

**Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and in practice**

REFERENCE:  
AL PHL 15/2017

6 December 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on violence against women, its causes and consequences and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 36/7, 32/19 and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of human rights violations resulting from the continued refusal of the Republic of the Philippines to espouse claims against the Government of Japan for crimes of sexual violence suffered by thousands of women and girls at the hands of Japanese military forces during the Second World War.

According to the information received:

*The Japanese "comfort system" in the Philippines*

Thousands of women in Japanese-occupied territories between 1932 and 1945 were imprisoned in sexual slavery facilities established by the Japanese army to cater to the sexual desires of its soldiers, a phenomenon later known as the "comfort women system". These so-called "comfort women" had to endure repeated instances of rape, other forms of sexual violence, torture, and inhumane conditions of detention. Such stations were established in the Philippines in 1942.

On 23 November 1944, Japanese troops raided the district of Mapanique in the municipality of Candaba in the province of Pampanga. The troops allegedly tortured, raped, and killed the Candaba residents and forced women and girls to carry the sacks of belongings looted by the Japanese soldiers and were forced to march towards the "Bahay na Pula" (Red House), the Japanese headquarters in San Ildefonso, Pampanga. Some of these victims were raped along the way. Upon arrival, women and girls, some of whom were eight or nine years old at the time, were detained in the Bahay na Pula for between one day and three weeks. During this time, they were repeatedly beaten, raped, and abused by Japanese soldiers. As a result of these atrocities, the survivors of the military sexual slavery system experience lasting harm. As of today, many of them are still suffering from the physical injuries that have left lasting scars, pain, damage to their reproductive system, and disabilities. The victims continue to experience emotional trauma and

harm to their social relationships, in their marriage, work and community from their sexual enslavement.

*Attempts to seek justice*

Between April 1946 and November 1948, the International Criminal Tribunal for the Far East, commonly known as the Tokyo Tribunal, tried Japanese officials for war crimes and crimes against humanity committed during the war. Despite ample evidence of the rape and sexual slavery, there were no prosecutions for these crimes. These victims were again ignored during the 1951 San Francisco Peace Agreement and the 1956 Reparations Agreement between the Philippines and Japan. In July 1995, the Japanese Government set up the Asian Women's Fund (AWF) which consisted of funds from Japanese corporations and individuals to compensate survivors of the "comfort women system". The AWF raised approximately twenty thousand US dollars for each victim, but many survivors reportedly refused to receive this compensation as it was not accompanied by an apology explicitly recognizing the responsibility of the Japanese State, and because the money came from private rather than governmental sources.

Since 1998, survivors of the "comfort women system" have approached the Filipino Executive Department through the Department of Justice, requesting assistance to file a claim against the Japanese officials and military officers for the rape and sexual slavery they had to endure. Nonetheless, officials refused to file a claim against Japan. The victims turned to the Department of Foreign Affairs, the Department of Justice and the Office of the Solicitor General. These officials reportedly dismissed the claims, arguing that their compensation was already waived under the San Francisco Peace Treaty, and that they were already compensated by the AWF.

On 8 March 2004, a Petition for Certiorari with an application for a Writ of Preliminary Mandatory Injunction was filed to the Supreme Court of the Philippines to require the espousal of the survivors' claims against Japan. The Supreme Court rejected the Petition, maintaining that the Executive Department had the exclusive prerogative to determine whether to espouse claims against Japan, and the Philippines had no international obligation to espouse these claims. A Motion for Reconsideration and a Supplemental Motion for Reconsideration were subsequently filed and denied. A Petitioner-in-Intervention was also filed and denied.

Reportedly, no step has been taken by the Government of the Philippines with regard to the crimes endured by the victims, nor any reparation provided to them. One of the symbolic demands of the survivors, which was the preservation of the "Bahay na Pula" (Red House), the old mansion where the abuses took place, as a historical marker/memorial, was reportedly not met.

While we do not wish to prejudge the accuracy of these allegations, we would like to express serious concern regarding the Philippine Government's systemic denial

of the opportunity of reparation for the survivors of rape and sexual slavery by Japanese military forces. Further serious concern is expressed as this failure to seek reparations from the Japanese Government perpetuates gender bias against women in the Republic of the Philippines where crimes of rape and sexual slavery were left completely unaddressed in the aftermath of the Second World War.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the actions that will be taken to ensure that women and girls victims to the so-called “comfort women” receive compensation in accordance with international human rights norms and standards.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Pablo de Greiff  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences

Alda Facio  
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

## **Annex**

### **Reference to international human rights law**

Given the sexually-related crimes endured by the victims of the “comfort women system”, we would also like to recall the Convention on the Elimination of All forms of Discrimination Against Women which your Government ratified on 5 August 1981. The Committee on the Elimination of Discrimination against Women (CEDAW) defines gender-based violence against women in its general recommendation No. 19 (1992) as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. We would also like to recall that the CEDAW Committee in its general recommendation No. 30 (2013), recommended that states ensure that substantive aspects of transitional justice mechanisms guarantee women’s access to justice. In this context, we wish to draw attention to article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women.

We would like to further refer to the CEDAW Committee’s General Recommendation 33 on access to justice, which specifies that State parties have to ensure that the non-judicial remedies, such as public apologies, public memorials and guarantees of non-repetition granted by truth, justice and reconciliation commissions are not used as substitutes for investigations into and prosecutions of perpetrators, reject amnesties for gender-based human rights violations such as sexual violence against women and reject statutory limitation for prosecution of such human rights violations (paragraph 19 (f)).

We would also like to recall that the CEDAW Committee recently recommended in its 2016 report that the Republic of the Philippines: “prevent, investigate and punish all forms of gender-based violence, in particular sexual violence perpetrated by State and non-State actors, apply a zero-tolerance policy to combat impunity and provide necessary support to women and girls who are at risk or victims of such violence.” This report reminds your Government of the importance on ensuring reparation following times of armed conflict, in line with the Committee’s general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations. In this context, we would also like to recall that general recommendation No. 30 recommends that States ensure a comprehensive approach to transitional justice mechanisms and enhance women’s access to justice in post-conflict situations (para 81).

In response to claims that the survivors of sexual slavery by Japanese military forces have already been properly compensated, we would like to draw your Government’s attention the report by the former UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, on her visit to the Democratic People’s Republic of Korea, the Republic of Korea and Japan. The report stated that the AWF was “a clear statement denying any legal responsibility for the situation of these women and

this is reflected in particular in the desire to raise funds from the private sector”. This was later confirmed by former Special Rapporteur on Contemporary Forms of Slavery, Gay McDougall, in her extensive analysis of Japan’s legal liability.

The realization of the right to truth, at both the individual and the collective levels, requires access to and, often, also the dissemination of information on human rights violations, as indicated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/68/362). Please also refer to the reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/24/42 and A/HRC/21/46).

The UN Security Council called on Member States in its Resolution 2122 (2013) to comply with their relevant obligations to end to impunity and to thoroughly investigate and prosecute persons responsible for war crimes, genocide, crimes against humanity or other serious violations of international humanitarian law (paragraph 12). We wish also to refer your Excellency’s Government to the Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence (2014), which mentions that the right to remedy and reparation of all victims, including those of conflict-related sexual violence, should be fulfilled without discrimination on the basis of sex. The Guidance Note highlights key principles for States to provide adequate reparations for victims of conflict-related sexual violence, including that “individual and collective reparations should complement and reinforce each other” (principle 3) and a “meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured” (principle 6).

We would also like to bring to the attention of your Government the 2010 thematic report to the Human Rights Council on “Reparations to women who have been subjected to violence” (A/HRC/14/22) by the former UN Special Rapporteur on Violence Against Women, Rashida Manjoo. The report recalls that the obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence. Furthermore, the report notes that reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of crosscutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience.