

## EN BANC

[ G.R. No. 162230, April 28, 2010 ]

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## DECISION

**DEL CASTILLO, J.:**

The Treaty of Peace with Japan, insofar as it barred future claims such as those asserted by plaintiffs in these actions, exchanged full compensation of plaintiffs for a future peace. History has vindicated the wisdom of that bargain. And while full compensation for plaintiffs' hardships, in the purely economic sense, has been denied these former prisoners and countless other survivors of the war, the immeasurable bounty of life for

themselves and their posterity in a free society and in a more peaceful world services the debt.<sup>[1]</sup>

There is a broad range of vitally important areas that must be regularly decided by the Executive Department without either challenge or interference by the Judiciary. One such area involves the delicate arena of foreign relations. It would be strange indeed if the courts and the executive spoke with different voices in the realm of foreign policy. Precisely because of the nature of the questions presented, and the lapse of more than 60 years since the conduct complained of, we make no attempt to lay down general guidelines covering other situations not involved here, and confine the opinion only to the very questions necessary to reach a decision on this matter.

### ***Factual Antecedents***

This is an original Petition for *Certiorari* under Rule 65 of the Rules of Court with an application for the issuance of a writ of preliminary mandatory injunction against the Office of the Executive Secretary, the Secretary of the Department of Foreign Affairs (DFA), the Secretary of the Department of Justice (DOJ), and the Office of the Solicitor General (OSG).

Petitioners are all members of the MALAYA LOLAS, a non-stock, non-profit organization registered with the Securities and Exchange Commission, established for the purpose of providing aid to the victims of rape by Japanese military forces in the Philippines during the Second World War.

Petitioners narrate that during the Second World War, the Japanese army attacked villages and systematically raped the women as part of the destruction of the village. Their communities were bombed, houses were looted and burned, and civilians were publicly tortured, mutilated, and slaughtered. Japanese soldiers forcibly seized the women and held them in houses or cells, where they were repeatedly raped, beaten, and abused by Japanese soldiers. As a result of the actions of their Japanese tormentors, the petitioners have spent their lives in misery, having endured physical injuries, pain and disability, and mental and emotional suffering.<sup>[2]</sup>

Petitioners claim that since 1998, they have approached the Executive Department through the DOJ, DFA, and OSG, requesting assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the "comfort women" stations in the Philippines. However, officials of the Executive Department declined to assist the petitioners, and took the position that the individual claims of the comfort women for compensation had already been fully satisfied by Japan's compliance with the Peace Treaty between the Philippines and Japan.

### **Issues**

Hence, this petition where petitioners pray for this court to (a) declare that respondents committed grave abuse of discretion amounting to lack or excess of discretion in refusing to espouse their claims for the crimes against humanity and war crimes committed against them; and (b) compel the respondents to espouse

their claims for official apology and other forms of reparations against Japan before the International Court of Justice (ICJ) and other international tribunals.

### ***Petitioners' arguments***

Petitioners argue that the general waiver of claims made by the Philippine government in the Treaty of Peace with Japan is void. They claim that the comfort women system established by Japan, and the brutal rape and enslavement of petitioners constituted a crime against humanity,<sup>[3]</sup> sexual slavery,<sup>[4]</sup> and torture.<sup>[5]</sup> They allege that the prohibition against these international crimes is *jus cogens* norms from which no derogation is possible; as such, in waiving the claims of Filipina comfort women and failing to espouse their complaints against Japan, the Philippine government is in breach of its legal obligation not to afford impunity for crimes against humanity. Finally, petitioners assert that the Philippine government's acceptance of the "apologies" made by Japan as well as funds from the Asian Women's Fund (AWF) were contrary to international law.

### ***Respondents' Arguments***

Respondents maintain that all claims of the Philippines and its nationals relative to the war were dealt with in the San Francisco Peace Treaty of 1951 and the bilateral Reparations Agreement of 1956.<sup>[6]</sup>

Article 14 of the Treaty of Peace<sup>[7]</sup> provides:

#### Article 14. Claims and Property

- a) It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless it is also recognized that the resources of Japan are not presently sufficient, if it is to maintain a viable economy, to make complete reparation for all such damage and suffering and at the present time meet its other obligations.
- b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

In addition, respondents argue that the apologies made by Japan<sup>[8]</sup> have been satisfactory, and that Japan had addressed the individual claims of the women through the atonement money paid by the Asian Women's Fund.

### ***Historical Background***

The comfort women system was the tragic legacy of the Rape of Nanking. In December 1937, Japanese military forces captured the city of Nanking in China and

began a "barbaric campaign of terror" known as the Rape of Nanking, which included the rapes and murders of an estimated 20,000 to 80,000 Chinese women, including young girls, pregnant mothers, and elderly women.<sup>[9]</sup>

In reaction to international outcry over the incident, the Japanese government sought ways to end international condemnation<sup>[10]</sup> by establishing the "comfort women" system. Under this system, the military could simultaneously appease soldiers' sexual appetites and contain soldiers' activities within a regulated environment.<sup>[11]</sup> Comfort stations would also prevent the spread of venereal disease among soldiers and discourage soldiers from raping inhabitants of occupied territories.<sup>[12]</sup>

Daily life as a comfort woman was "unmitigated misery."<sup>[13]</sup> The military forced victims into barracks-style stations divided into tiny cubicles where they were forced to live, sleep, and have sex with as many 30 soldiers per day.<sup>[14]</sup> The 30 minutes allotted for sexual relations with each soldier were 30-minute increments of unimaginable horror for the women.<sup>[15]</sup> Disease was rampant.<sup>[16]</sup> Military doctors regularly examined the women, but these checks were carried out to prevent the spread of venereal diseases; little notice was taken of the frequent cigarette burns, bruises, bayonet stabs and even broken bones inflicted on the women by soldiers.

Fewer than 30% of the women survived the war.<sup>[17]</sup> Their agony continued in having to suffer with the residual physical, psychological, and emotional scars from their former lives. Some returned home and were ostracized by their families. Some committed suicide. Others, out of shame, never returned home.<sup>[18]</sup>

### ***Efforts to Secure Reparation***

The most prominent attempts to compel the Japanese government to accept legal responsibility and pay compensatory damages for the comfort women system were through a series of lawsuits, discussion at the United Nations (UN), resolutions by various nations, and the Women's International Criminal Tribunal. The Japanese government, in turn, responded through a series of public apologies and the creation of the AWF.<sup>[19]</sup>

### ***Lawsuits***

In December 1991, Kim Hak-Sun and two other survivors filed the first lawsuit in Japan by former comfort women against the Japanese government. The Tokyo District Court however dismissed their case.<sup>[20]</sup> Other suits followed,<sup>[21]</sup> but the Japanese government has, thus far, successfully caused the dismissal of every case.<sup>[22]</sup>

Undoubtedly frustrated by the failure of litigation before Japanese courts, victims of the comfort women system brought their claims before the United States (US). On September 18, 2000, 15 comfort women filed a class action lawsuit in the US District Court for the District of Columbia<sup>[23]</sup> "seeking money damages for [allegedly] having been subjected to sexual slavery and torture before and during World War II," in violation of "both positive and customary international law." The

case was filed pursuant to the Alien Tort Claims Act ("ATCA"),<sup>[24]</sup> which allowed the plaintiffs to sue the Japanese government in a US federal district court.<sup>[25]</sup> On October 4, 2001, the district court dismissed the lawsuit due to lack of jurisdiction over Japan, stating that "[t]here is no question that this court is not the appropriate forum in which plaintiffs may seek to reopen x x x discussions nearly half a century later x x x [E]ven if Japan did not enjoy sovereign immunity, plaintiffs' claims are non-justiciable and must be dismissed."

The District of Columbia Court of Appeals affirmed the lower court's dismissal of the case.<sup>[26]</sup> On appeal, the US Supreme Court granted the women's petition for writ of certiorari, vacated the judgment of the District of Columbia Court of Appeals, and remanded the case.<sup>[27]</sup> On remand, the Court of Appeals affirmed its prior decision, noting that "much as we may feel for the plight of the appellants, the courts of the US simply are not authorized to hear their case."<sup>[28]</sup> The women again brought their case to the US Supreme Court which denied their petition for writ of certiorari on February 21, 2006.

### ***Efforts at the United Nations***

In 1992, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (KCWS), submitted a petition to the UN Human Rights Commission (UNHRC), asking for assistance in investigating crimes committed by Japan against Korean women and seeking reparations for former comfort women.<sup>[29]</sup> The UNHRC placed the issue on its agenda and appointed Radhika Coomaraswamy as the issue's special investigator. In 1996, Coomaraswamy issued a Report reaffirming Japan's responsibility in forcing Korean women to act as sex slaves for the imperial army, and made the following **recommendations**:

#### A. At the national level

137. The Government of Japan should:

- (a) Acknowledge that the system of comfort stations set up by the Japanese Imperial Army during the Second World War was a violation of its obligations under international law and accept legal responsibility for that violation;
- (b) Pay compensation to individual victims of Japanese military sexual slavery according to principles outlined by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms. A special administrative tribunal for this purpose should be set up with a limited time-frame since many of the victims are of a very advanced age;
- (c) Make a full disclosure of documents and materials in its possession with regard to comfort stations and other related activities of the Japanese Imperial Army during the Second World War;