HUMAN RIGHTS COMMITTEE
94th Session (13-31 October 2008), Geneva

Japan

Alternate report

Co-submitted by
Women's Active Museum on War and Peace and Peace (WAM),
Japan All Solidarity Network for the Settlement of the "Comfort Women" Issue, and
Violence against Women in War-Network Japan (VAWW-NET Japan) [1]

1) Theme

Japan's military sexual slavery issue / the "comfort women" issue

2) Related Articles of ICCPR

Article 2: Obligation to ensure human rights
Article 3: Equal rights of men and women
Article 8: Prohibition of slavery and forced labor

3) Response in the government report

There is no description included in the fifth report. (CCPR/C/JPN/5)

4) Reference in the List of Issues of the CCPR

Paragraph 21. Please indicate whether the State party considers assuming any legal responsibility for the "comfort women" system of military sexual slavery under the former Japanese military regime before 1945, and whether it intends to investigate and prosecute perpetrators who are still alive, educate the general public on this issue, and provide compensation to victims as a matter of right, including in countries that were not covered by the Asian Women's Fund (1995-2007).

5) NGO information to the List of Issues

(A)Legal responsibility of Japan regarding the "comfort women" issue

The present Government of Japan has never assumed any legal responsibility for Japan's system of military sexual slavery until 1945, nor does it intend to. On the contrary, it consistently rejects that it is legally responsible, listing their arguments about why it is not responsible. These arguments, however, are either false or misleading at best.

(1) Legal responsibility of the Japanese government under domestic law

・The acts committed against "comfort women" were prohibited by Japan's own domestic law at the time.

The system of licensed prostitution that existed in Japan until 1946 may be described as a *de facto* system of sexual slavery and prostitutes then were hardly able to exercise their rights. Since 1900,

[1] Women's Active Museum on War and Peace was established in 2005, to research and record the facts of Japan's military sexual slavery and pass on the memory through exhibitions. Japan All Solidarity network was formed in 2007 as a network organization to get redress for the "comfort women" survivors. VAWW-NET Japan was established in 1998, and its three main themes include calling for the restoration of honor and justice for women victimized by Japan's military sexual slavery.

however, Japanese law provided for prostitutes' freedom to quit altogether.[2] In 1872 the Government of Japan had issued Official Order No. 295, in which it "confirmed the ban on traffic in people, released prostitutes from their contracts and settled the issue of their debts."[3] Women put under Japan's military "comfort women" system had no freedom "to quit, to change or choose their residence, or even to leave the vicinity temporarily…Women transported to areas under Japanese occupation far from their homes found escape utterly impossible, as all transportation routes were under Japanese military control…Japan's military 'comfort women' system was literally sexual slavery, in a far more thorough and overt form", run by the State itself, who illegalized the same act when committed by its citizens.[4]

During this time period, acts of traffic in women and girls were also illegal. Japan's Penal Code of 1907 criminalized confinement and trans-border transportation of persons against their will, be it by force or threat, or by deception or use of "sweet words". (Articles 224-228; effective today through repeated revisions, most recently Act No. 36 of 2006)" In 1937, the Supreme Court of Imperial Japan found guilty certain procurers for collecting women in Japan proper with a false promise of a job, sending them to Shanghai and forcing them into "comfort stations" for Japanese troops[5].

・The Government of Japan is liable under Japan's Civil Code for the wrongful acts committed to "comfort women".

When contesting the claims that it is legally responsible for the damage suffered by "comfort women", the government of Japan takes up different arguments domestically and internationally. Against the claims of survivors in Japanese courts, the government of Japan includes the following "grounds" that it does not assert to UN organizations and others outside Japan: the principle of State Immunity (the pre-war Japan's principle which made the State immune of liability for the damages the State unlawfully inflicted upon its citizens) should be applied to the acts committed until 1945; and the technical statute of limitations by which the right to bring a matter to court diminishes after twenty years from the time when the act in question was committed. The government also claims that the San Francisco Peace Treaty and subsequent bilateral peace agreements have settled the victims' claims finally. Most of the decisions by Japanese courts have accepted these arguments and rejected the claims made by the women survivors.

These arguments of the government of Japan, however, are not regarded as established legal principles even in Japanese courts. Some of the courts have dismissed them. The Tokyo High Court on 18 March 2005 found that the principle of State immunity should not be applied to such cases as the case of Chinese "comfort women". The Supreme Court on 12 June 1998 found that the technical statute of limitations for making lawsuits are not applicable for certain cases. The Supreme Court on 27 April 2007 found that only the authority to make a claim, but not the right itself for compensation, was waived in the post-war peace treaties.

(2) Japan's legal responsibility under international law

Japan is responsible for its wrongful acts under international law. Internationally, the government of Japan had and still has legal obligations to prevent, prosecute and punish these wrongful acts, and to provide remedy to the victims of those acts. Japan's legal state responsibility has not been discharged.

・Japan was a signatory to the following international agreements:

The 1907 Hague Convention on Land Warfare and its Regulations

Japan ratified this Convention in 1911. The Convention and Regulations cover the wrongful acts committed to the women in the occupied areas. The women from Japan's "colonies" (namely Taiwan and the Korean Peninsula) and Japan proper may not be covered by these regulations, but are within the scope of crimes against humanity.

The agreements and conventions concerning suppression of traffic in women in 1910s and 1920s

Japan was a signatory to the following agreements and conventions in 1925:

- the International Agreement for the Suppression of White Slave Traffic of 1904
- the International Convention for the Suppression of White Slave Traffic of 1910

[2] Yoshimi, Y. , *Comfort Women*, Columbia University Press, New York, 2000, p202.
[3] Ibid.
[4] Center for Research and Documentation on Japan 's War Responsibility (JWRC), *Appeal on the issue of Japan's military "comfort women*", 23 February, 2007.
[5] *Mainichi Shimbun*, 6 August 1997

- the International Convention for the Suppression of Traffic in Women and Children of 1921

Japan was required under Articles 2 and 3 of the 1921 Convention to prosecute persons engaged in trafficking of women and children. Japan declared that its colonized territories were not included within the scope *ratione territorii* upon acceptance of the Convention. Most of the "comfort women" were minors, however; as such Japan's international obligation under this Convention was applied to their cases regardless of the girl's place of origin. Also, many of the "comfort women" from the colonies were put into sexual slavery in China and other areas that were under Japan's occupation; as such were also covered by the Convention.

The 1930 International Labour Organisation Convention Concerning Forced Labour (ILO Convention No. 29)

Japan ratified this convention in 1932. In the recent years, the ILO itself has, on many occasions, underlined that Japan's military sexual slavery until 1945 was in breach of this Convention.

・Japan recognized international customary law as expressed in the 1926 Slave Convention

While Japan was not party to this convention, the convention was an expression of international customary law of the time, which had become *jus cogens* by at least the time of WWII. As early as 1872, a Japanese court ruled in favour of a Chinese labourer who tried to flee from coolie trade(The Maria Luz Incident).6

・The waivers in the San Francisco Peace Treaty and subsequent bilateral peace agreements that the government of Japan keeps as its grounds do not cover the following cases:

The cases of the people from the countries and regions that are not parties to the San Francisco Peace Treaty or have not signed bilateral peace agreements with Japan. This category may include The DPRK.

The sexual damage suffered by women under the Japanese military. Women "did not have an equal voice or equal status to men at the time of conclusion of the Peace Treaties, with the direct consequence that the issues of military sexual slavery and rape were left unaddressed at the time and formed no part of the background to the negotiations and ultimate resolution of the Peace Treaties." 7The records of the negotiation process between ROK and Japan have shown that the suffering of Korean women were not at all discussed during the course of the negotiation.

(B)Failure to investigate and prosecute perpetrators

On February 7th, 1994, twenty-seven Korean "comfort woman" survivors and the Korean Council for the Women Drafted for Military Sexual Slavery by Japan tried to submit criminal complaints to the Tokyo District Public Prosecutors Office in order to seek criminal investigation and prosecution for the "comfort women" system. The Prosecutors office did not accept them on the following legal technical grounds: 1. the statute of limitation had run; 2. the names of the perpetrators were unidentified; 3. the facts of damage were unidentified; and 4. penalty articles were inadequate[8]. On September 7th, 2008, in response to the inquiry made by a member of the Diet concerning the grounds of this rejection, the Japanese Ministry of Justice replied that it had no knowledge since there were no records kept on this case.

In order to amend this failure of Japan and other States to discharge their responsibility *ergo omnes* for ensuring justice, the "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery" was held in Tokyo in December 2000 by the initiative of the survivors, their supporters and other human rights workers from the victimized countries, the perpetrating country Japan and the global civil society at large. Sixty-four survivors from eight victimized countries gathered at the Tribunal and testified to their ordeal. Four eminent international lawyers, led by Gabrielle Kirk McDonald, former President of the International Criminal Tribunal for the Former Yugoslavia (USA) as the Presiding Judge, were the Judges of

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[6] Yoshimi, p202

[7] Para. 1051, The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, *Judgement on Common Indictment and the Application for Restitution and Reparation,* The Hague, 2001

[8] Totsuka, E., "*Nihon ga shiranai sensou sekinin*"（war responsibility that Japan doesn't know）, *Hogaku Seminar* (legal seminars), No. 472, 1994, pp 104-105

the Tribunal[9]. The Tribunal invited the Japanese government to take part, but received no response whatsoever. The Tribunal issued its final Judgment in The Hague, The Netherlands, in December of the following year[10]. The accused ten high-ranking officials, including Emperor Hirohito, were found guilty for crimes against humanity through the Japanese Imperial Army's mass rape and sexual slavery. The Tribunal further acknowledged the Japanese government's state responsibility and made concrete recommendations. The judgment was handed to Japan's Minister of Foreign Affairs in 2002. To date, however, the Japanese government has not followed up on the recommendations made by the global civil society through this Judgment in any way. These recommendations include providing sincere official apology, prosecuting and punishing the responsible party, providing State compensation to the survivors, carrying out thorough finding and fully disclosing these facts and educating future generations about the issue.

(C) Failure in educating the general public

(1) Failure to educate the next generation---minimising the reference to "comfort women" from the junior high-school history textbooks

In August 1993 Chief Cabinet Secretary KONO Yohei issued an official statement (the "Kono Statement"), which acknowledged the involvement of the government and military of Japan and the use of force in the "comfort women" system. By 1997 descriptions of the system appeared in all the seven textbooks approved by the Education and Science Ministry for use in junior high schools (the last phase of mandatory education). However, reference to the "comfort women" issue have been gradually disappearing. In February 2004, the incumbent Minister of Education, Culture, Sports, Science and Technology stated that, "It is wonderful that words like 'military comfort women' and 'forced recruitment' no longer appear in most textbooks". This statement has brought to light the stance of the Government of Japan.

In the textbooks used in 2006, the phrase "comfort women" was completely erased, and weakened descriptions remained in only two textbooks. This means that only 17.3% of students in junior high school has the opportunity to learn anything about the fact of "comfort women" system now. (See the chart in Appendix 1)

(2) Failure to educate general public

・Denial of the facts by Minister-level politicians

On March 1, 2007 ABE Shinzo, then Prime Minister, publicly stated that there had been no coercion used by authorities against "comfort women". In the Diet session on February 19, 2007, ASO Tetsuo, then Minister of Foreign Affairs, agreed with the point made by Representative INADA Tomomi that the "comfort women" system involved no coercion. Both of the Ministers later stated that they adhered to the Kono Statement of 1993 (see above). Other cabinet members and minister-level politicians, including former cabinet ministers, have repeatedly been denied the historical facts, sometimes calling "comfort women" commercial prostitutes of the time.

For instance, a full-page advertisement entitled "The Facts" appeared in the Washington Post on 14 June 2007, which reiterated these claims. Forty-four Diet members were among the signatories of this advertisement. The Government of Japan has never officially refuted such negative comments. Those politicians who made false comments have hardly been sanctioned for those statements. Denials by Minister-level and other politicians, and the fact that the government makes no rebuttal or sanctions have had a broad negative impact on the general public in Japan.

Furthermore, the recent Cabinet decisions show that the government of Japan is determined to keep its position equivocal with regard to this issue. On 16 March 2007, the Cabinet officially replied in writing to a parliamentary enquiry made by Representative TSUJIMOTO Kiyomi. The reply notes as follows: "Among the materials the government had found prior to the day when the research results [and the Kono Statement, which is a result of the research] were disclosed, no reference was found that directly indicates so-called "coercion" [carried out] by the military or constituted authorities."

"The Cabinet Secretary's Statement is not a Cabinet decision, but something that the subsequent

[9] The other three Judges were: Carmen Maria Argibay, President of the International Women's Association of Judges (Argentina); Christine Chinkin, expert on gender and international law (United Kingdom); and Willy Mutunga, President, Commission on Human Rights (Kenya)

[10] The ILO Committee of Experts introduced the legal discussion of the Hague Judgment of the Tribunal and cited for seven paragraphs in its report published in 2003 (CEACR: Individual Observation concerning Convention No.29, Forced Labour, 1930 Japan(ratification: 1932) published 2003.

Cabinets have succeeded." "The basic stance of the government is that it keeps to the Statement; it has no plan to make the content of the Statement into a cabinet decision."

An Official Cabinet reply in writing is a Cabinet decision. In other words, this reply of 16 March 2007 made it clear that the acknowledgement of the official involvement and use of coercion as described in the Kono Statement has less authority than the government's intention for keeping the acknowledgement under ambiguous legal and political status.

・No reference in national history museums

As the "comfort women" issue first appeared in history textbooks in mandatory education in 1997, most of the adults, who went through the education system before that time, didn't have a chance to learn about the facts of "comfort women" during WWII. Providing means of educating them about the issue is important. However, the National Museum of Japanese History doesn't make any reference to the facts about "comfort women". Showa-kan (National Showa Memorial Museum), another national museum, was established next to Yasukuni Shrine in 1999, in order to preserve the hardships of "Japanese people" during and after WWII. This museum also makes no mention of the hardships "comfort women" suffered but only those hardships of the Japanese, its own people.

(D)Failure to compensate the victims

(1) Asian Women's Fund was not a state compensation

The "Atonement project" of the Asian Women's Fund (AWF) was a scheme to collect private donations from Japanese people and provide "atonement money" from the fund thus raised to the individual survivors in a limited number of countries. Only 285 survivors accepted the "atonement money" but many other survivors rejected it, since AWF was not considered that Japan took legal responsibility over the issue of "comfort women". The AWF projects did not cover DPRK, China, Malaysia, East Timor, Burma, Papua New guinea and Japan, where the survivors came out Thailand, Vietnam, Cambodia, Singapore, India, Guam, Solomon, Palau and other Southern Islands are the countries/regions where the survivors have not yet come out but the existence of "comfort stations" has been identified. To date, Japan has not even announced that it intends to conduct even any investigation at all concerning the subject, let alone any redress. The Asian Women's Fund was terminated in March 2007. (See attached Appendix 2)

(2) Opposition to Court Cases

There have been ten cases filed against the government of Japan at Japanese domestic courts by women survivors of Japan's military sexual slavery. The plaintiffs are from five different countries and regions, all claiming legal state compensation and apology from the government. One of them is still pending but in other nine cases, the women's claims have been dismissed finally by the Supreme Court, thus exhausting all the domestic remedies. In all these court cases, the government of Japan has contested the plaintiffs' claims on such technical grounds as statute of limitations and the immunity of the State at the time of the act concerned.

In addition to its refusal to accept legal responsibility over the matter, the government of Japan has never seized these lawsuits as an opportunity for fact-finding or finding of the truth. In some of the cases, this has led the court to stay away even from making factual findings in its decisions, thus resulting in depriving the women of a formal/official recognition of the harm inflicted upon them, which is an essential aspect for the rehabilitation and healing of a victim of sexual violence.

(3) Opposition to Efforts for Parliamentary Resolutions in Overseas

2007 marked a year of parliamentary resolutions over the "comfort women" issue. A resolution or motion calling for Japan's official and unequivocal apology was adopted in the US House of Representatives, as well as the Dutch, Canadian and the European Parliaments. The government of Japan is reported to have worked very hard to prevent the passage of these resolutions. In the case of the US resolution, In the case of the US resolution, the government of Japan reportedly paid to a firm in 2006 "about $60,000 per month to lobby on the sole matter of historical issues related to World War II" including claims concerning Japan's abuses of American P.O.W.s as well as "comfort women"[11].

[11] Silverstein, K. *Cold Comfort: the Japan Lobby Blocks Resolution on WWII Sex Slaves*, Harper's Magazine, October 5, 2006.

(4) Failure to provide redress through legislation and/or administration

The government of Japan has never approached the Diet for a resolution through legislation, a necessary step towards that end. To this day, the Japanese court has stated on two occasions that the redress of the "comfort women" survivors should be done through legislation. In 1998, the decision of the Shimonoseki Branch, the Yamaguchi District Court, in which the plaintiffs enjoyed a partial victory, accepted that the government was responsible for the lack of legislation for a very limited period of the few years after 1993 when the government had officially acknowledged its involvement, and ordered the government to pay compensation to the victimized women plaintiffs for the inaction during the period. The decision of the Tokyo District Court of April, 2003, though it dismissed the plaintiffs' claims and negated that the inaction of the government for a solution through legislation constitute an illegal act, found facts of damage according to the plaintiffs' allegation and went even as far as stating that redress through legislation and administration is hoped for.

The government of Japan, however, instantly made an appeal in 1998 in the former case, and contested exhaustively in court until the Supreme Court finally dismissed the women's claims in March 2003. And the government has shown no sign of trying to act upon the direction of the particular Tokyo District Court's decision of 2003 as described above[12].

If the government of Japan wishes to provide victims with redress, measures through legislation or administration should be an effective option[13]. The government, however, makes no such effort despite the explicit requests from the judiciary. The Government and the LDP the ruling party, however, far from making positive efforts for a resolution through legislation, have been making even negative movements against the "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Bill" that the opposition parties proposed for the first time in March 2001.[14]

6) Recommendations

The State party should consult sincerely with the few remaining survivors and their supporters, accept full legal responsibility for the “comfort women” system, officially listen to and record the testimony of the victims, investigate and prosecute perpetrators who are still alive, and provide unequivocal apology and compensation to victims as a matter of right.

[12] Generally speaking, in the post-war Japan, it has often been the situation related to various lawsuits filed by citizens against the government for compensation (for the damages of pollution, inappropriate social welfare, etc), where the government contested in court while it passed new laws or altered related administrative measures, so that even though the plaintiffs finally lost their case, those citizens suffering a similar damage were later provided redress somewhat or rather in the way the plaintiffs of the lawsuits had demanded. Regarding the issue of Japan's military sexual slavery, however, the government shows no sign of making such a response.

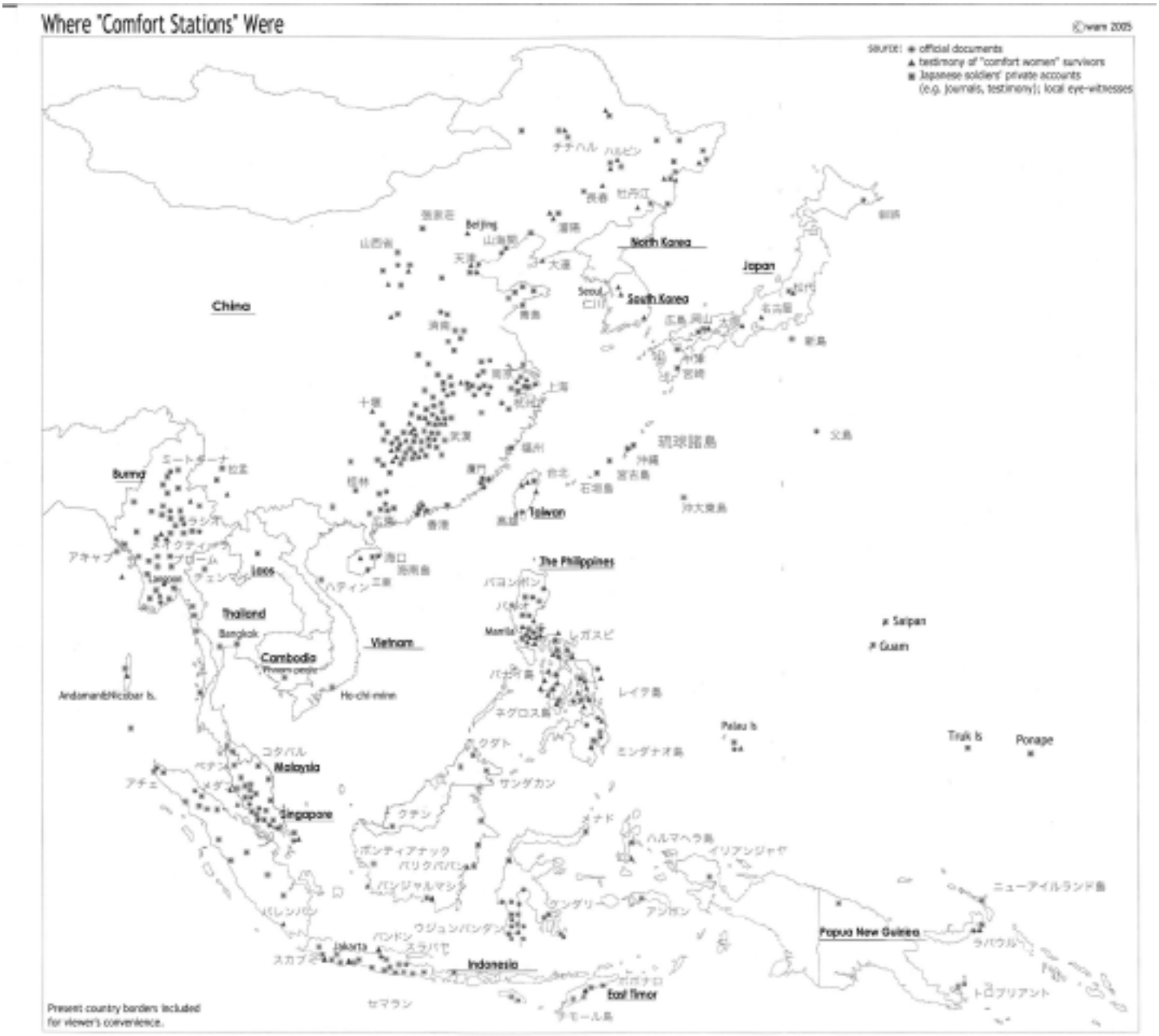
[13] In Japan, about 80 % of newly established legal codes are originated by the Cabinet.

[14] *Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act (Bill).* Introduced to the House of Councilors jointly by the Democratic Party of Japan, the Japanese Communist Party, the Social Democratic Party on March.31th 2001 for the first time, and the bill was discarded and reintroduced several times since then.

The reference on "Comfort Women are disappearing from junior high-school history textbook in Japan

Publisher	1993	1997	2002	2006	Adoption rate(2006)
Kyoiku Shuppan	No reference	①["War and the people's life"] …, and many Korean women were sent to the battlefield as 'comfort women' for Japanese soldiers. ②["Prospect of the post-war compensation issue"]… they include former 'comfort women,' victims of massacres, forcible draft and forced labor ③["Japan in Asia"] As of 1994, more than 20 lawsuits were filed by the victims of forcible draft/ forced labor and military note, in addition to the former comfort woman in the picture above. ④A former comfort woman seeking for compensation and the citizen's group in support * caption of the picture	No reference *1	No reference	11.8%
Tokyo Shoseki	No reference	①["Prolonged war and China and Korea] There were many young women who were sent to the battlefield against their will.	No reference	No reference	51.2%
Osaka Shoseki	No reference	①["War and the people's life"] …, and many Korean women were sent to eh battlefield as 'comfort women' for Japanese soldiers. ②["Postwar compensation"] Among serious issues are the 'comfort women for Japanese soldiers', forcible draft, difference in postwar compensation between nationalities including Taiwanese. ③Victimized former comfort women march in protest against the Japanese government seeking for postwar compensation * caption of the picture of "Postwar compensation"	No reference	No reference	15.4%
Nihon Bunkyo Shuppan	No reference	①["People's life in war"] There were women who were forced to go with the army as 'comfort women'.	No reference	No reference	1.4%
Nihon Shoseki Shinsha ***"Nihon Shoseki" until 2002**	No reference	①["People's life in war: Luxury is the enemy"] …and made women go with the army as 'comfort women' and treated them brutally.	①["Greater East Asia Co-prosperity Sphere' Illusion"] …and young women were forcibly collected in many areas in Asia, such as Korea, and sent to the battlefield as 'comfort women'. ②["Japan's postwar settlement"] …based on this, men forcibly drafted for labor, former comfort women and the victims of the Nanking Massacre have brought court cases seeking compensation and apologies from the Japanese government. ③ Ms Kim Haksun appeals: Ms Kim Haksun brought a court case seeking compensation and apologies from the Japanese government [1991] * caption of the picture	①["Greater East Asia Co-prosperity Sphere' Illusion"] Requested by the army, young women were collected in many areas in Asia, such as Korea, and sent to the battlefield as 'comfort women' for Japanese soldiers. ②[as the headline of the newspaper article presented in the textbook] 35 people including former comfort women. * Its caption reads: a newspaper reporting a court case against the Japanese government bought by 'Association for the Pacific War Victims" in Korea [Asahi Shimbun, December 6, 1991]	3.1%
Teikoku Shoin	No reference	①["Still remaining scars of the war"] Some were former comfort women…among those from these areas… ②["Japan's policy to make Korean people the Emperor's subject"] …urged people to the war front by drafting men as soldiers and women as comfort women, giving them unbearable hardship.	①[in a note of "Postwar compensation and neighboring countries"] …court cases were brought by women seeking compensation for having been sent to comfort facilities in the wartime …	①[in a note of "Postwar compensation and neighboring countries"]…court cases seeking postwar compensation were brought by women who were sent to comfort facilities, or by men from Korea or Taiwan who were drafted as Japanese soldiers in the wartime…	14.2%
Shimizu Shoin	No reference	①["Forcible labor draft of people from Korea, China and Taiwan"] …women from Korea and Taiwan, …, were made to work in the facilities for comfort on the battlefield.	①["War and common people"] …women from Korea or Taiwan, as well as Japan, in human facilities for comfort on the battlefield…	No reference	2.4%
Fusosha	*Not published	* Not published	No reference	No reference	0.4%

*1 The original textbook applied for authorization included an account: "and many Korean women were sent to the battlefield" –- which could infer 'comfort women'. The correction was ordered to this part: "many Korean women were sent to the factories".


Where "Comfort Stations" Were
©vaw 2005
SOURCE: official documents
testimony of "comfort women" survivors
Japanese soldiers' private accounts
(e.g. journals, testimony); local eye-witnesses
China
North Korea
Japan
South Korea
Seoul
Beijing
Burma
Taiwan
The Philippines
Laos
Thailand
Bangkok
Vietnam
Cambodia
Malaysia
Singapore
Indonesia
East Timor
Papua New Guinea
Saipan
Guam
Palau Is
Truk Is
Ponape
Andaman&Nicobar Is.
Ho-chi-minh
Present country borders included
for viewer's convenience.