino-Japanese War, *Twentieth Century Studies*, No. 1 (2000), pp. 79-111.

<sup>13</sup> YOSHIMI, *op. cit.*, pp. 58-59.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> YOSHIMI, *op. cit.*, p. 64.

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