

**Broken Silence:
Redressing the Mass Rape and Sexual Enslavement of Asian Women
by the Japanese Government in an Appropriate Forum**

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I was born as a woman but never lived as a woman . . . I suffer from a bitterness I do not know how to overcome . . . I feel sick when I am close to a man. Not just Japanese men but all men – even my own husband who saved me from the brothel – have made me feel this way. I shiver when I see the Japanese flag. Because it carried that flag, I hated the airplane I took to come to Japan. I've kept trying to disclose the facts. Why should I feel ashamed? I don't have to feel ashamed.¹

I. INTRODUCTION

After decades of silence, former comfort women are demanding an apology and reparations for the wounds inflicted upon them when they were military sex slaves. During World War II, Japan institutionalized the comfort women system, forcing young Asian women to sexually service

¹ Timothy Tree, Comment, *International Law: A Solution or a Hindrance Towards Resolving the Asian Comfort Women Controversy?*, 5 U.C.L.A. J. INT'L L. & FOREIGN AFF. 461, 462-63 (2000-2001) (citing Kazuko Watanabe, *Militarism, Colonialism, and the Trafficking of Women: Comfort Women Forced into Sexual Labor for Japanese Soldiers*, BULL. OF CONCERNED ASIAN SCHOLARS, Oct.–Dec. 1994 at 3, 5 (quoting unnamed comfort woman)).

soldiers of the Japanese Imperial Army.² These women suffered vicious and systematic rapes to satisfy the sexual needs of the Japanese military.³ Today, fifty years later, surviving comfort women want Japan to “acknowledge and apologize for what it has done.”⁴ Nevertheless, the Japanese government continues to ignore numerous requests for compensation and apology. As a result of Japan’s refusal to acknowledge its responsibility, surviving comfort women began to actively pursue legal remedies. Since 1991, former comfort women have filed eight lawsuits in Japanese courts; none have resulted in damage awards.⁵ Therefore, one important question remains: What should be done?

This paper critiques the Japanese government’s response to the former sex slaves’ claims for redress, specifically examining Japan’s legal system as well as various international forums that may provide former comfort women with a means to successfully heal their wounds. Section II presents a brief historical account of the comfort women system and the means Japan employed in its recruitment of comfort women. In addition, this section illustrates, through personal stories, the suffering former comfort women endured and continue to endure to this day. Section III discusses previous attempts at redress for former comfort women. In particular, this section describes the problems former comfort women encountered in Japanese courts. Further, this section examines the first attempt at the comfort women’s redress in U.S. courts and the reasoning behind the district court’s dismissal of *Hwang Geum Joo v. Japan*.⁶ Section IV considers the use of different international tribunals as forums to adequately respond to the claims of former comfort women. This paper concludes that the comfort women’s fight for reparations should be viewed as a fundamental human right, thus providing an alternative claim in international courts.

II. JAPAN’S WORLD WAR II SEX SLAVES

The secret story of the Asian comfort women was kept hidden from the outside world for over fifty years.⁷ Subjected to unimaginable

² *Id.* at 461.

³ *Id.*

⁴ *Id.*

⁵ See Maki Arakawa, *A New Forum for Comfort Women: Fighting Japan in United States Federal Court*, 16 BERKELEY WOMEN’S L.J. 174, 175 (2001).

⁶ *Hwang Geum Joo v. Japan*, 172 F. Supp. 2d 52 (D.D.C. 2001).

⁷ See GEORGE HICKS, *THE COMFORT WOMEN: JAPAN’S BRUTAL REGIME OF ENFORCED PROSTITUTION IN THE SECOND WORLD WAR 1941-45* (1994) (implying that

conditions and sexual and physical exploitation, young women were victims of inconceivable human rights abuses.⁸ Most appalling, it was the Japanese soldiers and their government who violated the rights of these women.⁹ Today, however, the secret is out—the Japanese enslaved young girls as sexual slaves beginning in 1930 and continued to do so throughout World War II.¹⁰

To satisfy the sexual cravings of Japanese soldiers during World War II, the Japanese government recruited in excess of 100,000 women from all over Asia to serve in frontline brothels.¹¹ The Japanese government labeled these women *jugun ianfu*,¹² or “comfort women.”¹³

many former comfort women were afraid to come forward because of shame and well-founded fears of rejection). In Asian societies, chastity has always been revered and loss of virginity, even by rape, means a life of ostracism with little chance of marriage. *Id.* at 165. Korean women are particularly “loathe to share their unpleasant past experiences with others (even to their immediate family members) due mainly to their upbringing in a Confucian society where a woman’s chastity is a prime virtue.” Chin Kim & Stanley S. Kim, *Delayed Justice: The Case of the Japanese Imperial Military Sex Slaves*, 16 UCLA PAC. BASIN L.J. 263, 267 (1998).

⁸ See generally HICKS, *supra* note 7.

⁹ *Id.*

¹⁰ *Id.*; see also Suvendrini Kakuchi, *Women-Japan: In Two Years, A Tribunal on Violence Against Women*, INTER PRESS SERVICE, Dec. 17, 1998, LEXIS, Nexis Library, News File (noting that there have been reported cases of eleven-year-olds among the soldiers’ sex slaves).

¹¹ YUKI TANAKA, *HIDDEN HORRORS: JAPANESE WAR CRIMES IN WORLD WAR II* 99 (1996). Although documents were hidden or destroyed at the end of the war, a Japanese military plan devised in July 1941 stated that “20,000 comfort women were required for every 700,000 Japanese soldiers, or 1 woman for every 35 soldiers.” *Id.* Over “3.5 million Japanese soldiers [were] sent to China and Southeast Asia[;] . . . therefore an estimated 100,000 women were mobilized.” *Id.* Korean women comprised about eighty percent of the total comfort women, but women from Taiwan, China, and the Philippines were also involved. *Id.*; see also *Asian Comfort Women Seek U.S. Support for Reparations Demands*, AGENCE FRANCE-PRESSE, June 4, 1998, WL 2295714 (“[A]bout 200,000 women were forced into frontline brothels for Japanese troops.”).

¹² Kim & Kim, *supra* note 7, at 263 n.1. “*Jugun ianfu*” was a term coined by the Japanese government.

Jugun means “attached” (or accompanying or following) the military. The word *Ian* (comfort) is adequate to convey the meaning that the soldiers who received sexual pleasure but quite contrary to express *Fu* (women) who are actually sex slaves of the soldiers to endure the forced prostitution and sexual subjugation with continuous rape on an everyday basis during the war.

Id.

On the advice of its military leaders, Japan established a system of military brothels called “comfort stations” throughout Asia.¹⁴ Young girls from Korea, China, the Philippines, Guam, Taiwan, Malaysia, Indonesia, and the Netherlands became victims of the comfort stations and were forced to have sex with the soldiers of the Japanese Imperial Army.¹⁵ Japanese soldiers repeatedly raped the women, and “[m]any women report having ‘serviced’ an average of twenty to thirty men per day.”¹⁶ Surviving comfort women who attempted to resist or escape from the comfort stations still bear visible scars from the physical torture and beatings they suffered at the hands of the Japanese military.¹⁷ The creation of comfort stations resulted in the physical and emotional torture of thousands of Asian women by both the Japanese Imperial Army and the Japanese government.

Race played a major role in the establishment and structure of the comfort women system.¹⁸ More than eighty percent of comfort women

¹³ *Former Taiwan “Comfort Women” to Sue Japanese Government*, CHINA NEWS, May 24, 1999, LEXIS, Nexis Library, News File. “Comfort women” is the “Japanese euphemism for more than 200,000 women from Taiwan, South Korea, the Philippines and other Asian countries who were forced into working as sex slaves for imperial Japanese troops during World War II.” *Id.*

¹⁴ See TANAKA, *supra* note 11, at 95-96. There were four major reasons the Japanese military decided that comfort stations were necessary. “Japanese military leaders were very concerned about the rape of civilians by members of the Japanese armed forces, but not out of concern for those civilians.” *Id.* They believed that “a ready supply of women for the armed forces would help reduce the incidence of rape of civilians.” *Id.* Additionally, the military leaders “believed that the provision of comfort women was a good means of providing their men with kind of leisure.” *Id.* The military leaders were also concerned about the incidence of venereal diseases and believed that “venereal disease threatened to undermine the strength of their men (and hence their fighting ability) and that it could also potentially create massive public health problems back in Japan once the war was over.” *Id.* Finally, the military leaders were concerned with security, believing that “private brothels could be [easily] infiltrated by spies.” *Id.*

¹⁵ See *Asian Comfort Women Seek U.S. Support for Reparations Demands*, *supra* note 11.

¹⁶ Arakawa, *supra* note 5, at 179 (citing Chin-sung Chung, *An Overview of the Colonial and Socio-Economic Background of Japanese Military Sex Slavery in Korea*, 1 MUAE 204, 212 n.3 (1995)).

¹⁷ *Id.*; see also Karen Parker & Jennifer F. Chew, *Compensation for Japan’s World War II War-Rape Victims*, 17 HASTINGS INT’L & COMP. L. REV. 497, 508 (1994) (“Women who resisted their violators were beaten, mutilated, or murdered, frequently with their fellow women forced to watch. They were very poorly fed and lived under extremely difficult conditions.”).

¹⁸ DAVID ANDREW SCHMIDT, IANFU—THE COMFORT WOMEN OF THE JAPANESE IMPERIAL ARMY OF THE PACIFIC WAR: BROKEN SILENCE 90-93 (2000) (“[S]ocial ranking

were Korean, targeted by the Japanese government to sexually service Japanese soldiers.¹⁹ As early as 1941, at least 20,000 Korean women were sex slaves for Japanese soldiers stationed in China.²⁰ Although civilians were usually involved in the trafficking of sexual slaves, the Japanese military was also extensively involved in the recruitment and transportation of comfort women, often transporting the women to comfort stations by truck or ship.²¹

Why were Korean women targeted for exploitation? The Japanese government's belief in the superiority of Japanese women and the suitability of Korean women for prostitution strengthened the government's decision to use women from Japanese-controlled colonies and occupied territories as comfort women.²² The Japanese government and their people denigrated Koreans as an inferior race.²³ The annexation of Korea compounded with the general attitude of Koreans as being racially inferior made them a logical choice for exploitation.²⁴ The Japanese believed their women should bear Japanese children "who would grow up to be loyal subjects of the emperor."²⁵ Thus, Japanese prostitutes²⁶ enjoyed safer conditions and better treatment, servicing only higher-ranking officers, whereas Korean and other non-Japanese comfort women serviced the inherently more sexual and more dangerous frontline

and discrimination was encouraged and pervasive among the Japanese *ianfu* at the top of the social scale and Koreans, Taiwanese/Chinese and other Asians following below in said order.").

¹⁹ HICKS, *supra* note 7, at 66 (citing Kim Il Myon, *Tenno no Guntai to Chosenjin Ianfu* [*The Emperor's Forces and Korean Comfort Women*], SAN-ICHI SHOBO (Tokyo) (1976)). Eighty percent of the total women taken were Korean women, while Japanese women represented only ten percent of the total. *Id.*

²⁰ Tree, *supra* note 1, at 467.

²¹ *Id.* at 467-68.

²² SCHMIDT, *supra* note 18, at 90-93; *see also* HICKS, *supra* note 7, at 16 (stating that, since the Korean Peninsula had been a Japanese colony, Koreans were regarded as Japanese subjects).

²³ *See* SCHMIDT, *supra* note 18, at 90-93.

²⁴ *Id.* at 91.

²⁵ Arakawa, *supra* note 5, at 178.

²⁶ *See* SCHMIDT, *supra* note 18, at 92. The term "comfort women" refers to women forced into sexual enslavement. Japanese women used during the war, however, were prostitutes. *Id.*

troops.²⁷ Although Korean women made up the bulk of the comfort women, many Filipino, Indonesian, Thai, Southeast Asian, Chinese, and even Dutch women, became sex slaves for the Japanese soldiers.²⁸

The horrific suffering endured by comfort women did not end at the conclusion of the war. Although many comfort women did not survive the poor conditions at the comfort stations, most died at the end of the war when Japanese soldiers forced the women to commit suicide with them,²⁹ intentionally murdered the women,³⁰ or simply abandoned them in remote and dangerous areas with no means of returning to their homelands.³¹ As a result, fewer than thirty percent of former comfort women survived.³²

Today, the suffering continues as many former comfort women bear the scars of their abuse and suffer both physically and mentally:³³

After the war, those women who survived and returned home continued to suffer. Many women committed suicide

²⁷ *Id.* at 92-93; see also HICKS, *supra* note 7, at 66-74. Hicks notes that “[s]ervice nearer the front was the harshest for the women. They were lodged in humble huts or makeshift barracks.” HICKS, *supra* note 7, at 72. The women were obligated to relieve men fresh from combat. *Id.* at 73. Japanese professional prostitutes, however, “tended to be kept in the more secure base areas, and made available to higher rank[ed] military officials], while Korean [women] were pooled and sent to the frontlines.” *Id.* at 66.

²⁸ Taihei Okada, Translations, *The “Comfort Women” Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan*, 8 PAC. RIM L. & POL’Y J. 63, 70 (1999) (stating that Koreans, Chinese, Taiwanese, Filipinos, Indonesians, and Dutch, as well as Japanese women were forced into sexual slavery).

²⁹ HICKS, *supra* note 7, at 153. Japanese soldiers “faced with inevitable defeat were inclined to follow the tradition of *gyokusai* – either fighting to the death or committing mass suicide as an alternative to surrender.” *Id.* *Gyokusai* means “broken jewel and comes from a saying in Chinese history that ‘it is better to be a jewel and be broken than a tile and remain whole’: an honourable death is better than a dishonourable life.” *Id.* Comfort women located in Burma and Micronesia represented the starkest accounts of *gyokusai*. *Id.*

³⁰ *Id.* at 154. Because it was unlikely that Korean comfort women would follow the tradition of *gyokusai*, military commanding officers decided that a sergeant would “throw two hand-grenades into their dugout late at night, while they slept,” instantly killing them. *Id.*

³¹ See *id.* at 157.

³² See David Boling, *Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility?*, 32 COLUM. J. TRANSNAT’L L. 533, 542 (1993).

³³ Arakawa, *supra* note 5, at 180; see also HICKS, *supra* note 7, at 165.

out of shame after returning home and facing ostracism from their families and communities. Many others have simply died of old age. Those who survive continue to suffer from severe physical and emotional difficulties including sterility, health problems associated with sexually transmitted diseases contracted in the comfort stations, insomnia, nervous breakdowns, psychological trauma, and shame.³⁴

Although a number of Japanese soldiers married the comfort women after the war, many of the women were unable to bear children.³⁵ In addition, those who did marry endured “their conjugal activities as a torment, and suffer[ed] severe mental anguish which would not find release in an open acknowledgment of the wrong done to them.”³⁶ Many women “became sterile because of [the] sexual abuse and inadequate medical treatment.”³⁷ Moreover, pretending to lead normal lives, despite their suffering, proved difficult.³⁸ Consequently, even though the war ended, the comfort women’s plight did not.

A. *Japanese Government Involvement*

The Japanese government was involved in many aspects of the comfort women system:³⁹ “[T]he primary duty to line up young Korean

³⁴ Arakawa, *supra* note 5, at 180.

³⁵ Yvonne Park Hsu, “Comfort Women” *From Korea: Japan’s World War II Sex Slaves and the Legitimacy of Their Claims for Reparations*, 2 PAC. RIM. L. & POL’Y J. 97, 114 (1993). Mitsuyoshi Nakayama, a military doctor, personally attested to the harm suffered by the comfort women. *Id.*

³⁶ HICKS, *supra* note 7, at 165.

³⁷ Hsu, *supra* note 35, at 114; *see also* HICKS, *supra* note 7, at 165 (describing how the women were crippled by various diseases, as a result of their brutal experiences, including “the drugs they were sometimes forced to consume to abort unwanted pregnancies,” and the sterilization inflicted by the operations done to eliminate menstruation).

³⁸ HICKS, *supra* note 7, at 165.

³⁹ *See* Arakawa, *supra* note 5, at 178-79. Initially, the government relied on volunteers, like former prostitutes, to “recruit” young women. *Id.* In addition, “[t]he government also recruited Korean women under general mobilization directives, which were part of the labor draft for factory work in war industries.” *Id.* Later, “the military, with the help of local government or police, conducted slave raids of local populations where the women were threatened with physical harm to themselves or their family members.” *Id.*

women through deception and coercion rested on the Japanese Governor-General.”⁴⁰ In Korean villages, “recruiters” of comfort women resorted to kidnapping and herded “young mothers [as well as young women] into trucks, separating them from ‘clinging, wailing . . . children.’”⁴¹ The Japanese government also used the Korean women’s poverty and lack of education and sophistication to lure the girls under the pretext of high-paying wage labor, promising them jobs as cooks, nurse assistants, and cleaners.⁴² The Japanese military also successfully recruited comfort women through deceit by initially offering the women factory jobs or convincing them to assist the Japanese Army in some fashion.⁴³

The Japanese government also aided in the maintenance of the comfort women system. The women were viewed and treated as military supplies.⁴⁴ In addition, the Japanese government justified their creation of the comfort women system by arguing that such a system was essential to:

- (1) prevent soldiers from uncontrollably raping local women;
- 2) preserve the strength of its troops by controlling the spread of venereal disease;
- 3) increase the fighting strength of the Japanese soldiers;
- 4) raise morale and provide leisure and recreation for soldiers as a reward for fulfilling their patriotic duties;
- 5) protect national security from espionage; and
- 6) raise revenue from taxing the comfort stations.⁴⁵

⁴⁰ Kim & Kim, *supra* note 7, at 266 (citing Senda Kako, JGUN IANFU [MILITARY COMFORT WOMEN] (1978), the first extensive exposé on the subject of comfort women); *see also* Hsu, *supra* note 35, at 100 (describing how the Japanese government recruited unsuspecting women through force, deceit, and coercion); HICKS, *supra* note 7, at 20 (describing how majority of the comfort women were naïve young girls, seized in “virtual sexual raids” and “drafted” into the comfort women system against their wills).

⁴¹ *See* Hsu, *supra* note 35, at 100.

⁴² *Id.*

⁴³ Tree, *supra* note 1, at 468.

⁴⁴ Arakawa, *supra* note 5, at 179; *see also* HICKS, *supra* note 7, at 83 (“[M]ovements of the women were recorded on transport lists in terms of units of ‘munitions’ or ‘canteen supplies.’”).

⁴⁵ Arakawa, *supra* note 5, at 177-78; *see also* TANAKA, *supra* note 11, at 95 (maintaining that the comfort stations were proposed to curb soldiers from raping local women of conquered territories).

The need for military sex slaves grew as the war progressed. As a result, the Japanese military continued to acquire comfort women through kidnapping and threats of violence.⁴⁶ When families resisted the capture of their daughters after the Japanese government conducted slave raids, military soldiers surrounded villages and beat family members with sticks.⁴⁷ Once the women were collected, they were transported to comfort stations on the frontlines by army ships, trains, trucks, and occasionally, planes.⁴⁸ In 1942, the Minister of Foreign Affairs ordered his staff to issue military travel documents for women “abducted” into sexual slavery, thus eliminating the requirement for them to possess passports.⁴⁹

Beginning with Shanghai, in 1931, “the Japanese government set up comfort stations in . . . China, Manchuria, Taiwan, Borneo, Rabaul, Ryuku, the Philippines, Singapore, Burma, Indonesia, Malaya, Japan, and Korea.”⁵⁰ These comfort stations were controlled by strict regulations.⁵¹ In addition, Japan issued business permits to entrepreneurs and required

⁴⁶ See HICKS, *supra* note 7, at 45-65.

⁴⁷ Colin Nickerson, *Japan's Wartime "Comfort Women": An Issue That Won't Die*, BOSTON GLOBE, March 30, 1993, LEXIS, Nexis Library, News File.

⁴⁸ TANAKA, *supra* note 11, at 98.

⁴⁹ *Id.*

⁵⁰ Arakawa, *supra* note 5, at 177. Although adequate documentation regarding the comfort women system is “missing,” the Japanese government “confirmed that comfort stations existed in . . . Japan, China, the Philippines, Indonesia, Malaya, Thailand, Burma, New Guinea, Hong Kong, Macao, and French Indochina.” *Id.* at 177 n.19.

⁵¹ See HICKS, *supra* note 7, at 83-84. Some of the regulations were:

- (1) Entry to the comfort station is permitted only to Army and paramilitary personnel;
- (2) Visitors must pay at reception and obtain a ticket and condom;
- (3) The ticket fee is two yen for [Noncommissioned officers], men and paramilitary;
- (4) The ticket is valid only for this occasion and if not entering a room can be refunded. There is no refund once it has been handed to a hostess;
- (5) On obtaining a ticket, the visitor is to enter the room with the number shown. The time allowed is thirty minutes;
- (6) The hostess is to be handed the ticket on entry;
- (7) Drinking alcohol in the room is prohibited;
- (8) Visitors must leave immediately after their business is completed;
- (9) Any one who fail to observe the regulations or who infringe military discipline are to be ejected;
- (10) Contact without the use of a condom is prohibited and;
- (11) Entry times: 10 a.m. to 5 p.m. for men, 1 p.m. to 9 p.m. for [Noncommissioned officers].

Id.

them to submit monthly reports and request permission to close or suspend any brothel business.⁵² Moreover, to protect against contracting sexually transmitted diseases and to maintain the health of the Japanese soldiers, the Japanese government provided health and medical services at all comfort stations.⁵³ The services provided by the Japanese government included “compulsory medical exams for the comfort women, treatment of venereal diseases and pregnancy, and the provision of condoms.”⁵⁴ The Japanese government also undertook security measures to prevent comfort women from escaping and to prevent “the unauthorized entry of any nonmilitary or paramilitary men.”⁵⁵ Thus, the Japanese government actively participated in maintaining comfort stations and comfort women through official rules and regulations.

B. *Personal Stories of Life as a Former Sex Slave*

The abuse endured by former comfort women remained a secret because of fear and shame.⁵⁶ After decades of silence, however, former comfort women have come forward to open old wounds by telling their stories.⁵⁷ Only through their own words can we understand the extent of the wounds caused by their forcible recruitment into sexual slavery.

⁵² See *id.* at 89-90.

⁵³ See *id.* at 93-94. The threat of diseases and health problems concerned the government. The authorities did their best to discourage the men from exposing themselves to infection. According to former comfort woman Madam X, “[m]any but not all of the men used condoms. The condoms in those days were thick and crude, and some men refused to wear them.” *Id.* at 93. Some comfort women had the duty of washing and recycling the used condoms. *Id.* As a result, the government took many precautions. For example, installed in each woman’s room was “a container of permanganic acid solution with a rubber tube for the men to wash their genitals after intercourse.” *Id.* Additionally, the women were required to “douche after each contact though, [during] rush hour the best they could do was wipe their pudenda with a pad of impregnated cotton wool.” *Id.* at 93-4.

⁵⁴ Arakawa, *supra* note 5, at 180.

⁵⁵ *Id.*

⁵⁶ See Kim & Kim, *supra* note 7, at 267. One of the reasons behind the silence is cultural. For instance, “Korean women . . . are loathe to share their unpleasant past experiences with others (even to their immediate family members) due mainly to their upbringing in a Confucian society where woman’s chastity is a prime virtue.” *Id.*

⁵⁷ See COMFORT WOMEN SPEAK: TESTIMONY BY SEX SLAVES OF THE JAPANESE MILITARY (Sangmie Choi Schellstede ed., Washington Coalition for Comfort Women Issues, Inc. 2000) (translating 19 taped interviews and testimonies of surviving comfort women).

The story of Park Tu-ri illustrates the coercion used to lure young women into being military sex slaves:

She was the eldest of seven children; she had three younger brothers and three younger sisters. Her family was extremely poor and she thought that she had to work in order to support her family. When she was seventeen, three men came to her village to assemble young women. They told her, "If you work at a factory in Japan, you can make a fortune." . . . She trusted the men and decided to go to the factory in Japan She was taken to a comfort station She was told to have sexual intercourse with a client It was the first time she had slept with a man. After that, she was beaten and raped many times. Since most of the clients were Japanese soldiers, it was prohibited to speak Korean at the comfort station and those who violated the rules were beaten. Her nickname was "Fujiko." She was forced to have sexual intercourse with ten men a day on average. She had only one day-off a month, but even in her day-off, she could not go outside freely. Food at the comfort station was very scarce and she had no money to spend on food. Being very hungry, she stole bananas from the nearby plantation. When this theft was discovered, she was severely beaten by the plantation owner as well as the owner of the comfort station Since she had to work as a "Comfort Woman" for such a long time, she contracted a disease that made her thighs swell and required surgery. Even now, she has these scars on her body.⁵⁸

Park Tu-ri's experience depicts the deception used to assemble women as military sex slaves. Her story reveals the lasting effects of life as a former comfort women.

Ha Sun-nyo's story describes the deceit that lured her into the comfort women system and the remaining effects of her experience:

Her family was poor. Her house was made of straw and had only two rooms. In 1937, when she was nineteen, she was working as a live-in domestic worker for an owner of a clothing store. One day, when she went shopping, two men spoke with her. One man was Japanese in western clothes and the other one was Korean in traditional Korean clothes.

⁵⁸ Okada, *supra* note 28, at 73-74.

They said, "You can make a fortune. Don't you want to come with us?" . . . She trusted the men and went with them She was taken to a dormitory, with a sign, which said "Army Comfort Station," near the American or French quarters The dormitory had about thirty rooms. There was no window in her room and it was so small that two people barely could sleep in it. She thought that she would do cooking and laundry in the room. But the day after she was assigned her room, a Japanese man in a khaki army uniform came into her room, he beat her and tried to strip her clothes away. She screamed and tried to flee, but the door was locked and there was no way out. From the next day on, except during her menstrual period, from 9:00 a.m. to 2:00 a.m. the following day, she was forced to have sexual intercourse with soldiers One day, being unable to put up with the situation any more, she tried to run away, but she was caught, brought back to the establishment and beaten with a fifty centimeter oak club. She was hit on the head and bled badly. Because of this injury, she continues to suffer from severe headaches on rainy days and occasional memory losses.⁵⁹

Ha Sun-nyo's suffering provides another haunting image of life as a comfort woman and the dishonesty used to kidnap women for sexual slavery.

Lee Sun-dok, a former Korean comfort woman, broke her silence and revealed her story. She detailed her experience of life as a military sex slave:

Four days after she was put in the army camp, a middle-aged officer with three stars on the uniform, named "Miyazaki," came into the hut. He forcefully tried to have sex with her. After she was incapacitated, he raped her. This continued every night for three days. After this incident, many soldiers lined up in front of the hut, and, one after another, raped her. This continued for the next eight years until the day of liberation in August of 1945. On average, starting at 9:00 a.m., she was forced to have sexual intercourse with eight or nine soldiers on weekdays and seventeen or eighteen on Sundays One of the soldiers accused her of sleeping with other men. He kicked her in

⁵⁹ *Id.* at 71-72.

the abdomen and slashed her back with a sword. After only one week of treatment, she was again forced to have sexual intercourse. She still suffers from this injury. Even now, she cannot walk because she gets dizzy spells and feels pain in her chest on rainy days When she returned [to Korea] her parents were long dead and her younger brother lived with her aunt. Her parents died from the grief for their missing daughter. She never told her younger brother or two successive husbands about what happened to her. During her two marriages, she never bore a child. When she went to an obstetrics doctor, she discovered that her womb was deformed and she could no longer bear a child.⁶⁰

For Lee Sun-dok, the physical and emotional pain she suffers is a constant reminder of her life as a comfort woman.

Although more than eighty percent of the women forcibly abducted into sexual slavery were from Korea, some *jugun ianfu* were also from the Philippines.⁶¹ The Japanese Imperial Army forced Gertrude Balisalisa into sexual slavery. Her story further illustrates the sexual assaults and their past and present effect:

I lost everything [I] was 23 years old and married with two children when Japanese soldiers arrested [me] in 1944. [I] was detained for more than a year in a “comfort station” where soldiers violated [me] sexually. Because of that, I lost a very good legal profession as I was then finishing my law studies. I lost my family, my children. I lost myself.⁶²

Today, at age seventy-five, Ms. Balisalisa speaks out, saying she will only “feel ‘comforted’ when Japan apologizes and compensates her for her sufferings.”⁶³

⁶⁰ *Id.* at 75.

⁶¹ See HICKS, *supra* note 7, at 17-18 (citing statistical data on comfort women from hotlines that were set up to collect information about comfort stations and comfort women).

⁶² Girlie Linao, *Asian Women tell Tokyo: Apologize and Pay*, UPI, March 28, 1996, LEXIS, Nexis Library, News File.

⁶³ *Id.*; see also HICKS, *supra* note 7, at 165-66 (describing the rejection and alienation Ms. Balisalisa endured by her own family). According to Ms. Balisalisa: “[j]ust like the Japanese he [my husband] would come to me when he needed me but afterwards I was just like a piece of furniture. My husband stopped my children from

Besides the physical injuries sustained, the Japanese soldiers further inflicted deep psychological wounds upon comfort women through their treatment. Forced to have sex with men who referred to them as “public toilets,”⁶⁴ comfort women were dehumanized daily. Those who survived bore both physical and psychological scars the rest of their lives.⁶⁵ Consequently, the continuing effect of this mental and physical degradation and continual suffering prompted former comfort women to break their silence.

Ideally, speaking aloud about these tragedies is cathartic for the victims and helps them through the healing process.⁶⁶ However, for some, coming forward only perpetuates the suffering.⁶⁷ Through their stories, we re-live the unspeakable harm and interminable suffering they endured. The wounds are ever-lasting.

III. ATTEMPTS AT REDRESS

Reparations play a critical role in the process of achieving reconciliation and appear to be the most important aspect in healing the comfort women’s wounds.⁶⁸ Specific reparations represent the “tangible expression of a group’s desire to redress historical justice grievances [and] can be a catalyst for social and economic restructuring.”⁶⁹ Only “when reparatory acts aim to rebuild intergroup relations through attitudinal changes and institutional restructuring [can] reparations . . . be transformative.”⁷⁰ Reparations address “group rather than individual

calling me ‘mother.’ He separated my children from me after a few years. I now have no contact with them as they refused to recognize me as their mother.” *Id.*

⁶⁴ DONNA K. HARVEY, *The Comfort Women*, 153 MIL. L. REV. 281, 282 (1996) (book review) (reviewing GEORGE HICKS, *THE COMFORT WOMEN: JAPAN’S BRUTAL REGIME OF ENFORCED SEX PROSTITUTION IN THE SECOND WORLD WAR* (1994)).

⁶⁵ *Id.*

⁶⁶ *See generally* ERIC YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (1999).

⁶⁷ *Id.* at 176-77.

⁶⁸ *Id.* at 268. Reparations entail repairing the damage to the material conditions of a group’s life to attenuate one group’s power over the other. This means material changes in the structure of the relationship (social, economic, political) to guard against “cheap reconciliation,” where healing efforts are “just talk.” *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* (indicating that the willingness of governments to admit to unjust and discriminatory past policies and practices and to negotiate terms for reparation with their victims are based more on moral consideration than on power politics).

claims and therefore focus on removing substantive barriers to group liberty and equality – in [terms of] education, housing, medical care, employment, cultural preservation, and political participation.”⁷¹ Reparations can only occur, however, within the larger context of a society’s social and economic condition.⁷² Until surviving comfort women experience material improvements in their daily living and working conditions, little healing will occur.⁷³ Reparations remain critical to the reconciliation process, and without it, meaningful reconciliation is unlikely.

As a result of the Japanese government’s failure to assume full responsibility and take adequate steps to heal the victim’s wounds, surviving comfort women are actively pursuing remedies. After years of suffering in silence, former comfort women are speaking out:

We strongly demand that the Japanese government make all relevant documents public records [sic], penalize those who are responsible for this inhumane atrocity and make appropriate monetary reparations to individual survivors [We] want Tokyo to admit guilt, apologize, provide compensation and even re-write their history books Japan should also reveal the extent of the slavery committed by its soldiers during the war, so that it would not happen again.⁷⁴

In addition to demanding official compensation, most surviving comfort women want an apology from the Japanese government.⁷⁵ At the age of seventy-nine, Lee Sun-dok, a former comfort woman, demands a proper apology and compensation, calling the Japanese government’s lack of responsibility “an insult to women ‘who were treated lower than human beings.’”⁷⁶ Another former comfort woman, Jan Ruff-O’Herne, states:

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Linao, *supra* note 62 (emphasizing that legal responsibility does not only mean money or a monetary sum, but also the integration of the stories of former sex slaves into Japanese textbooks).

⁷⁵ See Former Taiwan “Comfort Women” to Sue Japanese Government, *supra* note 13.

⁷⁶ Japan Ordered to Compensate 3 Sex Slaves Law: Judge Says Government Must Pay \$2,272 to the World War II ‘Comfort Women’ from South Korea. One victim

“They (the Japanese government) are all waiting for us to die, but this one will not die – I will continue to fight with other Asian comfort women.”⁷⁷ In demanding that the Japanese government acknowledge involvement in the comfort women system and compensate former comfort women for their suffering, surviving comfort women keep their fight alive.

A. *Invisible Promises: Japanese Civil Suits and the Failure to Compensate*

Demanding compensation and an apology, former comfort women remain adamant in their resolve for redress. Filing lawsuits in the Japanese courts represents one way for the plight of the former comfort women to emerge. The stubborn attitudes of the Japanese government and the Japanese courts, however, hinder these efforts.

Before filing suit, many Korean women groups, on behalf of comfort women, presented the Japanese prime minister with demands concerning compensation and government admission of responsibility.⁷⁸ The Japanese government rejected the demands.⁷⁹ Since the stories of the comfort women emerged, the Japanese government has consistently denied its involvement and legal obligation to compensate the surviving comfort women, maintaining that the comfort stations were privately operated.⁸⁰ In addition, the Japanese government has refused to pay restitution on the basis that any reparations claims had already been settled

demands an apology, L.A. TIMES, April 28, 1998, at A8, WL 2422368 [hereinafter “*Japan Ordered to Compensate*”].

⁷⁷ See *Former Taiwan “Comfort Women” to Sue Japanese Government*, *supra* note 13.

⁷⁸ Harvey, *supra* note 64, at 284.

⁷⁹ *Id.*

⁸⁰ See Tong Yu, *Reparations for Former Comfort Women of World War II*, 36 HARV. INT’L L. J. 528, 529-30 (1995). Japan has consistently denied any legal obligation to compensate former comfort women:

After reluctantly acknowledging its involvement in the recruitment and mobilization of comfort women against their will, the Japanese government presented a number of carefully worded public apologies to some of the individual countries from which women were taken and to the international community as a whole . . . [W]hen pressed for monetary compensation, the Japanese government firmly maintains that it has no legal responsibility to pay direct compensation to victims.

Id.

conclusively under the 1965 San Francisco Peace Treaty.⁸¹ Such refusals by the Japanese government to assume responsibility has angered victims.⁸² Despite the Japanese government's denial, former comfort women are adamant in their resolve for justice.

The first series of lawsuits filed in 1991 made public the appalling history of the *jugun ianfu*, or comfort women.⁸³ The lawsuits served as an example and imbued three former Korean comfort women with courage to come forward and file suit in the Tokyo District Court.⁸⁴ The women sought damages for their suffering and their struggle, as well as for crimes against humanity.⁸⁵

⁸¹ Arakawa, *supra* note 5, at 182; *see also* Hsu, *supra* note 35, at 102 n.36 (stating that under the San Francisco Peace Treaty, Korea received \$300 million in cash and \$200 million in loans from Japan).

⁸² Harvey, *supra* note 64, at 284. The Japanese government's denial of responsibility angered victims:

The continued Japanese denial of wrongdoing led some comfort women to come forward with their stories. They were angered by the Japanese denials. They were emboldened by their own advanced age and their culture's new awareness of women's issues. They wanted to make sure the truth did not die with them. They wanted justice.

Id.

⁸³ HICKS, *supra* note 7, at 11. Kim Hak Sun became the "first former comfort woman to announce she was willing to publicly tell her story, as part of legal action against the Japanese government." *Id.* As a result, other women spoke out. However, many countries are dependent on Japan for aid, investment, and support, essentially unwilling to support the claims of human rights abuses by the Japanese government. *Id.*

⁸⁴ *See* Hsu, *supra* note 35, at 97.

⁸⁵ *See id.*; *see also* Arakawa, *supra* note 5, at 181. Shortly after filing this lawsuit, Yoshiaki Yoshimi, a history professor at Chuo University in Tokyo, contradicted the official Japanese denial when he discovered official governmental documents in Japan's Self Defense Agency Library's archives "conclusively proving Japan's direct role in maintaining a large network of comfort houses." Arakawa, *supra* note 5, at 181; HICKS, *supra* note 7, at 205-6. These documents portrayed comfort women stations as a "sinister facet of the Japanese military's wartime effort and showed how the Japanese military organized and managed brothels in occupied territories and kidnapped and/or misled women into sex slavery." HICKS, *supra* note 7, at 205-6. Further, these documents illustrated the Japanese government's involvement in conscription, transportation, placement, living conditions, management of comfort stations. It also revealed records concerning venereal diseases, income, and prices at comfort stations. *Id.* Within hours of these documents becoming public, the Japanese government conceded to its participation in operating comfort stations, but denied the forcible recruitment of women. *Id.* Later, on August 4, 1992, the Japanese government issued a report acknowledging that the Japanese government coerced women into becoming military prostitutes. *Id.* In addition, high ranking government officials, including the emperor, knew of and expressly authorized the recruitment and deployment of comfort women. *Id.*

Persistent denial of wrongdoing and the lack of investigations and prosecutions demonstrate the Japanese government's lack of remorse. At the same time, the Japanese judiciary has recognized the human rights abuses that the former comfort women suffered.⁸⁶ On December 25, 1992, ten South Korean women, including three former comfort women, instituted a lawsuit.⁸⁷ The former comfort women sought an official apology and compensation from the Japanese government.⁸⁸ On Monday, April 27, 1998, a partial and nominal judgment by the Shimonoseki Branch of the Yamaguchi Prefectural Court ruled that the Japanese "government must pay compensation to three South Korean [*jugun ianfu*] who were forced to provide [sexual service] to Japanese soldiers during World War II."⁸⁹ In its decision, the Yamaguchi District Court stated:

[U]pon examination of the evidence, the comfort women system was outright discrimination based upon gender and ethnicity, which was in this case Korean . . . [t]he system violated fundamental human rights guaranteed by Article 13 of the Japanese Constitution.⁹⁰

In addition, the Court found that "Tokyo had neglected to fulfill its legal duty to repair the anguish suffered by the 'comfort women,' who were forced to work in brothels for Japan's former Imperial Army."⁹¹ As a result, the court ordered the Japanese government to pay each of the three South Korean plaintiffs 300,000 yen (equivalent to \$2,272 in 1998).⁹² The

⁸⁶ See *Japan Ordered to Compensate*, *supra* note 76.

⁸⁷ See Kim & Kim, *supra* note 7, 263-64. The lawsuit is known as the "Kan-Pu Trial." *Id.*

⁸⁸ *Id.* at 264.

⁸⁹ See *Japan Ordered to Compensate*, *supra* note 76.

⁹⁰ Kim & Kim, *supra* note 7, at 263-64.

⁹¹ See *Japan Ordered to Compensate*, *supra* note 76 (recognizing a fundamental violation of human rights); see also Barry A. Fisher, *Japan's Postwar Compensation Litigation*, 22 WHITTIER L. REV. 35, 45 (2000). Judge Hideaki Chikashita found that "the Diet's 'failure to legislate a necessary law' created a protectable right when 'the Diet members understood the necessity of the law to protect human rights, were able to do so, but [failed to do so] within a reasonable period of time.'" *Id.*

⁹² See *Japan Ordered to Compensate*, *supra* note 76.

court, however, declined to order an official apology, saying that the claims for an apology were best directed toward the legislative branch.⁹³

Although this decision may provide hope for other surviving comfort women to receive some form of redress, it is unlikely.⁹⁴ Japanese courts have proven extremely hostile to claims of former comfort women and Japan has vigorously defended the lawsuits.⁹⁵ Japanese courts have been reluctant to handle suits indicting the Japanese government for war crimes.⁹⁶ Consequently, litigation outcomes have been generally unfruitful for the plaintiffs.⁹⁷ The success rate for lawsuits dealing with international matters has been very low.⁹⁸ In addition, Japanese judges lack training in international law⁹⁹ and the frustratingly slow pace of legal procedures in Japan make the court system an unsuitable venue for resolving cases.¹⁰⁰

The Japanese courts' hostility towards the claims of former comfort women is not the only obstacle hindering redress efforts. Even if these lawsuits have merit, plaintiffs are likely to lose on procedural grounds.¹⁰¹ Japanese courts have held that surviving comfort women could not assert claims under the Japanese Constitution because it was adopted after these women had been forced into sexual slavery.¹⁰² The court reasoned that "no matter how serious the human rights violations were, it is wrong to consider that the Japanese Constitution has the power to force

⁹³ See Okada, *supra* note 28, at 103. The court was not sure of its jurisdiction over the issue and believed that claims for an apology should be directed to the legislature (the Diet), not the court. *Id.*

⁹⁴ See Fisher, *supra* note 91, at 44 ("It is inevitable that the judgment will be overturned on appeal, as the nation of Japan has never before lost a case to foreign plaintiffs on postwar compensation issues in the courts of Japan.") (quoting a Japanese lawyer close to the issue).

⁹⁵ See *id.* at 36, 44.

⁹⁶ See *id.* at 36.

⁹⁷ See *id.* (citing cases that included claims for labor, comfort women, POWs, and for injuries from abandoned explosives and chemical weapons, which resulted in dismissal of plaintiffs' claims).

⁹⁸ Tree, *supra* note 1, at 475.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 475-76 ("Many experienced lawyers in Japan predict that the plaintiffs must spend more than ten to twenty years to exhaust the three stages of the Japanese civil law procedure up to a judgment by the Supreme Court.").

¹⁰¹ See Yu, *supra* note 80, at 536.

¹⁰² See Okada, *supra* note 28, at 100.

the government to provide compensation, or endows the court with the right to come up with restoration measures in place of the compensation.”¹⁰³ In addition, the statute of limitations extinguishes civil claims after twenty years.¹⁰⁴ Thus, according to Japanese law, the surviving comfort women’s legal claims have long since expired.¹⁰⁵

Time plays a critical role if the surviving comfort women hope to obtain justice during their lifetime.¹⁰⁶ A lawsuit as complex as the one involving the former comfort women will “require years before an adequate decision can be made.”¹⁰⁷ Moreover, the Japanese government is likely to appeal if it loses.¹⁰⁸ Under Japanese law, there are two chances to appeal to the Supreme Court, and those appeals will take ten to twenty years to resolve.¹⁰⁹ Already in their seventies, many if not all of the surviving comfort women will be dead by the time their cases conclude.¹¹⁰ The Japanese legal process presents an enormous hurdle for surviving comfort women, especially when the current Japanese government could assert that successor governments should not be held responsible for the acts of a predecessor government.¹¹¹ Based on the government’s refusal to accept responsibility for forcing young Asian women into sexual slavery, an appropriate forum needs to emerge to adequately repair the wounds of former comfort women and start the healing process.

Since 1991, eight lawsuits have been filed in Japanese courts demanding reparations for former comfort women.¹¹² Unfortunately, despite an admission by the Japanese government regarding their

¹⁰³ *Id.* (analyzing the surviving comfort women’s “duty of the moral state” argument).

¹⁰⁴ Yu, *supra* note 80, at 536.

¹⁰⁵ *See id.*

¹⁰⁶ Tree, *supra* note 1, at 476.

¹⁰⁷ *See id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* (“[Appeals require exhausting] three stages of the Japanese civil law procedure up to a judgment by the Supreme Court.”).

¹¹⁰ *Id.*

¹¹¹ Hsu, *supra* note 35, at 123.

¹¹² *See* Fisher, *supra* note 91, at 44 (explaining that there are three lawsuits regarding Korean women, two lawsuits regarding Chinese women, one lawsuit regarding a woman from the Philippines, one lawsuit regarding a Taiwanese woman, and one lawsuit regarding a woman from the Netherlands).

involvement in the sexual enslavement of over 200,000 women, most of these lawsuits have not resulted in damage awards and have been, for the most part, unsuccessful.¹¹³ The Japanese government avoided liability for claims of individual comfort women by relying on the following arguments: 1) strong technical legal arguments based on the uncertain state of international law prior to the end of WWII, claiming that international customary law in those days did not recognize an individual victim's right to claim compensation against the state;¹¹⁴ 2) procedural grounds, such as the statute of limitations, arguing that the comfort women's claims are time barred because over fifty years have passed since the alleged action;¹¹⁵ and 3) post-war settlement treaties, such as the San Francisco Peace Treaty, settled all war claims, thereby waiving a citizen's right to bring individual war claims against Japan.¹¹⁶ The Japanese government challenged the comfort women's claims as an invalid retroactive application of international law because "[I]nternational law was not codified until after WWII, several years after the establishment of the comfort women stations in 1931."¹¹⁷ The Japanese government has consistently resisted redress by employing these legal theories. As a result, the former comfort women's claims for compensation and an apology still faces many obstacles.

B. *An Apology Denied*

For more than fifty years, the Japanese government steadfastly maintained their innocence of the human rights abuses suffered by comfort women during World War II.¹¹⁸ In January 1992, however, after History Professor Yoshimi Yoshiaki discovered incriminating documents entitled "*Regarding the Recruitment of Women for Military Brothels*," the

¹¹³ See Farhan Haq, *Rights: International Justice Needed for "Comfort Women*, INTER PRESS SERVICE, March 25, 1998, LEXIS, Nexis Library, News File (stating that some 200,000 women were enslaved in sexual servitude by the Japanese Imperial Army); see also Fisher, *supra* note 91, at 46 ("[T]he results of litigation in Japan have been generally negative for the plaintiffs.").

¹¹⁴ See Arakawa, *supra* note 5, at 184.

¹¹⁵ See Yu, *supra* note 80, at 536 (stating that the statute of limitations for civil claims in Japanese courts is twenty years).

¹¹⁶ See Hsu, *supra* note 35, at 101.

¹¹⁷ Arakawa, *supra* note 5, at 184.

¹¹⁸ SCHMIDT, *supra* note 18, at 20 (denying full responsibility of the *ianfu* system, maintaining that the women and girls were recruited into front-line brothels by private operators).

Japanese government admitted their involvement.¹¹⁹ But, for former comfort women, this admission was not enough, with neither compensation nor an apology coming directly from the Japanese government.

Although the Japanese government made no effort to formally apologize for their direct involvement in the recruitment and maintenance of the comfort women system, Japanese Prime Minister Tomiichi Murayama personally apologized to the comfort women. In August 1993, Prime Minister Murayama declared, "On the issue of the treatment of the many comfort women, and the damage done to their honor and dignity, I would like to take this opportunity once again to express my profound and sincere remorse and apologies."¹²⁰ Soon after this personal apology, the Japanese Parliament drafted a cautiously worded resolution that expressed remorse over Japan's colonialist aggression, but stopped short of apologizing.¹²¹ To date, Japan has made no attempt to offer an unequivocal apology.

Most people are not fooled by this unofficial, half-hearted "apology."¹²² To restore the dignity former comfort women lost during their sexual enslavement, "Japan must publicly acknowledge the full extent to which it violated the women and thereby proffer an earnest apology."¹²³ The healing process must begin with a sincere apology that includes complete disclosure of all aspects of the comfort woman system.

C. *False Hope: The Asian Women's Fund*

The Japanese government's refusal to compensate former comfort women for their suffering angered many. Responding to international criticism, the Japanese government created the Asian Women's Fund

¹¹⁹ *Id.* at 3 (bearing the personalized seal of the high command of the Japanese Army, the documents exposed the Japanese government's direct control over the military brothels and depicted how the quick construction of facilities for "sexual comfort" was ordered in an effort to stop the troops in China from raping women in the regions they controlled).

¹²⁰ Tree, *supra* note 1, at 473; *see also* Arakawa, *supra* note 5, at 181. On the same day that the key extract from the uncovered documents was published, "Chief Cabinet Secretary Koichi Kato, on behalf of the Japanese government, apologized for the first time for the military's involvement in the comfort women system." *Id.*

¹²¹ Linao, *supra* note 62.

¹²² *See* Hsu, *supra* note 35, at 125.

¹²³ *Id.*

(“AWF”) to compensate former comfort women.¹²⁴ Its goal was to help the government appear sincere in its commitment to ameliorate the suffering of former comfort women. Nevertheless, the AWF was an unfulfilled promise.

To avoid the appearance of being insensitive, the Japanese government dealt with the compensation issue at a non-governmental level.¹²⁵ In December 1994, as a token of apology for wrongs committed during World War II, Tokyo drew up a ten-year, one-billion dollar compensation plan to undertake cultural and vocational projects.¹²⁶ The plan did not include direct government compensation to former comfort women but instead called on the private sector to raise ten million dollars in donations.¹²⁷ Surviving comfort women were offered two million yen (about US \$17,000) in compensation.¹²⁸ Despite its label as a fund dedicated to compensating former comfort women, the AWF’s private donor base was a mechanism which enabled the Japanese government to avoid a confession of wrongdoing.¹²⁹ This politically motivated scheme created a facade of moral responsibility and sympathy while side-stepping official legal responsibility for past abuses committed by Japanese officials.¹³⁰

The AWF did not satisfy demands for reparations because the Japanese government failed to take official responsibility for its actions and show genuine remorse. Many survivors denounced the fund and

¹²⁴ Asian Women’s Fund, *Activities of the Asian Women’s Fund*, at http://www.awf.or.jp/index_e.html (last updated Dec. 7, 2000). The Japanese government officially established the Asian Women’s Fund “to deal with atonement to those who suffered as ‘wartime comfort women’ and to address the contemporary issues which offer on affront to the honor and dignity of women.” *Id.* “The primary aim of the AWF is to extend atonement and support to those who suffered as wartime ‘Comfort Women’” and the second objective “is to address contemporary issues concerning women.” *Id.*

¹²⁵ Tree, *supra* note 1, at 474.

¹²⁶ *See id.* at 472-74. The plan called “for raising private funds to pay a lump sum to each survivor” and to also provide former comfort women with medical and welfare services. *Id.* at 474. Japan’s Prime Minister, Tomiichi Murayama, as a result, established the Asian Peace, Friendship and Exchange Initiative, otherwise known as the Asian Woman’s Fund. *Id.*

¹²⁷ *Id.*

¹²⁸ *See id.*; *see also* Arakawa, *supra* note 5, at 182-83.

¹²⁹ *See* Tree, *supra* note 1, at 472-74.

¹³⁰ *See* Arakawa, *supra* note 5, at 183.

refused to accept the “consolation money.”¹³¹ One survivor was quoted as saying, “[I] would rather receive 10,000 won (approximately US \$12) and a formal apology than [sic] all the money from the Asian Women’s Fund.”¹³² The key redress issue, therefore, is not monetary compensation, but “the formal recognition by the Japanese government of its wartime atrocities committed in violation of international law and the dignity of comfort women, accompanied by an official apology that is endorsed by the Japanese Diet.”¹³³

D. *International Dismissal: An Alien Suit in the United States*

In response to the lack of success in hostile Japanese courts, on September 18, 2000, a group of fifteen former comfort women filed a class action lawsuit¹³⁴ in the United States District Court for the District of Columbia premised exclusively on the Alien Tort Claims Act.¹³⁵ The Court, however, determined U.S. courts could not hold Japan accountable because Japan is entitled to sovereign immunity under the Foreign Sovereign Immunities Act (“FSIA”).¹³⁶

Although U.S. judges may apply international law in a more progressive manner than their Japanese counterparts¹³⁷ the District Court chose not to do so. Instead, the Court applied the FSIA. The difficulty of suing a sovereign state under the FSIA, as well as unfavorable case law

¹³¹ See *id.*; see also Haq, *supra* note 113. Many former comfort women, who are now in their late 60s and 70s, want compensation to come directly from the Japanese government. Some survivors view the creation of such a fund as an offense to their dignity and honor. North Korea has refused to allow any acceptance of the Asian Women’s Fund. Taiwan has decided to offer Taiwanese victims direct compensation while rebuffing the Fund’s offer. Haq, *supra* note 113.

¹³² Tree, *supra* note 1, at 474.

¹³³ *Id.* at 474-5.

¹³⁴ *Hwang Geum Joo*, 172 F. Supp. 2d 52 (following in the footsteps of several successful suits brought in the United States by victims of human rights abuses).

¹³⁵ See Alien Tort Claims Act, 28 U.S.C. §1350 (1994). The Alien Tort Claims Act provides that “district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” *Id.*

¹³⁶ *Hwang Geum Joo*, 172 F. Supp. 2d at 56 (“Because this suit is brought against Japan, jurisdiction is premised exclusively on the Foreign Sovereign Immunities Act.”). The court determined that Japan “is presumptively immune from suit under the FSIA because it is a foreign state” and none of the FSIA’s exceptions apply. *Id.*

¹³⁷ Arakawa, *supra* note 5, at 176.

interpreting the FSIA by the Court resulted in a dismissal.¹³⁸ On October 4, 2001, U.S. District Court Judge Henry H. Kennedy Jr. dismissed *Hwang Geum Joo v. Japan*, ruling that U.S. Courts could not hold Japan responsible for its egregious conduct.¹³⁹ Although Judge Kennedy condemned Japan's actions, he ruled that jurisdiction was premised exclusively on the FSIA because the defendant was a sovereign nation-state.¹⁴⁰ The plaintiffs failed to satisfy any exceptions found in the FSIA.¹⁴¹ The court reasoned that, "Japan's alleged violations of *jus cogens*

¹³⁸ *Id.*

¹³⁹ See Bill Miller, 'Comfort Women' Suit Against Japan Dismissed, WASH. POST, Oct. 5, 2001, at A7 (stating the court's reasoning that "reparations should be sought through diplomatic channels without the court's intervention"). Filed in 2000, the lawsuit "sought to hold Japan accountable for the enslavement of an estimated 200,000 women who were forced to engage in sex with Japanese soldiers fighting in various Asian nations during the war." *Id.* "Although the plaintiffs are not U.S. citizens, they relied upon a law that gives foreigners the right to file federal lawsuits for crimes committed in violation of international law. But the judge said Japan could not be held accountable in U.S. courts because of the Foreign Sovereign Immunities Act and various postwar treaties." *Id.* The court's decision "sided with the legal argument made by the Japanese government and supported by the U.S. Justice Department." *Id.* Justice Department lawyer David J. Anderson stated at an earlier hearing that "the United States viewed the conduct as 'atrocities on a mass scale' but that the case 'probably belongs in the diplomatic arena.'" *Id.*

¹⁴⁰ *Hwang Geum Joo*, 172 F. Supp. 2d at 56 ("After the defendant has produced prima facie evidence supporting its entitlement to immunity, 'the burden of going forward . . . shift[s] to the plaintiff to produce evidence establishing that the foreign state is not entitled to immunity."). Thereafter, the defendant has the ultimate burden of proving immunity. *Id.*; see also 28 U.S.C. §§ 1602-1611. Under FSIA, Congress mandated immunity for foreign nations from lawsuits brought in the United States. 28 U.S.C. § 1604. There are, however, several exceptions to this grant of immunity. See *id.* §§ 1605-1607.

¹⁴¹ *Hwang Geum Joo*, 172 F. Supp. 2d at 52 (holding that Japan's acceptance of Potsdam Declaration at the end of the war was not a waiver of immunity under FSIA and that the comfort women system was not a commercial activity); see also Miller, *supra* note 139, at A7 ("[Since the] agreements and treaties made with Japan after World War II were negotiated at the government-to-government level, . . . the current claims of the [former] 'comfort women' should be addressed [as such].") (citing the court's reasoning); see also Bob Egelko, *WWII Reparations/Asian Sex Slaves Hope New Law will Aid in Fight for Redress*, S.F. CHRON., July 1, 2001, at A8. Prior to the District Court's decision, "the Bush administration—at the invitation of Japan, the sole defendant—has asked a federal judge to dismiss the suit." Egelko, *supra* note 141. The Justice Department lawyers argued that "[a]lthough U.S. law allows foreigners to bring suit over human rights violation, . . . all wartime claims against Japan were resolved by postwar treaties, which included billions of dollars in reparation – although none for comfort women." *Id.* In addition, the Justice Department argued that "the establishment of military brothels was a 'sovereign' act for which a government cannot be sued and that

norms¹⁴² by abducting women and forcing them into sexual slavery as ‘comfort women,’ prior to and during World War II, did not constitute an implied waiver of immunity under the [FSIA].”¹⁴³

Prior decisions have held, however, that foreign policy cannot be used to waive or dismiss claims. *Ware v. Hylton*, for example, dismissed the contention that a government can claim sovereign immunity and waive private claims without providing compensation.¹⁴⁴ The *Ware* court held:

Congress had the power to sacrifice the rights and interests of private citizens to secure the safety or prosperity of the public, . . . but the immutable principles of justice; the public faith of the States, that confiscated and received British debts, pledged to the debtors; and the rights of the debtors violated by the treaty; all combine to prove, that ample compensation ought to be made to all the debtors who have been injured by the treaty for the benefit of the public. This principle is recognized by the Constitution,

allowing the suit to proceed might expose the United States to suits in the courts of unfriendly nations.” *Id.*

¹⁴² *Hwang Geum Joo*, 172 F. Supp. 2d at 60 n.4.

A *jus cogens* norm is a principal of international law that is ‘accepted by the international community of States as a whole as a norm from which no derogation is permitted . . .’ Such peremptory norms are ‘nonderogable and enjoy the highest status within international law,’ they ‘prevail over the invalidate international agreements and other rules of international law in conflict with them,’ and they are ‘subject to modification only by a subsequent norm of international law having the same character.

Id.

A state violates *jus cogens* if it: “practices encourages, or condones (a) genocide, (b) slavery or slave trade, (c) the murder or causing the disappearance of individuals, (d) torture or other cruel, inhuman, or degrading treatment or punishment, (e) prolonged arbitrary detention, (f) systematic racial discrimination, or (g) a consistent pattern of gross violations of internationally recognized human rights.” *Id.*

¹⁴³ *Id.* at 53 (stating that a waiver of immunity under the FSIA needs to be clear, intentional, and unambiguous). Sovereign immunity is a legal doctrine, which protects the federal, state, and tribal governments within the United States from lawsuits, which would cause those governments to pay out money, real estate, or goods from the governmental treasury. *Id.* Over the last decade, many state supreme courts have limited or abolished the defense of sovereign immunity by finding that the doctrine was court made, declaring it to be unfair. *Id.* Most state legislatures in the United States have given up or waived some portion of their sovereign immunity. *Id.* Waiver of immunity is commonly done for public policy reasons. *Id.*

¹⁴⁴ 3 U.S. 199 (1796).

which declares, ‘that private property shall not be taken for public use without just compensation.’¹⁴⁵

Thus, the U.S. government cannot waive claims, even as part of a peace settlement, without compensating those whose claims have been violated. In reconciling the U.S. District Court’s recent ruling in the comfort women case with prior decisions, it appears that the court refused to address the claims challenging the Japanese government to avoid a “chain reaction” that would force the court to decide other alien suits. Once again, former comfort women have encountered a seemingly insurmountable obstacle to their pursuit of just compensation and a formal apology.

IV. WHERE DO WE GO FROM HERE?

Former comfort women need to heal. Reparations must eliminate the consequences of Japan’s illegal acts.¹⁴⁶ Although reparation usually takes the form of restitution, compensation or both, other means of granting redress exist.¹⁴⁷ One form of satisfactory reparations is disclosure of the truth, after an official and thorough investigation of the facts and circumstances, followed by an apology for the wrongs committed.¹⁴⁸ Recognizing the need to heal, surviving comfort women have sought redress and have failed. Both Japan and U.S. courts justify dismissing former comfort women’s claims by reasoning that they have either expired, been settled, or are barred by sovereign immunity. Where do the comfort women go from here?

A. *International Court of Justice*

The International Court of Justice (“ICJ”) may be an appropriate forum to provide the surviving comfort women the remedy they deserve.¹⁴⁹

¹⁴⁵ *Id.* at 245.

¹⁴⁶ Hsu, *supra* note 35, at 121.

¹⁴⁷ *Id.* at 124-25.

¹⁴⁸ *See generally* YAMAMOTO, *supra* note 66, at 194-96. If a person appears too willing to pay the damages, that willingness may be taken as a sign of his lack of regret. *Id.* Likewise, “when compensation or damages are to be paid to the victims, it is extremely important that the person responsible expresses to the victim his feeling of deep regret and apologizes, in addition to paying an appropriate sum.” *Id.*

¹⁴⁹ International Court of Justice [hereinafter ICJ], at <http://www.icj-cij.org/icjwww/generalinformation/icjgnot.html> (last visited Nov. 15, 2001). In 1946, the ICJ replaced the Permanent Court of International Justice. *Id.* The Court is

Acting as a world court, the ICJ's mission is to promote peaceful settlements of disputes between States.¹⁵⁰ However, the ICJ is not always effective and problems persist.

One major problem with the ICJ is that it deals only with disputes between states, not criminal acts by individuals.¹⁵¹ The abuses against the comfort women were inflicted by individual Japanese soldiers. Hence, the current issue is not a dispute between states, but rather systematic abuse of individuals committed by other individuals. In this regard, surviving comfort women's claims against the Japanese government may fail in the ICJ.

Another problem is that the ICJ is competent to entertain a dispute "only if the States concerned have accepted its [compulsory] jurisdiction."¹⁵² While Japan has accepted the general compulsory jurisdiction of the ICJ, Korea has not.¹⁵³ Consequently, it is highly

comprised of fifteen judges elected to nine-year terms of office by the United Nations General Assembly and Security Council. *Id.* When deciding a case, "[t]he Court decides in accordance with international treaties and conventions in force, international custom, the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists." *Id.* "The judgment is final and without appeal." *Id.* If one of the States involved fails to comply with the judgment, "the other party may have recourse to the Security Council of the United Nations." *Id.* Currently, there are 189 countries that are members of the United Nations and one country, Switzerland, which is not a member of the United Nations but which has become a party to the court's statute. *Id.* These countries are entitled to appear before the ICJ. *Id.*

¹⁵⁰ *See id.*

¹⁵¹ *See id.* (stating that "[o]nly States may apply to and appear before the Court").

¹⁵² *Id.* The ICJ has jurisdiction to entertain a dispute:

only if the States concerned have accepted its jurisdiction in one or more of the following ways: (1) by the conclusion between them of a special agreement to submit the dispute to the Court; 2) by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Several hundred treaties or conventions contain a clause to such effect; (3) through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration.

Id.

¹⁵³ *See* International Court of Justice, *Declarations Recognizing as Compulsory the Jurisdiction of the Court*, at <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm> (last visited Nov. 15, 2001). On September 15, 1958, Koto Matsudaira, Permanent Representative of Japan to the United Nations, declared:

unlikely that the ICJ will adjudicate these claims against the Japanese government.

Although the ICJ is an effective forum to resolve certain disputes, it will likely be an inappropriate forum to redress the surviving comfort women's claims. In particular, Asian countries tend not to engage in direct litigation with each other.¹⁵⁴ For example, when South Korea pursued former comfort women's claims, the Japanese government refused to make a reasonable settlement offer.¹⁵⁵ Today, with little accomplished, the Korean government has moved on and is not pursuing the matter further.¹⁵⁶ This lack of participation on the part of the Korean government hinders former comfort women's efforts in obtaining redress in the ICJ.

B. *International Criminal Court*

Although not yet formally established, the International Criminal Court ("ICC") is in the process of being formed to address crimes against

I have the honour, by direction of the Minister for Foreign Affairs, to declare on behalf of the Government of Japan, that in conformity with paragraph 2 of Article 36 of the Statute of the International Court of Justice, Japan recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation and on condition of reciprocity, the jurisdiction of the International Court of Justice, over all disputes which arise on and after the date of the present declaration with regard to situations or facts subsequent to the same date and which are not settled by other means of peaceful settlement. This declaration does not apply to disputes which the parties thereto have agreed or shall agree to refer for final and binding decision to arbitration or judicial settlement.

Id.

¹⁵⁴ Interview with Jon Van Dyke, Professor of Law, William S. Richardson School of Law, University of Hawai'i at Manoa, in Honolulu, Hawai'i. (Oct. 31, 2001).

¹⁵⁵ *Id.*; see also SCHMIDT, *supra* note 18, at 22. The Korean Women's Association demanded "an apology, a memorial and a complete inquiry into the issue," but was met with a response by the Japanese government that their requests were impossible to honor since there was no evidence of Korean women forced into an "ianfu" system. *Id.*

¹⁵⁶ See Tree, *supra* note 1, at 472-3 ("[In 1993,] the South Korean Kim Young-Sam administration announced that the Korean government would not seek any material compensation from Japan for former comfort women, but would insist that Japan thoroughly investigate the issue to uncover the truth and make a comprehensive formal apology.").

humanity.¹⁵⁷ According to UN Secretary General, Kofi Annan, the establishment of a permanent ICC is seen as a decisive step forward in bringing justice for victims of human rights abuses:

In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished.¹⁵⁸

The ICC may provide an ideal forum for comfort women and their struggle for redress.

Unlike the ICJ which is a civil tribunal that hears disputes between countries, the ICC is a criminal tribunal that will prosecute individuals.¹⁵⁹ The perpetrators of the crime in this case were individuals associated with the Japanese military and government. Therefore, they should come under the ICC's jurisdiction. In this way, when national institutions are unwilling or unable to act, the ICC can take over.¹⁶⁰ Because their claims

¹⁵⁷ Rome Statute of the International Criminal Court, *adopted and opened for signature* July 17, 1998, by the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court [hereinafter ICC], art. 1, U.N. Doc. A/Conf. 183/9 (1998) [hereinafter Rome Statute] (“[The ICC] shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern.”); *see also* Rome Statute, art. 5 (“[T]he jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole.”).

¹⁵⁸ *Rome Statute of the International Criminal Court*, at <http://www.un.org/law/icc/general/overview.htm> (last updated Oct. 8, 2001) (“One of the primary objectives of the United Nations is securing universal respect for human rights and fundamental freedoms of individuals throughout the world.”).

¹⁵⁹ *Id.*; *see also* Human Rights Watch, *International Criminal Court*, at <http://www.hrw.org/campaigns/icc/qna.htm> (last visited Feb. 12, 2002) [hereinafter Human Rights Watch]. The ICC “can try any individual responsible for such crimes, regardless of his or her civilian military status or official position.” Human Rights Watch, *supra* note 159.

¹⁶⁰ *ICC*, *supra* note 158. Two reasons are given for this inaction: (1) governments often lack the political will to prosecute their own citizens, or even high-level officials; or (2) national institutions may have collapsed. *Id.*

have been denied by the Japanese and U.S. courts, the former comfort women can appeal to the ICC to address their claims. The ICC serves to deter future war criminals and “ensures that those who commit the most serious human rights crimes are punished even if national courts are unable or unwilling to do so.”¹⁶¹

The ICC, while still new, may be the only alternative surviving comfort women have left to obtain justice.¹⁶² By bringing a suit in the ICC, there will be a chance that the individuals responsible for these horrendous acts will at least be prosecuted, despite their government’s failure to acknowledge responsibility.¹⁶³ This will ensure that, at the very least, the plight of the surviving comfort women will be adequately heard and considered by a court of law.

C. *Fundamental Human Right to Compensation*

Claims relating human rights abuses that can be brought forth in the ICC are based on fundamental principles of international law.¹⁶⁴ The failure to provide a remedy to victims of such abuses, in itself, can constitute a human rights violation.¹⁶⁵

The right to obtain financial compensation for a human rights abuse and to have the perpetrator of such an abuse prosecuted and punished is itself a fundamental human right that cannot be taken from a victim or waived by a government The only way to bring true healing to a divided society is to face up to the wrongs that were committed, to prosecute those who violated the fundamental human rights of others, and provide compensation to victims.¹⁶⁶

¹⁶¹ Human Rights Watch, *supra* note 159.

¹⁶² *Id.* (“The ICC ensures that those who commit the most serious human rights crimes are punished.”).

¹⁶³ *Id.*

¹⁶⁴ See generally Jon M. Van Dyke, *The Fundamental Human Right to Prosecution and Compensation*, 29 DENV. J. INT’L L. & POL’Y 77 (2001).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 1. Van Dyke argues that “[t]he right to bring a claim is a fundamental human right under international law.” *Id.* at 4.

According to Article 8 of the Universal Declaration of Human Rights, “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”¹⁶⁷ Likewise, Article 25(1) of the American Convention on Human Rights provides:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.¹⁶⁸

These laws establish that victims of human rights abuses have a fundamental right to bring a claim for redress.

Based on international law, the Japanese government’s refusal to provide compensation, or even an apology, may constitute a human rights violation. As such, the Japanese government could face prosecution in an international tribunal. Formulating claims under this principal is possibly the surviving comfort women’s only hope for redress. Because more than fifty years have passed between the human rights abuses and the filing of claims, many courts dismissed these claims based on the statute of limitations. By arguing that the current Japanese government committed a human rights violation by failing to provide compensation to remedy the wrongs inflicted upon these women, the surviving comfort women’s claims may prove successful.¹⁶⁹

Japan’s systematic rape and abuse of thousands of Asian comfort women was perpetuated through the official sanctioning of the comfort women system. Under Japan’s government-sanctioned system of sexual slavery, women were violated on a massive scale, and with institutionalized ruthlessness.¹⁷⁰ Japan violated international law; it is liable and should make adequate reparations to surviving comfort women.

¹⁶⁷ *The Universal Declaration of Human Rights*, art. 8, U.N. G.A. Res. 217A, 3 U.N. GAOR, U.N. Doc. A/180, at 71 (1948).

¹⁶⁸ American Convention on Human Rights, July 18, 1978, art. 25, <http://fletcher.tufts.edu/multi/texts/BH547.txt> (last visited Feb. 21, 2002).

¹⁶⁹ The eight lawsuits filed in Japanese courts that have not resulted in damage awards for the injuries suffered provide evidence of the lack of success of suits involving former comfort women.

¹⁷⁰ Tree, *supra* note 1, at 465.

Consequently, “Japan’s obligation to pay reparations to the comfort women arises out of numerous violations of customary norms of international human rights, . . . [which] include deportation, rape, forced prostitution, and torture. The comfort women’s claims for compensation arise from the consequences of those violations: physical sufferings and injuries, moral damages, loss of human dignity, and loss of consortium to the survivors of victims.”¹⁷¹ Public analysis of the Japanese government’s refusal to provide compensation or issue an apology as a human rights violation will help provide former comfort women the redress they deserve.

V. CONCLUSION

Time is running out for the former comfort women. The Japanese government and the Japanese courts have failed these women. The dismissal of their lawsuit in the United States has placed former comfort women in a dire position. The international community needs to pressure the Japanese government to assume full responsibility for the torture its soldiers inflicted on thousands of women during WWII. Without an appropriate legal forum to address their claims, the surviving comfort women may never heal. International acknowledgment that the Japanese government’s failure to provide a remedy violates a fundamental human right provides the surviving comfort women with a chance to get the redress they deserve. The Japanese government is responsible for the abuse they inflicted and continue to impose upon the comfort women. Anything less than compensation and an apology is a violation in itself. The silence is broken!

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¹⁷¹ Hsu, *supra* note 35, at 114.

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