Information Document Submitted to Ms.Lalaina Rakotoarisoa, Member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights

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Introduction

(1) The single rape of a woman by a man in peacetime (i.e., in the absence of armed conflict) raises a furor as a serious crime that violates the dignity of the victim, yet multiple rapes of many women by many men during armed conflict are dismissed under the popular belief that "it's the sort of thing that happens during armed conflict," or "rape is part of war"; these crimes continue to pass without any inspection in particular, and the perpetrators evade punishment and responsibility for compensation, while the victims can but cry themselves to sleep. Why has this happened so often?

Even in many peacetime instances of sexual violence, why is it that blameless women victims find it so difficult to state publicly that they were forced into sexual acts unwillingly (for example, any attorney who has even once accepted a case representing a sexual crime victim in a criminal charge, or as a representative in a claim for damages against an offender must know that just telling someone that she is a victim very often takes much longer than the six-month complaint period for rape that has been provided under the Criminal Code), and even when finally gathering all their courage and making such an admission, why are there so many difficulties encountered, as described below, until the perpetrators are indicted as criminal defendants and punished, and until the courts order compensation for the women victims?

(2) To determine why sexual violence during armed conflict often tends to be overlooked even though it is generally of greater cruelty and harm than peacetime sexual violence, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities commissioned studies by appointing Ms. Linda Chavez as a special rapporteur on "Slavery During Periods of Armed Conflict" in 1994, Ms. R. Coomaraswamy as special rapporteur on "Violence Against Women" in 1996, and Ms. Gay J. McDougall as special rapporteur on "Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict" in 1997. They all prepared final reports and submitted them to the UN Commission on Human Rights.

Through these efforts we have gradually become aware of facts such as those in par. 89 of the McDougall Final Report: "The right to an effective remedy is clearly essential in overcoming impunity and non-accountability for sexual slavery, rape and other acts of sexual violence in armed conflict, and the rights of victims of these atrocities must be vindicated and redressed. The failure to provide any forum or mechanisms for the redress of rights violations would clearly constitute a further violation of international norms and obligations, as would any discrimination against women in exercising their rights to redress. For instance, it is contrary to the principles of international law for municipal law, including customary law, to provide that only male relatives can claim and receive compensation on behalf of women victims of rights violations. Women must be legally entitled, on an equal basis with men, to claim and receive compensation on their own behalf." As this shows, the long continuance throughout history of a situation in which the civil and criminal responsibility of perpetrators is not effectively pursued for the mere reason that the crimes happened under a state of armed conflict has, each time a new armed conflict arises, given potential perpetrators of sexual violence a sense of license to commit the unlawful and inhumane act of wartime rape, a so-called "chain of impunity."

(3) The McDougall Final Report further states: "In addressing the issue of

impunity, it is important to note that wherever national courts have established adequate procedural mechanisms to safeguard the rights of both the victims and the defendants, national prosecutions for human rights and humanitarian law violations may often be preferable to prosecutions before international tribunals. In 1973, the General Assembly adopted resolution 3074 (XXVIII) entitled, 'Principles of international cooperation in the detention, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity', in which it noted in particular that '[e]very State has the right to try its own nationals for war crimes or crimes against humanity.' This principle also applies to cases of sexual violence, although the international community must recognize that crimes of a violent sexual nature require specific procedural and evidentiary safeguards to ensure that national prosecutions adequately respond to the violations" (par. 91; emphasis by this report's authors).

Laws of war include domestic laws under which a government imposes certain obligations on, or limits the rights of, its own citizens alone and only during wartime, but many laws of war are international laws that are applicable to multiple countries. Hence the matter of whether or not there are proper domestic procedures for protecting the rights of both perpetrator and victim, i.e., whether or not it is more desirable to bring a case about violations of human rights law and humanitarian law before a domestic court (i.e., try it under domestic law) than an international court, depends on whether the country to which the victim or perpetrator belongs, and on whether the domestic law of the country in which the crime was committed has legal institutions adequate to provide the victim with proper redress, and if said institutions are functioning effectively.

In that sense, the matter of whether a certain country's domestic laws applying to injury due to peacetime sexual violence are established as procedures that properly protect the rights of both victim and perpetrator is closely related to whether redress for sexual violence injury when that country is in a state of armed conflict is properly and effectively provided in light of international wartime law.

(4) Again in 1990s organized group sexual violence unfortunately occurred on a large scale during armed conflict in Rwanda and the former Yugoslavia, reminding us of a disgraceful page in Japanese history that tends to be forgotten: About 50 years before the Rwanda and Yugoslavia crimes, Japan regrettably had a wartime slavery system at places called "comfort stations." As Section 7 shall relate in detail, victims of that system have so far filed 10 lawsuits to regain their dignity in Japanese courts, but there are already 43 cases in which the Supreme Court has finalized decisions against plaintiffs (victims), and in the rest of the cases the district or appellate court decisions have been against the plaintiffs. Accordingly, it would be hard to say that redress under Japanese domestic law for cases of wartime sexual violence, in which Japan was the perpetrator, is carried out with adequate properness and effectiveness.

We must examine the reasons for this, as well as for the difficulty in modern-day Japan of determining guilt and responsibility for crimes of sexual violence, which we have, as lawyers and as representatives for women victimized by peacetime sexual violence, continually sensed in the process of police and prosecutor investigations, in the course of criminal and civil trials, and in the resulting court decisions, and we must examine what connection there is or is not with the difficulty of determining guilt and responsibility for wartime crimes of sexual violence of which Japan is the perpetrator.

(5) Preparation of this information document was occasioned by an August 13, 2003 decision delivered to Lalaina Rakotoarisoa, a member of the UN Sub-Commission on the Promotion and Protection of Human Rights, to submit an expanded working document on the difficulty of determining guilt and responsibility for crimes of sexual violence at the Sub-Commission's 56th session in the summer of 2004, and this document's purpose is to have Japan's situation accurately reflected in the expanded working document by providing accurate information to Ms. Rakotoarisoa — who could understand more detailed knowledge about Japan — with respect to matters including the reasons for the difficulty of determining guilt and responsibility for crimes of sexual violence in Japan, whether in peacetime or in wartime, and how the causes should be eliminated.

1. Making a Crime of Sexual Violence, and International Standards on Prosecution Procedures

(1) International Criteria: Rome Statute and ICC Rules

In recent years there has been progress in various countries on making a crime of sexual violence and on prosecution procedures with a focus on victims' rights. We can consider the Rome Statute adopted in 1998, and the International Criminal Court (ICC) Rules of Procedure and Evidence, adopted in 2002 by the countries that signed the Statute, as international standards supported by that progress.

Under the recognition, "Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation" (Preamble, fourth par.), the Rome Statute is replete with provisions to prosecute sexual violence and to protect witnesses and victims.

First, the Statute categorizes "rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as crimes against humanity and war crimes (Articles 7 and 8).

Second, the Statue says that both women and men should be equally considered for election as ICC judges, and that judges should include people with expertise on violence against women and children (Article 36).

Third, the Registrar is to create a Victims and Witnesses Unit where trauma specialists will provide protection and counseling (Article 43.6). Chapter 2.2.2 of the ICC Rules sets forth detailed provisions on the Victims and Witnesses Unit.

Fourth, as part of actual investigation and prosecution procedures, the prosecutor and the Court are obligated to protect victims and witnesses, and to take measures which take into account the nature of sexual violence crimes (Articles 54, 57, and 68). Under these provisions the Statute takes various matters into consideration in trial procedures.

- Testimony of a witness by means of video or audio technology (Rule 67))
- Strict limitations on inference of consent to sexual violence by victims (Rule 70)
- Disallowance of evidence on other sexual histories of victims (Rule 70)
- Orders by the Court to protect victims and witnesses (Rule 87)
- Orders by the Court for special measures for traumatized victims (Rule 88)

Fifth, the Court is empowered to order defendants to pay reparations to victims (Article 75), and can order the payment of reparations from trust funds established by decision of the Assembly of States Parties for victims and their families (Article 79).

Sixth, victims have the opportunity to state their views to the Court at several stages of the proceedings (Articles 15.3, 19.3, and 68.3), and the right to appeal orders for reparations (Article 82.4, Rules Chapter 4.3.3).

And seventh, the Statute requires the Court to take a stance for the protection of victims and witnesses as above, while at the same time reconciling this with internationally recognized human rights (Article 21), and providing sufficient assurance of human rights for suspects and defendants (Part 3).

(2) Current State and Problems of Japan's Criminal Justice on Sexual Violence

1) Omission of "Comfort Women"

Victims of the "comfort stations established by the former Japanese Army or of other sexual slavery systems by the former Japanese Army during the Second World War have been forsaken for many years. No procedures were initiated in the International Military Tribunal for the Far East or in accordance with domestic Japanese criminal justice to investigate and prosecute those responsible for the injury caused by such sexual violence. In 1991 victims broke nearly a half-century of silence and publicly spoke of the harm they endured, but even then Japan's government took no action whatsoever to determine criminal responsibility, an example being the refusal to accept the complaint submitted to the Tokyo District Public Prosecutors Office in 1994 by the Korean Council for Women Drafted for Military Sexual Slavery by Japan ("Teitaikyo").

On the other hand, item 145(e) of the Beijing Platform for Action adopted at the 1995 United Nations Fourth World Conference on Women demanded that governments fully investigate sexual violence and harms by sexual slavery under armed conflict and prosecute those responsible. Further, in 1996 the Coomaraswamy report submitted to the UN Commission on Human Rights (E/CN.4/1996/53/Add.1) made this recommendation to Japan's government: "Identify and punish, as far as possible, perpetrators involved in the recruitment and institutionalization of comfort stations during the Second World War" (137 (f)). And it was the McDougall report (E/CN.4/Sub.2/1998/13) submitted to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in June 1998 that performed a detailed analysis of the legal framework for prosecuting sexual slavery and sexual violence under international law, and especially the Japanese military's criminal responsibility for its sex slavery system. This report described the elements of contemporary international customary law for the prohibition of sexual slavery, rape as a war crime, crimes against humanity, and other provisions that should have been applied to the "comfort women" issue. The report also elucidated areas such as the legal principles concerning the responsibility of those in authority, and the legal principles on the inapplicability of any statute of limitations under international customary law, and it made a recommendation to Japan's government to immediately take action in response to the 1994 Teitaikyo compliant.

In September 2000 women and citizens from nine victim countries and Japan gathered in Tokyo for the Women's International War Crimes Tribunal to sit in judgment on the "comfort women" issue. A 2001 decision by a group of judges comprising the former ICTY president and other international jurists demonstrated, on the basis of evidence, the harm from organized and widespread sexual slavery in the Asia-Pacific region and the organized involvement of the Japanese government and military at that time, including Emperor Hirohito, and the decision advised Japan's government to immediately set to work on investigating and prosecuting these crimes.

Nevertheless, the Japanese government has still done nothing at all about it.

2) Status of Sexual Violence Victims under Current Criminal Procedure

Under Japanese criminal justice, victims have not been given status as parties to an action; instead, they were only unsworn witnesses in questioning by investigators, or used in public trial witness examinations. But in the 1990s there was reconsideration of the participation and role of victims in criminal justice, and in 1999 and 2000 there were a number of changes such as:

A. Victims at the Investigation Stage

When performing investigations, police officers are required to understand the feelings of victims and respect them as individuals (Crime Investigation Standards, Article 10.2). Additionally, police now give victims information on the arrest and disposition of suspects (Article 10.3). Further, the complaint period for sex crimes such as indecent assault and rape used to be only six months, but that limitation was abolished (Criminal Procedure Act, Article 235; Criminal Code, articles 176 to 178).

B. Victims in Procedures for Public Actions and Public Trials

Appeals to a prosecutor inquest against a decision by the prosecutor not to indict could formerly be made only by the victim herself, but it is now allowed for certain family members when the victim is deceased (Law for the Inquest of Prosecution, Article 2.2).

In public trials measures can now be taken to mitigate the psychological burden of witnesses, such as using video technology, or providing protective screens or attendants. If victims so desire, they may now state their opinions in public trials (Criminal Procedure Act, Article 292.2).

C. Redress for Victims

When deemed reasonable in situations such as cases in which there is a need for seeking payment of compensation, victims are allowed to view and copy records (Law on Measures Incidental to Criminal Procedures to Protect Crime Victims and Others, Article 3). And when there has been a civil-law compromise settlement on the payment of compensation in a public trial between the defendant and the victim, it is now possible for courts to prepare an executive trial protocol (Article 4).

However, in view of the international standards discussed above, these measures are far from adequate to protect victims of sexual violence.

First, all people engaged in judicial duties, not only judges, should be well grounded in the characteristics of injury from sexual violence, but actually when assigning judges to try sexual violence cases there is no requirement whatsoever that they have specialized knowledge about such issues.

Second, neither courts nor investigative agencies (police and public prosecutors' offices) have any special organizations or institutions to protect sexual violence victims or witnesses, or to take their psychological difficulties into consideration. Showing sensitivity to victims is left entirely up to the awareness of judges and prosecutors.

Third, victims obtain restitution through the preparation of a trial protocol when the defendant agrees and has assets, but there is no system to provide restitution when a decision calls for compensation but the defendant does not agree, or a fund to pay when the defendant has no assets.

2. Problems in Criminal Law

(1) Benefit of the Law in the Case of Rape

Benefit of the law in the case of rape should protect the victim's "sexual freedom" and "right to sexual self-determination," i.e., the victim's personal rights to freedom, but benefit of the law regarding rape was not conceived in this way when current laws were passed. Rape under current law is seen as a crime that violates the so-called social benefit of the law, and in the title on "Crimes of Obscenity, Adultery, and Bigamy" it is defined along with public indecency and bigamy. Hence in the legal system rape is conceived as a crime that violates society's sexual order and healthy sexual manner.

Even if protection and benefit of the law in the case of rape is seen as violating the individual's benefit of the law, it is safe to say that the interpretation which sees this as "chastity," i.e., the victim's sexual purity, was formerly the generally accepted theory. However, the concepts of the victim's right of sexual self-determination and chastity contradict one another. Even if a victim is supposedly sexually uninhibited, it does not at all mean she must submit to unwanted sex. But in general even now people are not clearly aware of this, and one not infrequently sees the statement that, for the crime of rape, it is sexual freedom or chastity that has the benefit and protection of the law.

The idea that "chastity" is the substance of the benefit of the law is even now alive and well in interpretation and implementation of the law for rape. One still finds case precedents which offer little doubt they are based on the idea that "a woman whose virtue is so weak that she readily yields to a minor sexual attack or intimidation is not worthy of protection under this article." In any event there is no question at all about the use of the word "chastity" in a court decision. Such an attitude in the courts will of course influence investigative agencies, and there is still hardly any improvement in the anatomy of a system which, even at the investigation stage, criticizes people who file incident reports. To wit, authorities focus exclusively on the fault of the victim's actions leading to the injury, and on the degree of resistance made to prevent the injury, as the criteria for judging whether the act of sex at the time was truly against the victim's wishes.

Although this concerns civil cases, in recent years there are signs in sexual harassment trials of a gradual change in perceptions toward victims of sexual violence. For example, one fact is that only a few victims scream or otherwise directly try to repel an attacker when it seems they will be raped, while other victims will not necessarily take such action. Also, although some sexual violence victims have no visible wounds, they suffer from post-traumatic stress disorder (PTSD) which is so serious that it should be considered a physical injury. This approach should actually be actively incorporated into criminal trials, in which victims who have filed incident reports are just one evidentiary method, not parties to their lawsuits. Perhaps for this reason as well, implementation is quite in favor of the perpetrator/suspect/defendant (victims of sexual violence are given only rights and obligations which are far different from those of parties to a lawsuit).

Although a person filing a victim's declaration is one form of evidence, real evidence and documentary evidence such as oral statement records are different from a living human being, making it necessary for criminal positive law to expressly provide for considerations based on the characteristics of evidentiary methods, and to sufficiently take this into account when implementing the law.

Thus, even though a victim is not a party to a criminal lawsuit, it is necessary

during examinations (i.e., the questioning of witnesses) to show consideration based on the distinctive characteristics inherent in evidentiary methods as discussed above, but implementation of current criminal procedure law still has too little consideration in this area, and the situation therefore calls for immediate rectification.

(2) The Need for Provisions to Punish Incest

Current law has no provisions for precluding circumstances with respect to the principal in the crime of rape. Thus, even if the principal is the victim's kin, this ideally constitutes the crime of rape. But because rape is a crime indictable upon a complaint, if a child is raped or otherwise sexually abused in the home, it is virtually impossible to charge the perpetrator (presumably the child's father, sibling, stepfather, or other such person) with the crime or call him to account. When a person with parental authority is himself the perpetrator, he can of course not be charged with the crime, and it is virtually impossible to expect other kin to press charges. Mothers who are aware that their daughters are being sexually abused, but who tolerate it silently or act as though they do not notice it, are certainly not rare, and it is safe to say that even if a mother barely delivers her child from the hands of the perpetrator by divorcing him, she will not bring criminal charges against her former spouse. It is even more difficult for the victimized child herself to bring charges.

Current law requires assault and intimidation to make the charge of rape stand for a girl 13 years or older. But in the small world of the home the perpetrator, who has the close relationship of kin to the victim, need not avail himself of assault or intimidation to rape the victim. In fact, the more sexual abuse occurs on a daily basis, the less the need for assault or intimidation. The worse and more long-term the harm, the harder it is to call the perpetrator to account, which is a terribly absurd outcome. Therefore consideration should be given to creating special provisions to punish incest that focus on the crime's special nature (for example, it should not be a crime indictable upon a complaint, and the requirement for assault and intimidation should be eliminated).

(3) Spouse Rape

Just as with incest, there is nothing in current law to prevent rape from being a crime even if the perpetrator is the victim's husband, but it is thought that spouses have the right to seek sex from one another, meaning that the other spouse is obligated to consent, and that it therefore cannot be a crime. Even if a wife charges a husband — or after divorce a former wife charges a former husband — with a crime, in reality the charge will not be accepted by the authorities. What this means is that with regard to spousal sexual relations, it is acknowledged that if the wife does not consent, the husband has the right to sexual intercourse by force, which is none other than thinking which condones sexual violence by a husband against his wife. Such thinking stands in direct opposition to the idea that domestic violence violates the human rights of the wife/victim, and to the intent behind Japan's Domestic Violence Prevention Law. As long as one subscribes to the thinking that domestic violence is a violation of human rights and that violence between spouses is a crime, this naturally leads to the conclusion that spouse rape too is a crime.

And even if charges are brought in a case of spouse rape, the same problems as with incest arises if assault and intimidation are requirements. It is evident how meaningless the requirement for assault and intimidation is in forced sex between

spouses if a dominance-obedience relationship has already been formed between them by repeated mental violence or other causes.

This is not to say that, in terms of judicial precedents, the crime of rape between spouses has never been recognized, but these are cases in which the parties had long lived apart and no longer had a life as husband and wife, seemingly making it inappropriate to think of it as spouse rape. There is no reason for separate treatment in cases of rape between people who are just legally spouses.

Therefore to punish spouse rape the government should create special provisions that focus on the crime's special nature.

(4) Amendments to Criminal Law Proposed on Statutory Penalties for Sex Crimes, and Questions Raised about the Lowness of Statutory Penalties

Some experts have consistently expressed the view that the statutory penalties for rape and rape resulting in bodily injury under the provisions of current law are too low. The absurdity is obvious when making a comparison with robbery, a property crime that has a structure similar in terms of constituent elements. While the penalty for rape is at least two years imprisonment, that for robbery is at least three years; the penalty for rape resulting in bodily injury is life imprisonment or at least three years, while that for robbery resulting in bodily injury is life or at least seven years. Thus experts observe that a woman's right of sexual self-determination is given less weight than property.

A few years ago a gang-rape incident became a matter of public concern and triggered consideration of changes including the following for rape and other crimes: Imprisonment for a definite term of at least two years for rape would become at least five years, and to augment the punishment for multiple criminal acts, a new crime of gang rape would be created, whose statutory penalty would be heavier than for a single act of rape, i.e., imprisonment for a definite term of at least four years. It remains to be seen what conclusion will emerge on the suitability of this proposed change.

But the punishments are still lighter than those for property crimes. It may not be the case that simply increasing punishment will solve the problem, but the statutory penalty uses numerals to candidly rate the weight of the benefit of the law that is infringed, and as such it is a frank indicator of the social value judgment underlying the law. As far as the proposal for change shows, in Japanese society women's sexual freedom still gets lower treatment than property rights.

3. Problems Actually Arising in the Investigation Process (Police and Prosecutors)
(1) Few Charges Brought

In February 2000 the Office for Gender Equality in the Prime Minister's Office (now the Cabinet Office) conducted a Survey on Violence Between Men and Women, in which women saying they had been coerced about sex once, or two or more times, totaled 6.8% of all the women surveyed. Further, 54.5% answered that they had consulted with someone about having been coerced about sexual acts, while 38.8% had consulted nowhere or with no one. Of those who said they had consulted, only 10.7% said they had contacted and consulted with the police. Therefore this survey revealed that among those women who were sexual victims, a mere 10% or so consulted with the police.

And even if victims consult with police, it does not necessarily lead to filing charges. Victims sometimes do not press charges because they fear retaliation from perpetrators. It is not rare for victims to give up filing charges for various

reasons such as: their attention is called to the definition of sex crimes under criminal law (the requirement for assault and intimidation), or to the fact that proof will be difficult if the suspect denies the act or insists that the victim consented to it, and they are instructed that the case could be dismissed even if charges are filed, or the authorities explain that testimony in police interviews and the trial will be necessary, thereby subjecting the victim to continued grueling circumstances. Further, some victims lose their trust in the police and take no more action when they suffer again at the hands of the authorities, as when seeing the unfeeling attitude of police officers, or criticized for being at fault.

Results of the aforementioned survey showed that only 25.6% of the suspected rapists were total strangers to their victims, and this percentage rises to only about 40% when combining those cases in which victims responded that they did not know who their attackers were. In most cases the suspects are acquaintances, friends, lovers, husbands, workplace associates, someone they have previously met, a parent, or a relative. Especially when the suspect is the husband, a parent, or a relative, victims who file incident reports hardly ever press criminal charges in consideration of the changes in family relationships and the magnitude of impacts on other family members should they do so.

When those who report injury from sexual violence go to the police with the intent of pressing charges against people in such relationships to themselves, the police sometimes will not accept the charge by persuading the victim that it is best not to press charges, or by not responding to the victim seriously.

Incidentally, National Police Agency statistics show that of all the rape cases in which police made arrests in 2002, suspects were kin in only 2.2%, while they were acquaintances in 33.5%, and non-acquaintances in 64.4%. The same percentages for indecent assault were 0.7% for kin, 16.6% for acquaintances, and 82.7% for non-acquaintances (*White Paper on Crime*, 2003 edition).

Even though, as noted above, many actual sex crimes are committed by acquaintances including kin, the percentages for crimes in which police made arrests shows that non-acquaintances committed 60% of rapes and 80% of indecent assaults. These statistics indicate that charges are rarely pressed for sex crimes by acquaintances, and that even if charges are pressed, investigative agencies are reluctant to perform investigations.

Additionally, the numbers of victims in 2002 acknowledged by police were 2,357 for rape (3.6 victims per 100,000 people), 9,225 women victims of indecent assault (14.2), and 251 men victims of indecent assault (0.4). All are on the increase, and over the last decade indecent assaults against women have jumped nearly three-fold (*White Paper on Crime*, 2003 edition).

(2) Police Interviews

Police internally assign personnel to guide sex crime investigations. They have instituted systems for designated female investigators, and otherwise taken steps so that women officers assigned to divisions other than criminal affairs sections can be involved in the interviews and preparation of statements relating to sex crimes. Yet, in actuality little has been done to take advantage of these efforts.

First, as only 3.8% of police officers are women (2001), even if a victim desires a female investigator for a sex crime, she is not necessarily assured of that.

According to the Report on a Fact-Finding Study of Crime Victims, which was performed by the National Police Agency's Crime Victim Fact-Finding Study Research Group on victims of crimes from 1998 to 2000, women police officers had conducted interviews in a mere 30% of cases even for sex crime victims.

Nearly 70% of victims were interviewed by men officers.

As a consequence, victims filing reports often suffer secondary injury from the interviewing officers during interviews. For instance, when a certain woman filing an incident report described in detail how she had suffered indecent assault, she was humiliated as the male officer leered and gestured how the perpetrator had touched her. This is none other than sexual harassment going by the name of a police interview.

Second, hardly any special measures are taken so that sex crime victims can talk freely and at ease about what happened. For example, in cases including those of child sexual abuse, there is no way at all, such as videotaping interviews, to avoid repeated interviews or court testimony (however, in connection with Article 37.2 of the Constitution, substituting video for the direct examination of the witness reporting injury might be possible only when the defense does not object), thereby keeping the victim's injury to the absolute minimum. Under present circumstances, victims cannot avoid the anguish of describing over and over again what happened, until concluding the series of procedures for the police, prosecutors, and court.

Interviews of victims are often conducted in rooms with barred windows (53.8% according to the Report on a Fact-Finding Study of Crime Victims) or in a part of a large room with other officers present (13.4%, same report), thereby making the victims feel as if they themselves are criminals. The report says that 30% of interviews were conducted in rooms furnished like reception rooms.

Third, the difficulty of collaboration and cooperation in investigations between police stations magnifies the psychological burden imposed on victims by interviews. One woman who incurred severe psychological injury from rape would suffer physical symptoms whenever she went to the district police station because it was near the crime scene. Because police jurisdiction basically covers crimes committed in their areas, women victims must overcome their trauma to proceed with the investigation, and this particular woman could not continue the investigation because of that encumbrance. Quick and easily made local judgments must make it possible to collaborate in investigations over prefectural boundaries.

(3) Investigations and Case Dismissals by Prosecutors

First, because 7% of prosecutors are women (2001), a victim might not be assigned a woman prosecutor even if she requests one for the investigation.

For the purpose of responding to explanations and examinations in court from the defense, prosecutors in their interviews persist in asking a victim about her past experiences with men, why she did not flee, whether or not she desperately resisted, and other unrelated questions in excess of what is needed to determine whether the sexual intercourse at the time of the incident was truly against the victim's will. In this way victims are subjected to relentless questioning based on rape mythology, which consists of mistaken ideas commonly accepted by society on the rape victim's words and actions just before, during, and just after a rape incident. For example, it is already obvious that one cannot necessarily say that a sexual violence victim will never get a ride to the nearest train station in a car driven by the rapist just after the incident, yet this is one of these mistaken social beliefs making up rape mythology.

Third, Japan's prosecutors boast a high conviction rate, but tend not to indict unless they have rock-solid evidence to ensure a conviction. Indictment rates are 65.8% for rape and 58.6% for indecent assault (2001). As noted above, charges are

brought in very few sex crimes, and only about 60% of those make it to indictment.

Analysis of cases of non-indictment results in these categories: (1) the victim knows the perpetrator, (2) the victim is an adult female with past sexual experiences, and (3) the victim has been victimized on multiple occasions. Such cases tend not to be indicted.

One woman was in the apartment of a man she was going with when he suddenly changed and raped her violently, kept her from contacting her family or friends, subjected her to threats, violence, and rape on a near daily basis, and confined her under these circumstances for over a year. At last she found the opportunity to flee and immediately filed charges, but the prosecutor did not indict. No one questions the absurdity of indicting for one rape when the perpetrator is a stranger to the victim, but not indicting for a string of criminal acts when the perpetrator is known to the victim.

(4) Conclusion

From this discussion we can observe the following problems in the investigation process: The low rate of charges pressed, insufficient protection for victims, low indictment rate, and especially the fact that criminal acts by the close relatives of victims are rarely treated as crimes.

Rectifying these problems requires: initiatives so that society better understands the seriousness of sex crimes, creating an awareness throughout society at large that sexual violence by close relatives is just as much a crime, and the implementation of similar human rights education and training in investigative agencies.

4. Problems Arising in Trial Procedures (Criminal and Civil)

(1) Criminal Cases

1) In trials on sex crimes, questions about victims' sexual histories invade their privacy and cause serious secondary injury.

As observed previously, the benefit and protection of the law for the crimes of rape and indecent assault was "chastity" (pledging and maintaining sexual fidelity to one's present or future husband), not women's sexual freedom or right of sexual self-determination. To benefit men, who have the rightful authority to use women sexually, women were expected to maintain and care for their sexuality and bodies, and obligated to preserve their "chastity." Because people still think this way, women have to "have a strong sense of chastity" in order to receive protection as victims of sex crimes, and in hearings on sex crimes there are still not infrequent instances when courts make an issue of whether a women abided by that obligation even in the past.

For this reason, hearings often relentlessly make an issue of and expose victims' private matters, and matters such as whether there is any correspondence between, on the one hand, whether the reported sexual act was against the will of the victim, and, on the other hand, things that have nothing to do with the crime, such as pre-incident circumstances (whether the victim dined with the perpetrator, or rode in the same car), and the victim's occupation and sexual history. Just as if linking these things is perfectly natural, judges too ask questions about, and make subject to examination, the at-best tenuous relationship of correspondence between things that have no bearing on the facts of the crime, and whether the reported sexual act was against the will of the victim.

In a December 16, 1994 decision by the Tokyo District Court (a case

concerning a charge of rape resulting in bodily injury), the reason that the judge and others at first harbored doubts about the credibility of the statement given by the victim were contradictions with objective evidence such as the circumstances of bodily injury of which the victim spoke, and the physician's medical certificate. Nevertheless, having allowed a detailed finding of fact including "the victim was negligent" and "[the victim] has a weak sense of chastity," which have no direct bearing on whether the sex act in question was against the will of the victim, the court went so far as to say, "The [victim who reported the incident] does not seem to be a person who is cautious or has a sense of chastity, and there are signs that one should suspect her testimony of including falsehoods and exaggerations." The court then found the defendant not guilty.

As this shows, it is possible that this criminal trial situation, in which facts which have hardly any bearing on the crime in question exert major influence on hearings and decisions, helps to not only cause secondary injury to victims and make people disinclined to bring charges in sex crimes, but also makes it hard for victims to see themselves as victims, and emboldens sex crime offenders.

2) Observations on Problems in Criminal Procedure

A. Currently there are no legal institutions in place to protect the privacy of sex crime victims in court at such times as reading indictments aloud, arraignments, and the reading of protocols. In view of the fact that the victim's name and address could provide the defendant with clues to create opportunities for attacks or defense, not reading these aloud when such avoidance is deemed appropriate by the court is worth considering from the perspective of protecting the privacy of sex crime victims.

B. Similarly for witness questioning and case records, when deemed appropriate by the court, keeping victims' names and addresses secret in public trials (including handing down judgments) is worth considering from the perspective of protecting the privacy of sex crime victims.

C. In witness questioning of victims, an amendment of the Criminal Procedure Act in 2000 (Article 157 par. 2 through 4) made it possible to shield the victim when giving testimony with a screen or other device so she cannot be seen by the perpetrator and the public, to give testimony through a video link, and to have the victim accompanied by a counselor or other person. But as long as the problem described in 1) still exists, these are certainly not sufficient protections for victims. From the perspective of protecting sex crime victims' privacy and preventing secondary injury, it is worth considering a restriction on questioning — or sometimes the exclusion of such questioning results from evidence — about the sexual history of the victim, which has little relevance to the factual nature of the matter at hand, and whether or not the sex act put at issue by the person reporting injury by sexual violence was against that person's will.

(2) Civil Cases

1) Likewise in hearings such as those demanding compensation because of sex-related injury, secondary injury from privacy invasion caused by delving into the victim's sexual history is just as serious as in criminal cases.

The more serious the sex-related injury, the more likely the crime was to have been committed behind closed doors, and the less objective evidence there is. Hence the matter of whose statement, the victim's or perpetrator's, can be trusted is often a point of contention. Counsel for the perpetrator relentlessly asks questions about the victim’s professional and sexual histories, and the judge repeats the

same kind of questions. The results of this questioning strongly affect the judge's convictions about the case, and hence not a few decisions reject demands for compensation because of the victim's actions on the occasion of the crime, and afterward, and due to a lack of understanding about PTSD.

2) Observations on Problems in Civil Procedure

In civil procedure it is not legally permissible to shield the victim when giving testimony so she cannot be seen by the perpetrator and the public, to give testimony through a video link, or to have the victim accompanied by a counselor or other person. Actually, such measures are used at the court's discretion only when the perpetrator's counsel agrees to a request from the victim's counsel to use them. It is also not legally permitted to restrict public visitors. From the perspective of protecting the privacy of sex crime victims, establishing the same legal provisions as in criminal procedure should be considered.

There are also situations in court questioning when it is appropriate to limit questions on the victim's sexual history, which has little bearing on whether the sex act in question was against the will of the victim. And from the perspective of protecting the victim's privacy, keeping the victim's name and address secret during questioning with the defendant's agreement should be considered.

3) In the declaration of cases, keeping the victim's name secret should be considered when inclusion could result in a serious invasion of privacy.

4) Current provisions on the inspection of case records allow to limit the inspection when the court approves a request from the victim (Civil Proceedings Act, Article 92.1). However, such requests must be made for each case and must detail the extent of inspection limitation, and if victims have no counsel, in many cases they are not even aware of these provisions. It is hoped that everyone is made aware of the inspection limitation provisions under Article 92.1 of the Civil Proceedings Act.

5. Problems in Court Decisions

(1) Criminal: Decisions in Rape and Indecent Assault Cases

1) The Extent of "Assault and Intimidation"

Requirements for rape and indecent assault are "assault and intimidation."

A May 10, 1949 Supreme Court decision made this demand for the extent of assault and intimidation: "They must be severe enough to make the other person's resistance extremely difficult." Thus, even if sexual intercourse was against the victim's will, it does not constitute the crime of rape without this serious extent of assault and intimidation. Further, according to many precedents, when considering a finding of rape, courts examined how much victims resisted, and how they dealt with the situation in order to determine whether there was assault and intimidation of an extent making resistance by the victim extremely difficult. If clothing was not ripped and the victim not physically injured, for example, assault was not considered to have been that serious.

But in reality victims sometimes become petrified with fear and cannot resist, and might even be killed if they resist. But the courts' unjustifiable demand that women resist their attackers is based on the idea that women must protect their chastity to the very end, even if they give their lives in doing so.

The very use of assault and intimidation in the first place demonstrates that the act is already against the victim's will, making it presumably unnecessary to

discuss the extent of assault and intimidation.

2) Questioning a Victim's Faults and Past

There are many cases in which courts make an issue of victims' faults ("She let the accused into her apartment," "She went for a walk with the accused at his invitation," "She got into the car without asking where they were going," etc.), sexual history, clothing, and other matters, do not trust victims' testimony, find that victims gave their tacit consent, and otherwise do not let the crime of rape stand.

An example is the aforementioned December 16, 1994 Tokyo District Court decision, in which the reason that the judge and others at first harbored doubts about the credibility of the statement given by the victim were contradictions with objective evidence such as the circumstances of bodily injury of which the incident reporter spoke, and the physician's medical certificate. Nevertheless, the court examined matters relating to the victim's overall credibility, such as her character and the features of her testimony, in detail that was unnecessary for determining whether the sexual intercourse in question was against her will, and having done so, found that the victim was at fault and maintained that she lacked self-awareness of those faults. Then in an overall consideration of the victim's history, conduct, and other matters, the court arrived at a finding that unnecessarily disparaged the victim by stating, "The [victim] does not seem to be a person who is cautious and has a sense of chastity, and there are signs that one should suspect her testimony of including falsehoods and exaggerations" (this is indeed what is known as secondary injury from sexual violence). The court then denied that the act constituted the crime of rape resulting in bodily injury on the grounds that the victim's testimony had low credibility.

This thinking demands that women be wary of men, be cautious, and protect themselves, i.e., conduct themselves as women with a sense of chastity, and is the same as declaring that only women who act this way will be protected. This is highly unjust because even though the issue should be whether a woman's sexual freedom has been violated, courts question whether victims abide by sexual morals, and impose strict sexual morals on women alone.

3) Rape Mythology

There are many kinds of rape mythology. For example: "Rape is a crime that happens when a woman is suddenly attacked by a strange man on the street at night," and "Women want to be raped."

But the Study on Intersexual Violence by the Prime Minister's Office asked women about their relationships to the men who forced them into unwanted sex acts, and found that only 25.6% were total strangers, while 14.9% were acquaintances and friends, 14.9% were lovers, 14% were husbands, and 11.6% were workplace associates. In all, 70.3% of the perpetrators had some relationship to their victims.

This fact notwithstanding, it is extremely difficult, as noted above, for rape by acquaintances to be recognized as rape, and extremely difficult even to get an indictment for rape by a lover or husband.

4) Statutory Penalties

Statutory penalties for rape are lighter than those for robbery.

5) Conclusion

These issues concern not only rape, but also indecent assault, and they indicate none other than gender bias in sex crime trials. Gender education is necessary and essential for judges and other judicial personnel.

(2) Civil: Decisions in Damage Claims

1) Legal Framework

There are no laws outside of criminal law that restrict violence against women, and victims of sexual violence must seek compensation on the basis of torts under Article 709 of the Civil Code.

To deal with sexual harassment, Article 21 of the Equal Employment Opportunity Law, which became effective in April 1999, obligates business proprietors to direct efforts toward preventing sexual harassment; National Personnel Authority regulation 10-10 stipulates prevention and other steps against sexual harassment; and for educational institutions the Ministry of Education, Culture, Sports, Science and Technology (MEXT) created regulations for preventing sexual harassment, and called for the establishment of counseling offices and the edification of employees for the purpose, but there is no law that outlaws sexual harassment. Dealing with it therefore requires that victims seek compensation from the offender for torts, and, against employers, to make an issue of employer responsibility under Article 715 of the Civil Code. Two precedents found contract default in accordance with Article 415 of the Civil Code on the grounds that employers must under labor contracts provide proper working environments (Kyoto District Court, March 17, 1997 decision, *Labor Law Precedents*, no 176, p. 49; Tsu District Court, November 5, 1997 decision, *Precedent Review*, no. 1648, p. 125).

2) Finding of Facts on Injury

A. In this case, the court did not acknowledge that injury had been done and dismissed the application on the grounds that the victim had not fled from the office or screamed (Yokohama District Court, March 24, 1995 decision, *Labor Law Precedents*, no. 670, p. 20).

For 20 minutes the victim was hugged, kissed, and suffered other indecent acts at the hands of her supervisor, and was harassed in her work. Because the situation was not properly addressed, she had no choice but to resign, and filed suit for redress including payment of compensation, but the Yokohama District Court dismissed her application, maintaining it was unnatural that the victim had not shaken free and fled from the office, had not screamed to seek help outside the office, or taken other such action, thereby remaining at the mercy of her supervisor for 20 minutes, and that she had not complained to her coworkers or supervisor immediately after the incident.

By contrast, the decision of the Tokyo Appellate Court cited US research on action taken by rape victims, observing that, "Even the victims of rape and other serious infringements of sexual freedom do not necessarily offer physical resistance such as fleeing or screaming," and "In particular the suppression from superior/inferior relations in the workplace and the pressure to stay on friendly terms with one's coworkers may function to keep a victim from resisting physically." Accordingly, the court approved a solatium of 2.5 million yen (Tokyo Appellate Court, November 20, 1997 decision, *Labor Law Precedents*, no. 728, p. 12).

B. The court did not acknowledge the act of rape, citing the victim's insufficient degree of wariness and resistance, and reducing the solatium amount

(Sendai Appellate Court, March 20, 2001 decision, *Precedent Review*, no. 1800, p. 47).

A female university employee brought charges that she had been raped by a professor, and on June 3, 1999 Sendai District Court ordered the payment of a 6-million-yen solatium, which was reduced to 2 million yen in a March 29, 2001 decision by the Sendai Appellate Court.

The appellate court found that the defendant had taken undue advantage of the victim's status of having to trust the professor and abide by his instructions and demands, thereby leading to the incident. However, the court reduced the solatium on the grounds that the victim had not been wary enough, and that the incident could have been prevented if she had assumed a firm attitude of refusal.

Concerning wariness, the court said that for the victim, a young woman, to do as told when being called out at night to go pick up the appellant by car "can only be called too unwary an act no matter how much she may have trusted the appellant."

Concerning the matter of insufficient resistance, the court stated, "Appellee has no external signs of having been physically assaulted, and no buttons were missing from her blouse. Photographs show that the lace of her undergarment is partially damaged, but if the appellee had desperately resisted as claimed and deposed, one would expect the damage to be greater," and "If the appellee had desperately resisted as claimed, one would expect that sex would not have occurred, leading to the inevitable conclusion that the appellee did not resolutely refuse the act by the appellant."

3) Small Solatium Amounts

A. Even when victims of sexual violence make claims for compensation, it does not constitute redress because courts approve solatium sums that are too small.

When indecent acts are, for example, touching a woman's breasts or thighs, the approved solatium is 500,000 yen even if the acts continue over several months (Tsu District Court decision of November 5, 1997, cited above), and even for a finding of rape by a supervisor, the solatium is only about 3 million yen (Tokyo District Court, October 27, 1999 decision, *Precedent Review*, no. 1706, etc.). Even when a woman is sexually harassed as in attempted rape, she is loses her job, and even in a case when a victim was found to have PTSD, the solatium was a mere 1.8 million yen (Tokyo District Court, March 10, 2000 decision, *Precedent Review*, no. 1734, p. 140).

For example, the solatium for a traffic accident is about 1.5 million yen when a person is hospitalized for one month and an outpatient for six months, and 1.66 million yen for outpatient care only for 12 months (according to Osaka District Court criteria). Considering that traffic accidents are due to negligence and not repeated, it is clear that solatia for sexual violence are too small.

An exceptional decision approved a payment of 10 million yen. A high school girl then age 17 was treated to a meal and received a watch as a gift before being raped, on which grounds the perpetrator threatened her with statements such as, "I'll tell your parents and school that you're a prostitute," and subsequently continued forcing her into sex, resulting in PTSD. Yamaguchi District Court stated, "For about 15 months the defendant shackled the plaintiff psychologically by threatening her in various ways, forced her into unwilling sex about 130 times, and infringed her right of sexual self-determination, as well as limiting the plaintiff's overall actions, including her course of future advancement, thereby

illegally infringing her personal rights." The court recognized this as the cause of PTSD and ordered the payment of a solatium of 10 million yen. In this case, the plaintiff was advised to seek a psychiatric examination because she had caused five traffic accidents in somewhat over a year, and the psychiatrist informed her parents, who had been unaware because the defendant had threatened the plaintiff that he would tell her parents (Yamaguchi District Court, October 15, 1998 final judgment, unpublished).

B. Case in Which District Court-Approved Solatium Was Reduced in an Appeal Hearing

To a women who required constant nursing care because of muscular dystrophy, a physician made statements such as, "You must be lonely because other women at age 20 all have boyfriends," and then took advantage of the woman's inability to resist by kissing her, fondling her breasts, inserting his finger into her vagina, and committing other indecent acts over a four-month period. The woman attempted suicide, and was later hospitalized for hyperventilation syndrome. On October 6, 1999 the Osaka District Court Sakai Branch handed down a decision approving the payment of a 5-million-yen solatium. The physician denied the indecent acts themselves, claiming that he made frequent visits to the victim's home to administer psychotherapy, and maintained that she was a pathological liar and had a histrionic personality disorder. In the appeal hearing he submitted the written statement of a nurse saying that "the woman's body was like that of an aged person," and asserted that it was preposterous to think he would commit indecent acts because she was not sexually appealing. When negotiating a compromise settlement in Osaka Appellate Court recommended a settlement by making claims not made by the physician's counsel, such as "[there was] consent or the mistaken belief of consent," (meaning that, at the least, the physician mistakenly thought the woman did not mind). The February 21, 2002 decision by Osaka Appellate Court stated that the physician did not commit indecent acts on 34 days, but held that he visited the victim's home on 18 days and that the woman had exaggerated somewhat, hence reducing the solatium to 3 million yen. However, there is actually no reason for that reduction because in addition to being threatened by the physician, the woman was a handicapped person dependent on her family's nursing care to live, and thus she acted cheerfully without telling about the truth out of fear that losing the bathing service would increase the burden on her family. This exhausted the woman, who attempted suicide and was then hospitalized repeatedly with hyperventilation syndrome.

Assuming that the appellate court's true intent is indicated by its assertion that "the physician had no malice because he mistakenly thought the woman did not mind," and that the decision reduced the solatium on these grounds, this constitutes discrimination against handicapped women (this case unpublished in journals).

4) The Need to Educate Judges

Many judges do not understand that sexual violence is committed by people with power over others, and that sexual violence victims respond in various ways. When judges do not understand how some victims are petrified and cannot even make a sound, or that some cannot resist because they feel helpless, and from that misunderstanding claim that a victim "could have fled outside and screamed to seek help," or assert that a victim is at fault for not having been cautious enough or for not desperately resisting, and then on such grounds rebuke the victim, deny her

claim for compensation, or reduce the solatium — these things fuel distrust of the courts and end up increasing the injury suffered by sexual violence victims. Judges need human rights education on how women suffer from sexual violence.

6. Offenders and Victims in Cases Involving Children

(1) Need to Review the Effectiveness of the Child Prostitution Law

On November 1, 1999 Japan's Law Concerning Punishment for Acts Relating to Child Prostitution and Child Pornography and to the Protection of Children (Child Prostitution Law) became effective, making it look as though crimes related to child prostitution and pornography are rigorously controlled. But statistics on arrests for criminal violations of other laws indicate that in 2000, the year after the Child Prostitution Law became effective, there were far fewer arrests under the Child Welfare Law, the Anti-Prostitution Law, and prefectural youth protection ordinances.

One interpretation is that perpetrators of crimes formerly arrested under these laws are now arrested under the Child Prostitution Law. If that is true, doubts emerge as to how effective the new law has been in controlling and deterring crimes that victimize children. Further, although the Child Welfare Law imposed a maximum penalty of 10 years imprisonment for the crime of inducement to illicit intercourse, the Child Prostitution Law imposes a maximum penalty of only three years.

Accordingly, more detailed study and analysis are needed to determine whether there are any crimes that could not be controlled until the Child Prostitution Law took effect; whether, in post-arrest treatment, something new is achieved by making an act a crime under this new law; and whether the new law confers benefits on guaranteeing and advancing children's human rights.

(2) One hardly hears anything about educating and informing the public in schools and companies, especially for men who might become offenders and for male students, about the sexual dignity that is part of children's human rights, the seriousness of infringing a child's sexual dignity, the Child Prostitution Law, or other related matters.

Despite informing the public through the police that child prostitution and child pornography are crimes, there is still insufficient education and public information on the significance and seriousness of protecting children's sexual dignity as part of their human rights, a matter that is inherent in issues of child abuse.

Eliminating the sexual exploitation and sexual abuse of children makes it absolutely necessary for schools and companies to conduct continuing human rights education. Japan's government, through the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of Economy, Trade and Industry, and other agencies, as well as local governments, through their boards of education, should exhort schools and companies to see the significance and seriousness of protecting children's sexual dignity as part of their human rights.

(3) From the viewpoint of attorneys representing child victims of sexual violence, and accompanying those victims during police interviews, when inspecting crime scenes, or during witness questioning in trials, child victims are exposed to secondary injury because investigative agencies and the judiciary still lack understanding that the children have not yet recovered from the psychic trauma of abuse at that time.

Although children suffer from the trauma of abuse and lack understanding from others that their memories are suppressed and chaotic, questioners expect children's statements to be consistent, they ask questions repeatedly, and resurrect painful memories. Children are subjected to a barrage of highly detailed questions which one doubts are truly necessary for an indictment, and in severe cases the victims are even asked about their past sexual experiences, and called to task as if they are at fault. Exposed to cross-examination by defense counsels, children are mentally driven into a corner so that in some instances even continuance of questioning is jeopardized.

To reduce such secondary injury, people in the judiciary must make efforts such as having detailed medical knowledge of abuse victims' trauma and their PTSD symptoms, carefully choosing which questions to ask children, and researching and developing ways to ask questions while learning from methods developed in the US such as forensic interview techniques. They should also consider researching methods that can reduce the number of questions put to children by having all concerned parties in the same place, methods in which specialists in clinical psychology ask questions, and cross-examination methods that do not require alternating examination in court. In these and other ways the system should be improved, including amendments to criminal procedure law. Further, police officers, prosecutors, judges, and attorneys must receive education and training on the human rights of children.

(4) The Child Prostitution Law has made no difference in the number of cases in which children, who are supposedly the victims of child prostitution, are treated by the police as juvenile delinquents instead of as victims, and receive correctional education in children's self-reliance support facilities or reformatories. Of course there are not a few cases in which children engaged in prostitution are also involved in other crimes such as drug crimes or larceny, and thus in some situations it is not necessarily appropriate to deal with, and provide care for, only the aspect of sex crime victim. But Japan's correctional education, especially that for children and youths, is often wanting in the awareness that the large majority of juvenile delinquents and criminal youths are victims of abuse and other human rights infringements by their parents and others, and it tends to lean toward the idea that children can be corrected by imbuing them with a norm consciousness and supervising them in an orderly daily life. Such education cannot heal the mental and physical wounds of children who have suffered sexual and violent infringements of their human rights (i.e., abuse), making it difficult for them to recover from trauma due to such causes and to develop the sense of self-respect needed to return to life in society.

Therefore the national and local governments should become aware of the critical shortage of facilities, programs, free medical treatment providers, and care workers needed for the mental and physical recovery of abused children, develop a plan for fundamental improvement, appropriate sufficient funds, and fully implement Article 15 (protection for children suffering from mentally and physically deleterious influences) and Article 16 (establishing institutions to protect children suffering from mentally and physically deleterious influences) of the Child Prostitution Law.

(5) The Child Prostitution Law includes provisions for punishing crimes that violate this law but committed outside of Japan, and at least two arrests for pornography and one for prostitution committed outside Japan have been reported.

But in a 1997 case in which a Thai youth charged a Japanese man with indecent assault under criminal law, the case ended with no indictment after a five-year investigation. The main reason was the lack of consistency in the youth's statements, but behind this were many problems including: at the point in time when authorities discovered that the young victim had been victimized for prostitution in other incidents, one wonders if Japanese prosecutors reasoned there was no need to protect the youth; and the investigation would be prolonged due to mismanaged cooperation in the international investigation, making it impossible to preserve the youth's deposition and real evidence. A subsequent civil lawsuit in which the youth demanded compensation ended in a victorious compromise settlement when the defendant (perpetrator) admitted to the victim's claims, apologized, and agreed to pay a solatium. This instance brought to the fore the question of why this could not have been tried as a criminal case.

Unfortunately there are no reports of changes (i.e., reduction) in the prostitution of children in other Asian countries by Japanese. Advances must be achieved in exchanging information and building systems for cooperation among NGOs, the police, prosecutors, and courts between Japan and other countries, especially other Asian countries, to crack down on child prostitution there. Additionally, the quick and effective punishment of crimes committed abroad requires entering into bilateral cooperation agreements, treaties, or other arrangements to facilitate mutual understanding of the differences in the criminal justice institutions in each of the involved countries, and the necessary mutual assistance.

7. Wartime Sexual Violence

As observed at the beginning, one reason for the continuing serious difficulty of achieving rulings on guilt and responsibility for crimes of sexual violence is that, despite the existence of a legal framework for prosecution, sexual violence has historically not been treated as a serious crime. In particular, it is a fact that sexual violence crimes committed in the midst of armed conflict have been downplayed as an unfortunate but unavoidable byproduct of war. Since 1991 in Japan women from various Asian countries who suffered sexual violence in an organized and continuing manner because they were made into sex slaves by the Japanese Imperial Forces during World War II have filed charges to have those responsible punished, or have filed civil lawsuits to determine the Japanese government's responsibility, but in all instances a proper response has been lacking, and responsibility has not been determined.

(1) Criminal Punishment

In February 1994 South Korean sex slavery victims and the Korean Council for Women Drafted for Military Sexual Slavery by Japan ("Teitaikyo") submitted to the Tokyo District Public Prosecutor's Office an indictment and complaint seeking the punishment of the Japanese military personnel who had made the victims into sex slaves. However, the Prosecutor's Office refused to accept it.

The reason given was that proper form had not been observed: (1) the statute of limitations had already expired, (2) the charged parties and charges were not specified, and (3) the charging document for these acts was incomplete.

But these are not sufficient reason for not accepting the indictment and complaint.

Specifically, international customary law has established the principle that no statute of limitations applies to crimes against humanity or to war crimes, which

was reconfirmed in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (adopted by the UN General Assembly in 1968). Also, it is clear from the example of Nazi war crimes committed during WW II that war criminals are in fact punished without regard to statutory limitations.

And although no certain defendants' names appear in the indictment and complaint, the allegations are specified, which is sufficient to initiate investigations, and any further specification is actually the responsibility of investigative agencies.

Concerning the charging document, punishment is possible for war crimes and crimes against humanity. The 1948 Batavia War Crimes Tribunal, in fact, meted out punishment to Japanese military personnel responsible for the crime of establishing a "comfort station" in Semarang, Indonesia during occupation by the Japanese military, making detained Dutch women into "comfort women," and forcing them into prostitution.

In the final analysis, the prosecution authorities refused to accept the indictment and complaint because they were highly disinclined to punish these serious wartime sex crimes.

The 1998 McDougall report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights also strongly recommends cutting the "cycle of impunity" by prosecuting the government and military personnel responsible for establishing and running the comfort stations (actually rape centers) in accordance with indictments and complaints. But Japan's prosecution authorities — just as if they are waiting for those responsible to die — have yet to even open an investigation.

(2) Examining Civil Responsibility

With the arrival of the 1990s, Asian victims abducted forcibly or through deception and made to serve as "sex slaves" by the Japanese military filed lawsuits in Japanese courts seeking apologies and compensation from Japan's government.

Japan's response to these lawsuits as the defendant has been highly insincere.

To begin with, not only did Japan not try to elucidate the perpetration of these acts by the Japanese military, it refused even to admit or deny plaintiffs' claims about many incidents, and because of that, these trials did not thoroughly illuminate how victims had been used as sex slaves by Japan's military.

Further, the above-cited McDougall report and other reports from international agencies have observed time and again that Japan has a legal responsibility to compensate individual victims, and recommended that Japan should do so quickly. Nevertheless, Japan has cited reasons such as: in the absence of special provisions, international law holds that rights are vested in nation-states, leaving individuals without the right to demand restitution; the issue was resolved by the Treaty of Peace with Japan; and the statutory limitations/exclusion period has lapsed (all these arguments were refuted by the McDougall report and others). On these grounds the government has stubbornly refused the plaintiffs' demands. And even when courts sounded out the government on solutions through compromise settlements, the government refused without looking at the terms.

The responses of the courts to these lawsuits were also very regrettable.

As this indicates, one sees on the part of the courts hardly any inclination to actively elucidate the actions of the Japanese government, which makes no attempt to ascertain whether these acts were actually committed. The courts are reluctant to question victims, and there are fewer decisions that even have findings

of wrongdoing.

Understanding of war crimes and international law is also highly inadequate, and nearly all courts have aligned themselves with the Japanese government.

As a consequence, except for an April 1998 decision on a South Korean woman victim by the Shimonoseki Branch of Yamaguchi District Court (later the decision was reversed against the plaintiff by an appellate court, and the final appeal was dismissed, thereby finalizing the plaintiffs' defeat), all applications by victims have been dismissed, and already in three of ten lawsuits dismissals of plaintiffs' applications have been finalized.

(3) Asian Women's Fund

In 1995 the Japanese government decided to lend assistance by paying out "indemnities" to sex slavery victims using money from a private fund, and by putting government funds into organizations operating programs for the medical care and welfare of victims. For this purpose the government created the Asian Women's Fund that year and in the following year began "indemnity" payments. However, payments from this fund do not constitute legal compensation, and those payments themselves are insufficient (cf. McDougall report, par. 64). Moreover, victims and their support groups have criticized the fund, claiming that it was created to cleverly avoid the full fact finding investigation, official apology, and state compensation that are demanded by the victims. Not a few victims refuse to accept payments on the grounds that going ahead with these indemnities despite these criticisms seriously harms the dignity and honor of the victims, and is a further infringement on their human rights. Organizations of victims and their supporters in Taiwan, the Philippines, South Korea, and the Netherlands asked the Japan Federation of Bar Associations (JFBA) to advise the Japanese government to stop the Asian Women's Fund and pay compensation to individuals based on the government's legal responsibility. In response to that request, JFBA on two occasions, June 1997 and March 1998, advised the government to exhaustively investigate the truth to determine the injury suffered by victims and to determine where responsibility lies, and then, having clarified its own legal responsibility, apologize to the victims and quickly study legislative solutions in order to effect restitution that is proper and possible.

As the foregoing discussion shows, activities under the Asian Women's Fund have not solved this problem.

Lawsuits against Government of Japan filed by survivors of Japanese military's sexual violence

	name of case	first filed on	number of original plaintiffs	case results and development（as of Feb.2004）
1	The Case of Korean victims of the Asia-Pacific War claiming reparations	06 Dec.1991	9	claims dismissed by Tokyo District Court March 2001; "koso" app Tokyo High Court July 2003; now pending at Supreme Court
2	The Case of Pusan "military comfort women" and Women's Labour Corps members claiming official apology, etc.	02 Dec.1992	3	a part of claims accepted by Shimonoseki Branch, Yamaguchi Dis 1998; "koso" appeal dismissed by Hiroshima High Court March 2(declined to review the case March 2003, thus dismissal of claims f
3	The Cases of Filipino "comfort women" claiming state reparations	02 Apr.1993	46	claims dismissed by Tokyo District Court Oct 1998; "koso" appeal Tokyo High Court Dec 2000; Supreme Court declined to review th thus dismissal of claims finalised
4	The Case of former "comfort woman" Korean resident in Japan claiming apology and reparations	05 Apr.1993	1	claims dismissed by Tokyo District Court Oct 1999; "koso" appeal Tokyo High Court Nov 2000; Supreme Court declined to review th thus dismissal of claims finalised
5	The case of Dutch POWs and civilian detainees claiming compensation	25 Jan.1994	1	claims dismissed by Tokyo District Court Nov 1998; "koso" appea Tokyo High Court Oct 2001; now pending at Supreme Court
6	The Case of Chinese "comfort women" claiming compensation, etc. (1st group)	07 Aug.1995	4	claims dismissed by Tokyo District Court Feb 2001; now pending Court
7	The Case of Chinese "comfort women" claiming compensation, etc. (2nd group)	23 Feb.1996	2	claims dismissed by Tokyo District Court March 2002; now pendi Court
8	The Case of victims of sexual violence in Shan-xi Province, China, claiming	30 Oct.1998	10	claims dismissed by Tokyo District Court Apr 2003; now pending Court
9	The Case of Taiwanese "comfort women" claiming compensation and written apology	14 July 1999	9	claims dismissed by Tokyo District Court Oct 2002; "koso" appeal Tokyo High Court Feb 2004; now pending at Supreme Court
10	The Case of Hainan Island victims of wartime sexual violence	16 July 2001	8	pending at Tokyo District Court