



National Asian Pacific American Women's Forum NAPAWF

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The Plight of "Comfort Women" in the U.S. Courts

Who are the "comfort women"?

"Comfort women" is a euphemism for the over 200,000 young women and girls forced into sexual slavery by the Japanese military during World War II. While 80% of the women were from Korea, others were taken from China, the Philippines, Burma, Indonesia, and other regions occupied by Japan. Only an estimated 25% survived their ordeal and even fewer are alive today. Japan has never formally apologized or provided reparations for its crimes against these women.

Why are they seeking redress?

The "comfort women" seek redress for the atrocities committed against them. They demand an official apology by the Japanese government, and reparations and acknowledgements of these war crimes in Japan's history books.

When was the lawsuit filed and under what statute?

In 2000, fifteen former "comfort women" filed a class action in the United States District Court for the District of Columbia seeking redress for the atrocities committed against them in Hwang Geum Joo, et al. v. Japan. Non-U.S. citizens can file lawsuits against other foreign entities in U.S. courts under the Alien Tort Claims Act (ATCA), an 18th century statute, for violations of international law. The most well-known example is the successful claims filed by Jewish foreign parties against the German government for atrocities committed by the Nazis during WWII.

Has the U.S. government taken a position on this case? If so, what is the U.S. government's position?

Yes. The Japanese government has stated that the WWII atrocity claims against Japan were settled in 1951. On April 27, 2001, the U.S. Department of State submitted a Statement of Interest in support of the Japanese government's motion to dismiss the case and the reasons cited, among others, include arguments that the matter is a subject for foreign diplomacy, that the Japanese government is entitled to sovereign immunity, and that the Treaty of 1951 resolve any and all claims against Japan.



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However, the treaty was signed between the United States and Japan but did not include the majority of victims who were not citizens of either country.

What is the status of the "comfort women" case?

On October 4, 2001, Judge Kennedy of the U.S. District Court for the District of Columbia dismissed the lawsuit, ruling that Japan is entitled to sovereign immunity under the Foreign Sovereign Immunities Act (FSIA). FSIA provides immunity from lawsuits against foreign states with few exceptions. The "comfort women" have argued that sexual slavery and trafficking of women during WWII is a commercial activity (an exception under FSIA) and that FSIA does not apply. On June 27, 2003, the United States Court of Appeals for the District of Columbia affirmed the dismissal of the class action lawsuit. It is anticipated that the appellate court will revisit the case because of two recent U.S. Supreme Court cases that may have bearing on the "comfort women" case.

On November 5, 2004, NAPAWF joined another amicus brief in support of the "comfort women's" request for the District Court to reevaluate their case in light of the two recent Supreme Court cases issued this past summer.

Two recent U.S. Supreme Court decisions may have implications for the "comfort women" case. What are those implications?

Two cases potentially affecting the revival of the "comfort women's" case were issued by the United States Supreme Court this past summer: Republic of Austria v. Altmann, 124 S.Ct. 2240 (2004) and Sosa v. Alvarez-Machain, 124 S.Ct. 2739 (2004).

In the Altmann case, the U.S. Supreme Court held that FSIA can be applied retroactively, before 1952, when the U.S. enacted a restrictive theory of foreign sovereign immunity (codified in FSIA in 1976). This is contrary to what the court of appeals in the "comfort women" case found when it stated that the FSIA, including its exceptions, could not be applied retroactively to events prior to 1952.

In Sosa, the U.S. Supreme Court addressed the potential issue of whether there has to be a legislative enactment of what constitutes international law for a party to claim a violation of international law under ATCA. The U.S. Supreme Court stated that no legislative enactment of international law is required, that common law provides a cause of action for a modest number of international law violations. The U.S. Supreme Court



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did caution, however, that there is a narrow class of international norms today that would constitute applicable violations under ATCA.

Recall that the "comfort women" claim that the Japanese government's war crimes violated international human rights laws. Although the court of appeals in the "comfort women" case found that it need not address the "comfort women's" claim under the ATCA because the court had already determined that they could not file a claim under the FSIA, Japan will no doubt reargue its position that the ATCA does not create a cause of action for a violation of customary international law. Sosa squarely addresses this potential argument.

What are other important events I should know regarding the "comfort women" issue?

- On July 24, 2001, Congressman Evans (D-IL) introduced a House Resolution calling for the Japanese government to acknowledge, apologize, and account for the Japanese government's crimes against the former "comfort women."
- On November 14, 2001, the Japanese Diet resubmitted a previously aborted bill seeking an official apology and state compensation for the victims of military sexual slavery by the Japanese Imperial Army during World War II.
- On December 4, 2001, the Women's International War Crimes Tribunal ruled that high level officials of the Japanese Imperial Army were guilty of crimes against humanity during World War II for the atrocities committed against former "comfort women". The Tribunal called for a "full and frank apology", a full investigation and disclosure by the Japanese government, offers of compensation to the victims, repatriation of the survivors who wish to go home, and return of the remains of the deceased.

How has NAPAWF supported the "comfort women" case?

NAPAWF initiated a "comfort women" campaign on August 4, 2001. NAPAWF chapters have conducted the following activities in support of the "comfort women."

- On July 23, 2001, NAPAWF DC participated in a rally in front of the State Department in Washington, DC, joining members from Young Koreans United from New York, Chicago, and Los Angeles, Korean Immigrant Workers



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Advocates, and others to protest the U.S. government's support of the dismissal of the case.

- On September 8, 2001, NAPAWF Bay Area participated in counter conferences and protests surrounding the 50th anniversary of the San Francisco Peace Treaty between Japan and the U.S. The 1951 Peace Treaty has been argued by the Japanese and U.S. governments as foreclosing any potential claims by "comfort women" against the Japanese government for its wartime atrocities.
- On September 18, 2001, the NAPAWF Minnesota co-sponsored an event entitled "Women Against Military Madness" at Hamline University, with guest lecturer D. Yune Chung Ok, a "comfort women" activist.
- NAPAWF joined an amicus brief to the Court of Appeals on behalf of the "comfort women" in the summer of 2002.
- On October 16, 2002, NAPAWF DC protested outside the Japanese Embassy in Washington, DC, to honor the weekly protests by "comfort women" in front of the Japanese embassy in South Korea.
- On November 8, 2002, NAPAWF DC hosted a film screening of "Silence Broken," a documentary of the "comfort women," and a panel discussion with filmmaker Daisil Kim-Gibson and attorney, Agnieszka Fryszman, one of the attorneys representing the "comfort women."
- On December 10, 2002, NAPAWF DC protested outside the U.S. Court of Appeals for the District of Columbia. That day, the court heard appellate arguments from both parties.
- NAPAWF joined an amicus brief to the Court of Appeals on behalf of the "comfort women" in the fall of 2004.

How can I support the plight of the "comfort women"?

- Host a forum on the "comfort women" issue in your community;



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- Read articles and books on the "comfort women". A recent book by Dal Sil Kim Gibson entitled "Silence Broken," documents the lives of "comfort women" she interviewed for her book and documentary;
- Track the case in the District of Columbia courts and participate in chapter events to show support for the "comfort women."