

Landmark Seoul Central District Court Ruling on Japan's System of Military Sexual Slavery

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I. Implications

The Seoul Central District Court's historic ruling on January 8, 2021 clearly declares that state immunity does not cover crimes against humanity. The ruling reaffirms that the Japanese military's commission of crimes against humanity by sexually enslaving hundreds of thousands of "comfort women" victims is one of the most inhumane schemes in modern human history. The landmark ruling reminds the world that crimes against humanity have no statute of limitations and that all individuals have equal access to justice.

This essay discusses the following: first, the significant implications of this ruling; second, arguments against this ruling; and third, the importance of remembering and honoring the history and legacy of victims of Japanese military sexual slavery. Perspectives of justice-seeking individuals and organizations in the United States on this ruling close this essay.

This first proposition is also evidenced by other rulings on war crimes. One such ruling can be found in the case *Germany v. Italy: Greece intervening*. On June 10, 1944, hundreds of civilians in Distomo, Greece, women and children among them, were slaughtered by the Nazis. The plaintiffs, victims of the Distomo Massacre, waged a decades-long legal battle demanding that the German government pay reparations to the victims. Unable to make progress, as their last resort, they took their case to the Italian judiciary. Finally, in 2014, the Italian Constitutional Court ruled that sovereign or state immunity for war crimes like the Distomo Massacre violated the fundamental rights guaranteed by the Italian constitution. The Italian Constitutional Court's 2014 ruling explicitly rejected the International Court of Justice's 2012 ruling that Italy violated the state immunity of Germany.

The second major implication of the January 8 ruling involved a reaffirmation that the Japanese military's system of mass sexual slavery constituted a crime against humanity. This finding follows from existing international precedent. In June 1998, Gay McDougall, U.N. Special Rapporteur, released her report on the Issue of Systematic Rape, Sexual Slavery, and Slavery-like Practices During Armed Conflicts, defining "comfort women" systems as crimes against humanity.¹ A month later, the Rome Statute of the International Criminal Court added sexual slavery as a crime against humanity.² The Imperial Japanese government used various methods—including kidnapping, deceptive recruitment, pressure on families, and human trafficking—to establish and operate the military sexual slavery system. By implementing a state-sanctioned military sexual slavery system, Japan violated international laws, including the following³: 1) Hague Convention Respecting the Laws and Customs of War on Land (1907); 2) International Convention for the Suppression of the Traffic in Women and Children (1921); and 3) Slavery Convention (1926); 4) International Labor Organization Convention Concerning Forced Labor or Compulsory Labor (1930).

The third and final major implication of the Seoul Central District Court's ruling is that, as was also found by the 2014 Italian Constitutional Court's ruling, crimes against humanity have no statute of limitations. Furthermore, it's significant to note that this court ruling carried out the plaintiffs' right of equal access to justice. The Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, released at the U.N.'s sixty-seventh General Assembly session in 2012,

¹ McDougall, Gay J. "Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict: Final Report," U.N. Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/1998/13, Jun. 22, 1998, p. 41.

² Rome Statute of the International Criminal Court, International Criminal Court

³ Yoshiaki, Yoshimi. *Comfort Women*, Columbia University Press, 2000, pp. 155–160.

emphasizes “the right of equal access to justice for all, including members of vulnerable groups, ... to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.”⁴ This declaration pays particularly close attention to women, recommitting to “establishing appropriate legal and legislative frameworks to prevent and address all forms of discrimination and violence against women and to secure their empowerment and full access to justice.”⁵

Ok-Seon Yi, one of the surviving “comfort women” victims who filed the lawsuit, commented on the ruling as follows: “Japan may wait for all victims to die. Japan must apologize before all victims die.” I hope that she and other surviving victims find some solace in knowing that crimes against humanity have no statute of limitations. The pursuit of justice never ends.

II. Misunderstandings and misinformation

The January 8 ruling constitutes a step in the right direction for a collective restorative justice movement. However, despite the ruling’s significant progress, there are some misunderstandings and misinformation that need to be addressed.

Some people may erroneously believe that this ruling is about twelve “comfort women” plaintiffs merely pursuing compensation for their suffering. Not so. In demanding reparations, the victims call for a both formal and symbolic acknowledgment of the Japanese military’s war crimes. In comparison, the monetary amount of the reparations has little significance. Every victory begins with a small step.

According to the *Oxford English Dictionary*, compensation is defined as something, typically money, awarded to someone as a recompense for loss, injury, or suffering. By this definition, reparations constitute compensation for war crimes—compensation paid for by the perpetrator, which in so doing acknowledges their guilt. The plaintiff “comfort women” victims demand this crucial acknowledgement. Likewise, they demand a formal apology ratified by the Japanese government legislature as opposed to one-off apologies made by Japanese officials.

In response, Japan has argued that South Korean individuals do not have the right to claim reparations due to the 1965 agreement between South Korea and Japan. But in 1999, the International Labour Organization formally demanded that the Japanese government provide compensation to forced labor victims and work to provide restitution. Moreover, since the 2000s, international law has strongly trended towards the view that individual claims do not expire as the result of negotiations between countries.⁶ In 2018, Seita Yamamoto, an attorney specializing in postwar compensation, recognized this international standard: “The ruling by the Supreme Court of Japan [and the Japanese government] that the South Korea-Japan treaty means that the individual right to make claims exists but claims in court are unacceptable goes against international norms.”⁷

Japan has also repeatedly brought up the 2015 “comfort women” agreement, stating that the agreement was “final and irreversible.” Under this argument, the rights of “comfort women” victims to pursue justice today are nonexistent. However, the 2015 deal, made without the consent of victims who denounce it, was essentially nullified in 2019.

⁴ The United Nations. 2012, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*.

⁵ Ibid.

⁶ “[Fact check] S. Korean individuals have the right to claim compensation from Japan,” *The Hankyoreh*, Aug. 7, 2019.

⁷ “Japanese foreign minister acknowledges rights of individual victims of forced labor to make claims,” *The Hankyoreh*, Nov. 17, 2018.

III. The importance of remembering and honoring the history and legacy of victims of Japanese military sexual slavery

Since this case was brought in 2013 by twelve Korean victims, euphemistically known as “comfort women,” seven have passed away. Nonetheless, this ruling provides the consolation that survivors, living and deceased, sought for decades: for the unending trauma and sexual violence they endured to finally be recognized. Their admirable resilience and the Seoul Central District Court’s landmark ruling remind us that the world has no tolerance for crimes against humanity. A nation cannot hide behind state immunity to escape the consequences of its war crimes. The successful struggle of “comfort women” victims sets yet another empowering precedent for victims of other crimes against humanity and undelivered justice to claim their rights.

By remembering and honoring the legacy and history of “comfort women,” we gain a crucial lesson about the causes and consequences of military sexual slavery, which constitutes a grave violation of human rights and a crime against humanity. This chilling case serves as a valuable teaching resource for the prevention and elimination of sexual violence. It must be heeded as a warning against all forms of sexual violence, state-sponsored or otherwise.

The inhumane story of “comfort women” is a deeply relevant history rooted in imperialism, discrimination, and historical denial—fundamental problems that echo across history to today. This ruling declares that human rights take precedence over state immunity and inter-country agreements, especially when victims are not invited to the discussion table.

IV. The international community’s perspectives on South Korea January 8, 2021 court’s ruling

The victims of the Japanese military’s system of sexual slavery stood up and led a courageous fight for justice. Justice-seeking and peace-advocating individuals promoting human rights will continue the restorative justice movement begun and led by the surviving victims for peace, justice, and empowerment. Starting in Korea, the movement has since spread to other countries in Asia, Europe, and the United States. Below are remarks from supporters of the restorative justice movement for victims of Japanese military sexual slavery, commenting on the ruling:

Ramsay Liem
Professor Emeritus of Psychology
Center for Human Rights and International Justice
Boston College

I view Korea’s recent court ruling as not only a welcome and long-overdue state recognition of the rights and claims of these women (and sadly the many who have passed away) but also as a rebuke to seventy years of U.S. meddling in Korean affairs, including the erasure of Japanese atrocities for the sake of strengthening the U.S., South Korea, and Japan cooperation. The ‘Normalization Treaty’ of 1965 between South Korea and Japan is the historical foundation for Japanese intransigence, and an agreement primarily in service of Japanese and U.S. interests. The Seoul Central District Court’s ruling is foremost a historic acknowledgement of the years of courageous struggle by these women and their supporters and a welcome expression of Korean sovereignty.

Uldis Kruze
Professor of History
University of San Francisco

The issue of the military sex slaves carries universal resonance. The Korean court demonstrated courage and affirmation of historical reality in its judgment.

Some analysis focuses on the implications of this ruling for current diplomacy and power politics between South Korea, Japan, and the new Biden administration. Some also say that Koreans are never satisfied with what the Japanese side has brought but always want more. This misses the mark. The issue is justice and historical accuracy and respect for the genuine sufferings of the Korean people.

In September 1990, the late Japanese political figure Shin Kanemaru and the late Social democratic leader Makoto Tanabe affirmed the need for a broad acceptance of Japanese responsibility for its colonial oppression of Korea and its post-1945 unequal treatment of divided Korea. They spoke of apologies and compensation. These Japanese political leaders found the will and courage to say what needed to be said. Prime Minister Suga should follow in their footsteps.

Rose Camastro-Pritchett, MFA
Artist, Writer, Educator
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Since 2013 I have done extensive research on the “comfort women” and I have created a body of artwork which continues to be exhibited internationally. My intent is to illustrate how the Japanese government systematically and violently rounded up over 200,000 women to be used as sex slaves for the Japanese military during WWII and to recognize the suffering of the women who were abused.

Crimes have consequences. The Japanese government must acknowledge what they did and reparations must be paid. It was a war crime and as such there is no statute of limitations. A lack of acknowledgement, apology and reparation ignores the crime and gives sanction to other governments to continue to commit crimes against women. It must be stopped.

Christine Hong
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Director, Critical Race and Ethnic Studies
Co-director, Center for Racial Justice
Co-editor of the journal, Critical Ethnic Studies
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The realization of justice for the survivors of Japan’s Pacific War system of military sexual slavery is just as essential to the decolonizing process for Korea as it is to the deimperializing process for Japan. It has been a long three decades since Kim Hak-Soon first came forward to identify herself publicly as a former “comfort woman,” as a prelude to the launching of a landmark class-action lawsuit against Japan. Hers was the courageous voice that not only galvanized other survivors to identify themselves as such but also launched myriad lawsuits against Japan for the crime of military sexual slavery. Yet in the decades to follow, one class-action lawsuit after another stalled or failed in the notoriously slow Japanese legal system. All the while, the survivors of military sexual slavery and the activist networks that supported them ceaselessly organized for long-overdue justice, exploring every legal avenue possible, including by staging innovative legal proceedings like the 2000 Women's International War Crimes Tribunal held in Tokyo and pursuing novel interpretations of U.S. alien tort law. Yet formal justice for the survivors has remained elusive in Japanese and U.S. legal systems. In the wake, however, of Park Geun-hye’s brokering of a devil’s bargain with the Abe Shinzo government in late 2015—a fundamental betrayal of the survivors—the South Korean courts have served up two noteworthy judgments with regard to Korean “comfort women” for the U.S. military and the Japanese Imperial Army: namely, the early 2017 Seoul Central District Court ruling that described the forcible detention of Cold War-era camp town prostitutes as a massive human rights violation and the early 2021 decision by the same court that described the Pacific War-era “*ianfu* (慰安婦)” system as a crime against humanity and ordered Japan to pay victims or

their families (in the case of deceased “comfort women”) reparations. The message that the Seoul Central District Court has sent with these cases is clear: the human rights of Korean women subjected to imperial systems of violent sexual subjection and exploitation cannot be bargained away between nations. As the survivors have tirelessly made clear, the time for justice is now.

**Statement on Decision by South Korean court on reparations for “comfort women”
US Women’s Caucus at the UN**

January 17, 2021

We applaud the January 8, 2021 decision by the South Korean Seoul Central District Court that awards long-overdue acknowledgement and reparations to Korean “comfort women.” This historic decision holds Japan accountable for its wartime system of sexual slavery that impressed some 200,000 women and girls, mainly Korean, into involuntary servitude across Asia. The sexual torture of these innocent people was deliberately planned and carried out by Japanese military authorities and lasted for years.

The suffering of the “comfort women” reflects the vulnerability of women and girls in patriarchal societies, especially during wartime. UN Security Council Resolution 1820 on women, peace, and security called rape in armed conflict a war crime and stressed the importance of excluding crimes of sexual violence from amnesty provisions at war's end. The Council called on states to end impunity for those responsible for crimes of sexual violence in order to build a sustainable peace.

The South Korea court ruling complies with and advances the Security Council's mandate. We admire and offer our gratitude to the courageous women who told their stories of sexual slavery and to the feminist allies who helped them obtain this measure of justice. We hope that Japan, a good friend of the US, will redress the regrettable mistakes of the past, affirm the value of abiding by UN resolutions, and comply with the court’s order.

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