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Truth, Memory and Justice:

The Intersection of the Right to the Truth and Memorialisation in the “Comfort Women” Case

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Abstract

Through the case study of South Korean victims of Japanese sexual slavery (“comfort women”), this thesis explores how truth-seeking, memorialisation, and justice interconnect and strengthen one another in efforts to seek redress following gross and widespread human rights violations. Firstly, the thesis argues that the right to the truth, firmly rooted in international human rights law, provides a solid legal foundation for “comfort women” claims, as it requires Japan to investigate the facts, acknowledge full responsibility, disclose evidence, and provide reparation to victims. Secondly, the thesis explores the significance and purposes of the memorialisation processes carried out in South Korea and Japan regarding the “comfort women” issue, which include urging the Japanese government to acknowledge the atrocities committed, honouring the victims, and ensuring that knowledge of the past is preserved, shared, and transmitted to future generations. Lastly, this thesis proposes that a truth commission and *ad hoc* archives could serve as potential future avenues for justice for “comfort women”, as they incorporate both dimensions of truth and memory, while fulfilling Japan’s duties towards the victims. The thesis concludes that truth and memory indeed offer pathways to justice for “comfort women”: on the one hand, the right to the truth provides survivors with a strong legal basis to demand that Japan’s government investigate, redress victims, and disclose information, thereby acknowledging its responsibility for wartime sexual slavery; on the other hand, memorialisation ensures that this knowledge remains accessible and is passed on to future generations, supporting survivors and society in dealing with the past and recognising the harm inflicted.

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List of acronyms

ACHR	American Convention on Human Rights
AWF	Asian Women's Fund
CEDAW	Committee on the Elimination of Discrimination against Women
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICA	International Council on Archives
ICCPR	International Covenant on Civil and Political Rights
ICPPED	International Convention on the Protection of All Persons from Enforced Disappearance
IMTFE	International Military Tribunal for the Far East
NGOs	Non-governmental organisations
OHCHR	Office of the High Commissioner for Human Rights
ROK	Republic of Korea
TC	Truth commission
TJ	Transitional justice
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly

UNHRC

United Nations Human Rights Council

VAWW-NET Japan

Violence against Women in War-Network Japan

WAM

Women's Active Museum on War and Peace

Table of contents

<i>Abstract</i>	<i>I</i>
<i>Acknowledgments</i>	<i>II</i>
<i>List of acronyms</i>	<i>III</i>
<i>Introduction</i>	<i>1</i>
1. Background.....	1
2. Methodology	2
3. Outline	3
<i>Chapter 1: The Right to the Truth in the Context of the “Comfort Women” Issue</i>	<i>7</i>
1.1 Introduction	7
1.2 The right to the truth in international human rights law.....	8
1.3 Japan’s failure to investigate wartime sexual slavery.....	13
1.4 Japan’s failure to make reparation to victims.....	20
1.5 What truth for the “comfort women”?	25
1.6 Truth-seeking mechanisms: different approaches to seeking the truth about the past.....	27
1.7 Conclusions	32
<i>Chapter 2: Memorialisation in the Case of South Korean “Comfort Women”</i>	<i>34</i>
2.1 Introduction	34
2.2 International standards on memorialisation of gross human rights violations.....	35
2.3 Memorialisation projects for “comfort women” in South Korea and Japan	37
2.4 Memorialisation between the duty to remember and the right to access State-held information	42
2.5 The duty to combat historical manipulation.....	46
2.6 Conclusions	50
<i>Chapter 3: Future Avenues for Justice</i>	<i>52</i>

3.1 Introduction	52
3.2 A truth commission on Japanese wartime sexual slavery	53
3.3 Archives on Japanese wartime sexual slavery	57
3.4 Conclusions	63
<i>Conclusions.....</i>	<i>66</i>
<i>Bibliography.....</i>	<i>70</i>

Introduction

1. Background

The case of military sexual slavery perpetrated by Japan during the first half of the 20th century is commonly known as the “comfort women” issue.¹ It involved hundreds of thousands of women who, from the 1930s to 1945, were abducted, coerced, or manipulated into becoming sex slaves for Imperial Japan’s army. This constituted a widespread, systematic, and serious violation of human rights that, however, remained largely concealed until the 1990s, when some survivors began to speak out demanding justice. The “comfort system” was conceived and implemented as an integral part of the war campaign that the Japanese military at the time was carrying out in the Asia-Pacific, characterised by mass rapes, executions, torture, and massacres of civilian populations. According to historical reconstructions, the first “comfort station” was established in China in 1932, with new facilities being built in the subsequent years. Documentary evidence and testimonies from victims as well as former soldiers indicate that these stations were present in China, Taiwan, the Philippines, Malaysia, Indonesia, the Dutch Territories, East Timor, and other Pacific islands.²

As acknowledged in a note verbale from the Japanese government to the United Nations (UN), the reasons for setting up these stations were multiple: to avoid anti-Japanese sentiments that might arise from assaulting local women, to prevent Japanese soldiers from contracting venereal diseases, and to avert possible occasions for espionage due to troops visiting local brothels.³ Many stations were managed by private operators with the support and knowledge of the Japanese army, but in some cases, they were directly operated by the military. Regardless, the degree of involvement of the Japanese military was high, as evidenced by its role in issuing permissions to open the stations, providing equipment, and setting up regulations for their management and use by soldiers.⁴ In these “comfort stations”, the women were subjected to rape, torture, forced medical examinations, and forced labour. They were deprived of their

¹ The expression “comfort women” is clearly a euphemism and derives from the Japanese terminology. The thesis employs this expression as it is the one most commonly used in this context, while being fully aware of its inherently harmful connotation.

² UN Commission on Human Rights (UNCHR), ‘Report on the mission to the Democratic People’s Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy’ (1996) E/CN.4/1996/53/Add.1.

³ UNCHR, ‘Note verbale dated 26 March 1996 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Centre for Human Rights, Economic and Social Council’ (1996) E/CN.4/1996/137.

⁴ Ustinia Dolgopol, ‘Women’s Voices, Women’s Pain’ (1995) 17 Human Rights Quarterly 127, 134.

freedom of movement and forced to live in inhumane conditions. When the Second World War came to an end, the Japanese troops either killed the women or abandoned them, often in foreign countries.⁵

Although some limited knowledge about the “comfort women” emerged immediately after the war’s end,⁶ Japanese sexual slavery was not prosecuted before the International Military Tribunal for the Far East (IMTFE), and neither Japan’s government officials nor military commanders were held accountable for the atrocities committed against the “comfort women”. The issue was brought to light only in 1991 when Kim Hak-Sun publicly shared her story as a former “comfort woman”, followed by hundreds of other survivors in the subsequent years.⁷ Since then, Japan’s government has maintained an ambiguous position on the issue, oscillating between recognising some level of involvement by the former military while denying the classification of the system as sexual slavery, and downplaying the violence in the women’s recruitment. Japan’s government has never acknowledged legal responsibility.

2. Methodology

The thesis employs a qualitative research methodology with a multi-disciplinary approach. The primary perspective adopted is legal, but it also incorporates philosophical and sociological contributions to offer a more comprehensive understanding of the issues addressed. The legal analysis comprises a comparative study of international human rights legislation and the jurisprudence of international human rights bodies. The methodology encompasses the review of scholarly literature on human rights and transitional justice, along with processing other secondary sources such as newspapers, online media, governmental and NGOs’ websites.

The presentation of theoretical frameworks in this thesis is always functional to their application in the empirical case study at the centre of this work. This explains why, in some instances, the thesis opts for a narrow focus and does not dwell on certain aspects that, while relevant in the broader field of study, are not substantial for the case subject. In this context, much of the information related to the individual experiences of the victims comes from reliable sources, primarily reports issued by the United Nations and NGOs working alongside the survivors.

⁵ Stephanie Wolfe, *The Politics of Reparations and Apologies* (Springer, 2014) 232.

⁶ Dolgopol (n 4) 147.

⁷ Pyong Gap Min, ‘Korean “Comfort Women”: The Intersection of Colonial Power, Gender, and Class’ (2003) 17 *Gender and Society* 938, 949.

3. Outline

The “comfort women” case appears to be a decade-old subject that does not elicit genuine interest in its resolution from the States concerned. Most of the victims have passed away, the Japanese government considers the issue settled, and civil society organisations struggle to maintain attention on the matter. Nevertheless, the “comfort women” issue has not lost relevance; on the contrary, the fact that the abuses endured by hundreds of thousands of women have not been fully acknowledged, the victims have not received reparation, and most of the survivors have died before their demands for justice could be met, should be precisely the reason not to dismiss or forget this case. This vacuum should motivate sustained attention, urging all parties involved, scholars, and the public to work towards a fair resolution of the matter.

Furthermore, the “comfort women” case is tied to the highly relevant issue of sexual violence in armed conflict, which disproportionately affects women and young girls. It raises questions about how international law addresses sexual violence perpetrated by the military during war, how victims can obtain reparation for such heinous violations of their rights, and how to ensure that the experiences and voices of survivors are acknowledged and heard without re-traumatisation or social stigma. These questions remain relevant and have yet to receive definitive answers, regardless of whether they stem from events that occurred eighty years ago or are taking place now. Truth, justice, and memory are also among the pillars of transitional justice (TJ): the core idea of TJ is that without fully addressing the past, an inclusive, peaceful, and democratic present cannot be built, leaving the future uncertain and vulnerable to the recurrence of violence. Although Japan is not a transitional country recently emerging from a period of widespread abuses, the tools and concepts provided by TJ are able to adequately frame the “comfort women” issue. TJ is founded on the idea that without acknowledging the past, justice cannot be fully realised, which is precisely the underlying message that “comfort women” convey through their efforts for redress.

While Japanese military sexual slavery lends itself to being analysed from many perspectives, this thesis focuses on two specific aspects: truth-seeking and memorialisation. Both have been consistently advocated for by survivors and the redress movement as essential elements for a fair resolution of the “comfort women” issue. More than monetary compensation, the establishment and acknowledgement of the truth as well as the preservation of collective memory have proven to be foundational for the “comfort women”. Survivors have vocally expressed that no response from Japan would be sufficient without a genuine effort to establish the truth about the past, which entails undertaking large-scale truth-seeking

initiatives to conclusively establish the facts as well as the causes and consequences of the sexual slavery, disclosing any information already in the government's possession, and acknowledging full responsibility (both moral *and* legal). The necessity of memorialising the past and transmitting this knowledge to future generations follows as a logical corollary of such requests, but it also responds to a basic human instinct of the victims, exemplified in the survivors' words: not to be forgotten. Therefore, the thesis looks at the past as much as at the future and, aware that not many survivors are still alive, urges to seriously consider the profound ramifications of the "comfort women" case, not only for the victims and Japan's government, but for the wider international community and society. This is not merely an Asian issue, nor is it an old problem relegated, at best, to the history books. The "comfort women" case concerns one of the most heinous attacks on human dignity and women's rights and reminds us that the roots of current issues trace back to the past.

The primary research question that the thesis seeks to answer is how truth-seeking and memorialisation intersect and enhance one another in the pursuit of justice for "comfort women". The thesis aims to analyse whether, and to what extent, efforts focused on strengthening truth-seeking and memorialisation, rather than formal accountability, can realise the victims' rights to reparation and justice, and fulfil Japan's duty to redress. It explores whether such a focus on truth and memory provides a viable path forward for the redress movement and for survivors in the near future. The thesis follows a tripartite structure designed to present and critically analyse the elements of truth, memory, and their interrelationship in the "comfort women" case, specifically within the South Korean context.⁸ Each chapter focuses on a different aspect of this question, which is examined in its theoretical foundation and then positioned within the empirical context of the "comfort women" case.

Chapter 1 is dedicated to the first element of the research question, which is conceptualised within international human rights law as the right to the truth. It seeks to examine the meaning that the right to the truth acquires in relation to South Korean "comfort women". The right to the truth is analysed in its juridical foundation and evolution, establishing the main coordinates of the concept. Its connection with the duty to investigate human rights violations, the right to remedy and reparation, and the general State

⁸ Although victims of Japan's wartime sexual slavery come from many countries, this work primarily takes into consideration South Korean victims and the South Korean movement for redress. Such a choice is not to dismiss the claims for justice or erase the memory of the victims of different nationalities; rather, it is a decision motivated by time and space constraints, as well as a desire to maintain a well-defined object of analysis, in addition to the author's familiarity with the South Korean context. Nonetheless, many of the considerations presented in this work can apply to the general issue of Japan's sexual slavery.

obligation to respect, and prevent violations of, human rights becomes particularly pertinent when examining Japan's significant shortcomings in addressing its responsibility for sexual slavery.

Chapter 2 focuses on the second aspect of the primary research question, which concerns the objectives and scope of memorialisation processes in relation to South Korean “comfort women”. This chapter analyses international standards for the memorialisation of gross human rights violations and highlights its aims. The significance of memorialisation is proven by the wealth of memory-related projects implemented by the South Korean redress movement, which are briefly examined in this section. The recognition of a right to the truth also raises the question of whether a duty to remember is incumbent on States under international law, which is analysed through the lens of the right to access information related to human rights violations and the corresponding duty of the State to disclose such information. This chapter also explores how memory-related duties contribute to combating the historical manipulation of past events, a phenomenon particularly present in Japanese public discourse surrounding the “comfort women” issue.

Subsequently, **Chapter 3** examines the implications of truth-seeking and memorialisation for the future of the redress movement for “comfort women”. Here, the thesis seeks to explore the avenues for justice that can be advocated for and effectively implemented, in line with the goals advanced by truth and memory. This chapter proposes two measures that can offer practical chances of realisation: firstly, the creation of a truth commission tasked with investigating Japan's wartime sexual slavery and drafting a reparation programme; secondly, the establishment of human rights archives on the issue of “comfort women”. The chapter critically analyses both mechanisms, highlighting their strengths and limitations.

Finally, some **Conclusions** are drawn on the topic of truth, memory, and justice for “comfort women”. Above all, the thesis aims to contribute to the discussion on redress for the victims of Japan's wartime sexual slavery, highlighting, in particular, the dimensions of truth and memory in the pursuit of justice, and thus emphasising the survivors' voices and needs. The choice to focus less on criminal prosecution and formal accountability is driven by various considerations, chiefly among them the fact that Japan has consistently demonstrated its reluctance to engage with such mechanisms – there is no reason to expect a different approach in the near future – and that little time remains before the survivors pass away. Only during the writing of this thesis did two South Korean survivors pass away, a sombre reminder of the unforgiving passage of time. The focus must be on pursuing realistic avenues of redress

that can increase the chance of implementation while at least some of the survivors are still able to witness it.

Chapter 1: The Right to the Truth in the Context of the “Comfort Women” Issue

1.1 Introduction

This chapter aims to examine the meaning of the right to the truth in the context of South Korean “comfort women” pursuing justice from Japan’s government. Understanding what the right to the truth entails according to international human rights law provides a legal framework within which specific aspects of the “comfort women” issue can be analysed. As several human rights bodies have addressed Japan’s responsibility for wartime sexual slavery, their decisions offer valuable insights into the serious shortcomings of the Japanese government towards the victims and show how their recommendations have been ignored over the years. In particular, this chapter examines Japan’s failure to investigate the facts, prosecute the perpetrators, and provide reparations to victims, as a means to highlight how these omissions not only constitute ongoing breaches of international human rights law but also severely frustrate the victims’ and society’s right to know the truth about the “comfort system”.

Furthermore, the chapter draws on concepts and ideas from philosophy to understand the kind of truth victims may aspire to and identifies key elements to consider when discussing such a complex topic. This multi-disciplinary approach aims to provide a more comprehensive view of the issue and move beyond a purely legalistic perspective. Lastly, the chapter explores different forms of truth-seeking as a way to realise the right to the truth after large-scale violence. These include extra-judicial measures, such as truth commissions (TCs) and people’s tribunals, which can be employed to uncover and establish the truth about past human rights violations, alongside judicial avenues. The efforts of the “comfort women” redress movement are examined to showcase the numerous attempts by survivors to seek justice and gain recognition of the truth from Japan’s government, with limited success.

Gaining a thorough understanding of the right to the truth and truth-seeking initiatives constitutes the first essential step in addressing the primary research question of this thesis, which aims to explore how truth and memory intersect and reinforce each other in the pursuit of justice for “comfort women”. This chapter demonstrates how the right to the truth provides a strong legal basis for victims of Japanese wartime sexual slavery to advance their claims for redress and how various truth-seeking mechanisms can be used to this end.

1.2 The right to the truth in international human rights law

The right to the truth has steadily developed a central place in the international human rights agenda, especially, though not exclusively, within the field of TJ. The surge in the number of TCs, the appointment of a UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, and the proclamation of an International Day for the Right to the Truth are just a few instances of this trend. The right to the truth “implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them”.⁹ However, scholars remain divided on how to precisely define this legal concept and whether it should be qualified as an autonomous right or subsumed under other rights, such as the right to an effective remedy.¹⁰ Nonetheless, there is a growing consensus on the need for a more decisive recognition within international human rights law.

It is widely understood that the right to the truth first emerged within the field of international humanitarian law, where a “right to know” is explicitly recognised in relation to family members of missing persons in armed conflicts. Article 32 of the First Additional Protocol (1977) to the Geneva Conventions of 1949 enshrines the “right of families to know the fate of their relatives”, while Article 33 states that “each Party to the conflict shall search for the persons who have been reported missing”. The International Committee of the Red Cross maintains that such an obligation has acquired the status of customary international law.¹¹ Within the field of international human rights law, the right to the truth emerged in connection with the phenomenon of enforced disappearances. The Inter-American Commission on Human Rights (IACHR) and the UN Working Group on Enforced or Involuntary Disappearances have undertaken significant efforts in this regard, substantially contributing to the concept’s elaboration. Thanks also to their work, the right to the truth has been enshrined in the International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED), which was adopted by the UN General Assembly (UNGA) on 20 December 2006. Article 24(2) of

⁹ UNCHR, ‘Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights’ (2006) E/CN.4/2006/91 [3, 38].

¹⁰ James A Sweeney, ‘The Elusive Right to Truth in Transitional Human Rights Jurisprudence’ (2018) 67 *International and Comparative Law Quarterly* 353; see also Patricia Naftali, ‘The “Right to Truth” in International Law: The “Last Utopia”?’ in Uladzislau Belavusau and Aleksandra Gliszczynska-Grabias (eds), *Law and Memory: Towards Legal Governance of History* (Cambridge University Press, 2017) 70.

¹¹ International Committee of the Red Cross, ‘Customary International Humanitarian Law, Volume I: Rules’ (Cambridge University Press, 2005) 421, Rule 117.

ICPPED reads the following: “Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard”.

The right to the truth is also generally inferred from other widely recognised provisions in human rights treaties, including the right to an effective remedy and the right to access the results of an investigation. It is also considered to stem from the States’ duty to investigate gross violations of human rights, which derives from their obligation to respect and ensure human rights.¹² International jurisprudence supports these positions. The Inter-American Court of Human Rights (IACtHR) has repeatedly recognised the right of family members to know the truth about the fate and whereabouts of victims of enforced disappearances. Although its jurisprudence primarily concerns cases of enforced disappearances, the IACtHR has held that the right to the truth applies to any kind of gross human rights violation.¹³ This is consistent with the general approach that views the right to the truth as arising from gross violations of international human rights law and serious violations of international humanitarian law, not only enforced disappearances.¹⁴ In *Las Dos Erres*, the IACtHR held that “in a democratic society the truth on grave human rights violations must be known” through public disclosure of the investigation’s results and redress to the victims.¹⁵ Furthermore, the Court grounds the right to the truth in the State’s duty not only to carry out effective investigations into human rights violations, but also to respect and guarantee human rights.¹⁶ The IACHR shares the same stance as the Court, and links the right to the truth also with the victims’ right to seek information.¹⁷

Unlike the Inter-American bodies of human rights protection, the European Court of Human Rights (ECtHR) has proven to be slower in addressing the right to the truth. The Court usually infers it from the State’s duty to investigate human rights violations, which is closely linked to the right to an effective remedy (Article 13, European Convention on Human Rights (ECHR)); or from the procedural

¹² UN Human Rights Council (UNHRC), ‘International legal standards underpinning the pillars of transitional justice: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli’ (2023) A/HRC/54/24 [18].

¹³ UNCHR, ‘Study on the Right to the Truth’ (n 9) [30].

¹⁴ UNGA, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (2005) A/RES/60/147 [24]; UNCHR, ‘Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity’ (2005) E/CN.4/2005/102/Add.1, Principle 5.

¹⁵ *Las Dos Erres’ Massacre v Guatemala* [2009] IACtHR Series C No. 211 [149].

¹⁶ UNCHR, ‘Study on the Right to the Truth’ (n 9) [30].

¹⁷ *Ignacio Ellacuría et al v. El Salvador* [1999] IACHR Report No. 136/99 [221ff].

limb of the right to be free from torture and ill-treatment (Article 3, ECHR) and the right to life (Article 2, ECHR). The ECtHR maintains that the concept of an effective remedy entails for the State a duty to undertake an effective investigation, including the right of victims and their relatives to access the procedure and its results.¹⁸ The failure on the part of the State to uphold these standards amounts to a violation of the procedural obligation to protect the right to life,¹⁹ or the right to be free from torture.²⁰ In *El-Masri v Macedonia*, the Grand Chamber notably remarked that an inadequate investigation has an “impact on the right to the truth regarding the relevant circumstances of the case”.²¹ The Court further underlined “the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened”.²²

The UN Human Rights Committee (HRC) has recognised the right to know the truth about the circumstances of enforced disappearances since 1981, in its seminal case of *Almeida de Quinteros v Uruguay*, where “the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts”²³ were considered to amount to a violation of Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which enshrines the right to be free from ill-treatment and torture. The HRC consistently holds that States have the obligation to thoroughly investigate human rights violations and provide an effective remedy to victims and their relatives, including information about the event and, in the case of a missing person, details about the victim’s fate and whereabouts.²⁴ In the Committee’s jurisprudence, the right to the truth is either connected to the next of kin’s inhuman treatment in relation to enforced disappearances or implicitly included in the right to an effective remedy. The HRC has also linked the truth about human rights violations with the fight against impunity, for instance in the 1996 Concluding Observations on Guatemala where it urged the government to “take all pertinent measures to avoid cases of impunity and,

¹⁸ *Aksoy v Turkey* [1996] ECtHR App no. 21987/93.

¹⁹ *Anguelova v. Bulgaria* [2002] ECtHR App no. 38361/97.

²⁰ *Tas v Turkey* [2000] ECtHR App no. 24396/94.

²¹ *El-Masri v The Former Yugoslav Republic of Macedonia* [2012] ECtHR App no. 39630/09 [191].

²² *Ibidem*.

²³ *Almeida de Quinteros et al v Uruguay* [1983] HRC CCPR/C/19/D/107/1981 [14].

²⁴ *Bautista de Arellana v Colombia* [1995] HRC CCPR/C/55/D/563/1993 [8.6]; *Mariya Staselovich v. Belarus* [2003] HRC CCPR/C/77/D/950/2000 [11].

especially, to allow the victims of human rights violations to find out the truth about those acts, to know who the perpetrators of such acts are”.²⁵

Furthermore, the right to the truth is explicitly recognised in a series of non-binding instruments, which constitute an authoritative source of information on the qualification and legal foundations of the concept. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (hereinafter referred to as the Updated Set of Principles against Impunity) states that “every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes” (Principle 2). This instrument elaborates on various corollaries of this concept, including the duty to preserve memory, the role of archives and the importance of TCs (all of which will be addressed *infra*). These principles refer to the right to the truth not only in its individual dimension – which is the aspect typically addressed by human rights bodies – but also in its collective dimension. Principle 5, in addressing the measures to give effect to this right, states that “societies that have experienced heinous crimes perpetrated on a massive or systematic basis” can benefit from the creation of mechanisms aimed at establishing the facts of such events.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter referred to as the Basic Principles on the Right to a Remedy) recognise that “victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimisation and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations”.²⁶ Additionally, they include “verification of the facts and full and public disclosure of the truth” among the forms that satisfaction should take as a measure of reparation for gross human rights violations.²⁷ The IACtHR also implicitly recognises victims’ right to the truth when awarding reparations for gross human rights violations. Indeed, the Court’s jurisprudence is rich in the number and variety of measures ordered to ensure that the State recognises its responsibility fully and publicly, and that victims’ dignity and memory are respected not only by contemporary society but also by future generations. The Court routinely orders measures such as the construction of memorials,

²⁵ HRC, ‘Concluding Observations: Guatemala’ (1996) CCPR/C/79/Add.63 [25].

²⁶ Basic Principles on the Right to a Remedy (n 14) [24].

²⁷ *Ibidem* [21].

the (re)naming of streets and public places in honour of the victims, the dissemination of the judgment, and public ceremonies of official acknowledgement of the crimes by government officials.²⁸ These measures visibly recall the examples of satisfaction listed in the Basic Principles on the Right to a Remedy.

The UNGA has issued multiple resolutions addressing the right to the truth, describing “the desire to know” as “a basic human need”²⁹ and recognising “the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights”.³⁰ The establishment of the truth about international crimes and gross human rights violations has been repeatedly affirmed by both the UNGA and the Security Council.³¹ The UN human rights bodies have also expressly addressed the topic, beginning with the Human Rights Council (UNHRC) which in its resolutions underlines the importance for States to provide “appropriate and effective mechanisms for society as a whole and, in particular, for relatives of the victims, to know the truth regarding gross violations of human rights and serious violations of international humanitarian law”, encouraging them to establish specific mechanisms to this end.³² Furthermore, in 2006 the Office of the High Commissioner for Human Rights (OHCHR) published a study on the right to the truth, which was concluded to be an inalienable and autonomous right, linked to the State’s obligation to protect and guarantee human rights, the duty to conduct effective investigations and the victims’ right to remedy and reparation.³³ The study also determined that the right to the truth possesses both an individual and a societal dimension.³⁴ Special procedures – such as the Special Rapporteur on the Independence of Judges and Lawyers,³⁵ the Working Group on Enforced or Involuntary Disappearances,³⁶ and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence³⁷ – have similarly recognised the right to

²⁸ See, *inter alia*, *Juan Humberto Sánchez v Honduras* [2003] IACtHR Series C No. 102 [188]; *Villagrán Morales et al v Guatemala* [2001] IACtHR Series C No. 77 [103].

²⁹ UNGA Resolution 3220 (XXIX) (1974).

³⁰ UNGA Res. 68/165 (2013) A/RES/68/165 [3.1].

³¹ UNGA Res. 57/105 (2003) A/RES/57/105; UN Security Council Res. 1468 (2003) S/RES/1468 and Res. 1606 (2005) S/RES/1606.

³² UNHRC Res. 9/11 (2008) A/HRC/9/L.12, 2.

³³ UNCHR, ‘Study on the Right to the Truth’ (n 9).

³⁴ *Ibidem* [36].

³⁵ UNCHR, ‘Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy’ (1998) E/CN.4/1998/39/Add.1.

³⁶ UNCHR, ‘Question of human rights of all persons subjected to any form of detention or imprisonment, in particular: question of missing and disappeared persons: Report of the Working Group on enforced or involuntary disappearances’ (1981) E/CN.4/1435 [187]; UNHRC, ‘Report of the Working Group on enforced or involuntary disappearances’ (2011) A/HRC/16/48.

³⁷ UNHRC, ‘International legal standards underpinning the pillars of transitional justice’ (n 12).

know the truth about the circumstances of gross human rights violations. The Committee against Torture explicitly links the right to the truth to victims' right to redress, which is enshrined in Article 14 of the Convention against Torture.³⁸

The above provides a brief overview of the status of the right to the truth in international human rights law. It can be concluded that all major human rights protection bodies recognise, to varying degrees and in different ways, this right as a fundamental component of responding to large-scale violence and ensuring accountability. Although the right to the truth is not explicitly enshrined in binding instruments apart from the ICPPED, its connection with obligations and rights at the core of international human rights law demonstrates how it is grounded in solid legal foundations and can be legitimately claimed by victims of human rights violations.

1.3 Japan's failure to investigate wartime sexual slavery

The obligations to investigate, prosecute and punish perpetrators are recognised in several binding human rights instruments at both universal and regional levels, either enshrined as such or derived from other provisions, such as the right to an effective remedy.³⁹ Furthermore, both the Updated Set of Principles against Impunity and the Basic Principles on the Right to a Remedy address it.⁴⁰ The HRC connects this set of obligations (which derives from the right to an effective remedy in Article 2 ICCPR) with the States' duty to prevent the recurrence of human rights violations when it holds that investigations are aimed "at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations".⁴¹ The Committee on the Elimination of Discrimination against Women (CEDAW) argues that States have the obligation "to investigate, prosecute and apply appropriate legal or disciplinary sanctions [...] in all cases of gender-based violence against women, including those constituting international crimes, as well as in cases of failure, negligence or omission on the part of public authorities".⁴² The obligations to investigate and prosecute serious human rights violations are also considered part of customary international law, and therefore, binding on States regardless of their

³⁸ UN Committee against Torture, 'General comment No. 3: Implementation of Article 14 by State Parties' (2012) CAT/C/GC/3 [16].

³⁹ See *inter alia* American Convention on Human Rights, Articles 1, 8 and 25; African Charter on Human and People's Rights, Articles 3 and 13; European Convention on Human Rights, Articles 1, 6 and 13; HRC, 'General Comment No. 31: The Nature of the General Obligation Imposed on States Parties to the Covenant' (2004) CCPR/C/21/Rev.1/Add.13 [15].

⁴⁰ Updated Set of Principles against Impunity (n 14), Principles 1 and 19; Basic Principles on the Right to a Remedy (n 14) [3].

⁴¹ HRC, 'General comment no. 36 on Article 6 (Right to Life)' (2019) CCPR/C/GC/35 [27].

⁴² CEDAW, 'General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19' (2017) CEDAW/C/GC/35 [23].

membership in a specific treaty.⁴³ This is relevant in the context of Japan’s responsibility for wartime sexual slavery, given that – while the State is bound by the UN human rights treaties it has ratified – there is no regional system of human rights protection in Asia that could provide a similar level of safeguard as the American, European or African systems.

Human rights bodies not only consistently assert that States have an obligation to investigate and prosecute violations of human rights, but they also contend that a failure to do so – or to meet the necessary standards for fulfilling such an obligation – could amount to a separate breach of international law. In this regard, the HRC states that the failure to investigate allegations of human rights violations “could in and of itself give rise to a separate breach” of the relevant instrument.⁴⁴ It is worth noting that the IACtHR has also established that, by failing to seriously investigate human rights violations, the State “prevents society from knowing the truth about the events”.⁴⁵ Similarly, the failure to prosecute and punish perpetrators could also give rise to an autonomous breach of international law.⁴⁶ Fabián Salvioli, former Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, acknowledges that only a small fraction of the alleged perpetrators of serious human rights violations are usually prosecuted due to the large number of suspects and the scarcity of human and financial resources.⁴⁷ Notwithstanding such difficulties, this constitutes a failure to discharge obligations under international law. In the same report about accountability for gross violations of human rights, Salvioli notes that the lack of effective investigations and prosecutions can often stem from a lack of political will. This can manifest, *inter alia*, through “the destruction or obstruction of access to information held in military, police or administrative records that would be useful in documenting the responsibility and culpability of perpetrators” and a failure to engage in consultations with victims.⁴⁸

⁴³ Naomi Roht-Arriaza, ‘State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law’ (1990) 78 California Law Review 449, 489; UNHRC, ‘Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli’ (2021) A/HRC/48/60 [22].

⁴⁴ HRC, ‘General Comment No. 31’ (n 39) [15]; see also UNHRC, ‘Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes’ (n 43) [21].

⁴⁵ *Zambrano Vélez et al v Ecuador* [2007] IACtHR Series C No. 166 [124].

⁴⁶ HRC, ‘General Comment No. 31’ (n 39) [18].

⁴⁷ UNHRC, ‘Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes’ (n 43) [28].

⁴⁸ *Ibidem* [55].

Since the late 1990s, UN human rights bodies have urged Japan's government to fulfil its international obligations to bring the perpetrators to justice. In 1996, the Special Rapporteur on Violence Against Women, its Causes and Consequences, Radhika Coomaraswamy, issued a report on the matter following her mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan. She argued that Japan's government must acknowledge and accept responsibility for the system of military sexual slavery, disclose the documents in its possession, and "identify and punish, as far as possible, perpetrators involved in the recruitment and institutionalisation of comfort stations during the Second World War".⁴⁹ In 1998, the Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices during Wartime, Gay J. McDougall, submitted a report highlighting Japan's responsibilities concerning the "comfort system": the central point was that Japan was under the obligation to investigate and prosecute the gross human rights violations, and to provide redress to the victims.⁵⁰ She also established that this obligation extended to successor governments.⁵¹ In her updated report in 2000, she indicated that Japan had not yet fully discharged its international obligations and reiterated that "in order to end impunity for gross violations of international law committed during armed conflict, the legal liability of all responsible parties, including Governments, must be acknowledged, and the victims must be provided with full redress, including legal compensation and prosecution of the perpetrators".⁵²

Furthermore, the issue of "comfort women" has been raised on multiple occasions before UN treaty-monitoring bodies, which have consistently called on Japan's government to comply with its duties under international law. In particular, the CEDAW has repeatedly recommended that Japan redress the victims and their families, investigate the facts, prosecute perpetrators, ensure that an accurate representation of the facts is included in educational materials and oppose disparaging statements made against the victims. The Committee has explicitly called on Japan to ensure the victims' rights to truth, justice and reparations.⁵³ A very similar position has been endorsed by the HRC, which has urged Japan

⁴⁹ UNCHR, 'Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime' (n 2) [137].

⁵⁰ UNCHR (Sub-Commission), 'Contemporary forms of slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: An analysis of the legal liability of the Government of Japan for "comfort women stations" established during the Second World War: Report submitted by Ms. Gay J. McDougall, Special Rapporteur' (1998) E/CN.4/Sub.2/1998/13.

⁵¹ *Ibidem* [32ff, 85].

⁵² UNCHR, 'Contemporary forms of slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict: Update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur' (2000) E/CN.4/Sub.2/2000/21 [78].

⁵³ CEDAW, 'Concluding observations on the ninth periodic report of Japan' (2024) CEDAW/C/JPN/CO/9 [33]; CEDAW, 'Concluding observations on the combined seventh and eighth periodic reports of Japan' (2016) CEDAW/C/JPN/CO/7-8 [29].

to ensure that “all allegations of sexual slavery or other human rights violations perpetrated by the Japanese military during wartime against the ‘comfort women’ are effectively, independently and impartially investigated and that perpetrators are prosecuted”, to disclose all the available materials related to the facts and to officially recognise its responsibility.⁵⁴ As recently as 2022, the HRC expressed regret for Japan’s failure to conform to the recommendations and for the lack of effective investigation and full reparation to victims.⁵⁵ The Committee against Torture and the Committee on Economic, Social and Cultural Rights have expressed the same emphasis on Japan’s failure to abide by its international obligations.⁵⁶

It is widely understood that for a State to discharge its obligation, the investigation must meet a series of criteria, namely, thoroughness, independence, impartiality, *ex officio* initiation, victims’ participation, transparency, and publicity.⁵⁷ There is a wide consensus on these parameters within the international human rights jurisprudence, but for the purposes of the present chapter it is particularly interesting to note that the IACtHR made an explicit connection between publicity of the investigation and the right to the truth when, in the *Juan Humberto Sánchez v Honduras* case, it held that “the results of those investigations must be made known to the public, for society to know the truth”.⁵⁸ Furthermore, State authorities cannot refuse to disclose information about serious human rights violations by resorting to mechanisms such as secrecy, confidentiality or national security reasons due to the overriding public interest in disclosing this type of information.⁵⁹ The Tshwane Principles pointedly underline that, in post-conflict contexts, “a successor government should immediately protect and preserve the integrity of, and release without delay, any records that contain such information that were concealed by a prior government”.⁶⁰

It is essential to emphasise that a breach of international law exists as long as the State fails to investigate human rights violations effectively. Indeed, human rights violations are considered to be

⁵⁴ HRC, ‘Concluding observations on the sixth periodic report of Japan’ (2014) CCPR/C/JPN/CO/6 [14].

⁵⁵ HRC, ‘Concluding observations on the seventh periodic report of Japan’ (2022) CCPR/C/JPN/CO/7 [28].

⁵⁶ Committee against Torture, ‘Concluding observations on the second periodic report of Japan’ (2013) CAT/C/JPN/CO/2 [19]; Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the third periodic report of Japan’ (2023) E/C.12/JPN/CO/3 [26].

⁵⁷ For a codification of these international standards: OHCHR, ‘Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev. 2 (Istanbul Protocol)’ (2022).

⁵⁸ *Juan Humberto Sánchez v Honduras*, IACtHR [186].

⁵⁹ See *Myrna Mack Chang v Guatemala* [2003] IACtHR Series C No. 101; Global Principles on National Security and the Right to Information (Tshwane Principles) (2013), Principle 10(A).

⁶⁰ Tshwane Principles (n 59), Principle 10(A)(3).

ongoing until the victims' right to an effective remedy, which entails the State's duty to investigate, prosecute and punish the perpetrators, as highlighted above, is fully realised.⁶¹ The notion of the continuous nature of a violation is widely employed by human rights bodies to overcome *ratione temporis* limitations to their jurisdiction: as long as a breach of international law persists, it will be possible for these bodies to affirm their jurisdiction over the violations. In 2016, the CEDAW came to this conclusion in regard to Japan's international responsibility for wartime sexual slavery, stating that "the issue of 'comfort women' gives rise to serious violations that have a continuing effect on the rights of victims/survivors of those violations that were perpetrated by the State party's military during the Second World War, given the continued lack of effective remedies for those victims".⁶²

Indeed, Japan's duty to investigate wartime sexual slavery derives directly from its violation of international law occurring at the time when the "comfort system" was in place. Although the Japanese government has repeatedly argued that its conduct was not in breach of any international obligation at the time, this position can be easily disputed.⁶³ In fact, during the first half of the 20th century, Japan was bound by conventional and customary international law that, while not prohibiting sexual slavery as such in a single norm, qualified its conduct as violating international law.⁶⁴ This violation of international law by Japan gave rise to a series of legal consequences, including the obligation to guarantee the victims' right to an effective remedy, which entails investigating human rights violations and prosecuting and punishing the perpetrators. Cessation of any ongoing violation constitutes a duty of the responsible State and simultaneously is "an essential element of the right to an effective remedy".⁶⁵ Thus, for Japan to cease its ongoing violation of international human rights law, it must comply with the obligation of investigating wartime sexual slavery and effectively provide redress to the victims and their families.

⁶¹ UNHRC, 'Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes' (n 43) [83]; see also Rumiko Nishino, Puja Kim, and Akane Onozawa, 'Epilogue: the struggle for justice continues' in Rumiko Nishino, Puja Kim and Akane Onozawa (eds), *Denying the Comfort Women: the Japanese State's assault on historical truth* (Taylor and Francis, 2018) [5].

⁶² CEDAW, 'Concluding observations on the combined seventh and eighth periodic reports of Japan' (2016) CEDAW/C/JPN/CO/7-8 [29].

⁶³ See Gay J McDougall, 'Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the Comfort Women' (2013) 1 *Korean Journal of International and Comparative Law* 137, 139.

⁶⁴ For an in-depth analysis see UNCHR, 'Contemporary forms of slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: An analysis of the legal liability of the Government of Japan for "comfort women stations"' (n 50) [13].

⁶⁵ HRC, 'General Comment No. 31' (n 39) [15].

The “comfort system” came to an end with Japan’s defeat during the Second World War, and the “comfort women” were either killed or abandoned by the soldiers who fled the battlefields.⁶⁶ After WWII, in 1946, criminal proceedings against the leaders of Imperial Japan were initiated before the IMTFE for crimes against peace, war crimes, and crimes against humanity (Tokyo Trial). No reference to the system of sexual slavery appeared during the proceedings or in the final judgement, apart from a brief mention of the fact that, in the Chinese city of Kweilin (current Guilin), the Japanese military “recruited women labour on the pretext of establishing factories” and “forced the women thus recruited into prostitution with the Japanese troops”.⁶⁷ Subsequently, the issue was publicly raised only in the 1990s when the first former “comfort woman” (Kim Hak-soon, a Korean survivor) spoke out against Japan, demanding truth and justice for herself and the other victims. Japan had launched no criminal investigation between the 1940s and the 1990s, nor was there any prosecution of alleged perpetrators or initiatives in support of the victims.

Only in 1993, the Japanese government conducted an internal study, which resulted in a statement where the Chief Cabinet Secretary Yohei Kōno vaguely recognised a degree of involvement from the Imperial Japanese army and extended “sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women”.⁶⁸ It marks the first time Japan’s government publicly admitted to the extent of the “comfort system” and its role in the operation and management of the “comfort stations”. However, the value of this statement and the study behind it has been significantly undervalued by subsequent assertions from public officials and politicians (including heads of government, ministers, and members of the Diet) who either rejected the reliability and legitimacy of the previous position or expressed disparaging and humiliating sentiments regarding “comfort women”.⁶⁹ Furthermore, the fact that Japan still does not recognise its responsibility under international law for sexual slavery, has not established any mechanism for truth-seeking that could satisfy the victims’ requests, actively hinders civil society’s initiatives in

⁶⁶ Christine M Chinkin, ‘Women’s International Tribunal on Japanese Military Sexual Slavery’ (2001) 95 *The American Journal of International Law* 335, 337.

⁶⁷ *Judgment of the International Military Tribunal for the Far East* [1948] International Military Tribunal For The Far East, 1018 <www.loc.gov/item/2021692613/> accessed 24 June 2025.

⁶⁸ Chief Cabinet Secretary Yohei Kōno, ‘Statement on the result of the study on the issue of “comfort women”’ (1993) <https://www.mofa.go.jp/a_o/rp/page25e_000343.html> accessed 24 June 2025.

⁶⁹ For an overview of the many oscillating statements of Japanese government officials in the 1990s and 2000s see Wolfe, (n 5) 266 (table 7.12) and 269 (table 7.13); Tomomi Yamaguchi, ‘Revisionism, Ultrnationalism, Sexism: Relations Between the Far Right and the Establishment Over the “Comfort Women” Issue’ (2018) 21 *Social Science Japan Journal* 219; Tarwara Yoshifumi, ‘Comfort Women, Textbooks, and the Rise of “New Right” Revisionism’ in Nishino, Kim and Onozawa (n 61) 160.

support of the survivors or for commemoration,⁷⁰ and refuses to engage genuinely with the victims, is indicative of the sentiment that still governs the official position of the State on the issue.

The damage caused by Japan's conduct cannot be underestimated. As the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence underlines, "the objective of the investigations should be to achieve recognition of formerly denied facts".⁷¹ By failing to promptly acknowledge and investigate the wartime sexual slavery, Japan has contributed, firstly, to collective amnesia on the facts and, secondly, to the creation of a narrative that, at best, has minimised the events and the harm suffered by the victims, and at worst has outright denied the existence of such a system or the involvement of the Japanese military. It can be argued that this "legacy of silence"⁷² traces its origins back to the Tokyo Trial: these proceedings were the first appropriate forum to raise the issue of wartime sexual slavery and to prosecute its perpetrators; however, no evidence was introduced, nor testimonies were heard, although the Allied Forces were aware to some extent of what had happened.⁷³ This absence contributed to the failure to acknowledge the enslavement of "comfort women" and Japan's responsibility for it. Furthermore, it helped the proliferation of denialist narratives and historical revisionism that powerfully counteracted the claims for justice made by the victims in the subsequent decades. Law was complicit in this silence, as it has the power to enshrine in collective memory the most significant historical events; however, the "comfort women" were excluded from this collective historical recollection. Their experiences, sufferings, and the crimes they endured were relegated to what Nicola Henry describes as an "abyss of silence".⁷⁴

However, a very practical and self-evident issue should not be forgotten or underestimated when it comes to Japan's investigatory and prosecutorial duties regarding the "comfort system". As documentary evidence and testimonies point to 1932 as the date when the first "comfort stations" began operating,⁷⁵ this means that, as of March 2025, nearly ninety years have passed. Out of the 240 victims

⁷⁰ Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, 'A to Z Guide for Just Resolution of the Japanese Military Sexual Slavery Issue' (2020) 148-150.

⁷¹ UNHRC, 'International legal standards underpinning the pillars of transitional justice' (n 12) [27].

⁷² Nicola Henry, 'Silence as Collective Memory: Sexual Violence and the Tokyo Trial' in Yuki Tanaka, Tim McCormack, and Gerry Simpson (eds) *Beyond Victor's Justice?: the Tokyo War Crimes Trial* (Martinus Nijhoff Publishers, 2011) 264.

⁷³ Dolgopol (n 4) 127-154.

⁷⁴ Henry (n 72) 264.

⁷⁵ *The Prosecutors and the Peoples of the Asia-Pacific region v. Hirohito Emperor Showa, Ando Rikichi, Hata Shunroku, Itagaki Seishiro, Kobayashi Seizo, Matsui Iwane, Umezumi Yoshijiro, Terauchi Hisaichi, Tojo Hideki, Yamashita Tomoyuki and the Government of Japan* [2001] Women's International War Crimes Tribunal For the Trial of Japan's Military Sexual Slavery Case No. PT-2000-1-T (Tokyo Women's Tribunal) [143-145, 155].

who have registered with the South Korean government, only seven survivors of wartime sexual slavery are still alive.⁷⁶ All of them are over ninety years old. It is reasonable to assume that most perpetrators have also passed away, especially considering that many victims were extremely young when they were enslaved. At the same time, military commanders who oversaw the “comfort stations” would have had to be older. This raises an uncomfortable but necessary question: how can Japan fulfil its obligations to investigate and prosecute when virtually all the alleged perpetrators are no longer alive? Since the initial reports issued by UN bodies, there has been an underlying sense of urgency in the authors’ words regarding the recommendations aimed at Japan’s government. All reports emphasised that there was no time to waste and that all the measures recommended therein were to be swiftly undertaken.⁷⁷ Those reports date back to the 1990s. Nearly thirty years later, not much has changed, apart from the number of survivors, which has dimmed even more. Therefore, it can be safely concluded that Japan’s conduct amounts to a continuous violation of its international obligations to investigate wartime sexual slavery and ensure accountability for such heinous crimes. This prevents the realisation of victims’ and society’s right to know the truth about the “comfort system”, compounding Japan’s government’s responsibility for human rights violations.

1.4 Japan’s failure to make reparation to victims

Having established that Japan has committed – and continues to do so – violations of international law, the question of reparation emerges as one of the most pressing issues to address. In 1998, McDougall, the Special Rapporteur on Slavery and Slavery-like Practices during Armed Conflict, established that the Japanese government was bound by customary international law to provide reparations to the former “comfort women”.⁷⁸ In particular, she emphasised compensation for individual victims and the prosecution of government and military personnel. Reparation and the right to the truth have a strong, mutually reinforcing link: on the one hand, no measure aimed at repairing the harm inflicted on victims would be effective and accepted if it is not fundamentally based on the disclosure of the facts and recognition of the truth; on the other hand, truth-seeking measures can themselves be considered as reparative measures.⁷⁹ In international human rights law, truth is usually included within

⁷⁶ Chung In-seo, ‘Passing of Gil Won-ok leaves only 7 Korean survivors of Japan’s “comfort women” sexual slavery system’ *Hankyoreh* (2025) <https://english.hani.co.kr/arti/english_edition/e_national/1182886.html> accessed 6 April 2025.

⁷⁷ UNCHR, ‘Contemporary forms of slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: An analysis of the legal liability of the Government of Japan for “comfort women stations”’ (n 50) [37].

⁷⁸ *Ibidem* [31].

⁷⁹ Margaret Urban Walker, ‘Truth Telling as Reparations’ (2010) 41 *Metaphilosophy* 525, 527.

the specific form of reparation that is satisfaction. Indeed, the Basic Principles on the Right to a Remedy list “verification of the facts and full and public disclosure of the truth” as an example of satisfaction, alongside commemorations for the victims and the inclusion of an accurate record of the violations in educational materials at all levels.⁸⁰

Former “comfort women” and victims’ organisations have consistently advocated for a broad and comprehensive reparations programme that extends beyond mere monetary compensation.⁸¹ Within the South Korean context, the most prominent civil society organisation is the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan (hereinafter referred to as the Korean Council). This organisation was founded in 1990,⁸² and since then it has been at the forefront of the redress movement, not only assisting the victims in initiating legal proceedings and lobbying at international fora for more attention but also organising regular visits to survivors’ homes, celebrating holidays and birthdays with them, and supporting the organisation of funerals for deceased victims. The Korean Council, serving as the spokesperson for South Korean survivors and their families, lists their reparation demands to the Japanese government on its website: (i) recognise the Japanese military sexual slavery system as a war crime; (ii) disclose official documents; (iii) deliver an official apology; (iv) pay compensation to the victims; (v) punish the perpetrators; (vi) record the sexual slavery system in history textbooks; (vii) erect a memorial monument and build an official archive.⁸³ Many of these measures are directly or indirectly related to the right to the truth. The necessity to uncover the truth, recognise the full extent and nature of the crimes committed, and ensure that the memory of past events endures into the future are indeed central themes of this thesis.

While compensation has never been taken off the table, over time the redress movement’s focus has increasingly shifted towards other forms of reparation. This shift can be explained by more than one reason: the moment victims most needed financial support was when they returned home after the sexual slavery, as they had to rebuild their lives while coming to terms with the atrocious acts they had endured. As it has been highlighted so far, this has evidently not occurred. However, in the 1990s, when the first former “comfort women” began their public campaign for redress, they still expressed the need to receive official compensation from Japan’s government because, in their eyes, that money would have been the

⁸⁰ Basic Principles on the Right to a Remedy (n 14) [22].

⁸¹ Na Young Lee, ‘Challenging the Global Human Rights Regime: Transnational significance of the “Comfort Women” Redress Movement’ 24 *Journal of Asian American Studies* 417, 422.

⁸² Korean Council’s website <<https://womenandwar.net/definition-eng>> accessed 6 April 2025.

⁸³ Ibidem <<https://womenandwar.net/activity-eng>> accessed 6 April 2025.

physical embodiment of Japan's apologies and acknowledgement of responsibility. As time passed and it became increasingly clear that Japan was unwilling to recognise legal responsibility and thus provide any official compensation, the focus shifted to more symbolic forms of reparation. While it can be argued that compensation possesses a symbolic dimension since "any material transfers become symbolic objects around which wrongs are acknowledged",⁸⁴ the former "comfort women" began to prioritise truth and acknowledgement above all else. Gil Won-ok, one of the most prominent Korean activists and a former "comfort woman" herself, once stated: "I am asking the Japanese government to honestly acknowledge the truth of history and, based on that truth, to make an official apology and provide legal reparation. I am not asking for money".⁸⁵ Another reason for this shift can be traced back to the negative experience many victims, particularly from South Korea, had with the Asian Women's Fund (AWF), a non-profit foundation established by Japan's government in 1995 to distribute "atonement money" raised through private donations.⁸⁶ Many victims viewed it as an attempt to buy their silence, as the Fund did not acknowledge Japan's responsibility for its crimes and was not official State compensation. Victims considered it as blood money and many refused to accept it. One of the survivors stated: "It is more important to get a sincere apology than simply to get a monetary compensation. I am not merchandise that can be traded".⁸⁷

What victims have always strived for is the establishment of the truth, which requires full recognition of the crimes committed against them, the harm they suffered at the hands of the Japanese military, and the pain and distress, both physical and psychological, they had to endure for the rest of their lives. Reparation plays a crucial role in recognising the victims' suffering and the full extent of their human rights violations. Indeed, as Anne Saris and Katherine Lofts argue, "recognition must [...] remain central to any project of reparation, if such a programme is to have any real reparatory or corrective effect".⁸⁸ An unconditional and broad acknowledgement contributes to "overcoming the exclusion victims have suffered"⁸⁹ and is essential in restoring their status and dignity. This also fosters an

⁸⁴ Geneviève Painter, 'Towards Feminist Theoretical Approaches to Reparations' (Conference Paper, 2006) 4 cited in Anne Saris and Katherine Lofts, 'Reparation Programmes: A Gendered Perspective' 87 in Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill Nijhof, 2009).

⁸⁵ Korean Council's Newsletter of February 17, 2025. Gil Won-ok passed away on February 16, 2025.

⁸⁶ 'Digital Museum: the Comfort Women Issue and the Asian Women's Fund' <<https://www.awf.or.jp/e2/foundation.html>> accessed 6 April 2025.

⁸⁷ Min (n 7) 946.

⁸⁸ Saris and Lofts (n 84) 91.

⁸⁹ Lisa Magarrell, 'Reparations in Theory and Practice' (2006) 5 cited in Esther Song, 'Just Reparations for Korean "Comfort Women": A Transitional Justice and International Law Perspective' 20 *Journal of Korean Law* (2021) 373, 386.

understanding and recognition from society, which is instrumental for transmitting the memory of what happened to future generations and helps nurture a culture of respect for women's rights. Reparation in itself requires "acknowledgment of injustice and an affirmation that compensation is owed due to injustice and out of respect".⁹⁰ Margaret Walker argues that truth-telling has a dual role in this regard, as it is both a condition – without establishing the facts, no redress can be effectively provided – and a constituent part of reparation.⁹¹ Indeed, telling the truth about wrongs is one of the constitutive elements of the expressive dimension of reparation, which is substantiated in the recognition of the crime, acceptance of responsibility, and promise of justice.⁹²

Reparation must be proportionate to the gravity of the human rights violations and the harm suffered by the victims.⁹³ Therefore, in designing and implementing reparations programmes, it is essential that "victims and other sectors of civil society [...] play a meaningful role".⁹⁴ Their contribution is irreplaceable for designing an effective range of reparative measures, and this will also help survivors reclaim, at least in part, their agency after enduring many years of silencing and denial. In the South Korean context, any type of reparations programme calls for the active participation not only of survivors but also of the Korean Council, which has accumulated significant experience over the years and established itself as a trusted spokesperson for the victims. The importance of participation by victims and their organisations should be stressed not only at the design and implementation stages, but also at the evaluation and decision-making stages.⁹⁵

Another aspect must be carefully considered and thoughtfully incorporated into the reparations programme as it relates to the broader phenomenon of the "comfort system". This was not simply a sum of individual violations; rather, it represented a systematic and widespread assault on women's rights, fuelled by an intersection of discriminating factors: gender, class and colonial power. Therefore, "the violation of their human rights has to be understood as something more than an act for a defined period of time: it is a violation which continues to affect their lives today".⁹⁶ Over the years, scholars have

⁹⁰ Bernard Boxill (1972, 118-19) cited in Walker (n 79) 529.

⁹¹ Walker (n 79) 527.

⁹² Ibidem 530.

⁹³ UNHRC, 'Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes' (n 43) [47].

⁹⁴ Updated Set of Principles against Impunity (n 14), Principle 32.

⁹⁵ African Commission on Human and People's Rights, 'Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence' (ACHPR/Res.111(XXXXII)07, 2007) 3, Principle B.

⁹⁶ Dolgopol (n 4) 138.

analysed the issue of “comfort women” through a feminist and intersectional lens, advocating for a broader approach.⁹⁷ Pyong Gap Min, in particular, suggests that we should examine the suffering of Korean victims from a dual perspective: on the one hand, the Japanese colonial rule over the Korean peninsula was one of the primary factors in the forced mobilisation of Korean women to “comfort stations” (and their subsequent treatment by Japanese soldiers); on the other hand, “gender hierarchy and patriarchal customs in Korea had greater effects on their suffering after returning home”.⁹⁸ Furthermore, the fact that nearly all victims came from poor backgrounds (their “class-based powerlessness”, as Min describes it) contributed to their victimisation, albeit to a lesser degree, and interacted with colonialism and its effects on the Korean peninsula.⁹⁹ Min argues that the stigma, shame, and social issues faced by Korean survivors upon returning home stemmed from Korean patriarchal ideology and gender oppression as much as from sexual slavery.¹⁰⁰ This is not to imply that the abuses they suffered at the hands of the Japanese military are to any degree diminished by the similarly traumatic experience in their homeland: the former remains the primary cause of the survivors’ suffering, but the latter should not be underestimated in understanding the victims’ experiences. However, none of these factors acted in isolation: the intersection of gender, colonial subjugation, and class enabled the enslavement of these women. This layered dimension needs adequate representation in the reparations programme, as the victims themselves have come to understand it as a crucial aspect of their victimisation.¹⁰¹

Therefore, any future reparations programme necessarily calls for a gendered perspective. In particular, it must move beyond the traditional and mainstream conception of reparation as an individualistic notion, which is ill-fitted for addressing gross and systematic human rights violations. The individualisation of reparation risks minimising the full scope of the crimes committed on such a massive scale and fails to capture the overall picture of a full-fledged system of abuse targeting a specific community of victims. Furthermore, it neglects to consider the underlying inequality and discrimination that pervaded the women’s experiences even before their enslavement and that contributed to their victimisation. Sexual violence “is linked to pervasive underlying structural inequalities that do not end simply because” the conflict ends.¹⁰² Thus, as Saris and Lofts contend, “[i]f reparation is to be gender-

⁹⁷ Lee (n 81) 419; for an intersectional analysis of the Tokyo Trial and the absence of women during the proceedings see Henry (n 72).

⁹⁸ Min (n 7) 953; see also Dolgopol (n 4).

⁹⁹ Min (n 7) 951-952.

¹⁰⁰ *Ibidem* 948.

¹⁰¹ *Ibidem* 950-952.

¹⁰² Saris and Lofts (n 84) 88.

sensitive, it must address these structural inequalities and take into account the particular ways in which women and girls experience harm”.¹⁰³

The Japanese government’s stance on redressing “comfort women” not only constitutes a denial of justice for the survivors and fails to comply with international law obligations, but it also demonstrates a disregard for gender issues, sexual violence, and women’s rights. Mina Watanabe, the director of Tokyo’s Women’s Active Museum on War and Peace (WAM), argues that Japan’s treatment of the “comfort women” still influences the country’s society today, as victims of sexual crimes face numerous challenges in accessing justice, especially when these are committed by armed forces.¹⁰⁴

1.5 What truth for the “comfort women”?

When “comfort women” speak about the truth for wartime sexual slavery, which concept are we referring to? This question is central to the issue, as it lies at the heart of the discussion. Although the right to the truth has a solid basis in international law – as the first section of this chapter demonstrates – it cannot provide a universal, one-size-fits-all definition of its own subject. What truth means, and what its contours are, necessarily remain context-dependent.

For an analysis of the concept of truth, an interdisciplinary evaluation can provide valuable insights and help us move beyond the strict legalistic sphere. Vishakha Wijenayake argues that truth “consists in an empirical process of relating human experiences to an objective reality”.¹⁰⁵ In its more collective dimension, society can create truth by “interfacing facts with collective representations”.¹⁰⁶ According to the correspondence theory in philosophy, facts – the physical plane of reality – exist in themselves, and truth is defined as a relation to such a reality, meaning truth is a relational property that involves a characteristic relationship to some part of reality.¹⁰⁷ In Descartes’ words, “‘truth’, in the strict sense, denotes the conformity of thought with its object”.¹⁰⁸ However, the physical reality is filtered through the sensory experience of the person who perceives it and through their logical cognitive

¹⁰³ Ibidem.

¹⁰⁴ Vivian Morelli, ‘A Plea for Justice for Japan’s So-Called Comfort Women’ *The New York Times* (2025), <<https://www.nytimes.com/2025/03/06/world/asia/women-japan-comfort-women.html?smid=nytcore-ios-share&referringSource=articleShare>> accessed 6 April 2025.

¹⁰⁵ Vishakha Wijenayake, ‘The Plurality of Truth in Post-Conflict Societies and the Right to Truth in International Law’ 26 *Sri Lanka Journal of International Law* 31, 32.

¹⁰⁶ Ibidem.

¹⁰⁷ Ibidem 33; see also David Marian, ‘The Correspondence Theory of Truth’, *The Stanford Encyclopedia of Philosophy* (Summer edn, 2022) <<https://plato.stanford.edu/archives/sum2022/entries/truth-correspondence/>> accessed 6 April 2025.

¹⁰⁸ Descartes, 1639, AT II 597 in Marian (n 107).

processes.¹⁰⁹ Therefore, reality is not interpreted in the same way by everyone, nor can it be, by its nature. Furthermore, this process of correspondence is not only an individual one, where a person assigns a specific meaning, value or judgment to the facts they perceive. It also involves social parameters that intervene in the cognitive thinking process of each individual.¹¹⁰ In this context, Wijenayake links this societal dimension to Durkheim’s notion of “concepts”, referring to collective representations produced by the interaction between physical reality and society, through which meanings and values are ascribed to those facts, and characterised by relative stability and impersonality.¹¹¹ International law, at times, formalises these collective representations and, at other times, creates them.¹¹² In Wijenayake’s view, collective representations can impose a collective truth on society, which may take priority over individual experiences.¹¹³

In times of peace, a society is able to attribute a common meaning to physical realities in a cohesive way, which presumes a shared understanding. However, when society experiences times of conflict that ruptures the social fabric, collective thinking also ruptures: this “gives rise to multiple discourses, where different collections or groups of persons interpret the external facts using fundamentally different tools, and thereby creating a society with different narratives of and a plurality [of] ‘truth’”.¹¹⁴ Wijenayake makes another interesting point: she notes that “those in power may manipulate the sharing of experiences and the construction of concepts” by limiting the information the population has access to, in order to deny the existence of certain facts (such as crimes) or minimise their scope.¹¹⁵ Therefore, the right to the truth under international law can be seen as a means to address this disrupted notion of truth by enabling not only victims but the entire society to get access to those facts that were previously concealed and by challenging how the former regime justified and represented those events that instead were already out in the open.¹¹⁶

Overall, truth cannot be said to be objective or monolithic,¹¹⁷ and this understanding serves as a premise for any truth-seeking and truth-telling mechanism. The experience of one of the most notable

¹⁰⁹ Wijenayake (n 105) 33.

¹¹⁰ *Ibidem* 34.

¹¹¹ *Ibidem*.

¹¹² *Ibidem* 35

¹¹³ *Ibidem*.

¹¹⁴ *Ibidem* 38.

¹¹⁵ *Ibidem* 37.

¹¹⁶ *Ibidem* 44, 50.

¹¹⁷ Erin Daly, ‘Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition’ 2 *The International Journal of Transitional Justice* (2008) 23.

and well-known mechanisms of TJ, the South African Truth and Reconciliation Commission, provides a valuable point of reference in this regard, as it acknowledged a multiplicity of truth types in its report (narrative, forensic, historical, social).¹¹⁸ The coexistence of multiple truths leads to several issues. For instance, while recognising the role of TCs as truth-tellers, they are not neutral actors in the process.¹¹⁹ Furthermore, even the most truthful account will lose something in the translation from the victims' experience to the words, as nothing can accurately capture their knowledge and experiences, which relates back to the aforementioned theory of correspondence of truth. Lastly, victims will usually seek a psychological truth more than anything else, meaning they want answers to the “why”, which might be impossible to achieve or unsatisfactory even when accomplished.¹²⁰

Erin Daly presents a compelling argument for truth-seeking initiatives in that, while it is unlikely any such mechanism could ever reproduce *the* truth, these tools can at least “limit the contested ground of debate or reduce deniability so that dialogue can occur on the basis of a greater shared understanding of the past”.¹²¹ However, truth alone cannot change the world, or a single society, no matter how powerful it may be: it must be complemented and reinforced by other mechanisms to fill the gaps of what truth-seeking initiatives can realistically achieve. These complementary measures range from public education and memorialisation to the construction and preservation of archives, as well as promoting accountability. This need for a multifaceted approach is also reflected in the demands made by Korean “comfort women”, which encompass not only full disclosure of the truth but also accountability, memory-building and educational initiatives.

1.6 Truth-seeking mechanisms: different approaches to seeking the truth about the past

Truth-seeking mechanisms can take various forms, among which TCs or other commissions of inquiry are the most prominent extra-judicial mechanisms, although truth can also be sought through judicial means, such as criminal prosecution. Additionally, national human rights institutions (or other administrative bodies), the disclosure of official documents, and proper management of State archives can play an essential role in uncovering the truth about past events. TCs are described as “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or

¹¹⁸ ‘Truth and Reconciliation Commission of South Africa Report’ (Juta and Company Ltd., 1998) vol 1 ch 5 cited in *ibidem* 25.

¹¹⁹ *Ibidem* 26.

¹²⁰ *Ibidem* 26-27.

¹²¹ *Ibidem* 28.

humanitarian law”.¹²² Although there is no universal definition of TCs, and their mandates vary depending on the context in which they operate, it can be said that these mechanisms aim to “elucidate the nature, causes and extent of human rights violations, as well as the underlying factors, antecedents and the context that led to such violations, together with identifying those responsible”.¹²³ The Updated Set of Principles against Impunity recognises that TCs are among the guarantees that give effect to the right to know the truth about serious violations of human rights and that they can be particularly beneficial for societies that have experienced crimes on a systematic or massive scale, as they help establish the truth of those events.¹²⁴ It also emphasises that any investigation undertaken by TCs “should be conducted with the object in particular of securing recognition of such parts of the truth as were formerly denied”.¹²⁵

In designing a comprehensive response to serious human rights violations, criminal prosecution is often regarded as the primary tool for achieving justice and finding the truth. The previous paragraphs have already established that States have specific obligations under international law to investigate these crimes and to prosecute and punish the perpetrators. However, criminal prosecution alone can appear inadequate for providing effective redress to a large number of victims, especially when reparation requires more wide-ranging remedies and institutional reforms. These challenges intensify when considering crimes committed in the distant past, where legal barriers such as statutes of limitations come into play. Civil proceedings can also be initiated for compensation claims as an alternative to overcome some of the challenges of the criminal justice system. Indeed, lawsuits filed against States for historical injustices are not uncommon, although they bring their own difficulties related to the standing of the plaintiffs, jurisdictional immunities or other procedural and substantive obstacles to litigation. Therefore, while the prosecution and punishment of perpetrators are undoubtedly mandated by international law, they can also present several counterindications.

Regarding Japan’s wartime sexual slavery, survivors and the organisations supporting them have predominantly pursued judicial pathways for redress. The first lawsuit was filed by a group of South Korean victims in the Tokyo District Court on December 6, 1991.¹²⁶ This lawsuit shows how, from the

¹²² Updated Set of Principles against Impunity (n 14) 6.

¹²³ Sweeney (n 10) 262.

¹²⁴ Updated Set of Principles against Impunity (n 14), Principle 5.

¹²⁵ *Ibidem*, Principle 6.

¹²⁶ Kiki A Japutra, ‘The Interest of States in Accountability for Sexual Violence in Armed Conflicts: A Case Study of Comfort Women of the Second World War’ in Morten Bergsmo and Song Tianying (eds), *Military Self-Interest in Accountability for Core International Crimes* (Torkel Opsahl Academic EPublisher, 2015) 189.

beginning, the demands put forth by the victims and their supporters have been clear: they requested that the Japanese government provide an official apology, pay compensation to the survivors, conduct thorough investigations into their cases, include wartime sexual slavery in Japanese history schoolbooks, and build a memorial museum.¹²⁷ The lawsuit was dismissed on March 26, 2001, for several reasons that did not fully address the merits of the case. Instead, the dismissal hinged upon the lack of standing of the victims in requesting compensation.¹²⁸ Other legal actions followed, not only in Japanese courts but also in judicial fora in South Korea and the US, with plaintiffs including Dutch, Taiwanese, and Chinese citizens. Most of these cases were dismissed, with a few exceptions.¹²⁹ Notably, a lawsuit filed on December 25, 1992, by a group of South Korean survivors with a Japanese court resulted, for the first time, in the recognition of Japan's responsibility for war crimes and its duty to provide reparations to the victims. The court also acknowledged that the "comfort women" case was an example of discrimination based on sexual and ethnic grounds, ordering the government to compensate the plaintiffs.¹³⁰ However, the Supreme Court later nullified the decision on March 25, 2003. A recent decision in favour of "comfort women" was issued on January 8, 2021, by the Seoul Central District Court, which ordered Japan to pay compensation to a group of twelve survivors.¹³¹ This judgment was particularly significant because it reached the conclusion that Japan was not entitled to State jurisdictional immunities due to the nature of the crimes committed against the plaintiffs based on an emerging humanitarian exception to the rule of State immunity.¹³² The Court held that the acts were "crimes against humanity committed systematically and extensively by Imperial Japan in violation of international *jus cogens*".¹³³ The Japanese government refused to comply with the judgment.

In addition to judicial proceedings, both international and national advocacy have served as significant means of pressuring Japan's government to comply with its obligations. Since the 1990s, activists from the Korean Council have sought greater attention on the issue of "comfort women" at

¹²⁷ Ibidem.

¹²⁸ Ibidem 190.

¹²⁹ For an overview of the lawsuits filed by former "comfort women" against Japan see Wolfe (n 5) 254-255 (table 7.9).

¹³⁰ Japutra (n 126) 190-191.

¹³¹ *Compensation for Damage (Others)* [2021] Seoul Central District Court, 34th Civil Chamber Case no. 2016 Ga-Hap 505092 translated by Woohee Kim, The Korean Council, Editorial supervision by MINBYUN – Lawyers for a Democratic Society International Solidarity Committee.

¹³² For a closer examination of the issue, see Alessandro Bufalini, 'State immunity from jurisdiction and inter-State negotiations: the Korean "comfort women" case' (2021) 15 *Diritti umani e Diritto Internazionale* 699; Mario Gervasi, 'Immunità giurisdizionale degli Stati ed eccezione umanitaria: in margine alla recente giurisprudenza sudcoreana sul sistema delle "donne di conforto"' (2022) 1 *Rivista di Diritto Internazionale* 167.

¹³³ *Compensation for Damage (Others)* [2021] Seoul Central District Court, Section 3.C(3).

international fora. They were among the women's rights groups that advocated for the inclusion of the matter of women and armed conflict on the international agenda, which led to the recognition of sexual slavery as a violation of women's human rights in the Beijing Declaration and Platform for Action.¹³⁴ Shortly thereafter, UN Special Rapporteurs proved receptive to the issue of "comfort women". As previously indicated, in 1996, Special Rapporteur Coomaraswamy submitted her report on the mission to the Democratic People's Republic of Korea, the Republic of Korea, and Japan on the issue of military sexual slavery in wartime, while Special Rapporteur McDougall published her report on the same topic in 1998.

Lastly, as part of the pursuit of truth and justice, the redress movement has also explored another non-judicial path. In 2000, the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery (hereinafter Tokyo Women's Tribunal) was established as a result of the efforts of the Violence Against Women in War Network, Japan (VAWW-NET, Japan).¹³⁵ The Tokyo Women's Tribunal was an international people's tribunal and is regarded as the most well-known example of this type of body in Asia. People's tribunals are informal mechanisms established outside State structures and aimed at holding perpetrators, whether State or non-State actors, accountable for human rights violations or addressing claims of justice that States have failed to realise.¹³⁶ They are based on the idea that law is not a monopoly of the State and, thus, when State powers fail to ensure justice, it falls to civil society to step in.¹³⁷ People's tribunals are not courts, therefore, they cannot issue binding decisions. However, "[w]here previously there was only silence and evasion, such a forum constitutes a form of public acknowledgement to the survivors that serious crimes were committed against them".¹³⁸ This aspect explains why such a mechanism would particularly appeal to the "comfort women". People's tribunals are typically part of a broader social movement and serve various functions, including drawing attention to matters that are underrepresented on the international or national stages, preserving memories and documents, and pressuring official institutions to act.¹³⁹ Typically, these bodies engage with legal principles and legal reasoning, thereby mimicking traditional legal proceedings. The Tokyo Women's Tribunal is one example of a people's tribunal that applies existing rules of international law and respects

¹³⁴ United Nations Specialised Conferences, 'Beijing Declaration and Platform of Action', adopted at the Fourth World Conference on Women (1995) [114].

¹³⁵ Chinkin (n 66) 336.

¹³⁶ Gabrielle Simm and Andrew Byrnes, 'International Peoples' Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Intervention?' (2014) 4 Asian Journal of International Law 103, 104.

¹³⁷ Chinkin (n 66) 339.

¹³⁸ *Ibidem*.

¹³⁹ Simm and Byrnes (n 136) 124.

international standards of procedure to the greatest extent possible. For instance, the Japanese government was notified of the proceedings and invited to participate, but no response was received. For reasons of fairness, the Tribunal appointed a team of lawyers to represent the State of Japan *in absentia*.¹⁴⁰

The Tokyo Women's Tribunal held proceedings from December 8 to 12, 2000, addressing charges of crimes that had not been considered at the IMTFE (notably, sexual slavery).¹⁴¹ The judgment reads that the Tribunal's authority derives from "the peoples of the Asia-Pacific region, and indeed, the peoples of the world to whom Japan owes a duty under international law to render account" and that its role is to step "into the lacuna left by [S]tates".¹⁴² The Tribunal found a number of Japanese military commanders, Emperor Hirohito and the State of Japan responsible for the crimes perpetrated in connection with the "comfort system". The judgment is not only a significant legal analysis of responsibility under international law, encompassing both individual criminal and State responsibility for wartime sexual slavery, but it also serves as a valuable collection of testimonies from survivors and interviews with legal and historical experts. The Tokyo Women's Tribunal's goal was to promote accountability for the crimes committed against the "comfort women" and establish the truth about the sexual enslavement. It provided a means to acknowledge the suffering of the victims and Japan's responsibility, while also presenting the facts to society at large. Indeed, the underlying motivation was to redress "the historic tendency to trivialize, excuse, marginalize and obfuscate crimes against women, particularly sexual crimes, and even more so when they are committed against non-white women".¹⁴³ Furthermore, by allowing some of the documents used as evidence to be transferred to the collection of the WAM in Tokyo, it contributed to the memorialisation of this issue. Despite facing criticism for not respecting certain legal standards and for lacking legal authority, the Tribunal was born out of the efforts of civil society groups and survivors advocating for justice for one of the most severe violations of women's rights and, in its own way, it furthered the goals of truth, justice and memory.

It can be concluded that various forms of truth-seeking exist and can be utilised to realise the right to the truth for victims of human rights violations. These mechanisms are also not mutually exclusive, as they complement each other in their approach to achieving the same goal, namely, establishing the truth

¹⁴⁰ Chinkin (n 66) 337.

¹⁴¹ Article 2, 'Charter of the Tokyo's Women's Tribunal: Annex 2' (2009) *Droit et cultures* 58 <<https://journals.openedition.org/droitcultures/2189>> accessed 1 July 2025.

¹⁴² Judgment of the Tokyo's Women's Tribunal (n 75) [8].

¹⁴³ *Prosecutors and Peoples of Asia Pacific Region v. Hirohito; Prosecutors and Peoples of Asia Pacific Region v. Japan, Summary of Findings and Preliminary Judgment* [5] cited in Chinkin (n 66) 336.

about past abuses and thereby redressing the victims. Furthermore, they demonstrate that truth-seeking is not a monopoly of the State and can be sought through informal and grassroots initiatives. The “comfort women” redress movement has demonstrated its flexibility and resourcefulness in pursuing different paths for truth-seeking, ranging from judicial litigation to a people’s tribunal. However, there is an option yet to be explored, which is establishing a TC on Japanese wartime sexual slavery. As TCs are among the most important tools for uncovering the truth about large-scale human rights violations, this path could prove valuable for the “comfort women” and will be addressed in the third chapter of this thesis.

1.7 Conclusions

The present chapter examines the right to the truth in relation to the case of South Korean “comfort women”, aiming to understand its significance in this context and whether it can provide a comprehensive legal basis to survivors’ claims against Japan’s government. Although the right to the truth still faces some doubts and contestations, it now holds a firm position in discussions about justice for serious human rights violations. Recognising the victims’ and society’s right to the truth following large-scale abuses entails for the State an obligation to investigate the crimes, prosecute the perpetrators, provide reparation to the victims, and ensure that similar events will not occur again, as “comfort women” have demanded from Japan’s government to no avail. In fact, the Japanese government has consistently avoided acknowledging its responsibility under international law and, thus, continues to breach its international obligations by failing to redress the victims. The most serious shortcomings of Japan’s government are its failure to adequately investigate the “comfort system”, prosecute the perpetrators, and make full reparation to the victims. These omissions have significantly contributed to silencing the survivors’ voices, fuelling denialist and revisionist narratives, with the effects of re-traumatising victims and hindering society’s full understanding of the abuses inflicted on “comfort women”.

Truth can be pursued through various methods, either via more formal routes, such as the criminal justice system, or through more creative and flexible mechanisms, like people’s tribunals. The redress movement for “comfort women” has explored both options and demonstrated a strong commitment to the cause, with its successes and setbacks. However, it has not achieved many of its goals due to strong opposition from Japan’s government. There is every reason to believe that the way forward will similarly face difficulties and the bitter reality that more survivors will pass away. This emphasises the pressing need to find a solution and encourages exploring alternative truth-seeking pathways, such as a TC. Although no truth-seeking mechanism can achieve an objective and complete truth, should such a

concept even be possible, they can minimise the grounds for debate and build a shared understanding of the past within society.

Therefore, it can be concluded that the right to the truth can be invoked by survivors of Japanese wartime sexual slavery and underpins a legitimate claim for justice. As McDougall, UN Special Rapporteur on Slavery and Slavery-like Practices during Armed Conflict, eloquently stated in her 1998 report, “the failure to settle these claims more than half a century after the cessation of hostilities is a testament to the degree to which the lives of women continue to be undervalued”.¹⁴⁴ This statement remains accurate, with the only difference that, by now, another 25 years have passed, making the situation even more dire and urgent than before.

¹⁴⁴ UNCHR, ‘Contemporary forms of slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: An analysis of the legal liability of the Government of Japan for “comfort women stations”’ (n 50) [69].

Chapter 2: Memorialisation in the Case of South Korean “Comfort Women”

2.1 Introduction

This chapter addresses the second aspect of the thesis’s research question, which is memorialisation in the aftermath of large-scale human rights violations. Since the aim is to explore how truth-seeking and memorialisation interact and reinforce each other in pursuing justice for “comfort women”, it is essential to understand the international standards on memorialisation and the framework they provide for contextualising the issue of Japanese wartime sexual slavery. By applying these standards to the “comfort women” case, the chapter examines the various memorialisation projects that survivors and NGOs working alongside them have established over time, both in South Korea and Japan, highlighting the importance of this theme to their struggle for justice. This overview underscores the close relationship between memory and justice in addressing historical injustices.

Subsequently, the chapter explores whether, under international law, a duty to remember is incumbent upon States following gross human rights violations and how this relates to the right to the truth. It examines the obligation to disclose human rights-related information and to ensure the right of access to such evidence for victims and society, both in theory and in the context of Japan’s responsibility towards the former “comfort women”. This section highlights additional obligations that Japan’s government must fulfil, building on the previous chapter’s discussion of the right to the truth in its dual dimensions, individual and collective. Consequently, the chapter considers the issue of historical denialism regarding Japanese wartime sexual slavery and the controversy over the inclusion of “comfort women” in history textbooks to analyse the State’s duty to prevent and combat historical manipulation.

Although the two are not often correlated, law and memory are not entirely independent of each other. Law has the power “to pronounce authoritatively on how history shall be remembered” by promoting accountability for certain crimes and choosing silence for others, thereby selecting which official narratives to transmit to the future.¹⁴⁵ For instance, as Mark Osiel argues, a war crimes trial “indelibly influence[s] collective memory of the events it judges”.¹⁴⁶ Conversely, the absence of prosecution and accountability for certain crimes may condemn them to oblivion. The “comfort women”

¹⁴⁵ Nicola Henry, ‘Silence as Collective Memory: Sexual Violence and the Tokyo Trial’ in Yuki Tanaka, Tim McCormack, and Gerry Simpson (eds), *Beyond Victor’s Justice?: the Tokyo War Crimes Trial* (Martinus Nijhoff Publishers, 2011) 281.

¹⁴⁶ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (Routledge, 2000) 2 cited in *ibidem* 279.

issue perfectly exemplifies the consequences of such circumstances, as the lack of prosecution for sexual slavery at the Tokyo Trial greatly contributed to the legacy of silence on the matter.

2.2 International standards on memorialisation of gross human rights violations

When discussing a response to serious human rights violations, a necessary starting point is acknowledging that “without the memory of the past, there can be no right to truth, justice, reparation, or guarantees of non-recurrence”.¹⁴⁷ Therefore, a central issue becomes how to build, preserve and transmit the memory of past events in a manner that complies with human rights and is not harmful to victims. Failing to do so not only risks re-traumatising survivors but also risks fostering denialist narratives of the past, which in turn can deepen divisions within the social fabric. This section examines how international human rights bodies interpret memorialisation following human rights violations, thereby providing a valuable framework for analysing the issue of memory in connection with Japanese wartime sexual slavery.

Memorialisation does not concern itself only with the past; rather, the present and the future are two essential dimensions of every memory project. Memorialisation processes aim to establish the facts of past human rights violations, address contemporary issues in society’s present (recognising and commemorating the victims, providing reparation, and fighting manipulation of historical facts), and ensure that similar violations will not be repeated in the future (through educational measures and the transmission of memory to new generations).¹⁴⁸ The purpose of memorialisation is to create a dialogic truth, meaning to “create the conditions for a debate within society on the causes and consequences of past crimes and violence and on the attribution of direct and indirect responsibility”.¹⁴⁹ This presupposes the ability to reach a collective and public understanding of the underlying causes that led to human rights violations and the context in which such events occurred. Acknowledging the mechanisms of oppression at the basis of mass violence is a fundamental condition for any such process and should encourage the development of critical thinking about a nation’s history.

¹⁴⁷ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’ (2020) A/HRC/45/45 [21].

¹⁴⁸ Ibidem [22]; see also UNHRC, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes’ (2014) A/HRC/25/49 [13].

¹⁴⁹ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law’ (n 147) [36].

It is interesting to note that when researching memorialisation, one usually encounters discussions about what some authors describe as the “tyranny of memory” or “too much memory”.¹⁵⁰ The idea is that memory can become an unhealthy obsession that confines people to their status as victims, generates irreconcilable versions of the past, and fuels narratives of self-victimisation and revenge. The underlying dilemma is how to strike a balance between remembering and forgetting, between memory and oblivion.¹⁵¹ If the equilibrium tips too far in favour of the first element, the danger lies in being stuck in the past and the victimisation narrative; if it is excessively tipped in favour of the second element, justice can hardly be realised. There is no fixed general answer to such a dilemma: it all depends on the specific context, and even within the same context, the response may vary depending on the viewpoints and sensitivities of the different people (or communities) involved. Gabriele Della Morte argues that the “dialectic tension between memory and oblivion defines the essence of the law itself”, which is not static but at the same time needs to retain some stability.¹⁵²

In his Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations, former UN Special Rapporteur Louis Joinet comes to the conclusion that the right to the truth is also a collective right, which “draw[s] upon history to prevent violations from recurring in the future”, and has in the duty to remember its corollary, thereby highlighting a connection with memorialisation.¹⁵³ He adds that “the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved”.¹⁵⁴ This statement is reflected in the Updated Set of Principles against Impunity at Principle 3, which addresses the States’ duty to remember and asserts that collective memory must be preserved from extinction. The commitment to do all the above guards “against the development of revisionist and negationist arguments”.¹⁵⁵

Memorialisation processes are emancipatory when their ownership can be claimed by both victims and society, serving as recipients as well as active agents in their creation and execution. Farida Shaheed, former UN Special Rapporteur in the field of Cultural Rights, argues that the most beneficial

¹⁵⁰ UNHRC, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes’ (n 148) [16-17]; *Ibidem* [41].

¹⁵¹ See Gabriele Della Morte, ‘International Law between the Duty of Memory and the Right to Oblivion’ (2014) 14 *International Criminal Law Review* 427.

¹⁵² *Ibidem* 437.

¹⁵³ UNCHR, ‘Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)’ (1997) E/CN.4/Sub.2/1997/20/Rev.1 [17]; see Section 2.4 for an analysis of the duty to remember.

¹⁵⁴ *Ibidem*.

¹⁵⁵ Updated Set of Principles against Impunity (n 14), Principle 3.

aspect of memorialisation is the *process* itself, the conversation surrounding past events, rather than the actual outcome, substantiated by a physical memorial.¹⁵⁶ Victims and civil society are key stakeholders in memory projects, and their voices, experiences, and insights must be incorporated into the design of memorialisation processes aimed at addressing gross human rights violations. The government plays a similarly fundamental role, as the State bears the primary responsibility for delivering justice to victims of human rights violations and ensuring their fundamental rights are fulfilled. However, top-down initiatives often fail to meet the victims' needs, and States are frequently unwilling or unable to dedicate resources to memory projects. Even when governments implement memorialisation initiatives, they are likely to be more interested “in neutralizing disagreements about the past than they are committed to challenging conventional wisdoms”.¹⁵⁷ This failure creates a gap that can be filled by civil society, which supports survivors and their families in their efforts to remember the crimes and seek official recognition.

In the 2001 Durban Declaration and Plan of Action Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence, “remembering the crimes and wrongs of the past” and “telling the truth about history” are unequivocally recognised as two essential conditions for creating an international order and domestic societies founded on justice, equality and solidarity.¹⁵⁸ The Durban Declaration also calls upon States to honour the memory of all the victims of slavery, slave trade, apartheid, colonialism, and genocide, by underscoring that these events must be firmly condemned and remembered in order to prevent their recurrence.¹⁵⁹

2.3 Memorialisation projects for “comfort women” in South Korea and Japan

Based on the theoretical formulation proposed by Alexandra Byrne et al., memorialisation projects can vary greatly, primarily depending on their intent, which can be to remove already existing monuments, reclaim spaces, or construct new memory sites.¹⁶⁰ The project's subject (specific incidents or general patterns), location (at sites of atrocities, public spaces, or intangible spaces), and medium (monuments, museums, events, and so on) can also differ considerably.¹⁶¹ Each of these aspects entails

¹⁵⁶ UNHRC, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes’ (n 148) [54].

¹⁵⁷ Alexandra Byrne, Bilen Zerie, and Kelebogile Zvobgo, ‘Producing Truth: Public Memory Projects in Post-Violence Societies’ (2024) 46 Human Rights Quarterly 207, 214.

¹⁵⁸ United Nations Specialised Conferences, ‘Durban Declaration and Plan of Action, Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence’ (2001) [106].

¹⁵⁹ Ibidem [99].

¹⁶⁰ Byrne, Zerie and Zvobgo (n 157) 210.

¹⁶¹ Ibidem 211.

a decision, which by itself carries a specific meaning and therefore warrants careful discussion and interpretation by relevant stakeholders.¹⁶² There is debate about which type of measure is most effective, or at least is more likely to be implemented by governments. Regardless, the desires and needs of victims should always be prioritised when designing a memory-related project. Applying these parameters to analyse memory measures adopted in relation to the “comfort women” issue contributes to improving our understanding of the wider context in which survivors’ claims for justice are located.

Indeed, many memorialisation processes have been carried out in the South Korean context, showcasing a wide range of avenues for memory-building. Most of these stem from the initiative of the Korean Council, which demonstrates its centrality in the landscape of the Korean redress movement. One of the most well-known memory projects implemented by the Korean Council, and subsequently replicated by other NGOs worldwide, is the Statue of Peace (in Korean, *Pyeonghwaui sonyeosang*, often referred to simply as *Sonyeosang*). The first iteration of the Statue of Peace was erected in December 2011 in front of the former Japanese embassy in Seoul. This monument depicts a young woman sitting on a chair facing the embassy. The statue’s physical appearance is carefully crafted to convey a specific message of suffering, courage, and remembrance.¹⁶³ Next to the chair occupied by the girl, another one sits, empty. This is an open invitation for any visitor to figuratively take the space, sitting along the statue, allowing themselves to feel the lives of the “comfort women” and be in their shoes, almost literally. The statue not only represents a condemnation of Japan’s government but also expresses the hope for a sincere apology from it. Over the years, various versions of the Statue of Peace have been erected, both in South Korea and abroad. These statues can now be found, among others, in the US, Germany, Australia, Italy, and China.¹⁶⁴ They do not all replicate the exact same structure of the original monument. Still, the core message remains unchanged: to commemorate the victims, remember the crimes and advocate for justice.

Other initiatives centre around the Statues of Peace. For instance, the original monument was installed on the occasion of the 1000th Wednesday Demonstration: the Wednesday Demonstrations are weekly gatherings held in front of the former Japanese embassy in Seoul to commemorate the victims and request a fair resolution of the “comfort women” issue. They have been organised since January 1992 and represent a “platform for remembrance, solidarity, and education”,¹⁶⁵ attended by survivors, activists,

¹⁶² UNHRC, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes’ (n 148) [63].

¹⁶³ Korean Council’s website <<https://womenandwar.net/activity-eng>> accessed 5 May 2025.

¹⁶⁴ ‘Project Sonyeo’ <<https://www.projectsonyeo.com/statueofpeace>> accessed 5 May 2025.

¹⁶⁵ Korean Council’s website <<https://womenandwar.net/activity-eng>> accessed 5 May 2025.

civil society groups, politicians, and general supporters. Furthermore, in 2012, the Korean Council opened the War and Women’s Human Rights Museum in Seoul as a space for remembrance and education about “comfort women”, with the goal of advocating for a just settlement of the matter. It also addresses broader issues related to sexual violence in armed conflict, women’s rights and peace. Its mission statement describes the museum as an “international platform for transnational citizens’ solidarity, education of future generations, memory and archiving”.¹⁶⁶ Of particular importance are the museum’s archives, which produce, collect and preserve historical records about the “comfort system”. These records include documents, photographs, drawings, publications, audio-video resources, and artefacts. According to the museum’s website, as of the first half of 2024, there are approximately 19,100 records in the archives, and some of them are also available online.¹⁶⁷ Moreover, in December 2012, the 11th Asian Solidarity Conference on resolving Japanese military sexual slavery declared August 14 as the International Memorial Day for Japanese Military “Comfort Women”. The South Korean government officially declared it a national day of remembrance in 2017, and has been observed annually since then.¹⁶⁸

Contrary to the South Korean context, there is no equivalent number or range of memorialisation processes in Japan, which should not come as a surprise, given the adversarial position embraced by the government and part of the public opinion in this regard. Nonetheless, a significant project of memorialisation of the “comfort women” issue is represented by the Women’s Active Museum on War and Peace (WAM). The museum opened in 2005 thanks to the efforts of Yayori Matsui, the then chairperson of VAWW-NET Japan, the organisation that planned the Tokyo Women’s Tribunal. Its mission resembles that of the Seoul-based War and Women’s Human Rights Museum in that it serves as a space for remembering the victims of Japan’s military sexual slavery, preserving historical records with a view to educating present society and future generations, and contrasting historical revisionism. The museum was specifically conceived to preserve and make available to the public all the documents and materials produced by the Tokyo Women’s Tribunal. Indeed, the museum’s mission statement asserts that “in order to overcome the past we need to keep the memory of past aggression alive, and pass it on to future generations”.¹⁶⁹ Similarly to the War and Women’s Human Rights Museum, WAM also

¹⁶⁶ War and Women’s Human Rights Museum’s Website <<https://womenandwarmuseum.net/233>> accessed 5 May 2025.

¹⁶⁷ Ibidem.

¹⁶⁸ Joyce Lee and Yimou Lee, ‘South Korea commemorates women forced into Japanese wartime brothels’ *Reuters* (2018) <<https://www.reuters.com/article/us-asia-comfortwomen/south-korea-marks-first-comfort-women-day-seen-drawing-japan-protest-idUSKBN1KZ07O/>> accessed 5 May 2025.

¹⁶⁹ WAM’s Website <<https://wam-peace.org/en/about>> accessed 5 May 2025.

possesses a broader vision exemplified in a series of objectives listed on its website, which include focusing on wartime violence with the goal of upholding universal justice free from gender bias, creating transnational networks of solidarity and consolidating these connections free from interference by State power.¹⁷⁰ Furthermore, WAM offers access to its archives, which contain not only documentary evidence collected during the Tribunal’s trial but also videos from the proceedings and the judgment.¹⁷¹

One of the few initiatives sponsored by Japan to settle the “comfort women” issue was the Asian Women’s Fund (AWF), a non-profit foundation established in 1995 by the government, led by the then-Prime Minister Tomiichi Murayama, with the intent to “acknowledge moral responsibility for the comfort women issue”.¹⁷² The fund’s primary task was to distribute “atonement money” to the survivors, which came from private donations by Japanese citizens, while the government allocated its public budget solely to cover the fund’s administrative expenses and to implement some welfare projects.¹⁷³ The fund was not a State reparation programme, and the government was careful to emphasise that it fulfilled only Japan’s moral responsibility, avoiding engagement with any question of legal liability.¹⁷⁴ South Korean survivors, in particular, were critical of the AWF, viewing it as an attempt to buy their silence through money coming from a private organisation and without the government acknowledging legal responsibility.¹⁷⁵ A Dutch survivor, Jan Ruff O’Herne, declared that the fund was “an insult to the ‘comfort women’”.¹⁷⁶ UN Special Rapporteurs Coomaraswamy and McDougall, in their reports on Japanese military sexual slavery, were also critical of the AWF, clearly stating that the fund did not satisfy Japan’s duties under international law vis-à-vis the victims since it did not acknowledge the government’s responsibility for the crimes committed or provide legal reparation.¹⁷⁷

When the Fund ceased its activities in March 2007, a decision was made to establish a digital museum. This museum (available in Japanese, Korean and English) opens with a message from the

¹⁷⁰ Ibidem.

¹⁷¹ WAM’s Website <<https://archives.wam-peace.org/wt/en/intro>> accessed 5 May 2025.

¹⁷² ‘Digital Museum: the Comfort Women Issue and the Asian Women’s Fund’ <<https://www.awf.or.jp/e2/foundation.html>> accessed 6 May 2025.

¹⁷³ Ibidem; see also Stephanie Wolfe, *The Politics of Reparations and Apologies* (Springer, 2014) 263.

¹⁷⁴ ‘Digital Museum: the Comfort Women Issue and the Asian Women’s Fund’ (n 172).

¹⁷⁵ Ibidem; see also Wolfe (n 173) 264.

¹⁷⁶ U.S. House Committee on Foreign Affairs (2007) cited in Wolfe (n 173) 264.

¹⁷⁷ UNCHR, ‘Report on the mission to the Democratic People’s Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy’ (1996) E/CN.4/1996/53/Add.1 [134]; UNCHR (Sub-Commission), ‘Contemporary forms of slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: An analysis of the legal liability of the Government of Japan for “comfort women stations” established during the Second World War: Report submitted by Ms. Gay J. McDougall, Special Rapporteur’ (1998) E/CN.4/Sub.2/1998/13 [64].

Fund's Director, who describes the museum's goals: to keep "a record of our awareness of the comfort women issue and of our atonement project so that people can learn a lesson from history", enabling people to remember the past and work toward international reconciliation and cooperation.¹⁷⁸ The digital museum has its own archives, which contain the findings from the research study conducted by the government on "comfort women" in December 1991, as well as documents related to the Fund. This project purports to achieve similar goals to the previous memory-related measures and serves as a (digital) public forum accessible to everyone. Nonetheless, it also stands as perpetual evidence of Japan's failure to adequately address the victims' demands and comply with its human rights obligations. Furthermore, no connection with Japan's government can be traced: the digital museum warns its visitors that the views expressed in the digital exhibitions are formulated solely under the responsibility of the AWF.

If we apply the framework of analysis provided by Byrne et al., the subject of the memorialisation measures discussed above is, of course, the Japanese military sexual slavery and its victims, therefore making it a collective subject of work, centred on a pattern of crimes. Their intent primarily aims at creating new memory sites rather than removing monuments or reclaiming spaces. Locations of physical memorial projects tend to be in easily accessible areas, such as museums, or in public spaces where ordinary citizens can engage with them in daily life (for instance, the Statues of Peace are usually positioned on the streets or in parks). Especially for the Korean memory projects, the aspect of public engagement is of primary importance, as demonstrated not only by the monuments' location but also by temporary initiatives. For example, in 2017, replicas of the Statues of Peace were placed on buses in the cities of Seoul and Suwon, where they sat alongside citizens during their daily routines.¹⁷⁹ This approach confronts passengers with the young girl depicted in the statue, encouraging them to acknowledge the uncomfortable thought that victims of serious human rights abuses are not distant figures, but are sitting alongside the rest of the world, waiting for recognition and justice. Lastly, the mediums of memorialisation vary, ranging from erecting physical memorials and establishing *ad hoc* museums to intangible expressions (such as the appointment of an international day of remembrance or organising regular commemorations).

¹⁷⁸ 'Digital Museum: the Comfort Women Issue and the Asian Women's Fund' <<https://awf.or.jp/e-preface.htm>> accessed 5 May 2025.

¹⁷⁹ Elise Hu, "'Comfort Woman' Memorial Statues, A Thorn In Japan's Side, Now Sit On Korean Buses' *NPR* (2017) <<https://www.npr.org/sections/parallels/2017/11/13/563838610/comfort-woman-memorial-statues-a-thorn-in-japans-side-now-sit-on-korean-buses>> accessed 5 May 2025.

This overview of the various memorialisation projects implemented in South Korea and Japan illustrates the essential role of memory in the “comfort women” case, demonstrating how the past, present, and future are interconnected. The memory-related projects do not merely focus on establishing the facts and educating the public about the history of Japan’s military sexual slavery; they also aim to raise awareness about the redress movement’s efforts to reach a resolution and shed light on the ongoing struggles faced by the *halmonis*.¹⁸⁰ Furthermore, the overarching aim is to transmit this memory to future generations, embracing the promise of “never again”. Frequently, these projects are linked to broader issues concerning women’s rights, recognising that the fight for victims’ rights and all women worldwide who suffer from violence in armed conflict forms part of a transnational movement of solidarity. As this section shows, memorialisation in the case of the “comfort women” predominantly stems from bottom-up initiatives that aim to fill the gap of State-sponsored memory projects. The Japanese government’s lack of engagement with memorialisation is not surprising, although it represents another significant shortcoming in the efforts to resolve the “comfort women” issue.

2.4 Memorialisation between the duty to remember and the right to access State-held information

If international law requires States to thoroughly investigate human rights violations and establish the truth about past abuses, and if memory-related measures fall within the reparatory duties that States must comply with, it is worth considering whether a “duty to remember” past atrocities is incumbent on States. Primary sources of international human rights law do not enshrine this duty *per se*, which is not surprising considering that memorialisation has come to the centre of attention only after the elaboration of most human rights treaties. However, this does not preclude the possibility of interpreting human rights provisions and norms in light of the human rights system’s evolution. As former UN Special Rapporteur Fabián Salvioli argues, States’ general obligation to safeguard human rights and prevent any violation can serve as a first legal basis for the duty to carry out memory processes.¹⁸¹ Indeed, the underlying idea is that for States to fully discharge their obligation to ensure respect and protection for human rights, and guarantee the non-repetition of their violations, it is essential to ascertain the truth of past abuses, make the information available to the public and preserve the memory for future generations. An additional legal ground for conceptualising a duty to remember derives from the framework of the

¹⁸⁰*Halmoni* (singular) is a term that means elderly woman or grandmother in Korean. In this context, it refers to survivors.

¹⁸¹ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law’ (n 147) [31].

reparatory duties incumbent on States vis-à-vis victims of human rights violations. Memory-related measures are now fully incorporated into the wide range of reparation measures that a State is required to provide to victims and their families, as exemplified by international jurisprudence (particularly, the IACtHR) and soft law instruments.¹⁸² Maria Chiara Campisi argues that the inclusion of memory-related measures in the framework of remedies for human rights violations is significant because it broadens the principle of reparation in this field.¹⁸³ While reparation has always been interpreted as the obligation “to wipe out all the consequences” of a violation,¹⁸⁴ memorialisation requires a different approach: it is no longer limited to eradicating the aftereffects of past violence, but demands full acknowledgement of the facts, remembrance of the harm inflicted to the victims, and transmission of this knowledge to future generations.¹⁸⁵ From these perspectives, the dimensions of past, present, and future are inevitably linked and mutually reinforcing. By interpreting three different sets of State obligations – the duty to investigate human rights violations, provide reparation to victims in the form of memorialisation, and prevent any future reoccurrence of violence – a duty to remember and memorialise past atrocities emerges.

Notably, secondary sources, such as the Updated Set of Principles against Impunity and the Basic Principles on the Right to a Remedy, recognise this duty in more explicit terms: the former asserts that States have an obligation to preserve memory (Principle 3), which is substantiated in the duty to preserve archives and other evidence of human rights violations, as well as in the duty to facilitate knowledge of such violations. This principle rests on the assumption that knowing past oppression forms part of a society’s history and heritage, and thus the collective memory of past widespread abuses must be preserved and protected against historical negationism or revisionism. The Basic Principles on the Right to a Remedy include measures related to the preservation of truth and memory of gross human rights violations as part of the State’s obligation to provide reparation to victims and their families.¹⁸⁶ Therefore, both instruments clearly maintain that the preservation of memory falls within States’ obligations arising from human rights violations.

¹⁸² See Basic Principles on the Right to a Remedy (n 14) [22] and Updated Set of Principles against Impunity (n 14) Principle 3; for an overview of IACtHR caselaw in relation to memory projects see Maria Chiara Campisi, ‘From a Duty to Remember to an Obligation to Memory? Memory as Reparation in the Jurisprudence of the Inter-American Court of Human Rights’ (2014) 8 *International Journal of Conflict and Violence* 61.

¹⁸³ Campisi (n 182) 66.

¹⁸⁴ *Factory at Chorzów (Merits)* [1928] PCIJ Series A No. 17, 47.

¹⁸⁵ Campisi (n 182) 66.

¹⁸⁶ Basic Principles on the Right to a Remedy (n 14) [22].

For a State to establish the facts about past human rights violations and preserve collective memory from extinction, a necessary step is to disclose any information in its possession about those events.¹⁸⁷ As most human rights abuses committed on a massive scale entail the involvement of State authorities to some extent, it is highly likely that a significant portion of the evidence, especially information that can explain the adoption of policies and/or large-scale abuses, remains in the hands of the authorities. The duty to disclose finds its corresponding conceptualisation in the right of access to information, enshrined at the universal level in Article 19(2) of the ICCPR as the freedom to seek and receive information.¹⁸⁸ The right to access information is not only an essential component of the right to freedom of expression, but is also a right in itself, “upon which free and democratic societies depend”.¹⁸⁹ Indeed, the HRC has explicitly recognised that the right to freedom of expression “includes the protection of the right of access to State-held information”, which possesses both an individual and societal dimension.¹⁹⁰ The Committee has also underlined that, similarly to the press and media, associations and private individuals can exercise “‘watchdog’ functions on matters of legitimate public concern” by accessing information on public affairs and circulating it within society and, thus, their requests for information enjoy full protection under the Covenant.¹⁹¹

Therefore, a State cannot refuse to disclose this type of information unless it can justify its denial under Article 19(3) of the ICCPR. Indeed, the right to access information allows for restrictions, which are admissible only in pursuit of specific aims. These limitations are legitimate only for “respect of the rights or reputations of others” or “for the protection of national security or of public order [...]”.¹⁹² However, it is widely understood that information on serious and widespread human rights violations cannot be denied access on grounds of national security, as there is an overriding public interest in disclosure.¹⁹³ This issue has also been addressed in international jurisprudence: for instance, the IACtHR has held that “in cases of violations of human rights, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national

¹⁸⁷ UNGA, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ (2013) A/68/362 [5].

¹⁸⁸ See also UNGA, ‘Universal Declaration of Human Rights’ (1948), Article 19.

¹⁸⁹ UNGA, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ (n 187) [18].

¹⁹⁰ *Toktakunov v. Kyrgyzstan* [2011] HRC CCPR/C/101/D/1470/2006 [7.4]; see also *ibidem* [19].

¹⁹¹ *Toktakunov v. Kyrgyzstan*, HRC [7.4].

¹⁹² Article 19(3), ICCPR.

¹⁹³ UNGA, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ (n 187) [66]; see also John D Ciorciari and Jesse M Franzblau, ‘Hidden Files: Archival Sharing, Accountability, and the Right to the Truth’ (2014) 46 *Columbia Human Rights Law Review* 1, 23ff.

security, to refuse to supply the information”.¹⁹⁴ Reference must also be made to the Tshwane Principles, which advocate for the full disclosure of information related to gross violations of human rights and for the inadmissibility of any withholding by the State for reasons of national security in particular.¹⁹⁵

The right to access information is closely connected to the right to the truth. As analysed in the previous chapter, States have an obligation to investigate human rights violations in order to establish the facts and punish perpetrators, thereby satisfying the victims’ and society’s right to know the truth about past abuses. Consequently, the State is under the duty to inform victims, their families and the public of what occurred, and these actors hold the corresponding right to access such information. Without the opportunity for victims and society to request and obtain information, the effectiveness of the right to the truth is significantly frustrated. Therefore, State disclosure of information is not only necessary for the preservation and protection of collective memory on past widespread abuses but is also functional to the realisation of the right to the truth. It should be noted in this regard that the State is not merely a passive entity that acts only when responding to requests for access made by individuals or other subjects. Its role must be proactive in disclosing information, especially when it concerns gross human rights violations, irrespective of the potential involvement of State actors.¹⁹⁶

Former “comfort women” have consistently demanded that the Japanese government disclose all information regarding wartime sexual slavery, as they contend that many documents remain available in State archives.¹⁹⁷ This is not merely an assumption on their part, although it is easy to conclude that such documents exist based on the level of operational organisation of the “comfort system”, which involved different ministries in addition to the military. In a note verbale addressed to the UNCHR in 1996, Japan’s government explicitly recognised the existence of “more than 230 relevant materials” in ministries and government offices, the National Diet Library, and the US National Archives.¹⁹⁸ The government admitted that additional materials could be uncovered, as also attested by Professor Yoshiaki Yoshimi who, in 1992, published a series of official documents on Japanese wartime sexual slavery located in the Defence Agency’s National Institute of Defence Studies, acknowledging that he was able to access them

¹⁹⁴ *Gomes Lund and others (“Guerrilha do Araguaia”) v Brazil* [2010] IACtHR Series C No. 219 [202].

¹⁹⁵ ‘Global Principles on National Security and the Right to Information (Tshwane Principles)’ (2013), Principle 10(A)(1).

¹⁹⁶ *Ibidem* [28]; HRC, ‘General Comment No. 34: Article 19, Freedoms of opinion and expression’ (2011) CCPR/C/GC/34 [19].

¹⁹⁷ UNCHR, ‘Report on the mission to the Democratic People’s Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime’ (n 177) [64].

¹⁹⁸ UNCHR, ‘Note verbale dated 26 March 1996 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Centre for Human Rights, Economic and Social Council’ (1996) E/CN.4/1996/137 3.

only because “[n]o one knew that this collection contained documents relating to the comfort women”.¹⁹⁹ The right of access to this information by survivors, their families, and society more than justifies the call for Japan to disclose the evidence in its possession. No reason of national security or public interest can reasonably justify withholding these resources, as the events they refer to occurred more than eighty years ago and pose no security threat. Moreover, as the Tokyo Women’s Tribunal underlined in its decision, “respect for the privacy of individual victims can be consistent with disclosure of wrongdoing”.²⁰⁰

In conclusion, similarly to the right to the truth as analysed in Chapter 1, although international conventions do not enshrine a duty to remember *per se*, this can be inferred from a series of obligations imposed on States following serious human rights violations. These include the duty to investigate such violations, provide memory-related reparation measures, prevent future violence, and disclose information concerning the abuses. As Japan’s government has not complied with these obligations, even when it admits to possessing relevant materials regarding wartime sexual slavery, this not only significantly frustrates the goals of memorialisation but also fails to uphold the victims’ and society’s right to know the truth about the past.

2.5 The duty to combat historical manipulation

Another reason underlies the call for full disclosure of information related to the “comfort system”: the fight against the manipulation of historical facts. Over the years, this phenomenon has been rampant in Japan, and one of the main causes is undoubtedly the government’s failure to unequivocally recognise the crimes committed in the past and disclose all related evidence. Indeed, former UN Special Rapporteur Salvioli, in his report about memorialisation, writes that the “failure to recognize and punish the crimes and violations that have occurred leads to denialism and perpetuates and legitimizes violence”.²⁰¹ The “comfort woman” issue in Japan serves as a poignant example of what often happens in such cases. The number of instances in which the experiences of “comfort women” were belittled, downplayed or outright denied is high: Japanese politicians and government officials have expressed these views with little to no repercussion and have tried to hinder commemorative projects in other

¹⁹⁹ Tokyo Women’s Tribunal Judgment (n 75) [950].

²⁰⁰ Ibidem [952].

²⁰¹ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law’ (n 147) [20].

countries.²⁰² The present section can only refer to some of these episodes for reasons of conciseness, but many others can be found. Former Prime Minister Abe Shinzo expressed his views on “comfort women” on various occasions, from denying any evidence of coercion by the military to implying that survivors’ testimonies are fabricated.²⁰³ He was also part of *Nippon Kaigi*, one of Japan’s largest conservative alliances that advocates historical revisionism concerning “comfort women”.²⁰⁴ Furthermore, in 2007, a group of Japanese lawmakers ran a paid advertisement in *The Washington Post* aimed at manipulating historical facts surrounding “comfort women”.²⁰⁵ The Korean Council has taken note of numerous attempts by Japanese public officials to discredit survivors or to lobby against commemorative initiatives.²⁰⁶

Furthermore, a dispute over Japanese history textbooks arose due to the inclusion of references to “comfort women”.²⁰⁷ In 1996, the approval by the Ministry of Education of new junior high school textbooks containing mentions of “comfort women” was strongly opposed by certain academic circles, which argued that no evidence existed to support survivors’ claims, and by some parents who sued the textbook publishing companies.²⁰⁸ Moreover, the then-Justice Minister remarked that Japanese schools should not teach children things that “discourage them from having pride in [their] country”.²⁰⁹ Remarkably, this attitude was not limited to Japanese textbooks: in 2015, Japan’s government requested a major US publishing company to revise certain passages about “comfort women” in a history textbook.²¹⁰ Shortly after, the then-Prime Minister Abe stated that the text inaccurately depicted history

²⁰² ‘Osaka cuts San Francisco ties over “comfort women” statue’ *BBC* (2018) <<https://www.bbc.com/news/world-us-canada-45747803>> accessed 15 May 2025.

²⁰³ See Wolfe (n 183) 266 (table 7.12) and 269 (table 7.13); see also Hirofumi Hayashi, ‘Disputes in Japan over the Japanese Military “Comfort Women” System and Its Perception in History’ (2008) 617 *The Annals of the American Academy of Political and Social Science* 123, 124.

²⁰⁴ Tomomi Yamaguchi, ‘Revisionism, Ultrnationalism, Sexism: Relations Between the Far Right and the Establishment Over the “Comfort Women” Issue’ (2018) 21 *Social Science Japan Journal* 219, 221; see also Isaac Chotiner, ‘How Shinzo Abe sought to rewrite Japanese history’ *The New Yorker* (2022) <<https://www.newyorker.com/news/q-and-a/how-shinzo-abe-sought-to-rewrite-japanese-history>> accessed 16 May 2025.

²⁰⁵ Tarwara Yoshifumi, ‘Comfort Women, Textbooks, and the Rise of “New Right” Revisionism’ in Rumiko Nishino, Puja Kim and Akane Onozawa (eds), *Denying the Comfort Women: the Japanese State’s assault on historical truth* (Taylor and Francis, 2018) 160.

²⁰⁶ Korean Council, ‘A to Z Guide for Just Resolution of the Japanese Military Sexual Slavery Issue’ (2020) 147ff.

²⁰⁷ Hayashi (n 203) 126.

²⁰⁸ Jordan Sand, ‘Historians and Public Memory in Japan: The “Comfort Women” Controversy’ (1999) 11 *History and Memory* 116.

²⁰⁹ Shuko Ogawa, ‘The Difficulty of Apology: Japan’s Struggle with Memory and Guilt’ (2000) 22 *Harvard International Review* 42, 45-46.

²¹⁰ Alexander Martin, ‘U.S. Publisher Rebuffs Japan on ‘Comfort Women’ Revision’ *Wall Street Journal* (2015) <<http://blogs.wsj.com/chinarealtime/2015/01/15/u-s-publisher-rebuffs-japan-on-comfort-women-revision/>> accessed 16 May 2025.

and that he was “shocked” to see it.²¹¹ In this regard, however, the CEDAW has urged Japan’s government to accurately incorporate the “comfort women” issue in history textbooks and ensure that “historical facts are objectively presented to students and the general public”.²¹² The interference of Japan’s government with the teaching of history raises serious concerns, as also underlined by former UN Special Rapporteur on Freedom of Expression and Opinion David Kaye, because it “undermines the public’s right to know and its ability to grapple with and understand its past”.²¹³ This, once again, demonstrates Japan’s struggle to come to terms with its past and to unequivocally acknowledge the crimes for which it is responsible. It constitutes a failure to give effect, on the one hand, to society’s right to know the truth and to access information of public interest, and, on the other, to victims’ right to receive reparation and respect for their dignity.

The debate on the role of law in regulating historical debate and the circulation of knowledge and interpretations about the past poses some complicated questions.²¹⁴ Historical negationism lacks a widely accepted definition, and the phenomenon it alludes to can be described by several terms. Emanuela Fronza defines negationism as a specific strand of historiographic revisionism that believes it can demonstrate that the Holocaust never took place in the way it is commonly reconstructed.²¹⁵ Over the years, the term has broadened its scope to include the denial and criticism of the historical reconstruction of other crimes against humanity. Negationists fail to adopt a scientific approach to history, instead selectively choosing only those facts and circumstances that support their arguments, while deliberately neglecting, sidelining, and even altering contradictory evidence or creating facts *ex novo*.²¹⁶

At the international level, human rights bodies have consistently regarded freedom and plurality as key principles in the discussion of history. In his report on the right to freedom of expression, former UN Special Rapporteur Frank La Rue stated that “historical events should be open to discussion” and

²¹¹ Martin Fackler, ‘U.S. Textbook Skews History, Prime Minister of Japan Says’ *The New York Times* (2015) <<https://www.nytimes.com/2015/01/30/world/asia/japans-premier-disputes-us-textbooks-portrayal-of-comfort-women.html>> accessed 16 May 2025.

²¹² CEDAW, ‘Concluding observations on the combined seventh and eighth periodic reports of Japan’ (2016) CEDAW/C/JPN/CO/7-8 [29].

²¹³ Yun-hyung Gil, ‘UN Rapporteur Speaks out against Comfort Women Descriptions in Japanese Textbooks’ *Hankyoreh* (2016) <https://english.hani.co.kr/arti/english_edition/e_international/740714.html> accessed 16 May 2025.

²¹⁴ See *inter alia* Emanuela Fronza, ‘The Punishment Of Negationism: The Difficult Dialogue Between Law And Memory’ (2006) 30 Vermont Law Review 609; Pascale Bloch, ‘Response to Professor Fronza’s “The Punishment of Negationism”’ (2006) 30 Vermont Law Review 630; Della Morte (n 151).

²¹⁵ Emanuela Fronza, *Il negazionismo come reato* (Giuffrè Editore, 2012) XIV (translated by the author).

²¹⁶ *Ibidem* XV-XVI. This thesis employs the term denialism in reference to those who outright deny the existence of the “comfort system” as it is commonly reconstructed and historical revisionism for those who downplay, minimise or relativise the facts (for instance, by stating that the “comfort women” were prostitutes).

warned against the power of States to “subjugate freedom of expression to official versions of events”.²¹⁷ Freedom of discussion in the field of history represents the overarching standard and is protected by Article 19 of ICCPR, as with any “idea and opinion capable of transmission to others”.²¹⁸ As outlined above, however, freedom of expression is not an absolute right and can be restricted under certain conditions. Therefore, the question arises whether the prohibition of negationism or revisionism can be legitimately sustained as a restriction on freedom of expression. The anti-discrimination rationale can provide a valuable framework for evaluating such a question: human rights law indeed requires States to prohibit “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Article 20(2), ICCPR).²¹⁹ From this perspective, incitement to hatred constitutes the outer limit of freedom of expression. The Rabat Plan of Action was elaborated as a result of a series of expert meetings organised by the OHCHR on the topic of combating hate speech.²²⁰ It provides guidelines for States to better balance the restrictions on freedom of expression with the prohibition of incitement to hatred, devising a six-part threshold test to this end. Based on the context of the statements made, the speaker’s position or status, the intent to incite the audience against a target group, the content and form of the statement, the extent of its dissemination, and the likelihood of harm, States should be able to decide whether to criminally penalise the speaker or not.

In the “comfort women” case, the same test can be applied to any of the statements pronounced by Japanese public officials over the years: it is beyond doubt that these remarks are extremely harmful to the victims and express sexist and nationalistic views, in addition to originating from high-ranking government figures and thus having the capacity to reach a vast audience. However, it is difficult to argue that the intent is specifically to incite the public to commit violence against the survivors. It is even more unlikely to argue about the imminence of a risk of harm that such violence will take place. The fact that these statements have been repeatedly pronounced over the years without physical attacks being carried out attests to the lack of such elements. Their intent appears more rooted in the idea of conveying a message of glorification and idealisation of the nation and its past, along with the outright rejection of any feeling of responsibility for Japan’s past actions. Instead, a potential ground for restricting freedom

²¹⁷ UNGA, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (2012) A/67/357 [55].

²¹⁸ *Ibidem* [11].

²¹⁹ See also *Robert Faurisson v. France* [1996] HRC CCPR/C/58/D/550/1993 [9.7].

²²⁰ UNGA, ‘Report of the OHCHR on the expert workshops on the prohibition of incitement to national, racial or religious hatred. Appendix: Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’ (2013) A/HRC/22/17/Add.4.

of expression is offered by the third paragraph of Article 19, ICCPR: respect for the rights or reputation of others. As the term “rights” includes those recognised under international human rights law, statements pronounced with the effect of damaging the victims’ dignity and reputation can fall within such definition.²²¹

The “writing of collective history” does not concern only the present but also addresses how future generations will perceive the past and which lessons they will derive from it.²²² The Japanese government’s behaviour regarding the teaching of history represents an interference with society’s right to know the truth about the past and a violation of the State’s obligation to disclose information of public interest. It not only prevents victims from obtaining a full recognition of their suffering, as the crimes they endured are kept in the shadows, but also precludes all persons from accessing and enjoying their cultural heritage, which encompasses both history and memory.²²³

2.6 Conclusions

This chapter seeks to examine the meaning and objectives of memorialisation following large-scale violations of human rights, as in the case of Japanese wartime sexual slavery, and what it can offer to victims in their struggle for justice. The essential role of memorialisation in the aftermath of widespread abuses is highlighted as a condition for reparation, a tool for prevention, and a forum for commemorating victims and raising awareness. Memorialisation does not only concern itself with preserving the memory of the past; it is also instrumental in delivering justice in the present and educating upcoming generations, ensuring that they can access and share knowledge of their history. The variety and richness of memory-related projects for “comfort women” in South Korea and Japan attest to the importance of safeguarding memory and history for survivors, especially in an environment where the responsible State fails to deliver justice or engage meaningfully with the demands of victims and civil society.

While victims and society are key stakeholders in creating and engaging with memory-related projects, the State’s role is analysed from the perspective of the duty to remember. Although this duty is not explicitly recognised in international human rights law, it can be interpreted as a corollary of certain

²²¹ HRC, ‘General Comment No. 34: Article 19, Freedoms of opinion and expression’ (n 201) [28].

²²² UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law’ (n 152) [63].

²²³ UNHRC, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes’ (n 153) [48].

obligations: the obligation to safeguard human rights, prevent violations, and make full reparation. In its conceptualisation of a duty to disclose and preserve information related to human rights abuses, along with the corresponding right of access for victims and society, it is also closely connected to the right to the truth, reflecting its dual dimension (individual and collective). Therefore, the Japanese government is under an obligation to disclose all evidence related to military sexual slavery, thereby upholding survivors' right to information and fulfilling its duty to ensure that the collective memory of past widespread violations is preserved and transmitted to the future. By disclosing information about "comfort women", Japan's government will also help combat the manipulation of historical facts, which has gone unchecked. Statements that deny, downplay, or minimise the events of wartime sexual slavery or the victims' experiences are unacceptable, especially when made by government officials. An accurate account of these events in history textbooks is essential to prevent denialist or revisionist narratives from gaining traction, or at least to equip young people with the tools to be informed and develop critical thinking about the past. Japan's government should refrain from interfering with publishers regarding the removal of references to an uncomfortable national past.

As Louis Joinet remarked, "before turning over a new leaf one must have read the old one".²²⁴ Without acknowledging and understanding the past, justice for the present and peace for the future will not be fully realised.

²²⁴ UNCHR, 'Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations' (n 158) [50].

Chapter 3: Future Avenues for Justice

3.1 Introduction

As the thesis has highlighted thus far, truth and memory do not function in separate and parallel ways. On the contrary, one reinforces the other in the pursuit of justice: the right to the truth provides a solid legal basis for victims' claims, entailing the duty to investigate human rights violations, the right to reparation, the right to access information, and the obligation to respect and prevent violations of human rights. Truth-seeking not only responds to the victims' need to see the State acknowledge its responsibility and recognise the full impact of human rights violations; it also aims to fulfil a societal need to know the truth about the past and understand the causes and consequences of large-scale violence. Memorialisation complements and further advances the goals of truth-seeking: it ensures that knowledge of the past is made accessible to survivors and the public, disseminated throughout society for educational and commemorative purposes, and transmitted to the future. When memory-related projects are developed by civil society, they also enable victims and the public to engage with this knowledge in innovative and informal ways.

As the overall aim of this study is to explore how the right to the truth and memorialisation processes can reinforce one another in the realisation of victims' rights within the context of the "comfort women" case, here the thesis addresses the implications of the findings established thus far for the future of the redress movement, particularly regarding South Korean survivors and the Japanese government. This chapter examines which measures can incorporate both dimensions of truth and memory, thereby providing redress to the victims. It proposes two options: the establishment of a TC and the creation of human rights archives. Both mechanisms are analysed in their key characteristics and strengths, demonstrating their ability to establish the truth about the "comfort system" and preserve its memory. Weaknesses are also examined to maintain a grounded approach to the issue and critically reflect on the feasibility of these measures.

The reason this chapter focuses on such mechanisms stems also from the belief that persisting in seeking formal accountability is unlikely to yield the desired results, at least not promptly, due to the Japanese government's resistance and the lack of enforcement at the international level. This risks further alienating Japan and stalling the situation. Victims have pursued the judicial path on several occasions, but with few successful outcomes. Exploring the potential of non-judicial measures, as presented in this

chapter, can offer new insights and contribute to the broader discourse on achieving redress for large-scale human rights violations.

3.2 A truth commission on Japanese wartime sexual slavery

The first part of this chapter's research question concerns how a TC can fulfil the victims' right to the truth and realise memorialisation in the context of Japanese responsibility for wartime sexual slavery. It also seeks to answer how and to what extent truth and memory enhance each other through a TC. The opening chapter of the thesis has already touched on the topic of TCs as one of the most well-known and widely implemented tools for truth-seeking.²²⁵ However, this chapter focuses on highlighting the relationship between such a mechanism not only with truth but also with memory, and their interplay in the pursuit of justice for the "comfort women".

As TCs are *ad hoc* bodies for truth-seeking and truth-telling, their relationship with the right to the truth is nearly self-explanatory: they are mandated to investigate past human rights violations; uncover the fate of victims; ensure that both victims and society fully know what occurred and why; provide recommendations to the government on how to deal with the past, remedy victims and their families, and prevent the recurrence of such violence.²²⁶ However, theirs is a twofold task: not only to investigate and uncover forensic facts, but also to provide a historical explanation of such events. Namely, they combine human rights investigations with a historical narrative that aims to explain the causes, patterns, and consequences of the abuses.²²⁷ This specific function responds to victims' needs that go beyond obtaining an account of mere facts: survivors want the public to know and understand *why* they were targeted.²²⁸ Furthermore, the official nature of TCs allows the historical truth about the past to become an official acknowledgement of the harm inflicted on victims.²²⁹ TCs fulfil the victims' demand to confront the legacy of silence that has obscured them for decades.

However, TCs hold a claim to truth as much as to memory. Indeed, they seek to "forg[e] societal consensus over the meaning of the past through their findings and narratives",²³⁰ that is, to build a shared

²²⁵ See *supra* Chapter 1, section 6.

²²⁶ Margaret Popkin and Naomi Roht-Arriaza, 'Truth as Justice: Investigatory Commissions in Latin America' (1995) 20 *Law & Social Inquiry* 79.

²²⁷ Onur Bakiner, 'One truth among others? Truth commissions' struggle for truth and memory' (2015) 8 *Memory Studies* 345.

²²⁸ *Ibidem*.

²²⁹ Yasmin Naqvi, 'The Right to the Truth in International Law: Fact or Fiction' (2006) 88 *International Review of the Red Cross* 245, 263.

²³⁰ Bakiner (n 227).

memory of what happened. Some scholars consider the creation of collective memory to be the specific function of a TC. McClennen and Slaughter argue that “the work of truth commissions *is* memory work”,²³¹ reflecting what has also been stated by the IACtHR: that TCs contribute to the construction and preservation of memory.²³² Although academic literature is divided on how to characterise the relationship between memory and history, and what each means in relation to TCs, there is a consensus that TCs are meaningful participants in the process of memory-making.²³³ Scholars also note that discussions on remembrance and memory over time have evolved into debates at the international level on human rights and justice, highlighting the close relationship between these concepts.²³⁴ TCs’ relationship with memory also occurs on another level: they offer survivors the space to tell their stories, thereby creating a place for memory-building. Their testimonies not only contribute to documenting the bigger picture (serving a function of truth-telling) but also become part of the shared memory that the commission helps build. Indeed, survivors “will begin to build a narrative by sharing their memories that, when overlaid with thousands of other stories, begin to constitute facts, and the truth will begin to unravel until it is fully revealed”.²³⁵

Consequently, the final report produced by a TC fulfils both truth and memory. It provides an authoritative account of past abuses, through which the commission explains the patterns of abuse and the structural conditions that enabled violence. It ensures that knowledge of the past is acknowledged by both the government and society, disseminated and preserved, contributing to the development of a shared understanding of past abuses, that is, a collective memory. Furthermore, the report contains the commission’s recommendations directed at the government, including measures of reparation such as memory-related projects. Additionally, it can serve as a basis for organising memorialisation initiatives as part of the outreach activities following the commission’s dissolution. Furthermore, the report and all other records collected and produced by the TC must be transferred to a secure location (such as an archival institution), ensuring that this information remains adequately preserved, is accessible, and

²³¹ Sophia A McClennen and Joseph R Slaughter, ‘Introducing human rights and literary forms; or, the vehicles and vocabularies of human rights’ [2009] *Comparative Literature Studies* 14 cited in *ibidem* (emphasis added).

²³² See *Rodriguez Vera et al. v Colombia* [2014] IACtHR Series C No. 287 [88].

²³³ Bakiner (n 227); Katrien Klep, ‘Tracing collective memory: Chilean truth commissions and memorial sites’ (2012) 5 *Memory Studies* 259.

²³⁴ Andreas Huyssen, *Present Pasts: Urban Palimpsests and the Politics of Memory* (Stanford University Press, 2003) 95-96 cited in Klep (n 233).

²³⁵ Juan Carlos Urquidi Herrera, ‘Victims’ Testimonies in Truth Commissions: Who Owns the Memory’ (2018) 20 *Oregon Review of International Law* 79, 85.

becomes part of the historical and cultural heritage (the following section will delve deeper into this aspect).

Turning to the case study subject of this thesis, a potential TC would aim to reconstruct the events and crimes of Japanese wartime sexual slavery between 1932 and 1945, identify the responsible persons, groups, and institutions, and explore the underlying causes, accompanied by an explanatory account that considers the historical and cultural context of the violations. The active participation of victims and NGOs in the preparatory phase of the TC, particularly in designing the mandate, is crucial for ensuring that the commission adopts a victim-centred approach and engages meaningfully with survivors during its operations.²³⁶ In line with what was outlined above, the commission would be empowered to conduct investigations and research into the facts of the “comfort system”, receive and compile information from various sources, and write a final report with recommendations directed at Japan’s government, including reparation measures and memorialisation projects.

It is crucial that the gender dimension be made explicit in the TC’s mandate and incorporated into its operational aspects. Gender is often neglected in TCs,²³⁷ but recognising and addressing this specific dimension is particularly relevant in the “comfort women” case, where the gendered aspect of the violations is essential. Collaborating with academics and civil society groups from feminist circles may present a fruitful opportunity to design the commission’s approach, both in practice and in its operational philosophy.²³⁸ A gender-sensitive approach can also help broaden the investigation by adopting a more systematic analysis that links the crimes to their enabling and structural conditions, thereby strengthening the commission’s potential for “gender-just transformative” outcomes.²³⁹ The recommended reparation measures must also consider the gender dimension, addressing the victims’ needs as well as the secondary impacts of the abuses. In this regard, collective measures of reparation that address the systematic violence are likewise important. However, as the first chapter highlighted,²⁴⁰ gender-based discrimination was not the only relevant factor in the recruitment of “comfort women” and the

²³⁶ International Center for Transitional Justice, ‘Truth Commissions AND NGOs: The Essential Relationship. The “Fratelli Guidelines” for NGOs Engaging With Truth Commissions’ (2004) 13.

²³⁷ Jeremy Sarkin and Sarah Ackermann, ‘Understanding the Extent to Which Truth Commissions Are Gender Sensitive and Promote Women’s Issues: Comparing and Contrasting These Truth Commission Roles in South Africa, Guatemala, Peru, Sierra Leone and Liberia’ (2019) 50 *Georgetown Journal of International Law* 463.

²³⁸ Vasuki Nesiya et al., *Truth Commissions and Gender: Principles, Policies, and Procedures* (2006) International Center for Transitional Justice 13.

²³⁹ Sarkin and Ackermann (n 237) 479-480.

²⁴⁰ See *supra* Chapter 1, section 4.

maintenance of the “comfort system”; ethnicity, class, and colonial power were also instrumental, thus necessitating careful incorporation into the commission’s work.

Admittedly, some critical issues arise in this proposal for a TC: firstly, and most importantly, the establishment and functioning of such a body depend on the political willingness and commitment of the actors involved, particularly Japan’s government. Although the Japanese government’s track record in this regard is concerning, any redress measure necessarily presupposes its commitment and engagement, which is a problem that extends beyond the establishment of a TC. To exercise pressure on Japan, emphasising the positive outcomes and incentives for undertaking such a process may prove beneficial. Kiki Japutra argues that Japan’s failure to prosecute and provide reparations for wartime sexual slavery stems from its unwillingness to address past atrocities, but also from the over-exposure of negative interests in accountability. In her view, asserting that a State should prosecute perpetrators because it is under an obligation to do so “may provide an answer to why a State *should* prosecute, but it fails to reply to the question of interest as to why a State would *want* to prosecute”.²⁴¹ The issue of the interests in self-accountability, then, becomes paramount. Japutra highlights some benefits that a State, including Japan, might gain from self-scrutiny, in particular the preservation of sovereignty, capacity-building, the cessation of prolonged public condemnation by victims and the international community, the enhancement of the State’s public image, and the protection of younger generations (in the sense of building a more comprehensive understanding of the past).²⁴² By securing a final settlement of the issue, Japan’s government could also improve its relationships with Asian neighbours.

Another critical issue concerns the investigation: some TCs carry out this function to identify perpetrators and collect documents to be handed over to judicial authorities for criminal prosecution. This is not the case for the “comfort women”: with the crimes occurring more than eighty years ago, the chances of the perpetrators still being alive are very slim. Moreover, it is unlikely that the Japanese judicial system would permit any action of this nature to proceed. However, survivors might request the naming of perpetrators not only to provide a comprehensive record but also to fulfil their right to know the truth. This presents some challenges to the guarantees of due process, as those nominated as perpetrators would not have the opportunity (rather, the right) to defend themselves and reply. The

²⁴¹ Kiki A Japutra, ‘The Interest of States in Accountability for Sexual Violence in Armed Conflicts: A Case Study of Comfort Women of the Second World War’ in Morten Bergsmo and Song. Tianying (eds), *Military Self-Interest in Accountability for Core International Crimes* (Torkel Opsahl Academic EPublisher, 2015) 214 (in italics in the original text).

²⁴² *Ibidem* 216-220. Japutra focuses on positive interests for prosecution; however, some of the considerations she makes can apply more generally to State accountability.

experience of past TCs indicates that this has often been a controversial issue, and various approaches have been adopted in this regard, ranging from silence on perpetrators' names to collaboration with the criminal justice system to a model of naming and shaming.²⁴³

Furthermore, as the “comfort women” issue involves multiple countries and most victims are of a different nationality than the responsible State, situating the TC in Japanese territory may give rise to debates. The physical (and psychological) distance from the victims' country of origin (South Korea, in this case) poses challenges for collecting testimonies and facilitating victims' participation, calling for careful consideration. A potential solution could be to establish offices in South Korean territory to coordinate specific activities, not only for survivors but also for collaborating with local NGOs and organising public events, while maintaining the headquarters in Japan.

3.3 Archives on Japanese wartime sexual slavery

This section addresses the second part of this chapter's research question, mirroring the one covered in the previous segment: how, and to what extent, can archives realise the right to the truth and memorialisation for victims of Japanese wartime sexual slavery? Do archives provide a space for truth and memory to enhance one another and contribute to achieving justice?

The role of archives in guaranteeing the right to the truth has been increasingly recognised in international human rights law, starting from the 1997 report on the Question of the Impunity of Perpetrators of Human Rights Violations by UN Special Rapporteur Joinet, in which he states that ensuring the preservation of, and access to, archives falls under the category of guarantees to give effect to the right to know (along with extrajudicial commissions of inquiry, such as TCs).²⁴⁴ This was reaffirmed in the 2005 updated version of the report by Diane Orentlicher, who emphasised that, regardless of the establishment of a TC, States have a duty to preserve archives concerning violations of human rights and humanitarian law, as well as to ensure access to them.²⁴⁵ The OHCHR has emphasised that the mechanisms usually employed by States to address past large-scale human rights violations (from

²⁴³ Erin Daly, 'Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition' (2008) 2 *The International Journal of Transitional Justice* 23, 35-36; Juan E Méndez and Francisco J Bariffi, 'Truth, Right to, International Protection' [2011] *Max Planck Encyclopedia of Public International Law* [9] <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1742>> accessed 18 June 2025.

²⁴⁴ UNCHR, 'Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), Annex II: Set of Principles for the Protection and Promotion of Human Rights through action to combat impunity' (1997) E/CN.4/Sub.2/1997/20, Principle 4.

²⁴⁵ Updated Set of Principles (n 14), Principle 5.

criminal prosecution to institutional reforms, truth-seeking, and reparation programmes) rely on archives and the information contained therein.²⁴⁶ For the same reason, they are also deemed essential for the victims as they enable survivors and their next of kin to exercise the right to remedy and reparation in the pursuit of justice. UN Special Rapporteur Salvioli considers that access to archives permits societies to learn the truth about past widespread atrocities as well as to “regain ownership of their history”, while serving as a precondition for memorialisation.²⁴⁷

The establishment and preservation of archives serve not only to uphold the right to the truth in its individual dimension, allowing victims and their families to know what happened to them or their relatives, why, and the context of the abuses; they also respond to the broader societal right to know and understand the past, fulfilling the collective dimension of the right to the truth.²⁴⁸ Furthermore, archives realise a fundamental component of this right, namely, the right to access information related to human rights violations. Since the early 2000s, the Council of Europe and the IACHR have affirmed that access to State-held information on human rights violations contained in archives is a fundamental right of every individual.²⁴⁹ The HRC has also underlined that the right of access is both individual and collective, falling under the protection of the right to freedom of expression.²⁵⁰ Moreover, by promoting a “culture of openness”,²⁵¹ archives also fulfil the corresponding State’s duty to disclose information related to human rights violations.

Archives are often described as the memory of nations, the embodiment of historical memory, and a tool for shaping a country’s social memory.²⁵² The relationship between memory and archives is not only evident in statements issued by archival institutions themselves, but also expressed by international organisations such as the UN Educational, Scientific and Cultural Organisation (UNESCO)

²⁴⁶ UNHRC, ‘Report of the Office of the United Nations High Commissioner for Human Rights on the seminar on experiences of archives as a means to guarantee the right to the truth’ (2011) A/HRC/17/21 [5].

²⁴⁷ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’ (2020) A/HRC/45/45 [70]; for an overview of the relationship between archives and the right to the truth in UN documents see Jens Boel, Perrine Canavaggio and Antonio González-Quintana (eds), *Archives and Human Rights* (Routledge Taylor & Francis Group, 2021) 22-27.

²⁴⁸ UNCHR, ‘Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations’ (n 244) [17].

²⁴⁹ Boel, Canavaggio and González-Quintana (n 247) 18-19.

²⁵⁰ *Toktakunov v. Kyrgyzstan* [2011] HRC [7.4]; see also Chapter 2, Section 4.

²⁵¹ International Council on Archives, *Principles of Access to Archives* (2012) 6.

²⁵² Reine Rydén, ‘National archives, national memory? How national archives describe themselves and their mission’ (2023) 23 *Archival Science* 297.

and the International Council on Archives (ICA).²⁵³ Academic literature on archival issues argues that the absence of archives weakens memory, as the latter is rooted in the former.²⁵⁴ However, many scholars have problematised this one-to-one, almost automatic correlation between the two concepts and prefer to view archives not as the physical embodiment of a vague concept of collective memory, but as “triggers or touchstones that lead to the recollection of past events”.²⁵⁵ Archives – or, more precisely, the records contained therein – are devices that transform individual memory into collective memory through a process of articulation to the external world.²⁵⁶ They help us, as individuals and as a society, to remember and understand what happened in the past. Therefore, archives are not just “tools for memory but antidotes to forgetting”.²⁵⁷

Truth and memory intersect and intertwine in archives: by ensuring that documents establishing the truth about past violations are preserved and made accessible to the public, they enable the process of creating collective memory. Memory-building would not be possible without the records that document what happened. Furthermore, by allowing us to know and understand the past, they also promote other goals related to both truth and memory, such as the prevention of future human rights abuses, education, the fight against historical denialism, and scholarly research.

The records contained in archives can vary in nature: they can be either documents held by the State as the successor to the previous repressive regime, or documents collected and produced by a TC during its activities, among others. In the “comfort women” case, both categories of records are relevant: as noted in the previous chapter,²⁵⁸ Japan’s government has acknowledged the existence of “more than 230 relevant materials” in ministries and government offices, the National Diet Library, and the US National Archives.²⁵⁹ It also allowed for the possibility of uncovering other materials.²⁶⁰ Additionally, a potential TC mandated to establish the truth about Japanese wartime sexual slavery, as outlined above, would necessarily collect and produce many other documents while carrying out its functions. Among

²⁵³ UNESCO, *Memory of the World: General guidelines to safeguard documentary heritage* (Revised edition 2002, prepared by Ray Edmondson, Paris) [1.1.1]; ICA, *Constitution* (2022) Preamble.

²⁵⁴ Joan M Schwartz and Terry Cook, ‘Archives, records, and power: the making of modern memory’ (2002) 2 *Archival Science* 1, 18 cited in Rydén (n 252) 301.

²⁵⁵ Laura Millar, ‘Touchstones: Considering the Relationship between Memory and Archives’ (2006) 61 *Archivaria* 105, 114; see also Rydén (n 252) 301.

²⁵⁶ Millar (n 255) 119.

²⁵⁷ *Ibidem* 123.

²⁵⁸ Chapter 2, Section 4.

²⁵⁹ UNCHR, ‘Note verbale dated 26 March 1996 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Centre for Human Rights, Economic and Social Council’ (1996) E/CN.4/1996/137, 3.

²⁶⁰ *Ibidem* 4.

these, the final report detailing the commission's findings would be the most significant document to preserve, along with investigative records, programme records, and administrative files.²⁶¹

The relationship between archives and TCs – more specifically, the records of TCs– has been extensively researched to highlight how the two entities interact and form part of a broader approach to dealing with the past.²⁶² The phase following the publication of the final report is particularly important in ensuring the legacy of a TC, as how the commission's records are preserved, made accessible, and used is fundamental. In this context, archives serve as both a means for protection and a platform to support further initiatives. Sandra Rubli and Briony Jones argue that “when the truth commission finishes its work, its legacy and contribution to dealing with the past is only just beginning”.²⁶³ Thus, not only are archives related to human rights violations crucial for the right to the truth, but they also help fight historical revisionism, promote memory-building, and enable present and future generations to access the source materials directly, forming their own interpretations within the parameters established by the TC.²⁶⁴

Archives often form part of projects developed and implemented by NGOs as part of memory-related initiatives. As shown in the second chapter, some memorialisation processes employed in the South Korean and Japanese contexts involve the establishment of archives, whether in a physical or digital form, to ensure the broadest possible accessibility to documents and testimonies.²⁶⁵ Such efforts are frequently undertaken in response to a lack of consideration by the government: in these cases, civil society assumes the role of guaranteeing that the memory of past violations is preserved and disseminated to the public. As the Japanese government has repeatedly demonstrated its unwillingness to fully acknowledge and redress the victims, civil society and the survivors have bridged the gap created by Japan's inaction.

²⁶¹ Trudy Huskamp Peterson, 'Final Acts: A Guide to Preserving the Records of Truth Commissions' [2005] Woodrow Wilson Center Press Washington 4.

²⁶² See *inter alia* Jennifer Dekker, 'Intensifying conflict by destroying archives: the case of the Truth and Reconciliation Commission of Canada' (2019) 3 *La Gazette des archives* 53; Joel A Blanco-Rivera, 'Truth commissions and the construction of collective memory: the Chile experience' in Jeannette A Bastian and Ben Alexander (eds) *Community Archives: the shaping of memory* (Facet Publishing, 2009) 133.

²⁶³ Sandra Rubli and Briony Jones, 'Archives for a Peaceful Future' [2013] *Swisspeace* 6.

²⁶⁴ *Ibidem*.

²⁶⁵ See *supra* Chapter 2, section 3.

Therefore, establishing a human rights archive fulfils the State's duty to preserve evidence concerning human rights violations and facilitate access to it.²⁶⁶ Some States that have transitioned from authoritarian regimes to democracy have created institutions to ensure access to information related to past human rights violations and to preserve such knowledge: in 2002, Slovakia established a Nation's Memory Institute based on the "duty of [the] State to disclose the activity of repressive authorities";²⁶⁷ in 2003, Argentina created the National Memory Archives to ensure that the truth about the abuses perpetrated by the military dictatorship would be preserved and memorialised.²⁶⁸ Although private entities can operate archival institutions, John Ciorciari argues for State leadership in the management of human rights archives for several reasons, which can be summarised as ensuring consistency in applying access rules, building a body of precedents in managing sensitive records, and improving cost efficiency.²⁶⁹ This approach is also reflected in the report drafted by UNESCO in collaboration with the ICA on the subject of archiving mass atrocities.²⁷⁰ Furthermore, State leadership can symbolise a definitive change in the government's attitude towards the abuses recorded in the archives and contribute to the customary norm of the duty to remember.²⁷¹

Establishing human rights archives on wartime sexual slavery would represent a significant step in addressing the "comfort women" issue on the part of Japan, particularly when combined with the creation of a TC as delineated above. It would fulfil Japan's duty to disclose information related to human rights violations and ensure that such information is available and easily accessible to the public, including the victims themselves; furthermore, it may be part of a broader reparation programme. Ensuring that an accurate collection of documents and other forms of evidence on past widespread violence is preserved effectively serves educational purposes for both contemporary society and future generations. Additionally, it may help Japanese society and younger generations in coming to terms with a more comprehensive understanding of their nation's history, including its darkest chapters. Many scholars agree that the government's careful reconstruction of historical narratives has been instrumental

²⁶⁶ Updated Set of Principles against Impunity (n 14) Principle 3.

²⁶⁷ John D Ciorciari, 'Archiving Memory after Mass Atrocities' [2012] Rapoport Center Human Rights Working Paper Series 4/2012, 6.

²⁶⁸ *Ibidem*.

²⁶⁹ *Ibidem* 11.

²⁷⁰ Antonio González-Quintana, 'The management of the Archives of the State security services of former repressive regimes' (Report prepared for UNESCO on behalf of International Council of Archives, 1997).

²⁷¹ Ciorciari (n 267) 12.

in sustaining a sense of pride, nationalism, and victimhood following the Second World War,²⁷² which is reflected in its approach to history education and textbooks. Consequently, the cost of “avoiding the imposition of guilt on younger Japanese” has been the absence of a collective reckoning with the nation’s history.²⁷³ Creating and managing archives on wartime sexual slavery could help foster a sense of local ownership and contribute to combating malicious statements and historical manipulation. An archival institution can also be entrusted with organising a wide range of outreach activities based on the TC’s final report and its other records. Rubli and Jones argue that such an entity should indeed play an active role in disseminating the commission’s findings and should cooperate with civil society and NGOs for this purpose.²⁷⁴ In particular, archives provide an incredible number of resources for the organisation of memorialisation and educational initiatives.

In discussing the establishment of archives related to the “comfort system”, similar concerns to those mentioned above regarding the TC also arise here and require careful consideration. The location of the archives in Japan may make it more difficult for individuals of other nationalities to access the information, including victims, their families, or civil society members. A decentralised centre may be envisaged to allow individuals from other countries to access digitalised versions or paper copies of the original documents.²⁷⁵ Privacy concerns also raise sensitive questions: on the one hand, not all victims have been identified or feel comfortable speaking out. Therefore, any reference that may render them recognisable should be approached with care, especially if, as is likely, the persons concerned are no longer alive. Given the nature of the violations committed, disclosing personal information is highly sensitive and could still result in social stigma, not only for the directly affected person but also for their family. On the other hand, privacy concerns similarly arise for perpetrators, as the information is likely to lead to the identification of military commanders or government officers who oversaw the design and implementation of policies related to the “comfort system”, and simple soldiers who took part in it. Lastly, akin to the TC, the establishment of archives requires a political willingness and commitment to invest financial, human, and administrative resources from Japan, alongside a long-term plan for the project’s sustainability. The same considerations highlighted in the previous section apply here.

²⁷² See Japutra (n 241) 209-212; Jordan Sand, ‘Historians and Public Memory in Japan: The “Comfort Women” Controversy’ (1999) 11 *History and Memory* 116, 124; Shuko Ogawa, ‘The Difficulty of Apology: Japan’s Struggle with Memory and Guilt’ (2000) 22 *Harvard International Review* 42.

²⁷³ Japutra (n 241) 212.

²⁷⁴ Rubli and Jones (n 263) 20.

²⁷⁵ *Ibidem* 17.

3.4 Conclusions

After devoting the previous chapters to the right to the truth and memorialisation respectively, here the thesis brings together the two elements to discuss their implications for the future of the “comfort women” redress movement. This chapter seeks to analyse the avenues for justice that can be pursued, focusing on truth-seeking and memorialisation, to highlight the ways in which they enhance one another. It identifies two mechanisms that can realise the victims’ right to know the truth about the human rights violations and build and preserve memory. The two mechanisms proposed are the establishment of a TC and the creation of human rights archives.

The chapter addresses the question of how TCs and archives can fulfil the right to the truth and contribute to memorialisation, both theoretically and through the empirical case study of South Korean survivors of Japanese wartime sexual slavery. TCs are, in the words of Marie Soueid et al., “a manifestation of the survivors’ right to truth”²⁷⁶ and are genetically mandated to investigate the past to provide an authoritative account of the facts and a broader explanation of the causes and enabling conditions of the abuses. At the same time, these bodies can contribute to the creation of a collective memory by fostering a shared societal understanding of the past. Furthermore, by giving voice to survivors’ stories, TCs provide them with the necessary space and time to articulate their individual memories as a tool for memory-building. The final report supports both truth (as an authoritative account of past violations) and memory (as the creation of a shared understanding of such violations), while also facilitating memorialisation initiatives and reparation measures based on the factual information contained therein. Similarly, archives can advance the goals of both truth-seeking and memorialisation: they are regarded as vehicles or touchstones of collective memory, protecting and making accessible records related to past abuses. They serve as a means for society and individuals to gain knowledge of the past, answering the question of “what happened”, thus guaranteeing the right to the truth. Archives enable the collection, preservation, and transmission of records related to human rights violations, safeguarding documents and other types of evidence that contribute to establishing the truth, including the final report produced by TCs.

A TC tasked with investigating Japanese wartime sexual slavery could elucidate the facts of the “comfort system”, identify those responsible, and ascertain the underlying causes of such mass violence.

²⁷⁶ Marie Soueid, Ann Marie Willhoite and Annie E Sovcik, ‘The Survivor-Centered Approach to Transitional Justice: Why a Trauma-Informed Handling of Witness Testimony Is a Necessary Component’ (2018) 50 *The George Washington International Law Review* 125, 137.

The final report would serve as an authoritative record on the issue and provide a baseline for further research. By establishing and supporting the commission throughout its mandate, Japan's government would fulfil its duty to investigate past crimes, albeit through a non-judicial mechanism. It remains debatable whether this measure would meet the threshold for dismissing Japan's obligation under international law, as international human rights bodies argue that TCs do not replace judicial investigations and prosecutions. However, as this thesis has highlighted, it is difficult to envision how Japan could initiate a judicial inquiry and prosecute the perpetrators, considering the low likelihood that any responsible individuals are still alive, the legal hurdles involved, and the government's reluctance. By implementing the reparation measures recommended by the commission, Japan would also comply with its obligation to redress the victims. Creating a dedicated human rights archive would ensure that information about the past remains accessible to all and preserves collective memory.

Truthfully, some critical issues can be highlighted for both measures: ultimately, they rely on Japan's government's willingness to confront past atrocities and its commitment to sustaining such mechanisms. The fact that the "comfort women" issue has a vast territorial scope and involves a wide range of violations poses challenges for the investigation as well as practical issues that must be addressed beforehand. These mechanisms are not easy feats: they require political willingness and commitment of Japan's government on one side and the agreement and participation of survivors and NGOs on the other. Japan must acknowledge the full scope of the violations committed by the former military, recognise its legal responsibility and genuinely apologise, which the government has been reluctant to do.

The TC and archives do not operate independently of one another: they should be regarded as two halves of the same project, sharing the same goals, albeit in different forms. They are closely connected and build upon each other, not only because they both pursue truth, memory, and justice for the "comfort women", but also because their activities are intertwined. Both contribute to establishing the truth about past human rights violations and creating a shared understanding of this past (a collective memory), mutually reinforcing. Furthermore, they serve as a bulwark against historical denialism and revisionism. While acknowledging that alternative paths may be available and different approaches preferred, this chapter demonstrates that focusing on non-judicial measures centred on truth-seeking and memory-building is an option worth exploring. A TC and archives on Japanese wartime sexual slavery hold significant potential to provide redress to victims and their families and may prove easier to accomplish.

TCs and archives, among other mechanisms of transitional justice, follow the rhythm of humankind, which moves like a pendulum, simultaneously oscillating forwards towards the future while also reliving the past.²⁷⁷ By following this motion, they demonstrate how truth, memory, access to information, and the duty to remember are interwoven threads of a larger tapestry.

²⁷⁷ Herrera (235) 111.

Conclusions

This thesis has sought to explore the relationship between the right to the truth and memorialisation through a case study of South Korean victims of Japanese wartime sexual slavery known as “comfort women”. The main research question was whether and to what extent truth-seeking and memorialisation can uphold the victims’ rights to reparation and justice, and fulfil Japan’s duty to provide redress. The overarching aim was to assess whether prioritising these elements might offer a feasible path forward in the pursuit of justice. To achieve this, the thesis employed a tripartite structure, with chapters dedicated respectively to the right to the truth, memorialisation, and future avenues for justice for the “comfort women”, thereby exploring the interconnected issues at the heart of this work.

The first chapter aimed to examine what the right to the truth means for the former “comfort women” and whether it could serve as a comprehensive legal basis for their claims against Japan’s government, within the wider context of international human rights law. Although its status remains somewhat debated, it is reasonable to conclude that the right to the truth entails establishing the truth about past human rights violations through judicial investigations and/or extra-judicial truth-seeking initiatives, acknowledging full responsibility, providing redress to victims (including wide-ranging reparations), and ensuring that such violence does not occur again.²⁷⁸ The collective dimension of the right to the truth is also essential, as it satisfies society’s right to know and understand what happened in its past, thereby learning lessons for the future and restoring survivors’ standing in society.²⁷⁹ In the “comfort women” case, the survivors demand that Japan’s government accept responsibility for wartime sexual slavery, recognise the full impact (both immediate and long-term) on victims’ dignity and lives, disclose all evidence in its possession, and provide comprehensive reparation.²⁸⁰ This demonstrates that the right to the truth aligns closely with the demands of “comfort women” and underpins a legitimate claim for justice. Furthermore, by asserting a right to the truth, survivors can effectively articulate a message of ownership over a legacy of silence and suppression that has persisted for decades.

The second chapter sought to explore the meaning and objectives of memorialisation in the aftermath of gross human rights violations, particularly in the context of South Korean “comfort women”.

²⁷⁸ UNCHR, ‘Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights’ (2006) E/CN.4/2006/91 [38ff].

²⁷⁹ *Las Dos Erres’ Massacre v Guatemala* [2009] IACtHR Series C No 211 [149]; UNCHR, ‘Study on the right to the truth’ (n 278).

²⁸⁰ Korean Council’s website <<https://womenandwar.net/activity-eng>> accessed 6 April 2025.

These objectives include acknowledging past abuses, honouring and commemorating the victims, addressing contemporary issues stemming from unresolved historical questions, and ensuring such knowledge is preserved, shared, and transmitted to future generations.²⁸¹ For the State, memorialisation entails the duty to disclose information related to human rights violations, enabling individuals and society to exercise their right to access this information;²⁸² and the duty to fight the manipulation of history, which prevents society (particularly younger generations) from fully grasping the scope of past abuses, hinders human rights-based education, and further harms and disparages the victims.²⁸³ The “comfort women” case clearly demonstrates how vital memorialisation is for redress, as survivors and NGOs have, over the years, made efforts both in South Korea and Japan to keep the victims’ memory alive and press Japan’s government to acknowledge the harm done. Memorialisation offers a space for survivors to tell their stories, giving voice to what Japan’s government has silenced or ignored; at the same time, it calls on Japan to preserve the collective memory of the past by disclosing, safeguarding, and making accessible all evidence related to wartime sexual slavery. Promoting Japan’s duties concerning memorialisation underscores the rights of victims and society to access information about past atrocities, and emphasises the importance of remembering and honouring the victims as a means of dealing with the past and building a more inclusive future.

Lastly, having established that the right to the truth and memorialisation processes realise victims’ rights following serious human rights violations, the third chapter brought together the conclusions of earlier sections to explore the implications of truth and memory for the future of the “comfort women” redress movement. The aim was to identify avenues for justice that focus on truth and memory and their mutually reinforcing relationship, which may be easier to promote and implement. Two measures have been proposed: establishing a TC on Japanese wartime sexual slavery and creating *ad hoc* archives. TCs are bodies mandated to establish the truth about past events and provide an explanatory account of the causes and consequences of large-scale abuses.²⁸⁴ In doing so, they create an authoritative record of what occurred and contribute to forging a shared social understanding of the past, actively participating in the

²⁸¹ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’ (2020) A/HRC/45/45 [22].

²⁸² UNGA, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ (2013) A/68/362 [5].

²⁸³ UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice’ (n 281) [78ff].

²⁸⁴ UNCHR, ‘Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity’ (2005) E/CN.4/2005/102/Add.1, 6.

process of memory-making.²⁸⁵ Furthermore, a TC on Japanese sexual slavery could recommend reparation and memorialisation measures to Japan's government. Establishing archives would fulfil the State's duty to preserve evidence of human rights violations and disclose it to survivors and society, including the TC's final report and other records collected or produced by it.²⁸⁶ In so doing, archives support the establishment and dissemination of the truth, as well as the creation of a collective memory of the past.

At this stage, let us revisit and answer the primary research question of this thesis: it can be concluded that truth and memory *do* provide a pathway for achieving justice for the “comfort women”, strengthening one another in multiple ways. The right to the truth provides survivors with a strong legal foundation to demand that Japan's government investigate the facts and causes of the “comfort system”, redress victims, disclose information in its possession, and guarantee stronger protections of women's rights to avoid a repetition of such violence. Furthermore, it fulfils victims' demands for Japan to acknowledge its responsibility and recognise the full impact of the abuses inflicted, thereby also upholding society's right to know the truth about past large-scale violence. Memorialisation complements and further advances the goals of truth-seeking: it ensures that knowledge of the past is accessible to survivors and the public, disseminated throughout society for educational and commemorative purposes, and passed on to future generations. It helps survivors and society to deal with the past and recognise the harm caused. One element without the other would be an incomplete attempt at redress: establishing the truth about past human rights violations would not hold as much significance and reparative potential for victims if such information was not protected and integrated into a collective process of memory-making, so that society can know what occurred and acknowledge the victims' suffering. Simultaneously, memorialisation presupposes that the truth about the past is established and that a shared social meaning around past events is being built, allowing such knowledge to be used to address contemporary issues, educate younger generations, and draw lessons for the future.

In conclusion, this thesis recommends that Japan's government work closely with South Korean survivors, NGOs (particularly, the Korean Council), and the government of the Republic of Korea (ROK) to develop a long-term plan aimed at acknowledging its responsibility for wartime sexual slavery and providing redress to the victims. Specifically, such a plan should encompass the establishment by the

²⁸⁵ Onur Bakiner, ‘One truth among others? Truth commissions' struggle for truth and memory’ (2015) 8 *Memory Studies* 345.

²⁸⁶ Updated Set of Principles against Impunity (n 284) Principle 3.

Japanese government of a TC to investigate the facts of the “comfort system” and design a reparation programme, including memorialisation initiatives. It should also involve creating *ad hoc* archives to preserve and make accessible to the public the records about “comfort women” held by Japan’s government offices, in addition to those collected and produced by the TC. These institutions should be based within Japanese territory as Japan’s government bears international responsibility for the crimes committed against the “comfort women”, while also considering decentralised offices in South Korean territory (in cooperation with the ROK’s government) to enable survivors and the public to engage with the TC’s activities and access Japanese government records.

By addressing the “comfort women” case, this thesis aims to contribute to discussions on how to redress large-scale human rights violations, particularly those that occurred long ago and may have few survivors still alive. In recent years, debates about responsibility and redress for historical injustices have grown exponentially, prompting us to find ways to achieve justice that are sensitive to the legacies of silence and neglect experienced by victims. While justice is often associated with judicial redress, this thesis encourages moving beyond this mindset to adopt a more holistic, victim-centred perspective. Measures such as truth-seeking and memorialisation serve as alternatives to meet the needs of victims and society, not least because their demands, if listened to carefully, align perfectly with these mechanisms, demonstrating their affinity. Of course, employing judicial mechanisms is an obligation incumbent upon States in the aftermath of human rights violations, and should be upheld with utmost commitment. However, in cases like the “comfort women” issue, turning to judicial pathways proves difficult or ineffective. Therefore, it is worthwhile to develop alternative approaches that prioritise the victims’ experiences and voices. This thesis aims to be a small step in that direction.

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