

# Redress for Victims of War Crimes: The Filipino Comfort Women's Continuing Search for Legal Remedies\*

H. Harry L. Roque, Jr.\*\* and Diane Desierto\*\*\*

Die Geltendmachung der Rechte der überlebenden philippinischen Trostfrauen (comfort women) im Kontext des philippinischen und des internationalen Rechts stehen im Mittelpunkt dieses Aufsatzes. Japanische Armeeeingetragene pilgerten zu Hunderten auf die Philippinen, um sich an den einheimischen Frauen zu vergehen, nachdem der Ausgang des Krieges immanent war. Im Jahre 1995 errichteten japanische Firmen und einzelne japanische Persönlichkeiten den AWF, einen Fonds aus dem den überlebenden Trostfrauen und anderen Opfern von Massengewaltungen finanzielle Hilfe zukommen sollte. Die Opfer wiesen diese private Entschädigung jedoch zurück und hoffen auf Hilfe ihres Staates. Die philippinische Regierung hält individuelle Entschädigungsansprüche der Trostfrauen gegen Japan jedoch für ausgeschlossen. Sie berufen sich insoweit auf das mit Japan geschlossene Friedensabkommen von San Francisco, in dem sie auf alle weiteren Reparationsansprüche verzichteten.

Der Artikel diskutiert allein die verbleibende rechtliche Bewertung der Entscheidungen des philippinischen Supreme Courts in Bezug auf den Fall *Vinuya et al., versus the Honorable Executive Secretary*. Es geht dabei um die Behauptung der vermeintlichen Pflicht eines Staates Straflosigkeit bei Verbrechen gegen die Menschlichkeit zu vermeiden. Als Begründung wird angeführt, dass der Verzicht auf Strafverfolgung mit internationalem Gewohnheitsrecht nicht zu vereinbaren und mithin verboten sei.

Der Artikel, wie auch die Verteidiger vor Gericht sehen im „comfort system“ der Japaner ein Verbrechen gegen die Menschlichkeit sowie ein Kriegsverbrechen, was dazu führe, dass die philippinische Regierung die unbedingte Pflicht besitze, die Durchsetzung der Ansprüche der Frauen auf Reparationszahlungen zu unterstützen. Geschieht dies nicht stelle sich die philippinische Regierung in Widerspruch mit ihren internationalen Verpflichtungen, Straflosigkeit bei internationalen Verbrechen unbedingt zu verhindern und diesem entgegenzuwirken.

## 1. Introduction

The Second World War was host to some of the most brutal crimes committed against humanity, one of which was the institution of sexual slavery through the comfort women system by the Japanese military governments in the occupied territories. The Philippines was one of the countries that Japan occupied and where it maintained a ‘comfort women system.’

On 8 September 1951 the Republic of the Philippines joined forty-seven other countries in signing the Treaty of Peace with Japan (hereinafter the Treaty) in the city of San Francisco<sup>1</sup> in order to, *inter alia*, terminate the state of war between Japan and each of the Allied Powers.<sup>2</sup>

Under article 13(b) of the Treaty, the Allied Powers waived all their claims for reparations, and the claims of their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war.

Since then, the Japanese government has officially denied the existence of the *comfort women system* not only in the Philippines but in other countries in Asia. The Japanese government has refused to officially acknowledge responsibility; the most it has done is to issue a general admission in 1992 that its soldiers committed rapes in World War II.

The Japanese government has also refused to address individual claims for compensation by victims of the *comfort women system*, arguing that the government’s responsibilities have been fully satisfied by its compliance with the peace treaties and international agreements it concluded with the allies and other Asian States following the end of the Second World War (Peace Treaties).<sup>3</sup>

In 1995, Japanese corporations and private individuals established the Asian Women’s Fund (hereinafter the AWF) to make monetary relief available to *comfort women* survivors. The AWF paid the Philippine government the amount of approximately twenty thousand US dollars per victim. Many survivors rejected the offer because it was not officially funded and accompanied by a genuine and explicit apology from the Japanese government.

\* This contribution is based on the actual Petition filed in GR NO. 162230 entitled “*Vinuya et al., vs. Executive Secretary*”, a petition given due course by the Philippine Supreme Court and currently pending decision by the said court. The author is the Counsel on record for the Petitioners in the case. The case is covered by the *litis pendencia* rule but the discussion is strictly for academic purposes only.

\*\* Prof. H. Harry L. Roque, Jr. holds a B.A. from the University of Michigan, a LL.B. from the University of the Philippines and a LL.M. from the London School of Economics (United Kingdom). He is the Director of the Institute of International Legal Studies and Assistant Professor of the University of the Philippines Law Center. Further he works for Partner, Roque and Butuyan Law Offices in Makati, Metro-Manila (Philippines) and a member of the Philippines Bar.

\*\*\* Diane Desierto holds a B.Sc. in Economics *summa cum laude* from University of the Philippines and a LL.B. *cum laude* from University of the Philippines. She is an Associate at the ACCRA Law Offices in Makati in Metro-Manila (Philippines) and a member of the Philippine Bar.

<sup>1</sup> United Nations Treaty Series 1952 (reg. no. 1832), vol. 136, pp. 45–164; initial entry into force on 28 April 1952.

<sup>2</sup> Article 1(a) of the San Francisco Treaty.

<sup>3</sup> Available at <<http://www.iccwomen.org/tokyo/summary.htm>>, 10 June 2006; Y. Yoshiaki, *Comfort Women*, New York, Columbia University Press, 2000, p. 43; Prime Minister Tomiichi Murayama, Statement Issued on the Fiftieth Anniversary of the end of World War II (15 August 1995); See also B.A. Fisher, “Japan’s Postwar Compensation Litigation”, (2000) 22 *Whitaker Law Review* 36.

The Philippine government supports the position of the Japanese government, agreeing that the claims of Filipino victims have been waived in the Treaty of Peace with Japan, and that even if there were no such waiver, the claims can already be settled by the AWF. The Philippine government, through the Department of Justice and the Department of Social Welfare and Development, had even assisted in the identification of victims and the distribution of grants.

In effect, the Philippine government effectively afforded impunity to the most brutal and inhuman acts that could ever be committed against women. To date, most of the victims have died, and those who have not are ravaged by illness and old age, slowly succumbing to mortality.

This article discusses the remaining and lone legal remedy availed of by the survivors. This relief is now pending before the Philippine Supreme Court, *Vinuya et. al., versus the Honorable Executive Secretary*.<sup>4</sup>

This petition was borne by the collective effort of students from the University of the Philippines College of Law<sup>5</sup> during a course on International Humanitarian Law (IHL). The Institute of International Legal Studies (UP-IILS) and the Manila Delegation of the International Committee of the Red Cross (ICRC) designed the course using Philippine issues and experience to make IHL familiar and relevant to Filipino students. One such local issue was the cause of the surviving victims of the Japanese comfort system in the Philippines.

The students were inspired to look for an alternative remedy in support of the victims following two unrelated events. First, the case filed by a group of comfort women in Japan was dismissed on the grounds that only States, not individuals, have the personality to sue for reparations for violations of Common Article 3 of the Geneva Conventions or violations of the Hague Convention. Second, the first Filipino to publicly admit that she was a comfort woman died. *Lola Rosa Henson* was the face of all the Filipino comfort women victims and she inspired others like her to come out in the open and raise interest and support to the plight of the forgotten victims. Her death, primarily due to old age, highlighted the urgency of obtaining apology and reparation for the victims during their lifetime, a requirement for the filing of the Special Civil Action of Certiorari.<sup>6</sup>

## 2. Origins of the Japanese Comfort System

The Japanese army set up the first known facilities for sexual slavery, euphemistically called *comfort station* in China in 1932, consonant with that army's movement into China through Manchuria.<sup>7</sup>

This military sexual slavery system became institutionalised after the invasion of Nanking in December 1937, resulting in a conquest so brutal it became known as the *Rape of Nanking*, intended initially, to replace Japanese soldiers' unrestrained rape of women throughout the city with a system of highly-regulated, institutionalised sex facilities. Later, the system was relied upon to provide psychological and physical *comfort* to the Japanese soldiers by providing an infamous mechanism to vent their pent-up emotions, tensions,

and frustrations resulting from the bleak, harsh, and conditions of war, and to diminish the probability of enemy infiltration and untoward disclosure of army secrets resultant from the unregulated use of local brothels or prostitution dens. These facilities provided members of the Japanese military with a steady supply of women for their exclusive sexual enslavement under strictly controlled conditions that minimise the risk of infection of venereal and contagious diseases that would severely debilitate individual Japanese soldiers.<sup>8</sup>

The Japanese military expanded the sexual slavery system through force, violence and deception, with the objective of satisfying their formula of one comfort woman for every one hundred soldiers; it regarded its colonies as a source of *supplies* for its system of sexual slavery. One of these *colonies* was the Philippines.

## 3. The Comfort System in the Philippines

With the institution of its military regime in the Philippines in 1942, the Japanese army established sexual slavery facilities all over the Philippines to cater to the sexual needs of the members of the Japanese military.

Survivors of the *comfort system* in the Philippines related how the Japanese army attacked their village and systematically raped all of the young girls and even old women of the village as part of the wholesale destruction of the village, during which the community was bombed, houses were looted and burned, and men were publicly tortured, mutilated and slaughtered. They also narrated how Japanese soldiers forcibly seized them, their sisters and mothers from their houses and from the streets and thereafter took them to holding houses or cells, where the Japanese soldiers repeatedly raped them for days, weeks, months or even years.<sup>9</sup>

<sup>4</sup> GR No. 162230.

<sup>5</sup> Members of the class who researched and drafted the petition are: Diane Desierto and Neil Silva, UP Law Class 2004 class salutatorian and 2005 Bar Topnotcher, respectively, both of whom were members of the UP College of Law winning team in the 2004 English Session of Jean Pictet IHL Competition; Arnel Uychoco, Raymond Sandoval who is currently an intern at the International Criminal Court at the Hague; Kaye Balajadia, Camille Sevilla, Pedro Maniego and Ahmed Paglinawan.

<sup>6</sup> Rule 65, Rules of Court Section 1 states: "When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46."

<sup>7</sup> K. Askin, *War Crimes against Women: Prosecution in International War Crimes Tribunals*, The Hague, Martinus Nijhoff, 1997.

<sup>8</sup> G. Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the Second World War*, New York, W.W. Norton & Company, 1994, pp. 164–165.

<sup>9</sup> J. Pritchard & S. Magbanua Zaide (eds), *The Tokyo War Crimes Trial: Volume 6*, Transcript of the Proceedings in Open Session, New York and London, Garland Publishing Inc., 1981, pp. 12385–12852.

When the Japanese military sensed that the end of the war was near, many *comfort women* were tortured, mutilated and summarily killed, while others were simply ignored and left stranded far from home.<sup>10</sup>

This case was filed by the victims from a village in Central Luzon.

On 23 November 1944, residents of Barangay Mapanique in Candaba, Pampanga were awakened by the sounds of bombs and cannons. Japanese troops had arrived *en masse*, ransacking the houses and ordering the residents to proceed to the school grounds. The men were castrated, bludgeoned, beaten, and eventually slaughtered in full view of their families. The women were asked to carry the sacks of belongings looted by the Japanese soldiers during the long forced march towards the *Bahay na Pula* (Red House), the Japanese headquarters in San Ildefonso, Pampanga. The petitioners were detained in the *Bahay na Pula* for a period ranging from one day and one night to three weeks; they were repeatedly beaten, raped and abused by the Japanese soldiers. Some of the victims were merely eight or nine years old at the time.

As a result of the sexual slavery in the hands of their Japanese tormentors the Petitioners spent what is left of their lives in misery, suffering in silence the long-term effects of the imposed sexual violence and enslavement. They have injuries that left lasting scars, pain and disability, mental and emotional suffering consistent with medical descriptions of post traumatic stress, damage to their reproductive capacity, and harm to their social relationships in marriage, work, and community.<sup>11</sup>

#### 4. Denial of Assistance by the Philippine Government

In 1998 the Filipino victims of the *comfort women system*, approached the Executive Department through the Department of Justice in order to request assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the *comfort women* stations in the Philippines. Officials of the Executive Department rejected the request.

The women in turn approached the Department of Foreign Affairs, Department of Justice and Office of the Solicitor General to file their claim against the responsible Japanese officials and military officers, but their efforts were similarly rejected.

Philippine government officials view the individual claims of the *comfort women* for compensation as already fully satisfied by Japan's compliance with the Peace Treaties.<sup>12</sup>

#### 5. The Women's International War Crimes Tribunal

In December 2000 a Peoples' Tribunal, the Women's International War Crimes Tribunal (hereinafter the Tribunal),<sup>13</sup> based in The Hague, Netherlands produced findings that should have further strengthened the claims of not just the Filipinos but all women victims against Japan.

The Tribunal declared that through the system of Japan's military sexual slavery: "girls and women throughout the Asia-Pacific region were taken either by abduction, conscription or coercion, or through deceptive means, and forcibly made part of the military sexual slavery system,"<sup>14</sup> and that "[o]nce enslaved, the girls and women were subjected to continuous and sometimes gang rape and other forms of sexual violence and torture. They lived in miserable conditions, with poor food, no privacy, and lack of hygiene."<sup>15</sup>

The Tribunal also declared that: "most of the young girls or unmarried women lost their virginity when they were first raped. During their time in the facilities, the relentless violence and violations resulted in a variety of reproductive harms, such as pregnancy, abortion, miscarriage, sterilization, sexually transmitted diseases, and sexual mutilation. The beatings, stabbings, burnings, and sexual tortures inflicted during the course of the rapes and enslavement caused enormous pain and suffering, as did the humiliating medical checkups forced upon the women. These abusive conditions also caused severe emotional or psychological harm. The appalling conditions of detention often resulted in malnutrition, disease, illness, or death. A large number of women and girls did not survive the conditions or mistreatment or were intentionally killed."<sup>16</sup>

The tribunal also stated that "[f]rom its establishment, the Japanese military issued extensive regulations governing the 'comfort system,' [a]mong these were the health regulations designed to prevent and identify sexually transmitted diseases [...], the type of women to be selected for use as *comfort women*, the ages of the victims to be targeted, the conditions of the *comfort stations*, [...] the rules to be followed by the *comfort women*," the regulations indicated the proper behaviour expected of the soldiers, and required that *comfort women* should be available to only those military personnel who had paid, and that a general ticketing system be installed to ensure this."<sup>17</sup>

Finally, the Tribunal found beyond reasonable doubt that: "that tens of thousands of women and girls were deceived,

<sup>10</sup> Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, Transcript of Oral Judgment, The Hague, The Netherlands, 4 December 2001, para. 64.

<sup>11</sup> Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, *supra* note 9, paras. 67 and 68.

<sup>12</sup> Available at <<http://www.iccwomen.org/tokyo/summary.htm>>, 10 June 2006.

<sup>13</sup> The Tribunal was composed of highly respected authorities in international law, namely, Gabrielle Kirk McDonald as Presiding Judge and Carmen Argibay, Christine Chinkin, and Willy Mutunga as Judges. The Peoples' Tribunal, however, has no power to punish the accused or to compel testimony or production of evidence. Nor does it have any power to force either the accused's heirs or the State of Japan to provide reparations to the victims or those entitled to make claims on their behalf. It can only make findings of fact and law, issue verdicts in the form of declarations. It can make recommendations to encourage or influence the State of Japan to provide appropriate remedies, but it has no power to enforce them.

<sup>14</sup> Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, *supra* note 10, para. 58.

<sup>15</sup> *Ibidem*.

<sup>16</sup> *Ibid.*, para. 59.

<sup>17</sup> *Ibid.*, para. 60.

forced, coerced, conscripted, sold, or otherwise unlawfully procured into the so-called *comfort women system*. The Tribunal also held beyond reasonable doubt that the *comfort system* was conceived, established, regulated, maintained, and facilitated by the Japanese government and military, often utilizing, or with the complicity of, local authorities or agents. The Tribunal further affirmed that the *comfort system* was established throughout the Asia-Pacific, including on the frontlines, by the Japanese government and military to provide relatively safe and convenient sexual services to members of the Japanese military.”

The Tribunal declared the *comfort system* as criminal *per se*, most particularly because of the illicit methods of procurement, the crimes of rape, sexual slavery, and other forms of mental, physical, sexual, and reproductive violence committed against the victims enslaved in the system, and last but not least the inhumane conditions of detention. The system was so extensive, its regulation so complex, and the crimes committed therein so routine that the criminal nature of the system had to have been known to most members of the Japanese military and to those holding high-level positions concerned with the war effort. The *comfort women system* had all the elements that make it a *system*, demonstrating the official involvement of Japanese authorities at all levels. Moreover, undoubtedly, the regulations pertaining to the ‘comfort stations’ did not mention that women were willingly or knowingly engaged in such activities, that they had to be protected against rape and other forms of violence, and that they were allowed to refuse servicing clients and leave the facilities. Instead, the regulations were designed solely to protect Japanese interests.

The Tribunal decisively found General Tomoyuki Yamashita responsible for the rapes and sexual slavery committed by his subordinates on the basis of the enormous power and control he exercised over his subordinates and on the basis of his knowledge of such atrocities.

Despite the findings of the Tribunal, the Philippine government upheld its position that the claims against the State of Japan of the victims of the *comfort system* in the Philippines had been waived in the Treaty of Peace with Japan, and had nonetheless been compensated by the AWF.

## 6. Other efforts on the International Level

Individual claimants have tried to obtain an official apology from the Japanese Government, as well as actual and moral damages for the atrocities perpetrated against them during World War II. None of these reliefs have ever been granted in any forum. To date, the only somewhat positive results are the: (1) 1948 Batavia Military Trials<sup>18</sup> that convicted 11 Japanese officers and comfort station operators for committing war crimes against Dutch women forced to work in comfort stations in the Dutch East Indies and the *Yamashita* and *Kuroda* cases of the International Military Tribunal for the Far East (which did not expressly deal with liability for the comfort women stations but imposed criminal liability for mass rapes and violence against women committed by

Japanese forces); (2) Former Japanese Prime Minister Murayama’s *vague apology* in 1995;<sup>19</sup> (3) the 15 October 2001 personal apology by then Japanese Prime Minister Juichiro Koizumi to Korean victims of World War II; (4) and only **one** case in the Japanese courts which was **not** dismissed<sup>20</sup> where the lower court found that Japan violated a Japanese governmental tort statute by failing to take action following a 1993 government report that acknowledged the Japanese government’s role involving ‘comfort women’ and awarded the plaintiffs a nominal sum that reflected the parliament’s failure but did not compensate the plaintiffs for their actual wrongs. (Unfortunately, the Japanese Supreme Court subsequently reversed this ruling.)

Even litigations under the Alien Tort Claims Act of the United States against the Japanese government in liberal US district courts has yielded dismal results. In the landmark case of *Hwang Geum Joo v. Japan*,<sup>21</sup> the US district court denied jurisdiction on two principal grounds: (1) the States of the victims *waived* their claims under the San Francisco Peace Treaty with Japan; and (2) Japan as a sovereign State cannot be sued under the Foreign Sovereign Immunities Act, none of the exceptions thereto applying in any circumstance.

At present, litigation in Japanese courts has had little, if any, success. Government officials are reluctant to sue Japan due to political-economic considerations and favorable foreign policy relations with influential actors in the international community.

## 7. The Nature of the Action

The case of *Vinuya vs. Executive Secretary* is a Special Civil Action for Certiorari with prayer for the issuance of a writ of preliminary mandatory injunction. Under Rule 65 of the Philippine Rules of Court a Petition for Certiorari is a special civil action that may be resorted to when any branch or instrumentality of government acts in grave abuse of discretion either in excess of or lack of jurisdiction.<sup>22</sup>

<sup>18</sup> Y. Yoshiaki, *supra* note 3.

<sup>19</sup> The statement read: “During a certain period in the not-too-distant past, Japan, after adopting a mistaken national policy, marched down the path to war and provoked a crisis jeopardizing the very survival of our people. Japan’s colonial rule and aggression inflicted immense harm and suffering upon people in many countries, especially in other Asian countries. I humbly acknowledge these irrefutable facts of history, express my deep remorse once again, and offer an apology from the bottom of my heart, in the hope that no such mistake will ever be made in the future. I also offer my sincere condolences to the victims of this period of history in Japan and abroad.” Statement issued on the Fiftieth Anniversary of the end of World War II, 15 August 1995.

<sup>20</sup> See ‘Comfort Women’ case, Judgment, 27 April 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan, reprinted in 8 *Pacific Rim Law & Policy Journal*. 63-100; B.A. Fisher, “Japan’s Postwar Compensation Litigation”, (2000) 22 *Whittier Law Review* 36.

<sup>21</sup> 172 F. Supp. 2d 52 (D.D.C. 2001).

<sup>22</sup> Rules of Court, rule 65, section 1 which states: “When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered

This power of the court, denominated as the power of judicial review, is derived from the American judicial system, which was first articulated in the landmark case of *Marbury vs. Madison*.<sup>23</sup> It is the cornerstone of a Republican form of government where the powers of government are apportioned between three coequal branches of government: the legislative, executive, and judicial branches of government. As early as the leading case of *Marbury vs. Madison*, the American Supreme Court declared that “[i]t is emphatically the province and duty of the Judicial Department to say what the law is.”<sup>24</sup> The Court only upholds the supremacy of the Constitution and shall therefore not cower to declare acts of other branches or instrumentalities of the government which are repugnant to the Constitution as void as: “If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.”<sup>25</sup>

In the Philippines, the Supreme Court has consistently ruled that the power of judicial review is not an instance of judicial supremacy, but merely asserts the supremacy of the Constitution: “And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the Legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed ‘judicial supremacy’ which properly is the power of judicial review under the Constitution.”<sup>26</sup> The principle was further emphasized in the case of *Francisco vs. Speaker De Venecia*.<sup>27</sup>

Given the nature of Certiorari jurisdiction, it was important for the petitioners to establish a *prima facie* ground for the grave abuse of discretion either due to lack of or in excess of jurisdiction, as a basis for the Court to give their Petition due course; or for the petition to be decided on the merits and not to be subject to summary dismissal since certiorari jurisdiction is not a matter of right.<sup>28</sup> In particular, it was imperative to establish that the government’s conduct was whimsical and capricious enough to warrant a review by the Court. The petitioners argued: “First, the Philippine government’s waiver of the claims of *comfort women* against the state of Japan through the treaty of peace with Japan is void for being contrary to the obligations *erga omnes* not to provide impunity for rape, sexual slavery, torture and other forms of sexual violence constituting crimes against humanity and war crimes. Second, the refusal of the Department of Foreign Affairs and the Executive Secretary to espouse the claim of Filipina *comfort women* against the state of Japan constitutes a grave abuse of discretion amounting to lack or excess of jurisdiction. Third, the petitioners are entitled to a writ of preliminary mandatory injunction against the respondents to require their espousal of petitioners’ claims for official apologies and reparations against the state of Japan before the International Court of Justice or other international legal forums or tribunals.”

## 7.1. The Waiver of Reparations is Void

The petitioners maintain that acts of States, including that of the Philippines, that grant impunity to the perpetrators of crimes against humanity through waiver or failure to prosecute, are prohibited under international customary law.<sup>29</sup>

On the first point, petitioners argued that the ‘comfort system’ instituted by Japan is a crime against humanity and a war crime.

Both treaties<sup>30</sup> and customary international law<sup>31</sup> provide that when rape is committed as part of a widespread or systematic attack directed at any civilian population, regardless of its international or internal character, then it constitutes one of the gravest *crimes against humanity*.<sup>32</sup> This principle

annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.”

<sup>23</sup> 5 US 137 (1803).

<sup>24</sup> 5 US 137, 177 (1803).

<sup>25</sup> 5 US 137, 178 (1803).

<sup>26</sup> *Angara v. Electoral Commission*, G.R. No. 45081, 15 July 1936.

<sup>27</sup> G.R. No. 160261, 10 November 2003.

<sup>28</sup> Rules of Court, *supra* note 22.

<sup>29</sup> The 1949 Geneva Conventions; The Torture Convention; International Covenant on Civil and Political Rights; General Assembly Resolution 3074 (XXVIII), 3 December 1973; General Assembly Resolution 2840, UN Doc. A/5892, 18 December 1971; General Assembly Resolution 2712, UN Doc. A/8233, 15 December 1970; General Assembly Resolution 2583, UN Doc. A/7840, 15 December 1969; *See also* Restatement (THIRD) of the Foreign Relations Law of the United States, Sec. 702 which states: “A complete failure to punish repeated or notorious violations of rights protected by customary international law generates state responsibility for a breach of that law.”

<sup>30</sup> See in particular:

- Art. II(1)(c) of the Charter of Allied Control Council No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity;
- Art. 5(c) of the Charter for the International Military Tribunal for the Far East;
- Arts. 14 and 97 of the 3<sup>rd</sup> Geneva Convention;
- Art. 27 of the 4<sup>th</sup> Geneva Convention;
- Art. 76(1) of Additional Protocol I to the Geneva Conventions;
- Art. 4(2)(e) of Additional Protocol II to the Geneva Conventions;
- Art. 5(g) ICTY Statute;
- Art. 3(g) ICTR Statute;
- Art. 7(1)(g) ICC Statute.

<sup>31</sup> M.C. Bassiouni “The Time Has Come for An International Criminal Court”, (1991) 1 *Indiana International and Comparative Law Review* 1; ICTY, *Prosecutor v. Zejnir Delalic et al.*, Case No. IT-96-21-T Judgment, 16 November 1998; ICTY, *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, Judgment, 10 December 1998.

<sup>32</sup> In this regard, see the Martens Clause; Preamble to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, Art. 6(c) of the 1945 Nuremberg Charter; United Nations General Assembly, Resolution 95(1), Fifty Fifth Plenary Meeting, 11 December 1946; Principle 6(c) of the Principles of International Law in the Judgment of the Tribunal, reprinted in (1950) ii Yearbook of the ILC 374-8; Francis Lieber, Instructions for the Government of Armies of the United States in the Field, Art. 44, originally published as U.S. War Department, Adjutant General’s Office, General Orders No. 100 (Apr. 24, 1863), reprinted in *The Laws of Armed Conflicts* 3 (D. Schindler & J. Toman (eds), Geneva, Henry Dunant Institute, 3<sup>rd</sup> rev. ed., 1988; P. Viseur Sellers & K. Okuizumi, “International Prosecution of Sexual Assaults”, (1997) 7 *Transnational Law and Contemporary Problems* 45; T. Meron, “Rape as a Crime under International Humanitarian Law”, (1993) 87 *American Journal of International Law* 427-28; M.C. Bassiouni, *Crimes against Humanity in International Criminal Law*, Dordrecht, Netherlands, Martinus Nijhoff Publishers, 1992, p. 164.

is codified under article 6(c) of the 1945 Nuremberg Charter<sup>33</sup> as well as article 5(c) of the Tokyo Charter,<sup>34</sup> which enumerated “murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian populations, before or during the war” as crimes against humanity, and extended in scope to include imprisonment, torture and rape by Control Council Law No. 10.

For rape to be considered as a crime against humanity, it must have been committed (1) before or during war, (2) as part of a large-scale or systematic attack committed against a civilian population, and (3) in connection with war crimes or crimes against the peace.<sup>35</sup> All these instances occurred in the rape of Barangay Mapanique, Candaba, Pampanga. The rapes occurred during the war, and pursuant to the Japanese military’s *comfort system*. The Japanese military clearly committed crimes against humanity; those of rape and sexual slavery by taking the women by force, purchase, and deceitful recruitment; by confining them to inhumane conditions and brutally punishing attempts to escape; subjecting them to repeated rapes and other forms of sexual violence; by otherwise torturing, mutilating and punishing them for disobedience; by subjecting them to invasive and inhumane medical examinations often involving rape; by subjecting them to unwanted pregnancies, forcing them to have abortions or give up their children; and by killing them or abandoning them when their services were no longer of use, such acts seen in whole or in part in the atrocities committed against the women of Barangay Mapanique, Candaba, Pampanga.

The petition seeks to establish that the *comfort system* was *sexual slavery* which is a crime against humanity.<sup>36</sup> Under the 1926 International Slavery Convention, slavery is defined as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,<sup>37</sup> and may, furthermore, take on the form of debt bondage, and/or sexual enslavement.<sup>38</sup> Under international customary law, and treaty law,<sup>39</sup> forced sexual labor and forced labor are absolutely prohibited.<sup>40</sup>

The petition seeks to establish that the ‘comfort system’ was also *torture*. The petition maintained that under customary and treaty international law, torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of, *inter alia*, obtaining from him/her or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>41</sup> Applying this definition of torture, the Petition then concludes that the rapes committed by the Japanese military against the women of Barangay Mapanique, Candaba, Pampanga meet the definition of torture since they (1) were committed by and with the acquiescence of persons acting in an official capacity; (2) were not incidental to lawful sanctions; and (3) constituted acts by which severe pain or suffering is intentionally inflicted.

The petition seeks to establish that the *comfort system* fulfills the criteria for *Other Forms of Sexual Violence Punishable as Crimes against Humanity*.

In addition, under customary international law, rape, sexual slavery and torture constitute a *jus cogens* norm from which no derogation is possible.<sup>42</sup> During World War II Japan was

<sup>33</sup> Art. 6(c) of the 1945 Nuremberg Charter which states:

“The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.”

<sup>34</sup> Charter of the International Military Tribunal for the Far East, 19 January 1946, amended 26 April 1946, TIAS No. 1589, 4 Bevans 20. The International Military Tribunal in Tokyo found some Japanese military and civilian officials guilty of war crimes, including rape, because they failed to carry out their duty to ensure that their subordinates complied with international law. See J.A. Appleman, Connecticut, Greenwood Press, 1971, p. 259. The IMT considered rape a war crime. B.V.A. Roling & C.F. Ruter (eds), *The Tokyo Judgment: The International Military Tribunal for the Far East*, Amsterdam, Amsterdam University Press, 1977, pp. 965, 971–72, 988–89; G. Ireland, “Uncommon Law in Martial Tokyo”, 1950; *World Affairs Yearbook* Volume 4, pp 54, 61 & n.14. Regarding the case of Admiral Toyoda, who was charged with violating laws and customs of war by tolerating various abuses, including rape (he was acquitted of all charges), see W.H. Parks, “Command Responsibility for War Crimes”, (1973) 62 *Military Law Review* 69–73.

<sup>35</sup> 1945 Nuremberg, *supra* note 32, and Article 5 of the Charter of the International Military Tribunal for the Far East.

<sup>36</sup> The underlying reasons for slavery being characterised as a crime against humanity shall be discussed more thoroughly later.

<sup>37</sup> Art 1(1) Slavery Convention, *supra* note 35, states:

“For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

<sup>38</sup> Art. 5 Slavery Convention, *supra* note 35; For further information, see A.Y. Rassam, “Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law”, (1999) 39 *Virginia Journal of International Law* 303.

<sup>39</sup> 1926 Slavery Convention, *supra* note 35 and Article 2 of the 1930 Forced Labour Convention.

<sup>40</sup> Art. 4(2) International Convention on Civil and Political Rights which states:

“2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.”; *Case Concerning The Barcelona Traction, Light and Power Company, Limited (Second Phase)*, ICJ Reports (1970), at 33

<sup>41</sup> Article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly, Resolution 3452 (XXX), 9 December 1975. This definition was confirmed by article 1 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 10 December 1984.

<sup>42</sup> *Barcelona Traction Case (Second Phase)*, ICJ Reports (1970) 3 at 32; Article 54, Vienna Convention on the Law of Treaties; R. Higgins, “Derogation Under Human Rights Treaties”, 48 *British Year Book of International Law* 281–82; K. Parker & L. B. Neylon, “Jus Cogens: Compelling the Law of Human Rights”, (1989) 12 *Hastings International and Comparative Law Review* 437.

bound to recognise customary international law, despite the fact that it was not a signatory to any treaty. Furthermore it had to abide by these preemptory norms, or rules of *jus cogens* as they are the highest rules of international law, which overturn all contrary laws.<sup>43</sup> This norm does not allow States to permit impunity in whatever form for perpetrators of crimes against humanity.<sup>44</sup> Hence despite the fact that Japan was not a party to any agreement prohibiting sexual slavery or rape, Japan knew of the legal and moral implications stemming from its system of sexual slavery.<sup>45</sup>

Here, Petitioners posit that the international community has an interest in the prevention of crimes against humanity, sexual slavery and torture inasmuch as the former gives rise to *erga omnes* obligations (an obligation towards the international community as a whole).<sup>46</sup>

Finally, the petitioners argue that international law is not their sole basis for the case. Indeed, article II, Section 2 of the Constitution provides that “[t]he Philippines [...] adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.” As such, the government has the positive duty not to afford impunity for crimes against humanity, specifically through rape, sexual slavery, torture and other forms of violence committed against *comfort women*.<sup>47</sup>

## 7.2. Grave Abuse of Discretion

Did the Department of Foreign Affairs and the Executive Secretary commit a grave abuse of discretion amounting to lack of jurisdiction when they refused to adopt the claim of the victims? This must be answered with a resounding affirmative. Such refusal amounts to a breach of an international obligation and is, therefore, tantamount to a grave abuse of discretion. Second, petitioners maintain that the principle of *pacta sunt servanda* and the 1951 Peace Pact should not bar further recovery of reparations.

On the first point, under article 53 of the Vienna Convention on the Law of Treaties to which the Philippines is a party explains that: “[a] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law [...]”<sup>48</sup>

Chapter V of the Treaty of Peace with Japan, specifically the provisions where the Philippine government waived the claims of Filipina ‘comfort women’ against the State of Japan for crimes committed against them through the ‘comfort system’, is void for being in conflict with peremptory norms and, thus, being contrary to article 53 of the Vienna Convention on the Law of Treaties.

In waiving the claims of Filipina ‘comfort women’, and failing to represent their complaints against the State of Japan, the Philippine government is in breach of its legal obligation under customary international law not to afford impunity for war crimes and crimes against humanity<sup>49</sup> constituting of rape, sexual slavery, torture and other forms of violence committed against the Filipina ‘comfort women’.

Moreover, petitioners pointed out that the Philippine government’s breach of its legal obligation not to grant impunity to perpetrators of crimes against humanity is aggravated by its arbitrary reliance upon the AWF as the mode of redress for the petitioners and other victims because the AWF was deliberately designed to provide impunity by:

1. preventing the unwitting and enfeebled recipients from filing claims against the Japanese government;
2. abdicating the responsibility of the Philippine government towards petitioners and other Filipino ‘comfort women’ in foregoing their demands for an official apology from the Japanese government;
3. the implicit or explicit deception of the recipients of the Fund and
4. the direct involvement of executive agencies such as the Department of Justice, the Department of Foreign Affairs, and the Department of Social Welfare and Development in the acceptance, allocation and distribution of the AWF to unsuspecting recipients.

On the second point, the *pacta sunt servanda* principle as applied to the 1951 Peace Pact should not bar the further recovery of reparations on the following grounds. First, further

<sup>43</sup> K. Parker & L. Neylon, *ibid.*, at 416 (noting that *jus cogens* refers to “known” law or “cogent law”).

<sup>44</sup> Art. 8 of the Universal Declaration of Human Rights (1948); Art. 2(3) of the International Covenant on Civil and Political Rights (1966); Arts. 1.1, 2, and 7 of the American Convention (1982); Art. 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); M.C. Bassiouni, *Crimes against Humanity in International Criminal Law*, Dordrecht, Martinus Nijhoff Publishers, 1992, p. 224; D.F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime”, (1991) 100 *Yale Law Journal* 2537; C.C. Joyner, “Redressing Impunity for Human Rights Violations: The Universal Declaration and the Search for Accountability”, 26 *Denver Journal of International Law and Policy* 591, 613; M.C. Bassiouni, “Crimes Against Humanity: The Need for A Specialized Convention” (1994) 31 *Columbia Journal of Transnational Law* 457, 463.

<sup>45</sup> C.P. Meade, “From Shanghai to GloboCourt: An Analysis of the Comfort Women’s Defeat in *Hwang v. Japan*”, (2002) 35 *Vanderbilt Journal of Transnational Law* 224–225.

<sup>46</sup> Case Concerning The Barcelona Traction, Light and Power Company, Limited (Second Phase), ICJ Reports (1970), at 32

<sup>47</sup> H. Grotius, “De Jure Belli Et Pacis (The Rights of War and Peace), ch. XXI, sec. IV (1) p. 347 (W. Whewell trans. & ed. 1853); Art. 5 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948); Art. 49 of Geneva Convention I (1949); Art. 50 of Geneva Convention II; Art. 129 of Geneva Convention III (1949); Art. 146 of Geneva Convention IV (1949); Art. 7 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1975); Art. 4 of the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 U.N.T.S. 73.

<sup>48</sup> The full text of Article 53 of the Vienna Convention on the Law of Treaties states: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

<sup>49</sup> See Art. 8 of the Universal Declaration of Human Rights, General Assembly Resolution 217 (III), U.N. Doc. A/810, 10 December 1948; Art. 2(3) of the International Covenant on Civil and Political Rights, (1966); Arts. 1.1, 2, and 7 of the American Convention (1982); Art. 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

reparation was waived in 1951 because Japan had limited material resources and had to be assisted in its effort to rebuild its war-torn economy<sup>50</sup> Second, Japan's commitments pursuant to the peace treaty was, *inter alia*, to comply with norms under both human rights and humanitarian law. Since both human rights and humanitarian law today recognise the duty to pay reparations to the victims of both human rights and humanitarian law violations, Japan implicitly agreed to the further payment of reparations as a means of compliance with its duties under modern human rights and humanitarian law, as well as pursuant to the duty to make reparations as a result of a breach of an international obligations.<sup>51</sup> Particularly Japan's violation of the *jus cogens* norms prohibiting the use of the *comfort system*.<sup>52</sup> Third, the provisions of the Treaty of Peace which waive the claims of Filipina 'comfort women' against Japan for the rapes, sexual slavery, torture and other forms of sexual violence are void for being contrary to *jus cogens* norms,<sup>53</sup> and do not bind the Philippines or the individual claimants.

### 7.3. No Other Adequate, Speedy and Effective Remedy under the Normal Course of Law

In addition, the Petitioners established that there were no other adequate, speedy, and effective remedy for the victims under the normal course of law<sup>54</sup> because of the following.

First, the Philippine government refuses to represent officially the victims before the International Court of Justice or any other international legal forums or tribunals (which only recognise States and not individuals as parties who can lodge a complaint), in clear violation of its legal obligation not to afford impunity to perpetrators of crimes against humanity.

Second, the comfort women failed to hold Japan liable in the United States under the United States' Alien Tort Claims Act. This action was dismissed by the US Federal Court on the basis of sovereign immunity from suits and has, thus, foreclosed the petitioners' option of suit before this forum.<sup>55</sup>

Third, the petitioners are dying from old age and from health problems sustained from their rape and sexual slavery.

For fifty years, the Philippine government, through the Department of Justice, Department of Social Welfare and Development, and the Department of Foreign Affairs, has turned, and continues to turn, a blind eye to the victims.<sup>56</sup> There is no legal impediment against the Philippine government to take up the claims of the petitioners before the International Court of Justice or other international legal forums to obtain an official apology and other forms of reparations from the State of Japan. Crimes against humanity are not covered by any statutory limitation.<sup>57</sup> In fact, "[t]he continuing effect of the Philippine government's refusal to adopt the claims of the petitioners and other Filipina 'comfort women' is to condone and excuse the perpetration of rape and sexual slavery as crimes against humanity; inevitably to relegate, without resolution, these crimes to the annals of history; and ultimately to condemn through governmental indifference, ignorance, and deceit, the petitioners and other Filipina

'comfort women' to unrelenting memories, deteriorating health, and eventual mortality."<sup>58</sup>

## 8. Prayer

In this view, the Petition asks the following from the Court: "To *declare* the rapes, sexual slavery, torture and other forms of sexual violence committed against the Filipina 'comfort women' as crimes against humanity and war crimes under customary international law;

To *declare* that the Philippines is not bound by the Treaty of Peace with Japan, insofar as the waiver of the claims of the Filipina 'comfort women' against the State of Japan is concerned, as such waiver conflicts with *jus cogens* norms and the concomitant *erga omnes* obligation of states to prosecute crimes against humanity and war crimes under customary international law;

*Declare* that the Secretary of Foreign Affairs and the Executive Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to espouse the claims of Filipina 'comfort women' for the crimes against humanity and war crimes committed against them;

*Order* the Secretary of Foreign Affairs and the Executive Secretary to espouse the claims of Filipina 'comfort women', specifically demanding an official apology from the State of Japan and legal compensation for the rapes Filipina 'comfort women' endured from the hands of the Japanese military in World War II.

*Declare* that the petitioners are entitled to a writ of preliminary mandatory injunction against the respondents to require their espousal of petitioners' claims for official apology and other forms of reparations against the state of Japan before

<sup>50</sup> To sue then would have been like drawing blood from stone.

<sup>51</sup> See Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 1 in relation to art. 31 and 34.

<sup>52</sup> K. Parker & L. Neylon; *supra* note 43, at 521-526; C.P. Meade, *supra* note 45, at 224-225

<sup>53</sup> D. Mitchell "The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine", (2005) 15 *Duke Journal of Comparative and International Law* 219.

<sup>54</sup> Rules of Court, *supra* note 6.

<sup>55</sup> *Hwang Geum Joo v. Japan*, *supra* note 21; Japan has continually denied the victims even an official apology, hence it cannot be expected to be a proper venue.

<sup>56</sup> Article 8 of the Universal Declaration of Human Rights provides: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or laws [...]"; See Art. 2(3) of the International Covenant on Civil and Political Rights (ICCPR); Art. 6 of the Convention on the Elimination of Racial Discrimination; Art. 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (Torture Convention); Art. 16 of the Convention on the Rights of the Child; Art. 11(3) of the American Convention of Human Rights; Art. 8 of the European Convention of Human Rights; Art. 5 of the African Charter on Human and Peoples' Rights; See also Arts. 16(4) and 16(5) of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO No. 169, 27 June 1989, 28 I.L.M. 1382.

<sup>57</sup> Article I, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968.

<sup>58</sup> This is the assertion of the *comfort women* in their petition.



the international court of justice or other international legal forums or tribunals.

*Direct* the respondents to espouse the petitioners' claims for official apology and other forms of reparations against the state of Japan before the international court of justice or other international legal forums or tribunals.<sup>59</sup>

The victims sought for the Philippine government to champion their cause and deliberately did not ask for outright reparation from Japan because the principle of sovereign immunity from suits would prevent such a claim and might result in the dismissal of the suit and only aggravate their grief.<sup>60</sup> Instead, the victims ask the Court to compel the Philippine government to take up their petition before Japanese courts.

## 9. Conclusion

The study of the rape of Mapaniqui, Pampanga started as a tool to properly contextualise and orient the study of international humanitarian law for law students of the University of the Philippines. It has now evolved into *Vinuya et. al. v. the Honorable Executive Secretary*. That the Supreme Court gave the petition due course, given the government's refusal to take up their cause, is already a first success in fifty years for Filipino 'comfort women' victims. This petition will allow them to record officially personal and community stories which have been silenced by years of government indifference. The Japanese government can officially deny they exist; yet, their stories will be officially recorded in Philippine jurisprudence for future generations to read, study, and judge.

At the same time, it is regrettable that these women need to resort to this course of action in order to obtain reparations.

It is truly one step backward for humanity when citizens have to sue their government to let them obtain redress from violations made by another State.

The petition of the 'comfort women' of Mapaniqui, Pampanga challenges not only the existing notions on the binding nature of international law, but also the effectiveness of international law as a normative system. The long years of struggle of Barangay Mapaniqui with governmental indifference and inter-state apathy starkly illustrates the fact that human rights victims' 'human rights' may inevitably be subject to the political considerations of statecraft. It is fervently hoped that with *Vinuya v. Executive Secretary*, the substantive human right of persons to an effective remedy,<sup>61</sup> at least in the Philippines, is not only mere legal fiction which serves as an inadvertent refuge for erring States and perpetrators of crimes against humanity. ■

<sup>59</sup> This is a direct quotation from the prayer in *Vinuya et. al., vs. Executive Secretary*, GR NO. 162230.

<sup>60</sup> *Minucher v. Court of Appeals*, G.R. 142396, 11 February 2003; *Wylie v. Rarang*, G.R. No. 74135., 28 May 1992. The precept that a State cannot be sued in the courts of a foreign State is a long-standing rule of customary international law.

<sup>61</sup> Article 8 of the Universal Declaration of Human Rights; Article 2(3) of the International Covenant on Civil and Political Rights; Article 6 of the Convention on the Elimination of Racial Discrimination; Article 2(c) of the Convention on the Elimination of All Forms of Discrimination Against Women; Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment; Article 16 of the Convention on the Rights of the Child; Art. 11(3) of the American Convention on Human Rights; Article 8 of the European Convention on Human Rights; Article 5 of the African Charter on Human and Peoples Rights; Arts. 16(4) and 16(5) of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO No. 169, 27 June 1989, 28 I.L.M. 1382.