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The 2015 South Korean–Japanese Agreement on ‘Comfort Women’: A Critical Analysis

Klea Ramaj | ORCID: 0000-0003-3998-5532

Institute of Criminology, University of Cambridge, Sidgwick Avenue,
Cambridge CB3 9DA, UK
kr451@cam.ac.uk

Abstract

Before and during the Second World War, Japan established a legalised system of sexual slavery, in which approximately up to 200 000 women, euphemistically known as ‘comfort women’, were exploited. Although the victims came from all the regions of the Japanese Empire, the majority of them were Korean. While initial reconciliation attempts were met with refusal, a seemingly positive step was taken in December 2015, when South Korea and Japan announced that they had reached an agreement which would ‘finally and irreversibly’ resolve this issue. The main argument developed throughout the present article is that the agreement does not do justice in addressing the victims’ needs and rights in many ways, with the need for acknowledgement and memorialisation being primarily neglected. A critical evaluation of the 2015 agreement is particularly important in light of its suspension due to the dissolution of the Reconciliation and Healing Foundation.

Keywords

comfort women – agreement – Korea – Japan – acknowledgement – memorialisation

1 Introduction

Between 1932 and the end of the Second World War in 1945, the Japanese Imperial Army together with the support of the Japanese Government established an institutionalised system of sexual violence. In this rape system, thousands of women from Japan’s occupied territories were forced to serve as sex

slaves for the Japanese troops. These women were known euphemistically as 'comfort women', and the rape centres where they were exploited as 'comfort stations'. Estimates of the total number vary, but historians argue that approximately 50 000 to 200 000 women have been victims of this system.¹ Although the victims came from all the regions of the Japanese Empire, Korea was the main source for procuring 'comfort women'.² The abuses experienced by these women were not properly addressed for decades.

A seemingly positive step was however taken on 28 December 2015, when South Korea and Japan announced that they had reached an agreement which 'finally and irreversibly' resolved the so-called 'comfort women' issue. In accordance with the agreement, the then Japanese Foreign Minister Kishida made a public apology on behalf of the then Japanese Prime Minister Abe for the suffering experienced by all former 'comfort women' and agreed to contribute approximately USD 8 000 000 to support the living South Korean victims. The South Korean government also promised to take measures for addressing the Japanese government's concern regarding a statue placed before the Japanese embassy in Seoul by South Korean human rights activists. This statue represented the women who had fallen victims of the sexual slavery system.³ While the 2015 agreement was perceived as an important development at the international level, it was highly contested by the South Korean society. Many of the surviving South Korean victims and their supporters claimed that the agreement was reached without the victims' consultation, and as a result failed to reflect their views and needs.⁴ The rejection of the agreement was expressed through numerous demonstrations, including one in which a South Korean Buddhist monk took the radical decision of setting himself on fire as a sign of protest.⁵

In spite of constant public criticism and speculations of revisions and renegotiation of the deal, on 9 January 2018, the then South Korean Foreign

1 Y. Yoshimi, *Comfort Women: Sexual Slavery in the Japanese Military during World War II* (Columbia University Press, New York, NY, 2000), pp. 91–94.

2 Y. Tanaka, *Japan's Comfort Women: Sexual Slavery and Prostitution During World War II and the US Occupation* (Routledge, London, 2003).

3 C. Sang-Hun, *Japan and South Korea Settle Dispute About Wartime Comfort Women*, available online at www.nytimes.com/2015/12/29/world/asia/comfort-women-south-korea-japan.html (accessed 20 May 2018).

4 J. McCurry, *Former Sex Slaves Reject Japan and South Korea's Comfort Women Accord*, available online at www.theguardian.com/world/2016/jan/26/former-sex-slaves-reject-japan-south-koreas-comfort-women-accord (accessed 20 May 2020).

5 Associated Press, *Buddhist Monk Sets Himself on Fire over Comfort Women Deal*, available online at www.theguardian.com/world/2017/jan/08/buddhist-monk-sets-himself-on-fire-in-south-korea-over-comfort-women-deal (accessed 25 May 2018).

Minister Kang Kyung-wha claimed that the agreement would be sustained.⁶ Nevertheless, concerns regarding the irreversibility of the 2015 agreement still endure. Although the deal improved the relations between South Korea and Japan, it remains questionable whether such a political success was achieved at the cost of disregarding the victims' perspective. Hence, the purpose of this article is to reflect on the scope to which the agreement fulfils and strengthens the needs and rights of South Korean victims. In order to fulfil its aim, this article explores the following main research question: To what extent does the 2015 South Korean–Japanese agreement address the needs and rights of South Korean women who were victims of sexual slavery before, during, and after the Second World War?

The article takes four steps to address the main research question. First, it starts by describing the system of sexual slavery perpetrated by the Japanese, its effects on the South Korean victims, and the initial reactions of the Japanese government. Second, to better comprehend the link between the crime, Japan's initial reactions and the victims' demands, the article then portrays the needs and rights of the South Korean victims as shaped by the type of abuse they suffered. It is demonstrated here that the victims' needs are justifiable based both on social scientific studies and on international legal principles. Third, the article examines the components of the agreement and their implications. Fourth the article briefly elaborates on how far the general victims' needs and rights are addressed by the agreement.

Due to the article's scope and because of the high importance placed by the victims on their list of demands, only the needs for acknowledgement and memorialisation are explored in-depth. The central argument developed throughout the study is that the agreement does not do justice in properly addressing the victims' needs and rights in many ways, with the need for acknowledgement and memorialisation being particularly neglected. Since acknowledgement and memorialisation are very broad terms, this article will largely focus on the lack of Japan's full acknowledgement for its responsibility regarding the initiation of the system of sexual slavery, and on the fact that the agreement deprives the victims of their need for memorialisation through the removal of the 'comfort women' statue. Particular attention will also be attributed to the victims' needs and rights, which were not only partially acknowledged, but also utterly excluded from the agreement. This includes the revision

6 Y. Tatsumi, *The Japan-South Korea Comfort Women Agreement Survives (Barely)*, available online at www.thediplomat.com/2018/01/the-japan-south-korea-comfort-women-agreement-survives-barely/ (accessed 25 May 2018).

of the Japanese education curriculum in order for it to include an accurate historical account of the violations experienced by 'comfort women'.

This article employs a victims-centred approach and takes the format of a critical and analytical literature study by making use of a number of research methods and perspectives. To begin with, the 'LibSearch' system of the online Maastricht University library was used to conduct a literature review in order to map the historical and social scientific research on the 'comfort women' issue. In addition, a variety of other relevant sources have been consulted, such as legal statutes, publications of intergovernmental organisations (IGOs) and non-governmental organisations (NGOs), newspaper articles, and materials made available online by the Japanese government. All the materials gathered from these sources served as a basis for analysing how the agreement reflects a lack of acknowledgement for the initiation of the crime by Japan and how it fails to meet the victims' need for memorialisation. In the analysis of the materials, insights are drawn from the transitional justice literature on the concepts of acknowledgement and memorialisation.

The added value of the present study is twofold. First, the existing work on the 'comfort women' issue mainly consists of historical studies and legal analyses. The present article goes a step further by developing a more analytical and theoretical approach. A constructive conclusion is drawn by addressing the issue via a variety of lenses, including scientific, legal, and theoretical ones. Second, it is important to note that there are less than 20 Korean victims alive, with an average age of 90, who claim that the Japanese government is waiting for them to die so that the issue disappears.^{7,8} Given that the group of survivors is decreasing, it is important that more academics write about this issue and make the victims' voice heard in order for their rights not to be left out of the light of political debate.

2 Background History on 'Comfort Women'

During the procurement process and their forced stay in the 'comfort stations', the women who were victims of this system underwent severe human rights violations. Prior to analysing the implications of the 2015 agreement, it is important to examine the roots of the problem. Hence, this section acquaints

⁷ *Supra* note 4.

⁸ E. Shim, *South Korea Comfort Woman Dies; 18 Remain Alive*, available online at www.upi.com/Top_News/World-News/2020/03/03/South-Korea-comfort-woman-dies-18-remain-alive/8641583259586/ (accessed 5 July 2020).

the reader with the immensity of the crime, the effects it had on the victims, and the deep implications of Japan's initial denial.

2.1 *The Crime*

Since a vast number of relevant official records were destroyed immediately after Japan surrendered in 1945, it is not known exactly when the Japanese set up the first 'comfort station'. However, documents discovered after the war suggest that the first 'comfort station' was set up in Shanghai in 1932.⁹ In spite of a number of 'comfort stations' being established in Shanghai as well as northeast China in the early 1930s, Japanese forces adopted the military 'comfort women' system as a 'general policy rule' in late 1937.¹⁰ The establishment of army 'comfort stations' was initiated by Japanese top-ranking officers and carried out by senior staff officers. Even though the staff of each army throughout the Japanese Empire's territories was responsible for dealing with matters relating to 'comfort women' themselves, the system was legally controlled by the government. More specifically, the Ministry of War used to issue instructions to each of the army's headquarters on the recruitment process of the 'comfort women'. For instance, the Medical Bureau of this Ministry requested that the recruitment process involved the conduct of medical checks on the women regarding sanitary affairs and the prevention of venereal diseases.¹¹

The main aim of the 'comfort system' was to fulfill a military-strategic function. First, given the Japanese soldiers' previous record of raping civilians, this new system ensured that the Japanese army personnel would not be offending against the local population. Rather than the wellbeing of the local women, the main concern of the Japanese was the prevention of any potential revolt of the local population against the Japanese occupiers.¹² Second, the 'comfort stations' were designed to protect the Japanese soldiers from venereal diseases, which are usually a result of mass raping. The stations were strictly regulated in order to prevent the spread of sexually transmitted infections (STIs), which would affect the health of the Japanese forces.¹³ Third, the 'comfort women' also provided 'entertainment' to the Japanese soldiers, hence increasing the group morale and making the Imperial Japanese Military operate more efficiently.¹⁴

⁹ *Supra* note 2.

¹⁰ *Ibid.*, p. 4.

¹¹ *Ibid.*

¹² Asian Women's Fund, *Who were the Comfort Women? - The Establishment of Comfort Stations*, available online at www.awf.or.jp/e1/facts-01.html (accessed 25 May 2018).

¹³ *Supra* note 1.

¹⁴ M. Arakawa, 'A New Forum for Comfort Women: Fighting Japan in United States Federal Court', 16(1) *Berkeley Women's Law Journal* (2001) 174–200.

Apart from military strategic factors, social aspects such as sexism and racism also played a role in the army's institutionalisation of sexual violence.^{15,16}

The first 'comfort women' were Japanese professional prostitutes. However, as the Japanese military was expanding, the military found itself short of Japanese sex workers and turned to the local population.¹⁷ There were two 'recruiting' methods following this shortage, and both of them consisted of forcing women to render sexual service to the Japanese troops. The first method involved local civic leaders in the occupied territories, who were asked by Japanese officers to supply certain numbers of young women. The second method gave the responsibility to each army headquarter in selecting its own recruiting agents (brothel owners or labour brokers), who were then sent to Korea, Taiwan, and Japan to secure 'comfort women'.¹⁸ These brothel owners and labour brokers were usually supported by the Japanese Ministry of War and the police forces in the aforementioned countries. Both methods used many dubious forms in 'recruiting' the women, including deception, intimidation, violence, and in extreme cases even kidnapping. The victims were incarcerated in 'comfort stations' both within their countries as well as abroad.¹⁹ There were about 2000 'comfort stations' throughout the Japanese Empire and up to 200 000 women are believed to have been 'recruited'. The nationalities of these women were as follows: Australian, Burmese, Chinese, Dutch, Filipino, Japanese, Korean, Indonesian, and Taiwanese.²⁰ Nevertheless, the majority of them were Korean. The average age of a 'comfort woman' was 25, and most of them came from poor and uneducated backgrounds.^{21,22}

Once they arrived at the 'comfort stations', these girls and young women were brutally dehumanized and deprived of their agency. They were seen as 'female ammunition', 'public toilets', or 'military supplies', and some of them were even forced to donate blood for the treatment of wounded Japanese soldiers.²³ Though each woman's story is different, their testimonies share many

15 C.S. Soh, *The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan* (University of Chicago Press, Chicago, IL, 2008).

16 T.J. Ward and W.D. Lay, 'The Comfort Women Controversy: Not over yet', 33(4) *East Asia: An International Quarterly* (2016) 255–269, doi:10.1007/s12140-016-9260-z.

17 G. Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the Second World War* (W.W. Norton & Company, New York City, 1994).

18 *Supra* note 2.

19 *Supra* note 1.

20 *Ibid.*

21 C. Argibay, 'Sexual Slavery and the Comfort Women of World War II', 21(2) *Berkeley Journal of International Law* (2003) 375–389.

22 M. Chang, 'The Politics of an Apology', 31(3) *Harvard International Review* (2009) 34–37.

23 K. Watanabe, 'Trafficking in Women's Bodies, then and now: The Issue of Military Comfort Women', 27(1/2) *Women's Studies Quarterly* (1999) 19–31.

similar experiences, including severe and inhumane physical, sexual, and psychological violence.²⁴ They were repeatedly beaten and were forced to sexually serve 10 men in normal days and up to 40 men in the days following combat operations.²⁵ Many were deprived of sufficient food, water, adequate lodging, toilet, and washing facilities, with medical care being limited to the treatment of venereal diseases, termination of pregnancies, and sterilisation.²⁶ If the women refused to meet the soldiers' demands or tried to escape, their resistance was met by force and torture. Moreover, if the girls attempted suicide, threats were made to harm their families.²⁷ Since 'comfort stations' served as 'rape camps' and women were forced into sexual activity against their will, it can be concluded that the 'comfort system' was a system of sexual slavery.^{28,29}

2.3 *The Effects of the Crime*

The abuses experienced in 'comfort stations' had lasting psychological, physical, and socio-economic consequences for the victims. Following the war, many survivors have expressed feelings of shame as well as a sense of inferiority, in comparison to the rest of the society.³⁰ Their traumatic experiences in the 'comfort system' have had a life-long impact on them. Several testimonies from the victims have demonstrated the psychological and emotional trauma of being raped and abused consistently for months and years. Interviews with the victims have shown that they tend to experience emotional distress, depression, and most of them suffer from post-traumatic stress disorder.^{31,32,33} For example, one of the victims states: 'Life is hard. I have emotionally suffered

24 *Supra* note 14.

25 *Supra* note 2.

26 K. Askin, 'Comfort Women - Shifting Shame and Stigma from Victims to Victimisers', 1(1-2) *International Criminal Law Review* (2001) 5-32, doi:10.1163/15718120121002522.

27 S.R. Lee, 'Comforting the Comfort Women: Who can make Japan pay?', 24(2) *University of Pennsylvania Journal of International Economic Law* (2003) 509-547.

28 G.J. McDougall, Economic and Social Council, Commission on Human Rights, *Contemporary Forms of Slavery - Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict - Final Report Submitted by Ms. Gay J. McDougall, Special Rapporteur* (E/CN.4/Sub.2/1998/13).

29 *Supra* note 21.

30 T. Dolgopol, 'Cold Comfort: Japan's Refusal to Compensate the Comfort Women in a Meaningful way', 21(4) *Alternative Law Journal* (1996) 156-159.

31 Amnesty International, *Still Waiting After 60 Years: Justice for Survivors of Japan's Military Sexual Slavery System* (Amnesty International Secretariat, London, 2005).

32 *Supra* note 15.

33 J.H. Park, K.W. Lee, M.D. Hand, K.A. Anderson and T. E. Schleitwiler, 'Korean Survivors of the Japanese Comfort Women System: Understanding the Lifelong Consequences of Early Life Trauma', 59(4) *Journal of Gerontological Social Work* (2016) 332-348.

... I am sad, so I still cry'.³⁴ Following their release from the captivity of the 'comfort system', the victims felt as though they were detached from themselves, their family, and their community. Feelings of intense loneliness have been reported, combined with resentment and anger at being forced to experience early-life trauma and its lasting consequences. These emotions were directed at the Japanese government, for having failed to acknowledge the victims' suffering, as well as at men in general. Negative sentiments against the male figure made it impossible for the victims to build peaceful and meaningful relationships with men.³⁵

Apart from psychological effects, the trauma experienced at the 'comfort stations' was also accompanied by physical health sufferings. These health issues mainly consisted of physical pain and were often a symptom of the damage done to the reproductive system. By way of example, a victim reported that she struggled with osteoporosis due to her uterus being removed during her time as a 'comfort woman'.³⁶ The miscarriages, forced abortions, and sterilisation of women in the 'comfort stations' brought about their inability to give birth. Due to patriarchal customs, the inability to bear children coupled with the lack of virginity further played a role in these women never getting married after their release or escape.³⁷ Having undergone consistent physical violence, being raped hundreds or even thousands of times, and lacking adequate medical assistance, most of the victims carried permanent scars in their bodies throughout the remainder of their lives, including mutilations of certain body parts. Although soldiers were strictly instructed by their units to use condoms during the sexual acts, many men forced women to serve them without condoms.³⁸ As a result, numerous victims were infected with STIs and suffered the consequences even after their release. The majority of the victims passed away without their physical injuries being cured.

In addition to physical and psychological traumas, a large number of victims also suffered socio-economic disadvantages.³⁹ Being abducted as teenagers and unable to continue their education led to them having lower economic opportunities in leading a financially dignified life. Hence, at the end of the war, the 'comfort women' survivors

34 *Ibid.*, p. 339.

35 *Ibid.*

36 *Ibid.*, p. 340.

37 *Supra* note 26.

38 *Supra* note 2.

39 Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, *The Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al.*, Case No. PT-2000-1-T, Judgment on the Common Indictment and the Application for Restitution and Reparation, 4 December 2001.

found themselves without education, job training, and also rejected by potential husbands. In order to survive, many had no choice but to become prostitutes, which was often the only line of work available to them.⁴⁰ Apart from being economically disadvantaged, the victims were also stigmatized by their loved ones and society at large. The sexual nature of the abuse was linked to dishonour for the families of survivors with some survivors being rejected upon returning to Korea or living in silence.⁴¹ Patriarchal social ideas about morality, purity, and chastity made the victims endure misplaced shame and ostracism by being referred to as 'spoiled goods'. In the worst cases, the blame was put on the victims themselves for what was done to them.⁴² Besides the role played by the patriarchal society, the stigmatisation against the victims was also a result of the Japanese government's lack of acknowledgement for the abuses endured by the victims. The denial of victimhood was accompanied by an absence of solidarity and social support for former 'comfort women'. Marginalised and placed in an environment that lacked support and solidarity, many victims did not speak about their past in order to prevent further negative implications.⁴³ They had to deny what had happened to them as a coping and defence mechanism, thus concealing the truth regarding the crime and unwittingly supporting the Japanese perpetrators in their quest for removing the existence of the 'comfort system' from social memory.

Overall, the physical, psychological, and socio-economic consequences suffered by the victims show that their traumatised continued even after the war.⁴⁴ It can be argued that the negative effects of the experienced violence were notably enhanced due to Japan's post-war silence and partial denial of the crime hereinafter, thus fuelling the victims' need for acknowledgement and memorialisation of their sufferings. However, before analysing in-depth the women's demands, it is first important to look at how structural dynamics of denial developed following the end of the Second World War.

2.4 *Japan's Initial Reactions*

The 'comfort women' issue remained in silence for around 45 years following the war. It began to be more openly discussed in the end of the 1980s, especially after Ms. Hak-soon Kim became the first survivor to share her painful experience as a 'comfort woman'. Since then, many survivors who had been silent

⁴⁰ *Supra* note 26.

⁴¹ *Ibid.*

⁴² H. Yang, 'Finding the 'Map of Memory': Testimony of the Japanese Military Sexual Slavery Survivors', 16(1) *Positions: East Asia Cultures Critique* (2008) 79–107.

⁴³ N. Kumagai, 'Ontological Security and Japan's Ideological Debate over Compensating Wartime 'Comfort Women'', 18(2) *Social Science Japan Journal* (2015) 145–161, doi:10.1093/ssjj/jy009.

⁴⁴ *Supra* note 27.

for decades came out.⁴⁵ Following the increased number of confessions, three former 'comfort women' joined a lawsuit in Tokyo against the government of Japan in 1991, in which they unsuccessfully demanded apologies and financial compensation for every surviving victim.⁴⁶ Subsequently, in 1992, 'Asahi Shimbun', one of the main Japanese newspapers revealed official documents that confirmed the involvement of the Japanese government in setting up the 'comfort women' system and in regulating it.⁴⁷

The Japanese government initially responded to the allegations by denying any involvement in such a system, claiming that the system was managed by private entities and that the women had offered their services on a voluntary basis.⁴⁸ Nevertheless, as the issue started to become subject of public debate and the victims' testimonies began to intensify, the Chief Cabinet Secretary at the time, Koichi Kato, issued a statement in which he admitted that the government had been involved in the establishment of 'comfort stations'.⁴⁹ After Kato's statement, the evidence about the involvement of the government continued to accumulate. In 1993, the Japanese government was obliged to make a new statement in which Chief Cabinet Secretary Yohei Kono acknowledged that the army was closely involved in setting up and managing the system. He apologised and admitted that the women were often recruited against their will.⁵⁰

It can be inferred from these statements that Japan accepted moral responsibility for the phenomenon of 'comfort women', but not legal responsibility.⁵¹ Given that the statements did not describe in full details the precise nature of the harm done to 'comfort women', it could not be inferred that the crime the Japanese government was responsible for was sexual slavery, thus avoiding issues of legal obligations arising from

45 *Supra* note 16.

46 *Supra* note 27.

47 *Supra* note 43.

48 P.H. Kratoska (ed.), *Asian Labour in the Japanese Empire Wartime: Unknown Histories* (Routledge, London, 2014).

49 Ministry of Foreign Affairs of Japan, *Statement by Chief Cabinet Secretary Koichi Kato on the Issue of the so-called 'Wartime Comfort Women' from the Korean Peninsula*, available online at www.mofa.go.jp/policy/postwar/state9207.html (accessed 30 May 2018).

50 Ministry of Foreign Affairs of Japan, *Statement by the Chief Cabinet Secretary Yohei Kono on the Outcome of the Issue of Comfort Women*, www.mofa.go.jp/policy/women/fund/state9308.html (accessed 30 May 2018).

51 R. Coomaraswamy, U.N. Commission on Human Rights, Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Submitted in Accordance with Commission on Human Rights Resolution (E/CN.4/1996/53)*.

violations of international law.⁵² Therefore, it can be argued that the victims' need for acknowledgement was firstly denied and then only partially met. In his statement, Secretary Chief Cabinet Kono also claimed that historical facts would be studied and taught in history courses.⁵³ Yet, in reality, these history textbooks downplayed or did not account for certain important aspects of the sexual slavery and other atrocities committed by the Japanese military during the Second World War.⁵⁴ The victims' need for memorialisation was thus also not properly fulfilled.

Another seemingly positive step taken by the Japanese government towards reconciliation was its intention to financially compensate the victims for their suffering, by creating the Asian Women's Fund in 1995. In spite of being set up by the Japanese government, the fund was relied on private donations, or in other words on the Japanese citizens.⁵⁵ Korean civil society, including the Korean Council, mobilised against Japan's 1995 initiative and argued that the indirect state compensation was solely a 'pretend' solution that left the Japanese government space to avoid their legal responsibility.⁵⁶ The Korean Council was founded in 1990 to represent the interests of former 'comfort women' and it is regarded as a veto player on this issue.⁵⁷

In light of the requests set forth by the Korean activists, it is of worth to mention that in the issue of post-war compensation, the tension between legal and moral responsibility has always existed. Reconciliation requires acceptance of responsibility, by each side, for the wrong it has done to the other and for the course of the conflict. It must be expressed symbolically, in acknowledgement of one's actions, their effect on the other, and apologies; and concretely, in appropriate steps of compensation, reparation, and restitution.⁵⁸ However, it can be argued that the acknowledgement of responsibility cannot be based entirely on an objective set of legal or moral norms, but requires a process of negotiation in which different types of responsibility are identified and agreed upon.⁵⁹ By way of example, Germany's financial compensation of former Eastern European forced labourers under Nazi occupation did not constitute

⁵² *Supra* note 31.

⁵³ *Supra* note 50.

⁵⁴ *Supra* note 31.

⁵⁵ *Supra* note 16.

⁵⁶ *Supra* note 30.

⁵⁷ A. Sakaki, 'Japan-South Korea Relations—A Downward Spiral: More than 'just' Historical Issues', 35 *SWP Comment* (2019) 1–7. doi.org/10.18449/2019C35.

⁵⁸ H.C. Kelman, 'Reconciliation from a social-psychological perspective', in A. Nadler, T.E. Malloy and J.D. Fisher (eds.), *The Social Psychology of Intergroup Reconciliation* (Oxford University Press, Oxford, 2008), pp. 15–32.

⁵⁹ *Ibid.*

reparations in a legal sense, but it was only a recognition of Germany's moral obligation.⁶⁰

When analysing Japan's initial reactions, it is also important to note the political background at the time. The 'comfort women' issue emerged immediately after the end of the Cold War. It was caught up in the debate between the political left and right in Japan and it was tied with intense nationalistic discourse in South Korea.⁶¹ At the time, expectations were rising amid domestic changes in Japan, influenced by the collapse of single-party electoral dominance by the Liberal Democratic Party and by the arrival of governments led by more liberal coalitions. Within the opposition between liberals and conservatives, a split among the liberals who supported and did not support the compensation for former 'comfort women' was one of the factors behind the apparent lack of success of the Asian Women's Fund. Radical liberal Japanese groups, who opposed to the fund called for the admission of legal responsibility and worked with activists in South Korean feminist groups, which assisted former 'comfort women' with demands for state compensation. Meanwhile, those who supported and promoted the fund managed to launch it and commence its compensation work amid opposition from South Korea and fund-bashing activities by anti-fund liberals. It was a three-way debate among hardline conservatives, pro-funders, and anti-funders.⁶² Hence, numerous South Korean former 'comfort women' did not trust Japanese efforts to deal with the issue, and many of them refused to accept the compensation offered by the Asian Women's Fund.

3 The South Korean Victims' Needs and Rights

Being acquainted with the multi-dimensional trauma and injustice experienced by the victims, one can wonder what the victims demand in terms of reparations as a form of at least partial redress for the prolonged cycle of harm done to them.

Former 'comfort women' have continuously expressed a list of wants and needs in order to address both the system of sexual slavery they were subjected to, and the denial of justice and reparations following the war.⁶³ Based on exhaustive testimonies and consultations with survivors, in 2000, the Women's International War

60 C. Hofhansel, 'The Diplomacy of Compensation for Eastern European Victims of Nazi Crimes', 8(3) *German Politics* (1999) 103–124, doi:10.1080/09644009908404570.

61 N. Kumagai, 'The Background to the Japan-Republic of Korea Agreement: Compromises Concerning the Understanding of the Comfort Women Issue', 23(1) *Asia-Pacific Review* (2016) 65–99.

62 *Ibid.*

63 *Supra* note 31.

Crimes Tribunal on Japan's Military Sexual Slavery in Tokyo provided several recommendations on the remedial measures that the government of Japan should provide to the victims.⁶⁴ These recommendations represent the needs of former 'comfort women' and are tied to the psychological, physical, and socio-economic effects of the experienced violence, as well as to Japan's initial denial of the crimes thereupon. The needs and wants are grouped into six main categories, with the need for acknowledgement and memorialisation being particularly important to the victims.

3.1 *Access to Judicial Redress*

The need for access to judicial redress is related to the victims' demand for the identification and punishment of the main actors involved in the recruitment and institutionalisation of 'comfort stations' during the Second World War. According to the victims, indispensable responsibility rests with the individuals in charge of establishing and maintaining the 'comfort system', including the agents, physical perpetrators, 'comfort station' owners or managers, and superiors on the hierarchical ladder who had a duty to prevent, halt, or punish crimes committed by subordinates under their authority and control. The punishment of liable individuals could be achieved through criminal prosecution or administrative sanction, such as truth-telling or public shaming.⁶⁵ The Japanese government made no effort to track down the perpetrators and try them. On the contrary, every year, high government officials visit the 'Yasukuni Shrine' to pay tribute to soldiers who were killed during the war, with many of these inaugurated soldiers having committed serious war crimes and having been convicted by the 'Tokyo War Crimes Tribunal'.⁶⁶

Punishment serves two main purposes: deterrence and retribution.⁶⁷ While deterrence argues that punishment deters people from committing crimes, retributivism holds that punishment is a deserved consequence the offender should experience depending on the gravity of the harm inflicted. According to retributive justice theory, in order to address criminal acts, a balance between the victims and the perpetrator should be restored in the social order.⁶⁸ The use of punishment as a tool of retribution is more

64 *Supra* note 39.

65 *Ibid.*

66 The Japan Times, *Koizumi's Yasukuni Trips are Ruled Unconstitutional*, available online at www.japantimes.co.jp/news/2005/10/01/national/koizumis-yasukuni-trips-are-ruled-unconstitutional/#.WxqIAkiFPIV (accessed 30 May 2018).

67 A. Ashworth, 'Punishment and Compensation: Victims, Offenders and the State', 6(1) *Oxford Journal of Legal Studies* (1986) 86–122.

68 A. Mooij, 'Kant on Criminal Law and Psychiatry', 21(4) *International Journal of Law and Psychiatry* (1998) 335–341.

aligned with what victims of trauma and violence need. Research has shown that symptoms of post-traumatic stress disorder are correlated with feelings of revenge, and hence with the need for retribution.⁶⁹

3.2 *Restitution*

The aim of restitution is to 'restore the victim to the original situation before the violations ... occurred'.⁷⁰ When it is possible to restore the victim to one's place prior to the injury, restitution includes the restoration of liberty, legal rights, social status, family life, citizenship, and employment; return to one's place of residence; as well as return of property. In instances when restitution is impossible, as in the case of murder or rape, financial compensation is usually awarded to the victims or family members as a substitute for the pre-injury status. According to the victims, the government of Japan did not take any measures to restore the survivors' honour and social status, or the material losses they experienced as a result of the 'comfort system', following the crime.⁷¹

While it is not possible to restore the situation of the former 'comfort women' before the experienced violence, the victims claim that there are certain measures that the Japanese government can take instead, such as returning them to the country of residence if they wish; providing them with some material well-being, including long-delayed health care that they might have enjoyed prior to becoming 'comfort women'; and erasing any criminal records of, for example, prostitution or unlawful immigration, which might have been a consequence of being a 'comfort women'.⁷²

3.3 *Compensation*

Compensation is a form of remedial provision, which helps to economically address material and economic damages encountered by the victims, including physical or mental harm, lost opportunities, material damages, harm to reputation or dignity, as well as costs required for legal assistance, medical treatment, and psychological or social services.⁷³ It is important that the compensation comes from the source of the wrongdoer, since

69 M.J.J. Kunst, 'PTSD Symptom Clusters, Feelings of Revenge, and Perceptions of Perpetrator Punishment Severity in Victims of Interpersonal Violence', 34(5) *International Journal of Law and Psychiatry* (2011) 362–367, doi:10.1016/j.ijlp.2011.08.003.

70 Economic and Social Council, *Civil and Political Rights, Including the Question of: Independence of the Judiciary, Administration of Justice, Impunity* (E/CN.4/2000/62), para. 22.

71 *Supra* note 39.

72 *Ibid.*

73 Economic and Social Council, *Civil and Political Rights, Including the Question of: Independence of the Judiciary, Administration of Justice, Impunity* (E/CN.4/2000/62).

such a step establishes a clear acceptance of responsibility, redresses the harm done to the victims, and deters future occurrence of similar crimes.⁷⁴ The compensation must be adequate and proportional to the victims' lost opportunities and to their physical and emotional sufferings, all being a result of the crimes committed and of the denial of truth and remedial measures.⁷⁵

Although the government of Japan did initially implement the Asian Women's Fund, this form of financial reparation was rejected by the survivors mainly because it failed to provide them with direct compensation and because prior consultations with the survivors on the proper amount of compensation did not take place.⁷⁶ The Women's Tribunal of 2000 found that the delay of Japan's reparations and acknowledgement of crimes emphasized the injuries experienced by the victims and caused additional and continuing suffering, including economic hardship and impoverishment, ostracism, un-redressed health problems, and loss of opportunities. According to the victims, all these consequences should be subject to financial compensation, which the voluntary contribution by the Japanese population through the Asian Women's Fund could not cover.⁷⁷ Since financial means can never make up for the wrongdoings concerned, 'comfort women' survivors were not necessarily interested in the money. Above all, a direct financial compensation by the Japanese government to the victims or their families would publicly acknowledge the women's sufferings and would show that the Japanese government takes its responsibility for initiating the 'comfort system' seriously.

3.4 *Rehabilitation*

Rehabilitation includes services provided to both the victim and the perpetrator and takes the form of medical and psychological care, as well as of legal and social services.⁷⁸ Psychological trauma and physical injury, particularly when resulting from mass violence and sexual violence, often cause long-lasting damages to the victims, who usually require special care and treatment to heal. To ensure that the victimisation will not be repeated, rehabilitation may require educating, training, and treating the perpetrator as well. Apart from preventing the re-occurrence of the offence, rehabilitation would also make perpetrators more productive members of

⁷⁴ *Supra* note 30.

⁷⁵ *Supra* note 39.

⁷⁶ *Supra* note 16.

⁷⁷ *Supra* note 39.

⁷⁸ *Supra* note 70.

society, given that it would help them come to terms with their guilt of participating in crimes.⁷⁹

The conditions to which 'comfort women' were subjected were extreme; their testimonies demonstrate that the physical and mental violence they endured has not healed, and that efforts need to be taken to ensure that the reduction of all the facets of pain is achieved. According to the survivors, this could be done by providing living conditions that are comfortable and supportive to the victims and ensure an adequate standard of living. This form of rehabilitation is important given that 'comfort women' were denied educational opportunities and work experience. Moreover, the abuses inflicted on these women resulted in survivors having difficulties in marrying, particularly in patriarchal societies where males are given preference and unmarried women are scorned in public and private life.⁸⁰ As mentioned earlier, the rehabilitation of the victims or their perpetrators was almost inexistent on the agenda of the government of Japan following the Second World War.

3.5 *Acknowledgement and Memorialisation*

Even though the aforementioned needs bear a significant importance for the victims, their utmost demand is for the crimes done to them to be acknowledged and remembered by future generations. A full acknowledgement by the government of Japan, including a detailed description of the perpetration of the crime of sexual slavery, an identification of all the parties involved, and an acceptance of responsibility, would finally resolve the 'comfort women' issue. In addition, memorialisation would bring peace to the victims by comforting them that their sufferings during and after the war will be remembered and commemorated. With the majority of the former 'comfort women' having deceased, there are less than 20 Korean victims alive, with an average age of 90.^{81,82} As claimed by the women and their supporters, part of the Japanese government's strategy has been to disregard their demands for full acknowledgement until all victims die and the issue is removed from the public's eye. That is why, apart from acknowledgement, the need of memorialisation is of particular importance for these women.

Although judicial redress, restitution, financial compensation, and rehabilitation are valuable in addressing the victims' needs on a personal level, for the former 'comfort women', needs that relate to their sufferings being socially

79 *Supra* note 39.

80 *Ibid.*

81 *Supra* note 4.

82 *Supra* note 8.

acknowledged and remembered, are more significant. These latter needs pertain to acknowledgement and memorialisation.

3.5.1 Acknowledgement

According to the victims, acknowledgement has two meanings. First, it refers to the Japanese government explaining in detail the set-up and the consequences of the 'comfort system', including naming the offence of sexual slavery and describing in detail the impact it had on the victims.⁸³ As shown in the previous section, the apologies made by representatives of the state of Japan minimised the harm inflicted on the victims and denied the weight of the survivors' suffering during and following the crime. Second, to the victims, acknowledgement refers to Japan's acceptance of responsibility and liability for the establishment of the 'comfort system', and of the fact that this system was in violation of international law.⁸⁴ The initial reactions of Japan were not in line with the second aspect of acknowledgement either. Japan's official position in the first decades following the crime shifted from destroying inculpatory documents, to denial, to partial and ambiguous acknowledgement.

The victims' need for acknowledgement stems from the lasting psychological impact of the experienced trauma. For survivors, 'truth' is linked to justice for the wrongdoing done to them.⁸⁵ Research has shown that public acknowledgement is essential for redressing the victims' feelings of shame and guilt, for providing healing and closure, as well as for restoring dignity and social harmony.⁸⁶ When the perpetrator publicly validates the victims' sufferings, the solidarity from victims' communities increases, and hence feelings of isolation are lessened. By admitting the inflicted harm, the wrongdoer recognizes that his moral compass failed and he confirms that the injured party did not do anything wrong, thus transferring the shame from the injured party to the wrongdoer.⁸⁷ Moreover, perceived as an act of humility, acknowledgement begins the process of balancing the relationships between the abuser and the victims through exchanging social powers among the two. By accepting responsibility for the horrific crimes, the perpetrator assumes a position of vulnerability and places the injured person in control of the social transaction of power. As a result, the victims' dignity is restored, ending up in a position of strength.⁸⁸

83 *Supra* note 39.

84 *Supra* note 31.

85 *Ibid.*

86 S. Alter, *Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations* (Law Commission of Canada, Ottawa, ON, 1999).

87 *Ibid.*

88 *Ibid.*

In the present case, Japan's initial resistance to fully acknowledge its wrongdoing and the fact that the crime committed against the victims was that of sexual slavery shifted the blame onto the victims, through excuses that the women came to the 'comfort stations' on a voluntary basis. This perpetuated the silence and feelings of shame among the survivors, preventing them to live in peace.⁸⁹ Psychological studies have demonstrated that unacknowledged victims of sexual violence are deprived of supportive reactions from their communities and have an elevated risk of sexual re-victimisation.⁹⁰ Supportive reactions are often missing because unacknowledged victims are less likely to open up and even when they decide to do so, they may describe their experience to others as a subtle event. Additionally, given that unacknowledged victims perceive their experiences as less serious than acknowledged victims, they may be unable to recognise risky sexual situations.⁹¹

3.5.2 Memorialisation

Memorialisation, or the preservation of memory, is closely related to acknowledgement and concerns publicly disclosing the factual records of the 'comfort system' as well as creating an open historical record for telling and investigating the full history. As claimed by the victims, this can be achieved through re-writing the Japanese education curricula and creating memorials, museums, monuments, and libraries. Educational initiatives, such as meaningful inclusion of the 'comfort women' issue in historical textbooks, are particularly relevant to memorialisation because they ensure the education of the population—most importantly the youth and future generations—concerning the gross human rights violations committed and the harm suffered. According to the Women's Tribunal,⁹² the efforts of the Japanese government to educate the people of Japan and future generations through formal education, official memorials, or commemoration days, have been lacking from the start.

Accurately recording and preserving the memory of the wrongdoing and harm done to the victims serves their rehabilitation in the public eye and ensures a non-occurrence of similar crimes in future generations.⁹³ By providing evidence for the kinds of deaths that occurred, memorialisation practices represent the survivors' conviction that the victims' lost lives matter and that

⁸⁹ *Supra* note 39.

⁹⁰ H. Littleton, D. Axsom and A. Grills-Tauchel, 'Sexual Assault Victims' Acknowledgement Status and Revictimisation Risk', 33(1) *Psychology of Women Quarterly* (2009) 34–42.

⁹¹ *Ibid.*

⁹² *Supra* note 39.

⁹³ *Ibid.*

they deserve public recognition and grief. They help the restoration process of the victims' dignity, honour the dead, and represent the need for survivors to protest the violence they and other diseased victims underwent.⁹⁴

3.6 *The Victims' Rights under International Law*

The Japanese government failed to take meaningful measures to implement the six main recommendations provided by the Women's International Tribunal in the decades following the Second World War, on the basis that it had no legal obligation to do so.⁹⁵ However, this is not entirely the case. International law has prohibited slavery well before the Japanese army created 'comfort stations' during World War II. Slavery is defined as the status or condition of a person over whom powers to the right of ownership are exercised.⁹⁶ Since sexual autonomy is a power attaching to the right of ownership, controlling another person's sexuality is, therefore, a form of slavery. The Japanese 'comfort system' combined these forms of control, by both restricting its victims' freedom of movement and forcing them to perform sexual labour. Thus, it can be argued that the 'comfort system' constituted a system of slavery that violated international law.⁹⁷ The treaties and customary law that provide the basis for criminalising slavery have used different language in their attempts to define the crime. However, the language of the 1926 Slavery Convention, by focusing on the exercise of the rights of ownership, provides the best definition of slavery and one that encompasses sexual slavery. The Tokyo 2000 Tribunal found all the indicia of sexual slavery in the comfort system. It stated that the Japanese military, government officials and their agents committed the crimes of rape and sexual slavery against women and girls as a part of their war of aggression in the Asia-Pacific. These crimes were widespread (occurring on a vast scale and over a huge geographic area) and systematic (being highly organized, regulated, and sharing similar characteristics).⁹⁸ Under Article 7(c) and 7(g) of the Rome Statute, they were crimes against humanity committed against tens of thousands of civilian women and girls who were forced into sexual servitude to the Japanese military as part of the comfort system. 'Crimes against humanity by definition are committed against individuals and not against state. Moreover,

94 C. Boudreaux, 'Public Memorialization and the Grievability of Victims in Ciudad Juárez', 83(2) *Social Research* (2016) 391–420.

95 *Supra* note 31.

96 See, e.g., Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 L.N.T.S. 253. (hereinafter 1926 Slavery Convention).

97 *Supra* note 21.

98 *Ibid.*

as obligations owed to *erga omnes*, they constitute an offense against the entire world community...'⁹⁹

It is an established principle of international law that if an obligation is not met, responsibility entails the duty to make reparation.¹⁰⁰ As concluded by the Permanent Court of International Justice in the *Factory at Chorzow* case:¹⁰¹

[R]eparation must, so far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.

Furthermore, the commentaries of the International Law Commission's Articles on State Responsibility clarify that 'the general obligation of reparation arises automatically upon commission of an internationally wrongful act and is not ... contingent upon a demand or protest by any State'.¹⁰² The forms of reparation include restitution, compensation, and satisfaction, which consists of an acknowledgement of the breach, an expression of regret, a formal apology, assurances of non-repetition or the punishment of culpable perpetrators. With reparation, the wrongfulness is cured, and the normal international legal order is restored.¹⁰³ The measures listed as the forms of reparation are exactly what former 'comfort women' have repeatedly requested the State of Japan to take in order to settle the issue of 'comfort women'.

The needs of former 'comfort women' have been additionally recognised as international human rights and enshrined in the 2005 United Nations General Assembly Resolution 2005/35 entitled 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International

99 *Supra* note 39, para. 1041.

100 K. Abe, 'International Law as Memorial Sites: The 'Comfort Women' Lawsuits Revisited', 1(2) *The Korean Journal of International and Comparative Law* (2013) 166–187.

101 Permanent Court of International Justice, *Case Concerning the Factory at Chorzow, Germany v. Poland*, P.C.I.J. Series A. No. 17, 13 September 1928, para. 125.

102 J. Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press, Cambridge, 2002).

103 *Supra* note 100.

Humanitarian Law', also known as the 'van Boven principles'.¹⁰⁴ According to the 'van Boven principles', the victims of gross human rights violations have among others, the following rights to remedies: (1) equal and effective access to justice, (2) adequate and prompt reparation for harm suffered, and (3) access to relevant information concerning violations and reparation mechanisms. Even though non-binding, the 'van Boven' principles serve as a helpful guide for States in the implementation of public policies on reparations. In compliance with these principles, full and effective reparations include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁰⁵ As it will be explained later on, the reparation of satisfaction encompasses both the need for acknowledgement and memorialisation.

Taken as a whole the analysis showed that the former 'comfort women' needs and rights were not properly addressed in the first decades following the crime. Questions remain however as to whether the 2015 agreement does justice in fulfilling these needs and rights. Before engaging in a thorough analysis, it is first important to explore what the 2015 South Korean–Japanese agreement entails, predominantly what its implications are with regards to the need and right for acknowledgement and memorialisation.

4 The 2015 South Korean–Japanese Agreement

In December 2015, more than 70 years after the Second World War, South Korea and Japan reached an agreement to resolve the dispute over Korean 'comfort women' who were used as sex slaves for the Japanese Imperial Army. Both parties considered the deal to be a 'final and irreversible resolution' of the issue.¹⁰⁶ Questions may be raised as to why an agreement was reached at this time. It appears certain that behind this agreement were calculations of national interest in both Japan and South Korea based on security-related, economic incentives, and national circumstances faced by the leaders of both countries.¹⁰⁷ The recent agreement was reached abruptly after a confrontation over historical perceptions that lasted so long that it could be described as a 'battle of wills'.¹⁰⁸ The need of a cooperative

104 M. Zwanenburg, 'The van Boven/Bassiouni Principles: An Appraisal', 24(4) *Netherlands Quarterly of Human Rights* (2006) 641–668, doi:10.1177/01693441060240040.

105 United Nations Office of the High Commissioner, *Basic Principles and Guidelines for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, (resolution 60/147 of 16 December 2005).

106 *Supra* note 3, para. 3.

107 *Supra* note 61.

108 *Ibid.* p. 72.

relationship between Japan and South Korea was further exacerbated by the influence of the US, given its interest in forming a trilateral Japan–US–South Korean cooperation to counter the North Korean nuclear and missile crises and to restore the Northeast Asian power balance following the rise of China.¹⁰⁹

Prior to analysing whether the 2015 agreement addresses the South Korean women's needs and their internationally recognized legal rights, it is primarily important to acquaint the reader with the components of the agreement and their implications. While describing its components, the present section raises questions—which will be addressed later on in the discussion—as to whether the agreement has indeed acknowledged the crime and whether it truly settles the issue 'finally and irreversibly'. From the beginning, the euphemistic term 'comfort women' has played an important role in diminishing the significance of the true nature of the victimisation suffered by the victims. Given that in the official declaration of the 2015 agreement—by both the former Japanese and South Korean Foreign Ministers—the term 'comfort women' is still used to refer to the 'issue' serves as an initial indication that the agreement cannot settle the issue 'finally and irreversibly'.

The agreement was announced after months of consultations between senior officials of both sides and consisted of four main components: (1) an apology from the then Japanese Foreign Minister on behalf of the then Prime Minister Shinzo Abe; (2) a promise from Japan's side to deliver approximately USD 8 000 000 to support a victim fund for the survivors; (3) South Korea's commitment to address Japan's concern regarding the 'comfort woman' statue placed in front of the Japanese Embassy in Seoul; and (4) a mutual compromise by both parties to refrain from presenting their conflicting views in front of the international community.¹¹⁰

4.1 *Apology*

In the announcement about the agreement between Japan and South Korea, the Japanese Foreign Minister at that time, Fumio Kishida, issued a formal public apology on behalf of the former Prime Minister Shinzo Abe to all the South Korean victims who suffered as 'comfort women':

The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honour and dignity

¹⁰⁹ *Supra* note 61.

¹¹⁰ Y. Tatsumi, *Japan, South Korea Reach Agreement on 'Comfort Women'*, available online at www.thediplomat.com/2015/12/japan-south-korea-reach-agreement-on-comfort-women/ (accessed 30 May 2018).

of large numbers of women, and the Government of Japan is painfully aware of its responsibilities from this perspective. As Prime Minister of Japan, Prime Minister Abe expresses anew his most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.¹¹¹

Kishida's statement was a direct response to the critics who had dismissed the 1993 Kono apology as an expression of this leader's personal feelings and who had not accepted it as an official government apology. Moreover, the fact that Abe, the conservative former Japanese Prime Minister, was the one expressing the official apology and remorse, assisted in quieting the Japanese 'revisionists'.¹¹²

When reading the apology several questions arise, such as how were the authorities precisely involved, how was the women's dignity infringed upon, to what extent was the crime systematic, or what is the nature of the Japanese government's responsibilities. Hence, given the unclear description of the gravity of the crime, the parties involved, and the degree of responsibility that follows hereinafter, one can wonder whether Kishida's statement does indeed address the victims' need and right for acknowledgement. Moreover, it remains questionable to what extent Shinzo Abe, the former leader of the Japanese government, acknowledges the content of the apology, given that the statement was not conveyed directly by him.

4.2 *Victim Fund*

In addition to the above-mentioned apology, Kishida also announced the establishment of a financial foundation for the victims:

The Government of Japan has been sincerely dealing with this issue. Building on such experience, the Government of Japan will now take measures to heal psychological wounds of all former comfort women through its budget. To be more specific, it has been decided that the Government of the ROK establish a foundation for the purpose of providing

111 Ministry of Foreign Affairs of Japan, *Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion*, available online at www.mofa.go.jp/a_o/na/kr/page4e_000364.html (accessed 30 May 2018), para.1.

112 *Supra* note 110.

support for the former comfort women, that its funds be contributed by the Government of Japan as a one-time contribution through its budget ...¹¹³

In conformity with the agreement, the government of Japan transferred JPY 1 000 000 000 (approximately USD 8 000 000) to the South Korean fund to support the victims and their families. The fund, also known as the Reconciliation and Healing Foundation, was established and coordinated by the South Korean government. A total of 245 women, living and deceased, and their relatives were eligible to receive the money. The money was handed out in cash with approximately JPY 2 000 000 being disbursed to each family of any 'comfort woman' who had died by the end of 2015, with those still alive receiving approximately JPY 10 000 000 each.¹¹⁴ More than two-thirds of the survivors accepted payments from the foundation (namely 34 of the 46 women who were still alive).¹¹⁵ The money was intended for medical and nursing purposes, funeral costs, and scholarships for relatives.

It remains uncertain what the aim of the fund is: to address the victims' right for compensation or to acknowledge the responsibility for the wrongdoing done to them. Given that the donation was only made available through a foundation and not transferred directly to the victims and their families, one can wonder whether Japan, similarly to what it did with the 'Asian Women's Fund', is only acknowledging a moral rather than a legal responsibility. Moreover, it is also dubious whether it is possible to heal the psychological wounds of the former 'comfort women' through monetary compensation alone.

4.3 *The Statue*

The third aspect of the agreement concerns the removal of a statue in front of the Japanese embassy in Seoul. With regards to this issue, the then South Korean Foreign Minister Yun Byung-se stated that:

The Government of the ROK acknowledges the fact that the Government of Japan is concerned about the statue built in front of the Embassy of Japan in Seoul from the viewpoint of preventing any disturbance of the peace of the mission or impairment of its dignity, and will strive to solve

¹¹³ *Supra* note 111, para. 1.2.

¹¹⁴ The Japan Times, *Japan Completes Transfer of ¥1 Billion to South Korean 'Comfort Women' Fund*, available online at www.japantimes.co.jp/news/2016/09/01/national/politics-diplomacy/japan-completes-transfer-%C2%A51-billion-south-korean-comfort-women-fund/#.%20WM-gRfnyvIU%20 (accessed 30 May 2018).

¹¹⁵ *Supra* note 57.

this issue in an appropriate manner through taking measures such as consulting with related organisations about possible ways of addressing this issue.¹¹⁶

The statue at hand is positioned on the sidewalk facing the Japanese embassy in Seoul and represents the women who were victims of the system of sexual slavery. It portrays a young girl and has various symbolic elements, such as clenched fists, which convey the message that the victims will no longer stay silent about Japan's war crimes.¹¹⁷ Passers-by have endorsed the statue by covering it with jackets or scarves. Despite Yun's statement, South Korean government officials argued that it was not in their competencies to remove the statue since it was created by an NGO.¹¹⁸ The statue has not been removed yet, a move which according to the Japanese is not in accordance with the agreement.¹¹⁹

It seems as if the Japanese government's urge to remove a statue, which represents the women's sufferings, as well as their fight for justice and acknowledgement, is a direct jeopardy to the women's need for memorialisation. Hence, one can wonder whether denying the victims their need and right for memorials can also bring about the extinction of the issue from the social memory of future generations. Furthermore, it is also questionable what other elements—apart from the statue—not addressed in the agreement could potentially meet the women's need and right for memorialisation.

4.4 *Diplomatic Relations*

The fourth and last component of the agreement addressed the political situation between the two countries. According to Yun, South Korea's Foreign Minister, at that time:

The Government of the ROK, together with the Government of Japan, will refrain from accusing or criticizing each other regarding this issue in the international community, including at the United Nations, on the

¹¹⁶ *Supra* note 111, para. 2.2.

¹¹⁷ S. Han and J. Griffiths, *Why this Statue of a Young Girl Caused a Diplomatic Incident*, available online at www.edition.cnn.com/2017/02/05/asia/south-korea-comfort-women-statue (accessed 30 May 2018).

¹¹⁸ D. Kirk, *Comfort Woman Statue Casts Shadow over Japan-Korea Deal on Comfort Women*, available online at www.forbes.com/sites/donaldkirk/2015/12/28/comfort-woman-statue-looms-over-japan-korea-deal-on-comfort-woman/#49beu6e5f36 (accessed 30 May 2018).

¹¹⁹ S. Miller, *Questions Remain over Comfort Women Foundation Future as Protests Continue*, available online at www.voanews.com/east-asia-pacific/questions-remain-over-comfort-women-foundation-future-protests-continue (accessed 30 May 2018).

premise that the Government of Japan will steadily implement the measures it announced.¹²⁰

The agreement symbolised the removal of the biggest obstacle that prevented the two countries from engaging diplomatically and cooperating on their security concerns. It was deemed to be the first step towards the reconciliation between Japan and South Korea.¹²¹ The deal was also supported by the West, and particularly by the United States, which was one of the actors that encouraged the agreement in the first place, and which favours good relationships between these two allies mainly due to security concerns in the region.¹²²

There are controversies regarding the intention and the political nature of the decision to refrain from discussing the issue in the international arena. Does such a decision suggest that the primary aim of the agreement is to achieve certain political interests rather than to address the victims' needs and rights? Additionally, would impeding the 'comfort women' issue from being internationally discussed contribute to its lack of acknowledgement and its oblivion in the future? The next section closely scrutinises these questions while also examining the components of the 2015 South Korean–Japanese agreement, with particular focus being placed on the extent to which the agreement addresses the women's need and right for acknowledgement and memorialisation.

5 Discussion

Although a positive step between the two countries on a political level, the agreement fell short of bringing closure to the emotional wounds of former 'comfort women'. The deal was from the start rejected and criticised by the surviving victims, who claimed that it had made them 'look like fools'.¹²³ Hundreds of protesters, including students, opposition legislators, and civil

120 *Supra* note 111, para. 2.3.

121 *Supra* note 6.

122 Japan Nationwide Action for Resolution of the Japan's Military 'Comfort Women' Issue, *An 'Agreement' Without the Victim is no 'Resolution'*, available online at wam-peace.org/en/news/523 (accessed 30 May 2018).

123 *Supra* note 4, para. 3.

124 J. Kim, *South Korean 'Comfort Women' Protest Against Accord with Japan*, available online at www.reuters.com/article/us-southkorea-japan-comfortwomen/south-korean-comfort-women-protest-against-accord-with-japan-idUSKBN0UD0I520151230 (accessed 30 May 2018).

activists, joined the victims in their quest for justice.¹²⁴ This section aims to shed light on the reasons behind the women's and their supporters' discontent by critically reflecting on how far the agreement addresses the victims' needs and rights, with particular focus being placed on acknowledgement and memorialisation, as two of the most important needs of the victims.

5.1 *The Lack of a Victim-Centred Approach*

Following the agreement, critics in the South Korean media and civil society described the deal as selling the dignity of survivors for short-term diplomatic gain.¹²⁵ The current South Korean President, Moon Jae-in, further denounced the agreement for being seriously flawed, for having failed to meet the needs of the victims, and for having violated general principles of the international society.¹²⁶ As a result, he set up a special task force to investigate the 2015 bilateral agreement from a victims-oriented approach. Inter alia, the task force report, which was published on 27 December 2017, heavily criticized the process through which the agreement was created. According to this report, the agreement reflected a governmental rather than a victim perspective.¹²⁷ The consultations in reaching the agreement were held behind closed doors and did not make use of democratic procedures—such as public hearings—where the victims' opinions and needs could be voiced. Moreover, certain aspects of the negotiation process were kept secret from the public eye and were not disclosed in the Joint Press Conference by the two Foreign Ministers at that time. This included an internal bilateral compromise of never employing the term 'sexual slavery' to refer to the 'comfort system' in the future.¹²⁸

The absence of efforts from the South Korean stance to commit to the victims, to include them in the consultation process, and to put their needs first, can be argued to be unconstitutional. In 2011, the South Korean Constitutional Court ruled that the South Korean government had failed to hold Japan responsible for the damages done to the victims. By not fulfilling its responsibility to

125 A. Panda, *The 'Final and Irreversible' 2015 Japan-South Korea Comfort Women Deal Unravels*, available online at www.thediplomat.com/2017/01/the-final-and-irreversible-2015-japan-south-korea-comfort-women-deal-unravels/ (accessed on 30 May 2018).

126 T.-H. Kim, *South Korean President Calls Sex Slave deal with Japan Flawed*, available online at www.apnews.com/830a2ce4f9f446c2b7e215e69ce7d896/S.-Korean-president-calls-sex-slave-deal-with-japan-flawed (accessed 30 May 2018).

127 The Ministry of Foreign Affairs of Korea, *Task Force on the Review of the Korea-Japan Agreement on the Issue of 'Comfort Women' Victims*, available online at www.mofa.go.kr/upload/cntnts/www/result_report_eng.pdf (accessed 30 May 2018).

128 *Ibid.*

stand up for the victims, the South Korean government had violated the constitution. That is because the lack of reparations from Japan's side violated the victims' basic constitutional rights.¹²⁹ As suggested by the Court's ruling, the victims expected the South Korean government to involve them more in the process of reaching the agreement, thus providing them with more support in their struggle for justice. The victims were hurt by the fact that they were not consulted on how the South Korean government could deal with the issue. Additionally, the fact that both countries agreed to never criticise each other on this issue again, implies that political interests were put first. This infringed the honour and dignity of the victims.¹³⁰

The lack of a victim-centred approach in the negotiation process suggests that none of the victims' needs and rights for reparations was properly addressed by the agreement. This can also be implied by the comfort women's lawsuit against the South Korean government over its 2015 agreement with Japan.¹³¹ Due to this article's scope and the importance given by the victims, the discussion critically assesses the agreement only through the lenses of the victims' need and right for acknowledgement and memorialisation.

5.2 *Failing to Acknowledge*

As elaborated in the third section, the victims' need for acknowledgement is highly linked to the psychological effects of the experienced violence. To the victims, acknowledgement has two meanings and it refers to: (1) The Japanese government explaining in detail the set-up of the 'comfort system' (including naming the offence of sexual slavery) and the impact it had on the victims; and to (2) Japan's acceptance of responsibility and liability for the establishment of the 'comfort system', and of the fact that this system was in violation of international law. The victims' need for acknowledgement is also reflected by the right to satisfaction. Inter alia, the right to satisfaction includes verification of the facts and full public disclosure of the truth; an official declaration or a judicial decision restoring the dignity and reputation of the victim or their relatives;

¹²⁹ T. Etsuro, *Proposals for Japan and ROK to Resolve the 'Comfort Women' Issue: Creating Trust and Peace in Light of International Law*, available online at www.apjjf.org/2013/11/1/Totsuka-Etsuro/3885/article.html (accessed 30 May 2018).

¹³⁰ *Supra* note 122.

¹³¹ AFP, *Seoul to Face Lawsuit over 'Comfort Women' Agreement*, available online at www.tribune.com.pk/story/1172616/seoul-face-lawsuit-comfort-women-agreement/ (accessed 30 May 2018).

¹³² *Supra* note 104.

and a public apology including acknowledgement of the facts and acceptance of responsibility.¹³²

At first glance, it seems that Kishida's public apology addresses both the need and right to acknowledgement, given that it recognises the Japanese army's involvement, the responsibility of the Japanese government, and the pain inflicted on the victims. Nevertheless, when examining his statement closely, one would notice that, similar to previous apologies of the Japanese government, the language used by Kishida is quite vague. By referring to an 'involvement' in the 'issue' and by indicating that the 'honour' of the women was affected, the statement provides solely a partial recognition of the Japanese military's participation in setting up the 'comfort system' and in dehumanising and raping the former victims. Moreover, the 'responsibility' of the Japanese government was mentioned without further explanation, making it thus unclear whether Kishida was referring to a legal or rather to only a moral responsibility. The statement did not account for the Japanese government's responsibility in initiating and maintaining the system of sexual slavery. Kishida's apology also referred to 'large numbers of women' involved in the system and that these women underwent 'incurable physical and psychological wounds'. The phrase 'large numbers of women' is highly open to interpretation—large can mean hundreds or thousands of women. This term does not accurately portray the exact estimates of women involved (50 000 to 200 000), the fact that the crime was systematic, and that it pertained to sexual slavery. As brought up earlier, not only was it not mentioned in the agreement, but the term 'sexual slavery' was also secretly agreed upon not to be used in the future when referring to 'the issue'.¹³³ As far as the 'physical and psychological wounds' are concerned, it is not entirely clear what kind of wounds the statement is precisely referring to, what was the exact impact of these wounds on the victims, and how did these wounds come about.

The vagueness regarding the details and implications of the 'comfort system' was also accompanied by the fact that the statement was not conveyed by the former Prime Minister Abe directly to the victims, a step which was highly criticized by the Korean Council for the Women.¹³⁴ The victims consider it very important for the acknowledgement of the facts to come directly from a representative of the institution which bore a certain responsibility in the offence of the crime.¹³⁵ In the present case, Abe was the representative of the Japanese government and not only did he

¹³³ *Supra* note 127.

¹³⁴ *Supra* note 16.

¹³⁵ *Supra* note 86.

not address the victims directly, but it is also doubtful whether he was the right person to provide such a statement, given his controversial behaviour in the past.¹³⁶ Failing to properly fulfil the victims' need for acknowledgement is also depicted by the fact that the donation was only made available indirectly, through a foundation. As mentioned earlier, publicly acknowledging responsibility for the crime is more important to the victims than money alone. The fact that the Japanese government did not compensate the women directly indicates that the Japanese government is not assuming any legal responsibilities. This was further confirmed by the Japanese side, which immediately after the agreement stated that the nature of the monetary compensation allocated to the foundation is not reparation based on the legal responsibility that arises after the violation of international law.¹³⁷

Nevertheless, one can also argue that it is moral compensation that has the potential to express sincere feelings of atonement, keeping in mind the ultimate goal of helping to heal the victims' psychological wounds and achieving true reconciliation between the victimisers and the victimized.¹³⁸ As claimed by the Asian Women's Fund, legal compensation, whose basis is the logic of rights and responsibilities, does not necessarily entail true regret, remorse, or apology after all.¹³⁹ Furthermore, from a legal perspective, Japanese courts have rightfully maintained that individuals cannot be regarded as having the right to demand compensation from an offending State for violations of international law.¹⁴⁰ Constant rejections and criticisms from South Korea's side have been considered by Japan as a 'bottomless pit'¹⁴¹ for reconciliation gestures that are never enough.

It is also worthy to note that the Healing and Reconciliation Foundation's discussions on diverse reconciliation measures were suspended due to the unilateral decision of the South Korean government, after just two years from its creation. South Korea sent an official notification to Japan on the

¹³⁶ *Supra* note 16.

¹³⁷ *Supra* note 127.

¹³⁸ *Supra* note 61.

¹³⁹ Asia Women's Fund, 'Moral Responsibility and Reconciliation', *International Expert Meeting* (14–15 January 2005), p. 43.

¹⁴⁰ S.H. Bong, 'Compensation for Victims of Wartime Atrocities: Recent Developments in Japan's Case Law', 3(1) *Journal of International Criminal Justice* (2005) 187–206.

¹⁴¹ *Supra* note 57, p. 5.

¹⁴² H.M. Kang, *South Korea Decides to Dismantle 'Comfort Women' Reconciliation and Healing Foundation*, available online at thediplomat.com/2018/11/south-korea-decides-to-dismantle-comfort-women-reconciliation-and-healing-foundation/ (accessed 3 November 2021).

dismantlement of the foundation, with all members of the foundation having resigned by the end of 2017.¹⁴² While the financial compensation already distributed to the victims could not be annulled, in July 2018 the current Moon government decided to raise a USD 10 000 000 000 fund to return to the Japanese fund. According to the perspective of Japan, the dissolution of the Reconciliation and Healing Foundation signifies a de-facto suspension of the 2015 'comfort women' agreement as well as a violation of an inter-governmental agreement.¹⁴³ Further to this, the Korean Council of the Women has been surrounded by controversy with it failing to meet financial disclosure requirements over multiple years.¹⁴⁴ In May 2020, former comfort woman Lee Yong-soo publicly accused the Korean Council and its former head of having exploited her and other former 'comfort women' for political gain.¹⁴⁵ The Korean Council has also been alleged of having pressured former 'comfort women' into not accepting money from the Japanese government under the 2015 agreement, as well as of embezzling donations made to the organisation for private purposes and personal profit.¹⁴⁶

5.3 *Denying Memorialisation*

As explained earlier, similar to acknowledgement, the victims' need for memorialisation stems from the effects of the violence endured while being exploited in the 'comfort system'. According to the victims, memorialisation can be achieved by creating memorials, museums, monuments, or libraries.¹⁴⁷ The victims' need for memorialisation is also reflected by the right of satisfaction. Inter alia, the right of satisfaction includes paying commemorations and tributes to the victims.¹⁴⁸ Contrary to acknowledgement, which was partially addressed, the need and right for preserving the memory of the wrongdoing perpetrated against the victims was utterly denied and infringed upon by the agreement. This was mainly done through the negotiation between both countries to remove the 'comfort women' memorial statue placed in front of the Japanese embassy in Seoul.

143 *Supra* note 57.

144 M.-H. Wi and J.-A. Kim, *Calls to Rein in NGOs Follow Korean Council Scandal*, available online at koreajoongangdaily.joins.com/2020/06/17/national/socialAffairs/comfort-women-NGOs-IRS/20200617171400366.html (accessed 3 November 2021).

145 J.-h. Jun, *Yoon uses Comfort Women for Own Interest*, www.koreatimes.co.kr/www/nation/2020/05/356_29_0099.html (accessed 3 November 2021).

146 H.-j. Ock, *'Comfort Women' Advocates deny Allegations*, available online at www.koreaherald.com/view.php?ud=20200511000829 (accessed 3 November 2021).

147 *Supra* note 39.

148 *Supra* note 105.

Also known as 'The Statue of Peace', the statue placed near the Japanese embassy in Seoul represents the suffering experienced by the victims as well as their fight for justice.¹⁴⁹ The statue embodies a young girl and reflects a lot of powerful and meaningful messages. Her fists are clenched, indicating that the victims are driven, that they want to tell the truth, and will therefore no longer be silent. Her face expresses anger about the inhumane treatment, but also determination to resolve the issue. The girl's feet do not touch the ground, implying that the victims have no contact with society because they are often excluded. Although the girl in the statue is young, there is a shadow of an old woman behind her, which symbolises the long-term hardship endured by women. The statue also reflects the fact that former 'comfort women' who have deceased, deserve to be remembered to the same extent as those who are still alive. This is represented by a bird at the shoulder of the girl, which signifies peace, freedom, liberation and it connects victims who 'went in the sky' to those who are still on the ground.¹⁵⁰ The statue was created for the 1000th Wednesday demonstration—one of the anniversaries of the weekly protests that have been held by surviving former 'comfort women' outside the Japanese embassy in Seoul since 1992. It is a continuous social reminder for the harm experienced by 'comfort women'. Its positioning in front of the Japanese Embassy implies that when the women will no longer be there protesting, the statue will silently continue the fight for justice for them.

Keeping in mind the women's need and right to memorialisation, the Japanese government's decision to remove such a statue can be considered as a direct attack to the women's right and need to be remembered and commemorated. Broadly speaking, survivors of gross human rights violations create memorials to make a claim about public causes of death and to influence social or political change.¹⁵¹ Infuriated by the deal, the victims started to put dozens of more 'comfort women' statues in South Korea and abroad.¹⁵² In late 2016, a statue appeared in front of the Japanese consulate in the South Korean port city of Busan.¹⁵³ Other statues were placed on buses serving routes in

149 *Supra* note 117.

150 *Ibid.*

151 J. Santino, 'Performative Commemoratives, the Personal, and the Public: Spontaneous Shrines, Emergent Ritual, and the Field of Folklore', 117(466) *The Journal of American Folklore* (2004) 363–372.

152 J. McCurry, *Buses in Seoul Install 'Comfort Women' Statues to Honour Former Sex Slaves*, available online at www.theguardian.com/cities/2017/aug/16/buses-seoul-comfort-women-statues-korea-japan (accessed 30 May 2018).

153 The Japan Times, *Comfort Women' Statue Installed near Japanese Consulate in Busan* available online at www.japantimes.co.jp/news/2016/12/30/national/comfort-woman-statue-installed-near-japanese-consulate-busan/#.WyAndoiFPIU (accessed 30 May 2018).

central Seoul. This was done to show the discontent with the agreement, to pay tribute to the victims, and to remind South Koreans of the sufferings the women went through. In addition to installing statues, the women also asked to make August 14 a National Day of Remembrance and to open a museum dedicated to 'comfort women'.¹⁵⁴ As a rebuttal point, one can also claim that the removal of the statue can be considered beneficial for reconciliation. It has been argued in the study of reconciliation that victims shaming their victimisers tends to postpone reconciliation.¹⁵⁵

The evidence presented thus far supports the idea that, the women's need and right to be remembered was not addressed by the 2015 agreement. This was not only expressed by the compromise of removing 'The Statue of Peace', but also by the bargain of refraining from debating the 'comfort women' issue in the international arena. Such a decision could potentially lead to the oblivion of the matter by future generations. There is one more component not included in the agreement, which is particularly important to the victims and relevant to both acknowledgement and memorialisation: education.

5.4 *Education, Acknowledgement, and Memorialisation*

The 2015 South Korean–Japanese agreement did not make any reference to educational measures as a means of passing on the memory to future generations. As mentioned earlier, one of the women's demands is the re-writing of the Japanese education curricula in order to include historical facts related to 'comfort women' in school textbooks. Educational initiatives, such as meaningful inclusion of the 'comfort women' issue in historical textbooks, are particularly relevant to both acknowledgement and memorialisation. They represent recognition of the occurrence of the crime and ensure the education of the population through generations, concerning the gross human rights violations committed and the harm suffered. The South Korean women's need for the update of the Japanese education system is also supported by the right to the reparation of satisfaction, which *inter alia* stipulates that states involved in human rights abuses have an obligation to provide an accurate account of such violations in international legal training as well as in educational materials at all levels.¹⁵⁶

In 2018, the South Korean delegation for the third Universal Periodic Review of Japan requested the Japanese government to include information about the 'comfort women' issue in the Japanese public education guidelines. This

¹⁵⁴ *Supra* note 152.

¹⁵⁵ *Supra* note 61.

¹⁵⁶ *Supra* note 105.

request was rejected by the Japanese government.¹⁵⁷ On the contrary, South Korea has taken a different approach on the matter. Recent publication of new 'social studies' textbooks for sixth grade pupils contain images of victims of wartime sexual violence, under the description that all women in Japanese colonies, including South Koreans, were captured forcibly and experienced enormous pain.¹⁵⁸ The decision not to include the re-writing of the Japanese education curricula in the agreement, as well as the rejection to take such a step after being requested to do so by South Korean representatives, suggest that Japan once again failed to fulfil the victims' needs and internationally recognized rights for both acknowledgement and memorialisation.

6 Conclusion

This article argued that the 2015 South Korean–Japanese agreement does not do justice in properly addressing the victims' needs and rights in many ways, with the need for acknowledgement and memorialisation being particularly neglected. Given the lack of a victim-centred approach in its creation, the vagueness of the language used in the public apology statement, the indirect financial compensation, the denial of the victims' need and right to be remembered through contemplating the removal of 'The Statue of Peace', the deal of not criticising each-other in front of the international community on the 'comfort women' issue, as well as the exclusion of certain important needs and rights of the victims from the agreement, all suggest that the 2015 agreement represents another failure from Japan's standpoint in addressing South Korean victims' rights and its state obligations under international law. The fact that the agreement does not properly address the victims' needs and rights maintains the system of oppression and puts the victims in a position of marginalisation, thus harming their dignity and hindering their recovery.¹⁵⁹

In spite of constant public criticism and speculations of renegotiating the deal, on 9 January 2018, the then South Korean Foreign Minister Kyung-wha Kang claimed that the agreement would be sustained.¹⁶⁰ This was mainly a

¹⁵⁷ K. Bizwire, *Japan Rejects Calls to Teach About 'Comfort Women' in School Textbooks*, available online at www.koreabizwire.com/japan-rejects-south-koreas-request-to-teach-about-comfort-women-in-textbooks/113336 (accessed 30 May 2018).

¹⁵⁸ *Ibid.*

¹⁵⁹ J. Butler (ed.), *Excitable Speech: A Politics of the Performative* (Routledge, New York, NY, 1997).

¹⁶⁰ *Supra* note 6.

result of international pressure and of a bilateral cooperative need to face the threat posed by North Korea. Nevertheless, an accurate ‘final and irreversible’ resolution of the ‘comfort women’ issue would require the Japanese government to take policy measures that serve the interests of the victims, rather than those of political entities. These measures include respecting the internationally recognised principles on remedies and reparations, fully acknowledging the historical facts concerning the system of sexual slavery, building memorials and holding commemoration days to remember the victims, as well as updating the educational curricula to include information relevant to the crime, in order for future generations to be acquainted with the suffering experienced by the victims. The human rights violations against former ‘comfort women’ will continue as long as their demands and rights are disregarded and not properly addressed.

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